



University Policy: Policy on Ownership of Copyright for American University

Policy Category: Academic/Research; Operational

Subject: Copyright ownership and intellectual property

Office Responsible for Review of this Policy: Office of the Provost

Procedures: NA

Related University Policies: Principal's Investigators Handbook; Patent Policy; Faculty Manual

I. SCOPE

A clear policy on copyright ownership can promote open access, encourage innovation among faculty, staff, and students, and allow development of materials for educational and commercial purposes. Every member of the American University community has rights and responsibilities with respect to copyright and intellectual property.

II. POLICY STATEMENT

All American University faculty, staff, and students have the responsibility to properly use copyrighted material and protect intellectual property rights. The purpose of this policy is to clarify the copyright ownership of certain created works.

III. POLICY

Copyrightable Works

1. Works by Faculty Members

a. Scholarly, Professional and Creative Work by Faculty:

A "Scholarly, Professional and Creative Work" includes a pedagogical, scholarly, literary, or artistic work created by a faculty member (including full-time, part-time, and adjunct faculty members) as part of traditional academic activity. Such Scholarly, Professional and Creative Works include, but are not limited to, books, journal articles, reviews, course syllabi, tests, course assignments, monographs, scholarly papers, musical compositions, works of art, computer programs, unpublished manuscripts, and recordings or transcriptions of lectures or performances.

In accordance with academic tradition, and unless specified by the Policy, the University does not claim ownership to Scholarly, Professional and Creative Works, and copyright ownership of the Scholarly, Professional and Creative Work will vest with the faculty member who created the work.

When multiple faculty members create a Scholarly, Professional and Creative Work, the faculty members will be joint copyright owners of the work unless there is a written agreement.

In consideration of the University not claiming ownership (unless specifies by this Policy) to Scholarly, Professional and Creative Works, faculty members grant the University a non-exclusive, perpetual royalty-free license to use work created for ordinary teaching use in the classroom (including but not limited syllabi, tests, assignments, reading lists, course description) for educational, research, internal, archival, or any other purpose consistent with the mission of the University.¹ Appropriate attribution should be made in uses of substantial intellectual contributions, where it is reasonable and appropriate.

Faculty members are also encouraged to disseminate their work for the public good and to promote American University.

The following are two separate exceptions to faculty ownership of Scholarly, Professional and Creative Work:

i. Written Agreement

When Scholarly, Professional and Creative Work is produced pursuant to the terms of a written agreement, the agreement shall specify ownership in the work.

ii. Exceptional Use of University Resources

Copyright ownership of Scholarly, Professional and Creative Works produced with exceptional use of university resources shall belong to the University unless there is a written agreement. Whether an individual work has been created through exceptional use of university resources shall be determined initially by the dean of his or her equivalent of the academic unit in which the faculty member has

¹ The Copyright Ownership Policy states that the faculty grants the University a non-exclusive license to use the work created for ordinary teaching use in the classroom (including but not limited to syllabi, tests, assignments, reading lists, course description) for educational, research, internal, archival, or any other purpose consistent with the mission of the University. From a legal perspective, a non-exclusive license does not grant the University any intellectual property rights in the works. All copyright in said works remain with the faculty. The non-exclusive license simply gives the University permission to use the work for the use stated. In addition, the University's non-exclusive license granted does not get transferred to a third party. This means that a third party does not have any permission to further distribute the work if he/she gained access to it. The third party still must get permission from the copyright owner.

principally been involved, or from which he or she has received resources to fund the work, taking into account that nature and amount of resources customarily made available to faculty in that department or unit. At the time that exceptional resources are approved, the dean or his or her equivalent shall inform in writing that faculty member of its decision.

Exceptional use of university resources occurs when the University has provided substantial support specifically for production of the work with resources of a degree or nature not routinely made available to faculty. This may include unusual reduction of teaching service or similar university activities, and other significant institutional funding in support of the work's creation; or free use of specialized university facilities outside of classroom settings. Each academic unit will determine what constitutes "exceptional use" and should provide guidelines to its faculty in this regard, and shall submit these guidelines to the Office of the Provost for the record.

Routine use of office space, office equipment, library materials or materials stored on a server is not considered exceptional use of university resources.² Works created on faculty sabbaticals and during approved research leave are considered routine and do not in and of themselves fall under exceptional use of university resources.

If the faculty member who created the work disagrees with the determination that the use of university resources is exceptional, he or she may file a written appeal to the Chair of the Faculty Senate's Committee Faculty Equity and Grievances (CFEG) (specified in Sec. III) within thirty (30) days after the dean's determination as set forth in the dispute resolution section defined below.

If the dean or his or her equivalent fails to assert copyright ownership rights when an exceptional use of university resources is authorized, the faculty member will be presumed the copyright owner.

b. Administrative Works by Faculty

"Administrative Work" is any work by faculty, excluding Scholarly, Professional and Creative Work, that is made at the express direction of a supervisor, prepared pursuant to the specific provisions incorporated within a position description, or prepared in the performance of any administrative duty.

² Nothing contained in this policy would prevent the University from the right and obligation to monitor and access stored material and data in University facilities and networks to ensure compliance with the law and University rules, regulations, and policies.

Copyright of ownership of Administrative Work shall belong to the University.

c. Conflict of Interest

This policy incorporated the Section 21 (Professional Standards) of the Faculty Manual. Specifically, faculty with full-time appointments, during their employment at the University, should not use (or permit others to use) their works in ways that compete with the University's courses; or is to the disadvantage of the University and its legitimate interests; or create a situation that would put the University at a competitive disadvantage unless prior written permission is obtained from the Provost or his/her designee. If the faculty member receives written approval of the college dean or director and the provost or his/her designee to teach at another college or university, then this approval also grants the faculty member permission to use his/her works in the teaching of the course. This provision does not apply to works created in conjunction with professional activities in conformance with University norms such as, but not limited to: sharing syllabi or other course materials with colleagues at other non-profit educational institutions; ordinary outside consulting; participation in professional or scholarly organizations; scholarly presentations and publications; pursuit of future employment opportunities; and public service.

d. Recordings in the Classroom

Faculty may give permission to students to make audio recordings in the classroom for personal use or for ordinary learning purposes pertaining to that class. Faculty may make audio or video recordings in the classroom for any educational purpose consistent with the mission of the university. For commercial purposes, classroom recordings must be approved in advance by the Provost or his/her designee.

2. Work by Students

Students own the copyright to the academic work they produce unless there are exceptional circumstances. In such cases, a written agreement is required. Academic work includes class papers, theses, dissertations, artistic and musical works, and other creative works made by university students.

Work produced by students as university employees, either as a work study or regular employee, as part of their assigned duties is owned by the University.

If a graduate research assistant is involved in assisting faculty with producing Scholarly, Professional and Creative Work as a part of their assistantship, then the faculty should have a written agreement with the student that clearly states the copyright interest of the student in the work. If the student is a significant

contributor to the work then the assumption is that they should be considered as a co-author, co-inventor or co-creator and share appropriately in rights to the work.

3. Work by Staff

Work produced by staff members within the scope of their employment is considered work-for-hire and the University owns the copyright to the work produced, unless there is a written agreement between the parties.

4. Sponsored Program Work

A “Sponsored Program Work” is any type of work developed using funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements. In consultation with the faculty member, copyright ownership shall be determined by written agreement between the University and the third party.

5. Work by Independent Contractors

Work produced for the University by independent contractors, excluding Sponsored Program Work, shall be considered work-for-hire and shall be owned by the University. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized university official, including but not limited to a provision that the University shall own copyrighted works produced by the independent contractor.

6. Independent Work by University Staff

AU does not claim ownership of intellectual property that is produced by staff on their own time and that is outside the scope of their employment, nor does it claim ownership of intellectual property produced without exceptional use of university resources, except as specifically provided in the Policy on Ownership of Copyright for American University.

III. Faculty Dispute Resolution of Exceptional Use of University Resources

The University shall use the Faculty Senate’s Committee on Faculty Equity and Grievances to review faculty disputes of exceptional use of university resources and to make recommendations to the Provost regarding any disputes between a faculty members and a dean or his or her equivalent over the determination that the use of university resources is exceptional as specified in Section III (a) (ii).

If a faculty member disputes the determination that the use of university resources is exceptional as specified in Section III (a) (ii), the faculty member may seek resolution of the dispute by filing a written request with the Chair of the CFEG. Within forty-five (45) days after the CFEG Chair receives the initial written request, the CFEG shall report its findings and conclusions to the Provost in writing along with a written recommendation for

disposition of the matter. However, the Provost shall have the authority to extend reasonably this period should the CFEG need additional time. Copies of such findings, conclusions and recommendations shall be provided to all parties. On receipt of such findings, conclusions and recommendation, the Provost shall issue a written decision in the matter. The Provost's decision shall be final.

IV. EFFECTIVE DATE(S)

This Policy was adopted by the Faculty Senate Committee for Information Services and (is) effective January 29, 2009.

V. SIGNATURE, TITLE AND DATE OF APPROVAL

This policy needs to be signed by the appropriate officer (listed below) before it is considered approved.

Approved:

A handwritten signature in black ink, appearing to read "Scott A. Bass", is written over a horizontal line.

Scott A. Bass

Provost

Date approved: 4/7/09