

# FAYETTEVILLE STATE UNIVERSITY

## COPYRIGHT USE AND OWNERSHIP POLICY

<b>Authority:</b>	Issued by the Chancellor. Changes or exceptions to administrative policies issued by the Chancellor may only be made by the Chancellor.
<b>Category:</b>	Research
<b>Applies to:</b>	●Faculty      ●Staff      ●Students
<b>History:</b>	Revised – June 4, 2009 Originally Approved - December, 2003 First issued - December, 2003
<b>Related Policies:</b>	<i>Patent and Copyright Policies</i> [UNC Policy 500.2]
<b>Contact for Info:</b>	Provost and Vice Chancellor for Academic Affairs (910) 672-1469 General Counsel (910) 672-1141

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### I. INTRODUCTION

In pursuit of its mission, it is the policy of Fayetteville State University (FSU) that its faculty, staff and students carry out their scholarly work in an open and free atmosphere, and that consistent with applicable laws and policies, the results of such work by FSU faculty, staff and students are without restraint. To those ends, and in order to effect provisions of the *Patent and Copyright Policies* of the University of North Carolina (UNC), this Copyright Policy (*Policy*) is adopted.

This *Policy* applies to all institutional employees, including, but not limited to faculty, visiting scholars, researchers and staff. This *Policy* also applies to all students in attendance at FSU, including, but not limited to full-time and part-time, resident and commuter, undergraduate and graduate students.

This *Policy* supplements the *Patent and Copyright Policies of the University of North Carolina*, and is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in copyrighted works created in connection with sponsored research.

### II. ADMINISTRATIVE RESPONSIBILITY

The Provost and Vice Chancellor for Academic Affairs (hereinafter referred to as the “Provost”) is responsible for implementing this policy. (Questions and concerns of a legal

nature shall be the responsibility of the General Counsel.) In administering the Policy, the Provost shall be responsible for:

- A. Developing, with the assistance of the FSU Intellectual Property Committee, policies and procedures designed to supplement and interpret the ownership aspects of the *Policy*;
- B. Providing advice regarding ownership of specific works;
- C. Releasing institutional rights;
- D. Accepting an assignment of rights to FSU from an author or creator of a work;
- E. Contracting for the terms of transfer, shared ownership, and/or commercialization of copyrighted works at FSU;
- F. Determining the applicability of the "work for hire" doctrine and the suitability of waiving that doctrine in individual cases; and,
- G. Dispute resolution.

### III. FSU INTELLECTUAL PROPERTY COMMITTEE

#### A. **Composition**

The Intellectual Property Committee (IPC) shall be appointed by the Chancellor and shall be constituted as follows:

- 1. **FSU Staff**
  - University Librarian
  - Associate Vice Chancellor for Academic Affairs
  - Dean of Graduate Studies and Research
- 2. **FSU Faculty\***
  - Arts and Sciences (1)
  - Business and Economics (1)
  - Education (1)

\*Following consultation with the members of the faculty senate, the chair of the faculty senate shall recommend to the Chancellor one faculty member from each of the university's schools/college as a member of the IPC.

The General Counsel shall be an ex officio (non-voting) member of the Committee.

#### B. **Duties**

The IPC shall have such responsibilities as the Chancellor may specify concerning copyrights and patents, including but not limited to the following duties:

1. In accordance with regulations of the UNC Board of Governors, to propose to the appropriate advisory and governing bodies revisions to FSU's policies on the use of copyrighted materials and the ownership of intellectual property;
2. To monitor developments in intellectual property law as it relates to changes in instructional and communications technology in order to propose to the appropriate advisory and governing bodies' revisions to FSU's policies on the use of copyrighted materials and the ownership of intellectual property;
3. To provide advice to FSU personnel concerning interpretation of FSU's intellectual property policies and procedures; and,
4. Under procedures specified below, to hear and recommend resolution of disputes involving copyright ownership. The IPC shall forward its findings and recommendations regarding such disputes to the Provost. Copyright disputes shall be exclusively within the jurisdiction of the IPC.

#### **IV. USE OF COPYRIGHTED WORKS BY FACULTY, STAFF AND STUDENTS**

##### **A. Appropriate Use of Copyrighted Works**

FSU is committed to complying with all applicable laws regarding copyrights and patents. As an institution devoted to the creation, discovery and dissemination of knowledge, FSU supports the responsible, good faith exercise of full fair use rights, as codified in federal law at 17 *US.C.* § 107, by faculty, librarians, staff and students in teaching, research, and service activities.

Except as allowed by law, it is a violation of this *Policy* for FSU faculty, staff or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

##### **B. Fair Use; Permissible Use**

17 *US.C.* §107, as amended, provides exemptions to certain copyright uses which allows for legitimate use or "fair use" of copyrighted materials for purposes that might otherwise infringe a copyright and violate the rights granted to the copyright holder. These uses include creative, personal and educational fair use.

##### **1. Elements of Fair Use: Good Faith Consideration Required**

FSU faculty, staff or students who propose to make fair use of a copyrighted work must consider in advance the applicability of four

statutory factors to be weighed in making a fair use analysis. These factors are:

- (a) The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
- (b) The nature of the copyrighted work;
- (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and,
- (d) The effect of the use upon the potential market or the value of the copyrighted work.

2. **Procedure for Making Fair Use Determinations**

The IPC shall issue and as necessary revise guidelines to assist FSU faculty, staff and students in making fair use evaluations. Faculty, staff or students who require assistance with fair use questions are encouraged to consult with the IPC.

3. **Infringement**

The Provost shall make the final determination, on behalf of FSU, as to whether a specific use of a copyrighted work may constitute infringement.

**V. COPYRIGHT OWNERSHIP**

Ownership of a copyright in a copyrighted work shall depend on the category of the work in question and on the status of its creator. Categories of work defined under this *Policy* include:

- Traditional Works or Non-Directed Works;
- Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources;
- Directed Works;
- Sponsored or Externally Contracted Works; Works Made for Hire;
- Works by Independent Contractors; and,
- Student Works.

**A. Works Created by Faculty or EPA Non-Faculty Employees**

1. **Traditional Works or Non-Directed Works**

- (a) **Definition.** Traditional works or non-directed works are pedagogical, scholarly, literary, or aesthetic works resulting from non-directed efforts. (Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of the *Policy*,

works of art or design, musical scores, poems, films, videos, audio recordings or other works of the kind that have historically been deemed in academic communities to be the property of their creator.)

- (b) **Ownership.** The creator of such a work shall own the work unless it is a directed work, a sponsored or externally contracted work requiring FSU ownership of the copyright, a work for hire or a work involving exceptional use of university resources (defined below.) As a condition of employment, faculty and EPA non-faculty creators of a traditional or non-directed work related to their field of employment at FSU, shall be deemed to have granted FSU a non-exclusive, non-transferable, royalty- free license ("shop right") to use the work for FSU's own educational or research purposes unless such a license will impede scholarly publication or similar activities.

Traditional works or non-directed works for which authorship cannot be attributed to one or a discrete number of authors but instead result from simultaneous/sequential contributions over time by multiple authors shall be owned by FSU.

- (c) **Commercialization; Assignment to University.** If FSU is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to FSU under an *Assignment Agreement*. The *Assignment Agreement* shall contain provisions outlining FSU's commercialization responsibilities and a mechanism for sharing commercial proceeds with the author. In such cases, FSU shall own a license as specified in (b) above.

## 2. **Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources.**

- (a) **Definition.** Exceptional use of University resources has occurred where FSU has provided support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EPA non-faculty employees. Exceptional use of University resources may include, but not be limited to:
  - (i) Waiver of fees normally required to use specialized facilities such as equipment, production facilities, service laboratories, specialized computing resources, and studios;
  - (ii) Institutional funding or gifts in support of the work's creation;
  - (iii) Reduction in levels of teaching, service or other typical university activities (e.g., course load, student advising

responsibilities, division/department meetings, office hours, administrative responsibilities) specifically to facilitate creation of the work; or,

- (iv) Any other non-ordinary use of FSU's equipment, property or resources.

Ordinary or limited use of computers, laboratory space, libraries, office space or equipment, routine secretarial services at routine levels, telephones and other informational resources shall not be considered exceptional use of FSU resources.

- (b) **Ownership.** FSU shall own traditional works or non-directed works involving exceptional use of university resources. Whether an individual work has been created through exceptional use of university resources shall be determined initially by the department chair or unit head in which the creator has principally been involved or from which he or she has received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty or staff in that department.
- (c) **Release to Creator.** The Provost, in consultation with the creator's department chair or unit head, may release or transfer FSU's right in a traditional work or non-directed work created through exceptional use of FSU's resources to the work's creator through an appropriate written revenue sharing agreement.
  - (i) Any agreement for release to a creator of a traditional work or non-directed work created through exceptional use of university resources shall include provisions that FSU shall have a shop right.
  - (ii) If commercialization of the work generates income either, (a) the creator shall reimburse FSU for the exceptional resources provided the creator or, (b) the creator shall share income from such commercialization with FSU. The amount will be negotiated between the creator and the Provost after consultation with the creator's department chair or unit head.
- (d) **Proceeds.** The Provost shall determine how proceeds from the work will be allocated.
- (e) **Disputes.** Disputes regarding whether a work has been created through the exceptional use of university resources shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified in Section VII. However,

decisions regarding financial terms made under item (c) (ii) or item (d) above shall not be subject to appeal under this *Policy*. In the event that the creator and FSU are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with FSU.

### 3. **Directed Works**

- (a) **Definition.** A directed work is a work that is specifically funded or created at the direction of FSU. Such funding need not constitute exceptional use of FSU resources in order for the work to be considered a directed work.
- (b) **Ownership.** FSU shall own the copyright in a directed work. Where practicable in the estimation of the creator's department chair or unit head and subject to any additional terms or limitations made necessary by FSU licensing agreements, the creator, where shall be granted a shop right.
- (c) **Release to Creator.** FSU may release or transfer ownership in directed work to the creator.
  - (i) Any agreement for release to a creator of a directed work shall include provisions that FSU shall be granted a shop right; and/or,
  - (ii) If commercialization of the work generates income, either (a) the creator shall reimburse FSU for the resources provided the creator in conjunction with creation of the work, or (b) the creator shall share income from such commercialization with FSU, in an amount to be negotiated between the creator and the Provost. The Provost, in consultation with the creator's department chair or unit head, shall determine how proceeds from the work will be allocated.
- (d) **Proceeds.** The Provost shall determine how proceeds from the work will be allocated.
- (f) **Disputes.** Disputes regarding whether a work is a directed work shall be resolved under the dispute resolution procedures specified in Section VII. However, decisions regarding financial terms made under item (c) (ii) or item (d) above shall not be subject to appeal under this *Policy*. In the event that the creator and FSU are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with FSU.

4. **Joint Ownership**

In addition to the foregoing provisions for release to the creator of a directed work, FSU, through the Provost in consultation with the creator's chair, and the creator may alternatively negotiate for joint ownership of the work.

**B. Sponsored or Externally Contracted Works**

1. **Definition.** A sponsored or externally contracted work shall be any work developed using funds supplied under a contract, grant, or other arrangement between FSU and a third party, including a sponsored research agreement.

2. **Disclosure.** For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the university, the creator of the work must promptly disclose the work to Provost through the Office of Sponsored Research.

3. **Ownership**

(a) **Creator Owned Work.** Unless the agreement expressly requires copyright ownership by FSU or conveyance of rights to a third party, the creator of a sponsored or externally contracted work shall own the work. As a condition of employment, faculty and EPA non-faculty creator-owners of a sponsored or externally contracted work shall be deemed to have granted FSU a shop right.

(b) **FSU or Third Party Owned Work.** FSU shall own a sponsored or externally contracted work where the relevant agreement requires copyright ownership by FSU or conveyance of rights to a third party, in which case FSU will convey rights to the third party as required. In such cases the creator of the copyrighted work shall be required to report the work to the Provost, using such forms and procedures as the university requires.

Where a proposed sponsored research agreement or research grant will require that copyrighted works be owned by FSU or a third party, the FSU Office of Sponsored Research shall inform the relevant Principal Investigator of the copyright provisions and secure his or her consent, in writing, to such provisions before the agreement is signed or the grant accepted.

4. **Release.** Sponsored or externally contracted works owned by FSU may be released to the creator or jointly assigned to the creator and FSU,

through the procedures mandated for directed works, where FSU has ascertained that such release will not conflict with the terms of the relevant agreement or grant or with written consent of the other party to the agreement or grant.

**C. Works Created by SPA Staff Employees Considered Works Made for Hire**

1. **Definition.** For purposes of this *Policy*, a "work made for hire" is:
  - (a) A work prepared by an employee within the scope of his or her employment; or,
  - (b) A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.
2. **Ownership.** Works made for hire by SPA staff shall be owned by FSU. Exceptions to university ownership may occur with the approval of the Provost. In the case of an exception, FSU shall enter into an agreement with the SPA employee in advance of the creation of the copyrighted work. The agreement shall specify that the work shall be owned in whole or in part by the employee and that proceeds from the work will be negotiated.

**D. Works by Independent Contractors**

Works produced for FSU by independent contractors shall be considered works made for hire and shall be owned by FSU. 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 specifying ownership of copyrighted works produced by the independent contractor.

**E. Student Works**

1. **Definition.** Student works are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by FSU students.
2. **Ownership and Use.** Students shall own the copyright in student works in the following cases:

- (a) For sponsored or externally contracted works, ownership shall be in accordance with the Section V.B. of the *Policy*.
  - (b) Student works created in the course of the student's employment by FSU shall be considered works made for hire, and ownership and use of such works shall be as specified in the section of this *Policy* on works for hire made by SPA employees.
  - (c) Students have a limited right to use classroom, laboratory and other academic materials generated in the instructional process, which are derivatives of an instructor's work for personal educational purposes. A student generating such notes shall not use them for commercial purposes nor may they be posted to Internet sites.
- 3. **Release.** The Provost may release or transfer FSU's right in a work created by a student through an appropriate written agreement which shall specify the respective rights and obligations of the parties.
  - 4. **Joint Ownership.** In addition to the foregoing provisions for release to the student-creator of a directed work, FSU, through the Provost may alternatively negotiate for joint ownership of the work.

## VI. WORKS SUBJECT TO BOTH COPYRIGHT AND PATENT PROTECTION

Where an invention is thought to be the subject of protection under both patent law and copyright law, if FSU determines to retain title to its patent rights, the inventor/creator shall assign the copyright to FSU. If the work is commercialized, the inventor/creator shall be compensated in accordance with the provisions of all such policies established by the institution.

## VII. DISPUTE RESOLUTION

### A. Jurisdiction

Any FSU faculty, staff or student may seek resolution of a dispute regarding ownership of a copyrighted work governed by this *Policy* by filing a written complaint with the Provost. The Provost shall refer such complaints to the Chair of the IPC. The Chair of the IPC shall appoint a panel consisting of at least three (3) members of the IPC and the chair (Dispute Resolution Panel) to hear such a dispute. The IPC shall have exclusive jurisdiction on all issues related to copyrights.

### B. Conduct of Hearing

At its discretion, the Dispute Resolution Panel may elect to conduct a hearing into the matter or may make a recommendation based upon the written record,

provided that all parties to the dispute are given an opportunity to present evidence and arguments in support of their respective positions. Each party shall provide the other party with a copy of any written materials submitted to the Dispute Resolution Panel at the same time that such materials are submitted to the panel. Any hearing will be conducted following procedures set forth by the panel or promulgated by the IPC. No party shall have the right to be represented by legal counsel before the Dispute Resolution Panel, but any party may be accompanied at a panel hearing by an advisor of his or her choosing who is an employee of FSU. The advisor shall not participate in the hearing.

**C. Disposition**

The Dispute Resolution Panel shall forward its written findings, conclusions and recommendations to the Provost within thirty (30) calendar days of the appointment of the panel by the IPC Chair. For good cause the IPC Chair extend the time period for submission of the panel's report by not more than an additional thirty (30) calendar days. Copies of such findings, conclusions and recommendations shall be provided to all parties involved. On receipt of the panel's report, the Provost shall issue a written decision in the matter within thirty (30) calendar days of the receipt of the panel's report. The Provost's decision shall be final, subject to appeals permitted under the *Code* of the University of North Carolina.