

BOWLING GREEN STATE UNIVERSITY

COPYRIGHT POLICY

I. Preamble and Purposes

The University encourages and supports the creation, development, expression and publication of written and recorded materials by university faculty, staff and students. Such activity furthers the broad university goals of excellence in knowledge creation, communication, and dissemination. Publication, a common means for communication and dissemination, is also a common indicator of scholarly productivity and quality because publication per se is often preceded by external evaluation of the quality and significance of the work. Therefore, publication is an important activity for the University to encourage and support, both because of its scholarly significance and its role in the communication of knowledge.

An important corollary of publication is copyrighting, which secures for a limited time an exclusive right of ownership to authors or creators for their work. Owners of copyrighted material may transfer or grant license to use their protected work usually in return for some fee or other benefit. Thus, copyrighting protects these proprietary and financial interests while encouraging publication.

Many works developed for publication by University authors or creators are undertaken at their own initiative. The University clearly recognizes the long-standing norms of academic freedom and legal tradition that University personnel through their own initiative may prepare materials that may be copyrighted by and generate income for the author(s) or creator(s). The University has no interest in restricting the ability of its personnel to produce copyrightable materials and to receive royalties therefrom.

The University does recognize however, a proprietary interest in some materials prepared with its support, by its personnel or under its auspices for which copyrights are requested. University support of the scholarly activities leading to creation, development, expression, and publication of written or recorded materials takes many forms, including: clerical and research assistance; supplies, equipment, and use of University facilities and services; specifically assigned time for the work; graphics and computer services.

Therefore, the purposes of this University Copyright Policy are to: (1) identify the proprietary rights of personnel and of the University in respect to copyrightable materials; (2) establish procedures for clarifying and negotiating proprietary rights when those of the University intersect with those of its personnel; (3) establish procedures for licensing use of University copyrighted materials; and (4) establish an income distribution schedule for royalties resulting from licensing agreements or other marketing arrangements for University copyrighted materials.

II. Publication Rights of University Personnel

The policy of the University with regard to copyrighted materials is intended to foster and support the traditional freedoms of the University's faculty, staff, and students in matters of publication. It is also intended to ensure that the University's legitimate ownership interests in certain classes of materials are adequately protected and that commercial development is conducted in a manner consistent with the University's public mission.

The ownership of materials initiated and produced by authors who are University staff members shall remain with the authors, except for the classes of works identified in Section III below. This policy follows the principle that ownership of copyright generally vests in the author(s) or creator(s) of the copyrighted work. When ownership vests in the author or creator, she/he is entitled to all rights and privileges associated with commercial development of the work including (but not limited to) copyrighting the work, registering the copyright,

licensing the use of the work, publishing, marketing, paying fees and expenses associated therewith, and receiving royalties therefrom.

III. Principles of University Ownership

There are, however, exceptions to the "author/creator as owner" principle. These arise in cases of (A.) "works for hire," (B.) works substantially assisted by the University, (C.) works done under a sponsorship agreement between the University and an external agency, and (D.) works contributed to the University. The University desires to publish, copyright, and license the use of only those materials which fall into one of these categories and have a potential for royalty return. The potential for royalty return indicates that there is economic value to their dissemination requiring copyright protection. Other University-owned materials should be placed in the public domain by publishing them with copyright protection and a corollary permission clause allowing general "not for profit" use. Thus, the principle of author or creator as owner applies to all but the following categories of copyrightable materials or works.

A. "Works for hire."

Copyrightable materials produced by University employees as the result of direct work assignments to meet specific objectives or as an assigned University duty other than general academic research and normal teaching assignments are "works for hire" for which the copyrights belong to the University. Such materials are usually not initiated by the author, although they may result from performance of a general assigned duty (e.g., a staff member may prepare a manual, instructional materials, or computer programs as a general assignment of his/her job). Such materials also include works commissioned by the University which fit within any of the categories of "specially ordered or commissioned" works enumerated in Section 101(2) of The Copyright Act of 1976. The University supports the primary cost of the work and all income derived from the work accrues to the University, to be shared as indicated in Section VI below.

B. Works substantially assisted by the University.

There are some instances in which copyrighted materials are substantially assisted by University support, such as (but not limited to): salary awards above and beyond the normal academic year salary; other staff salaries and effort; use of facilities and equipment; University computing and graphic services. Where such assistance goes beyond the author's academic year salary, use of office space, personal use of library and computing resources, or use of word processing equipment and clerical assistance, resulting in additional costs to the University, then the work was created with the substantial assistance of the University. It is correspondingly reasonable to review the rights to ownership and equities for that work in consideration of the magnitude and importance of University assistance in its creation.

Therefore, for works that are created with substantial University assistance, the rights and equities of ownership shall be negotiated and agreed upon in writing by the author(s) or creator(s) of the work and the Associate Vice President for Research prior to release of University copyright privileges. It is desirable in most cases to negotiate agreements prior to the commitment of the University assistance for the work. The University may agree to: (1) assign all rights of ownership to the author or creator; (2) assign joint ownership rights, sharing in all income derived from the work; (3) negotiate a royalty-free non-exclusive license to reproduce and use the work for University activities in return for sole ownership by the author or creator; (4) negotiate a value of the University's assistance and receive payment of no more than 50 percent of royalties accruing to the author or creator up to the value of the University assistance, in return for sole ownership by the author or creator; or (5) any combination of the above that adequately reflects the University's level of support. Whatever arrangement is negotiated, the author or creator shall acknowledge in writing in the work the support of Bowling Green State University in producing the work.

The Associate Vice President for Research shall utilize the assistance of the Copyright Advisory Committee in negotiating the ownership rights and equity. If no arrangement can be mutually agreed upon, the Copyright Advisory Committee

and the Associate Vice President for Research shall make independent recommendations regarding ownership and equity to the President who shall assign the rights of ownership and equity and whose decision will be final.

C. Externally sponsored works.

The ownership of copyrightable materials prepared either wholly or partially with the support of grants or contracts from an external agency shall be determined according to the terms and conditions of the applicable grants or contracts. Where the applicable grant or contract is silent on rights to and income from copyrightable materials or where the agency has no policy pertaining thereto, rights to ownership shall be determined as if the materials were "substantially assisted by the University," see Section III. B. above.

D. Works contributed to the University.

University personnel may choose to contribute copyrightable materials to the University and thereby assign all rights of ownership to the University. The University may choose to accept or not to accept such works for University ownership. In accepting such works for University ownership, the Associate Vice President for Research may negotiate a limited license for personal use by the author or creator as well as a share of any royalties earned by the University from commercial development in return for contribution of the copyrightable work.

Nothing in this section shall be construed to be contrary to the policies of Bowling Green State University publications in regard to ownership rights or equities.

IV. Student Works

Unless subject to the provisions of Section III, Part B, copyrightable works prepared by students as part of the requirements for a degree program are deemed to be the property of the student, but are subject to the following provision.

The University shall have, as a condition of the degree award, a non-exclusive royalty-free right to retain and use a limited number of copies of the copyrightable work and the right to secure its publication for archival use.

V. Responsibilities and Administration

A. The Associate Vice President for Research shall be responsible for promoting general awareness of this policy by University personnel and for answering any specific questions having to do with its terms or implementation.

B. University personnel agree to abide by this policy and by procedures for its implementation as a condition of their employment.

C. The Associate Vice President for Research shall appoint a Copyright Advisory Committee consisting of three members of the faculty, one administrative staff member, and one classified staff member for terms of three years. Initial appointments shall be for staggered terms to avoid disruptive member changes every third year. The Committee shall meet at least once a year.

D. The Associate Vice President for Research shall develop and approve agreements about and assignments of copyright to authors or creators, to the University, or to both, in regard to works which are produced with substantial University assistance.

E. The Associate Vice President for Research shall provide assistance in securing the copyright to any works in which the University has proprietary rights and equity.

F. The Associate Vice President for Research shall provide assistance in licensing or distributing any copyrightable works in which the University shares rights and equities with the author or creator or external sponsor.

G. The Associate Vice President for Research shall establish appropriate accounts and procedures for receiving and distributing income accruing to the University as the result of licenses to use copyrighted works in which the University has proprietary rights and equities or for which there are other agreements assigning income to the University.

VI. Distribution of Income

Net income accruing to the University from the commercial licensing or development of wholly University-owned copyrights resulting from works for hire shall be distributed as follows:

Thirty-three (33) percent to the author(s) or creator(s), with the balance sixty-seven (67) percent to the University.

Net income is gross income less expenses for copyright registration, marketing, or other requirements for use and sale of materials outside the University.

Although this is the norm for University copyright agreements, the distribution formula is subject to negotiation for works substantially assisted by the University, externally sponsored works, and works contributed to the University. The distribution formula in these instances should reflect the level of University support or assistance.

VII. Definitions

As used in this policy, the following terms have the indicated meaning:

1. *Written materials* -- All literary, dramatic, musical materials or works, all pantomimes, and choreographic works, pictorial, graphic, and sculptural works, and all other materials or works including computer programs published or unpublished, copyrighted or copyrightable at any time under the Federal Copyright Act as now existing or hereafter amended or supplemented.

2. *Literary materials* -- Works expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material object, such as books, periodicals, manuscripts, phono records, film, tape, disks, or cards in which they are embodied.

3. *Recorded materials* -- All sound recordings, visual, audio-visual, and television films, tapes, or disks, video tapes, kinescopes, computer tapes or disks containing electromagnetic representations of written materials or computer programs.

4. *Works* -- Written or recorded materials.

5. *Publication* -- Distribution of copies or recordings of a work to the public by sale or other transfer of ownership, or by rental, lease or lending.

6. *University personnel* -- Part-time and full-time members of the faculty, administrative staff, classified staff, all students, postdoctoral fellows; and any other employees or consultants to the University or persons being trained in University-sponsored programs.

7. *Work for hire* -- Work created under the circumstances set forth in Section 101 of The Copyright Act of 1976.

8. *Substantial assistance* -- University salary, above and beyond the academic year or contract year salary; assignment of University-salaried staff other than author(s) or creator(s) to creation or production of the materials above and beyond clerical assistance; or use of University facilities and equipment in creation or production of the materials above and beyond use of assigned office space, libraries, personal use of computing resources, and word processing equipment. Faculty improvement leave with pay does not constitute substantial assistance in the creation of material subject to copyright.