I. SCOPE

In the course of teaching, research and other scholarly and administrative activities at the University, faculty, staff, postdoctoral associates, students and others may create works that are protected by copyright. Federal Copyright Law provides protection for original works of authorship automatically at the time those works are fixed in a tangible medium.

This policy establishes the rights and responsibilities of the University and of faculty, staff, postdoctoral associates, students and others regarding the creation, use and ownership of works protected by copyright, and the distribution of royalties generated from the licensing and exploitation of those copyrights.

II. POLICY

A. General Policy Statement

Copyright law (e.g. 17 U.S.C. § 101, et. seq.) provides that the copyright to a work created by a person in the course of his or her employment (a “work for hire” – see Definitions) belongs to the employer rather than the individual creator. However, universities have traditionally developed exceptions to this general rule that apply to their unique academic settings. Therefore, subject to the exceptions in items 1 through 5 below, it is the policy of the University that the copyright in all materials created by University faculty, postdoctoral associates, or students (hereinafter “University Authors”) in the course of their academic responsibilities resides with the University Authors.

Accordingly, ownership of copyrightable Scholarly Work, including Software, created by University Authors in the course of research, scholarship, teaching, and/or other academic and educational responsibilities shall reside with the University Author. Likewise, ownership of copyrightable Course Materials created by a University Author prepared in the course of teaching responsibilities at the University shall reside with the University Author. University Authors, however, are reminded that they must also comply with Policy RI 01, Conflict of Interest Policy for Faculty, Scholars, Researchers, Research Staff/Coordinators (formerly 11-01-03), and with Policy RI 05, Patent Rights and Technology Transfer (formerly 11-02-01). Ownership of copyright cannot impede compliance with these policies or with University policies or Federal or State regulations governing academic issues such as research integrity.

The University does retain a non-exclusive, irrevocable, perpetual, royalty-free license for course material created by the faculty in the course of employment. This license includes the right to create derivative works, but not the right to publish such scholarly works for dissemination outside the University.

The University also retains world-wide copyright ownership in the following specific circumstances:

1. Assigned Tasks The University owns the copyright to works created: (i) by staff members (other than faculty or postdoctoral scholars) or student employees within the scope of their employment; and (ii) by faculty members or postdoctoral associates as an assigned task. An assigned task is any task within the scope of employment that is not a Scholarly Work. An assigned task might include the development of course materials when this has been specifically agreed to as outlined below (see #5 below).
2. **Outside Agreements** Where copyrighted materials are developed in the course of sponsored research funded by an outside agency or entity pursuant to a written agreement, copyright ownership of such materials shall rest with the University unless it is stated otherwise by the terms of such agreement. See section II, D below.

3. **Patentable Works** Where a copyrighted work, such as certain computer software, is also patentable, University Policy RI 05, Patent Rights and Technology Transfer (formerly 11-02-01), will apply as to ownership of both copyright and patent rights and to distribution of any income from commercialization or exploitation, notwithstanding any inconsistent provisions contained in this or any other University policy.

4. **Scholarly Works** The University shall retain ownership of copyrightable Scholarly Work in the event (1) the creation of the Scholarly Work is a Sponsored Activity or is directed by a contract, grant, or cooperative agreement with a third party, in which case ownership is governed by the contract, grant, or cooperative agreement; or (2) the Scholarly Work is supported by a specific allocation of University support, to which the Creator(s) agreed, or created at the direction of the University for a specific University purpose.

5. **Course Materials** The University shall retain ownership of copyrightable Course Materials in the event: (1) the preparation of Course Materials is a Sponsored Activity or directed by a contract, grant, or cooperative agreement with a third party, in which case ownership is governed by the contract, grant, or other formal agreement; or (2) the Course Material is supported by a specific allocation of University support, to which the Creator(s) agreed, or created at the direction of the University for a specific University purpose.

B. **Student Works**

As described above in accordance with academic and University tradition, the University does not claim ownership to Scholarly Works. Such works include those of students created in the course of their education, such as dissertations, papers and articles. However, patentable inventions including those described in a dissertation, paper or article are the property of the University pursuant to Policy RI 05, Patent Rights and Technology Transfer (formerly 11-02-01). See also section II, A (3) above.

C. **Works of Non-Employees**

Under the Copyright Act, works of consultants, independent contractors, and other non-employees, created at the request of, on behalf of, or for the benefit of the University, generally are owned by the creator and not by the University, unless there is a written agreement to the contrary. Since it is the University’s policy that the University shall obtain ownership of the copyright in such works, the University requires all consultants, contractors or other non-employees to execute a written agreement prior to the beginning of any work under such engagement that state that world-wide copyright ownership of such works is assigned to and vests in the University.

Examples of works which the University may retain non-employees to prepare are:

- Architectural structures
- Reports by consultants or subcontractors
- Computer software
- Architectural or engineering drawings
- Illustrations or designs, including computer graphics
- Artistic drawings and artistic works
D. **Contractual Obligations of the University**

This Copyright Policy shall not be interpreted to limit the University’s ability to meet its obligations for deliverables under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements and the like. Copyrightable works that are subject to a sponsored research agreement or other contractual obligations of the University shall be owned by the University, so that the University may satisfy its contractual obligations.

III. **ROYALTY/INCOME POLICY**

A. **Allocation of Royalty/Income – For Works Other Than Scholarly Works**

Where the University has an ownership interest in a work and revenues result from licensing that work or otherwise exploiting it, the standard royalty sharing arrangement will be as follows:

1. Where the work is a “work for hire” created by a University employee or non-University consultant, contractor, or other non-employee there is generally no royalty-sharing arrangement unless there is a written agreement between the University and such person(s) providing for distribution of income to the University employee, consultant, contractor, or other non-employee.

2. Where there is a written agreement between the University and any non-University individual or entity, or a written shared-royalty agreement regarding works created using University resources, distribution of income will be made according to that agreement.

3. In all other cases where the University has an ownership interest in a copyrighted work, first income will reimburse University or other development funds (excluding gifts and sponsored agreements) and other expenses or fees related to the creation of the work and the maintenance, or enforcement of the copyright or of licensing of the work.

The balance of proceeds from royalties or disposition will be distributed as follows:

- 50% to the creator(s) or developer(s);

- 25% to the department or school of the creator/developer for use in furthering the work of the creator/developer at his or her discretion with the approval of the department head or chair; or for purposes at the discretion of the department head or chair, if the creator/developer is no longer an active member of the faculty or staff and the department has applied for use of the funds as stated below, or is a student at the University; and

- 25% to the University Copyright Development Fund, to provide for development of works that may be copyrightable, under the direction of the Office of the Provost.

In the event that total income from a copyright exceeds $100,000, the above distribution of royalties may be changed in accordance with a plan approved by the Chancellor of the University, but not so as to reduce the creator’s share.

In the event that an employee entitled to allocation of royalties or income under this policy leaves the University, voluntarily or involuntarily, the employee will continue to receive payments, but will not be entitled directly or indirectly to continue to receive or transfer any other rights or benefits from the proceeds distributed to the department, school, or University.
In the event of the death of an employee entitled to allocation of royalties or income under this policy, payments will continue to be paid to the employee’s estate and subsequently to those who, by a court approved distribution or order, are designated to receive such payments. The limitations on distributions set forth in the preceding paragraph apply.

In the event of the above mentioned departure or death of an employee entitled to royalties or income under this policy, the department’s share of funds described above will revert to the University Copyright Development Fund. The University Author’s department, wherein the University Author was primarily employed while he or she created the work, may subsequently choose to apply to the University Copyright Committee for use of these funds. In the event of such an application, the Committee will make a recommendation to the Provost who will make a final determination.

Any disputes involving royalties will be resolved by the Provost, after a recommendation from the University Copyright Committee.

B. Determination of Ownership and Policy in Unclear Cases

Questions of ownership or other matters pertaining to materials covered by this policy shall be resolved by the Provost after a recommendation from the University Copyright Committee.

C. Use of the University Name in Copyright Notices

The following notice should be placed on all copies of all University-owned materials in order to protect the copyright:

Copyright (or ©), year, University of Pittsburgh. All Rights Reserved.

No other institutional or departmental name is to be used in the copyright notice although the name and address of the department to which readers can direct inquiries may be listed below and separate from the copyright notice. The date in the notice should be the year in which the work is first published, i.e., distributed to the public or any sizable audience.

Additionally, works may be registered with the United States Copyright Office using its official forms. Assistance with the registration of University-owned works may be obtained from the Office of General Counsel, to which questions concerning copyright notices and registration also may be addressed. In cases where the University does not own the work, University Authors should consult their own counsel regarding registration.

D. Copying of Works Owned by Others

Members of the University community are cautioned to observe the rights of other copyright owners. Relevant legislation and guidelines regarding the copyright law, the TEACH Act and the Digital Millennium Copyright Act are available at the Office of General Counsel. Also see Policy CS 03, Copying Copyrighted Material (formerly 10-04-01).

E. In the event the foregoing guidelines leave you with unanswered questions which may affect proposed conduct, please contact the Office of General Counsel at 412-624-5674.

IV. DEFINITIONS

A. Copyrightable Work
- Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- Musical works including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works (if fixed, as in notation or videotape);
- Pictorial, graphic and sculptural works, including photographs, diagrams, sketches and integrated circuit masks;
- Motion pictures and other audiovisual works such as videotapes; and
- Sound recordings.

B. Scope of Copyright Protection

Federal copyright law provides that copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it is embodied, illustrated or expressed. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described could be freely copied unless it enjoys some other protection, such as patent.

Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and as to certain types of works display or perform the work publicly. Ownership of copyright is distinct from the ownership of any material object in which the work may be embodied. For example, if one purchases a videotape, one does not necessarily obtain the right to make a public showing for profit. Furthermore, simply because a work is available electronically does not mean it may be legally reproduced.

C. Course Materials

Works used primarily for the instruction of students. Such works may include, but are not limited to, slides and presentation content to be used in classes; class notes; exercises and assignments; syllabi; examinations, including assessments and answer materials; course recordings (including audio and/or visual); and other material distributed to and accessed by students via computer programs designed for use in education or training, including via third party sites and technologies.

D. Scholarly Work

Copyrightable works of authorship created by a University Author prepared in the course of research, scholarship, teaching, and/or other academic and educational responsibilities at the University outside of the terms of a contract, grant, or cooperative agreement. Scholarly Work shall include, but not be limited to: scientific or scholarly writings and/or papers; books, theses, and dissertations; poems and other literary works; musical works (including compositions, lyrics, performances, mixing, and recordings); architectural works; databases, datasets, collections or compilations of data; Software; and artistic works and sculptures.

E. Software

Computer code and/or computer programs that may consist of patentable inventions and/or copyrightable works of authorship. Software may consist of Scholarly Work. Software, for the purposes of this policy, does not include works of authorship that are merely fixed or embodied in digital form/format, including computer-generated works of art or music or the content of other works, such as Scholarly Work, that is recorded in a digital medium.

F. Sponsored Activities

Externally-funded activities in which a formal written agreement (i.e., grant, contract, or cooperative agreement) is entered by the University and by a sponsor, in which there is a specified statement of work, with a related, reciprocal transfer of something of value.
G. University Copyright Committee

The University Copyright Committee shall be formed and maintained by the Office of the Provost as follows. The Committee will consist of five members. A majority of the members will be faculty members. The Chair of the Committee will be the Vice Provost for Research. The Chair is also a member of the committee. The Committee may promulgate rules for its own conduct. The purpose of the Committee is to attempt to resolve copyright disputes, and if unable to resolve the dispute, make a recommendation to the Provost for final resolution. Any member of the University community may submit, in writing, a copyright matter for resolution to the Committee.

H. Work for Hire

According to Copyright law (e.g., 17 U.S.C. § 101, et. seq.) “work for hire” is a legal term defined as “a work prepared by an employee within the scope of his or her employment.” This definition includes works prepared by employees in satisfaction of sponsored agreements between the University and outside agencies. Certain commissioned works are also works for hire if the parties so agree in writing.

The employer (i.e., the University) is by law the author of a work for hire, and thus the owner, for copyright purposes. Works for hire subject to this principle include works that are developed, in whole or in part, by University employees. Where a work is jointly developed by University faculty or staff or student employees and a non-University third party, the copyright in the resulting work typically will be jointly owned by the University and the third party. In such instances, both the University and the other party would have nonexclusive rights to exploit the work, subject to the responsibility to account to each other.

Whether the University claims ownership of a work will be determined in accordance with the provisions of this Policy, and not solely based upon whether the work constitutes a work for hire under the Copyright Law.

V. REFERENCES

Policy CS 03, Copying Copyrighted Material (formerly 10-04-01)

Policy RI 01, Conflict of Interest Policy for Faculty, Scholars, Researchers, Research Staff/Coordinators (formerly 11-01-03)

Policy RI 05, Patent Rights and Technology Transfer (formerly 11-02-01)

Procedure CS 03, Copying Copyrighted Material (formerly 10-04-01)