

***Proposed revision to the Intellectual Property Policy in the Faculty Handbook, section H “Copyright and Traditional Scholarship” and section I “Copyright and Other Intellectual Property.” Approved by the Faculty Senate on May 14, 2008.***

## **H. Copyright and Traditional Scholarship**

~~“The primary objective~~

~~1. Purposes. As a student-centered research institution, Georgetown University has as one of the copyright is not to reward the labor of authors, but ‘[t]o promote the Progress of Science and useful Arts.’ To this end, copyright assures authors the right in their original expression, but encourages others to build freely upon the ideas and information conveyed by a work. This result is neither unfair nor unfortunate. It is the means by which copyright advances the progress of science and art.” (Feist Publications, Inc. v. Rural Telephone Service Co., 499 U.S. 340, 349 (1991), Justice Sandra Day O’Connor)~~

~~Purposes. A its main goal of Georgetown University, as a student-centered research institution, is goals the discovery, production, and dissemination of knowledge. The copyright policies of the University are intended to further that goal by providing appropriate incentives to ~~faculty and~~ members of the ~~faculty and~~ academic staff for the production ~~and dissemination~~ of new knowledge.~~

~~2. Traditional Independent Scholarship. These policies are not intended to disturb the customary relationship between the University and the author of traditional scholarly ~~works such as books, manuscripts, or~~ artistic works, ~~movies and television programs.~~ In general, the University does not claim “work ~~made~~ for hire” status under Title 17 of the U.S. Code for such works. Traditionally, most ~~published~~ works written by members of the faculty ~~or academic staff~~ have been viewed as the property of ~~the author~~ ~~those individuals~~ and have been published under agreements made by ~~those author~~ ~~them~~ without participation of the University. Where the criteria in Section ~~H~~ ~~H~~ 5 below apply, a formal agreement between the University and author(s) must be made pursuant to the procedure described in Section ~~I~~ ~~I~~ 3 below.~~

~~3. Support for Fair Use/Access to Scholarship. The University strongly encourages faculty members who publish traditional scholarly works to ~~become familiar with their rights under copyright law, and to negotiate contracts with publishers that preserve rather than waive these rights.~~ The University will seek to make available scholarly work of faculty on institutional servers in a manner consonant with copyright law, and encourages faculty to negotiate terms with publishers that allow access by the Academy and students. For information on copyright and fair use, see <http://www.lib.umn.edu/copyright/map.html>. ~~do so on terms maximizing their ownership of those works and widespread access to those works.~~ Even when members of the faculty and academic staff receive payment for their works from publishers, wide distribution and proper credit are important to ~~secure to the individual author(s) the benefits of authorship.~~ Therefore, the University encourages ~~members of the faculty and academic staff whenever possible to retain the copyright in their scholarly articles and similar works, and at a minimum to preserve their rights to disseminate such works without further permission from publishers.~~ Various options are available, including (1) ~~grants of first publication rights only,~~ (2) ~~model license terms,~~ and (3) ~~Creative Commons licenses.~~ The University also encourages members of the faculty and academic staff to preserve their rights to attribution when ~~their works are reused; many of the above licenses preserve rights of attribution.~~ Finally, the University encourages members of the faculty and academic staff to place notice of copyright on their works in a manner consistent with the licensing option that is selected. Consistent with these~~

principles, the University will seek to make available scholarly work of members of the faculty and academic staff on institutional servers or via open access repositories.

I. Copyright and Other Intellectual Property  
4. Support for Fair Use. The University strongly encourages members of the faculty and academic staff to become familiar with their rights under copyright law, including fair use and other rights that allow use of copyrighted material for teaching and scholarly purposes.

~~While the University generally has not sought assignment by Covered Individuals of the copyrights in their traditional scholarly works (written or edited), it has generally required assignment of ownership rights in all other Intellectual Property made or conceived by Covered Individuals utilizing the facilities, equipment, funds or other contributions of the University to a degree that is substantially in excess of what is normally provided to Covered Individuals. Consequently, in cases not involving traditional scholarly works, when the University provides substantially more than the usual support for the creation of copyrightable material or commercially valuable collections of information—for example, by subventing publication of scholarship or by committing University resources for the development of digital materials for teaching and learning—formal arrangements (created at the OTC) must be drafted in order to ensure that rights, responsibilities, and prospective revenues are shared equitably between those who develop the Intellectual Property and the University as the provider of auspices and facilitating resources.~~

5. Publication Subvention. In those instances when ~~both~~ (1) the University pays the full or a substantial part of the cost of publication (including such costs as printing, editing, etc., but excluding the salary of the primary author~~(s),~~) and (2) the royalties or revenues from the publication are likely to exceed \$10,000, formal agreements concerning the ownership of the copyright and the division of these royalties must be made pursuant to the procedure described in Section ~~I 4~~ I 3 below.

## I. Copyright and Other Intellectual Property.

1. Assignment of Ownership Rights. While the University generally has not sought assignment by members of the faculty and academic staff of the copyrights in their traditional scholarly works (written or edited), it has generally required assignment of ownership rights in all other intellectual property made or conceived by all covered individuals [link to IP Policy glossary: “For purposes of this policy, any Georgetown University employee, (including without limitation faculty, administration, and staff members) or any student or fellow, who is engaged, whether or not for compensation, in University research work from which an invention or copyrightable work is developed.”] utilizing the facilities, equipment, funds, or other contributions of the University. Consequently, in cases that involve works other than traditional scholarly works, which are described in Section I 2 below, formal agreements with the Office of Technology Commercialization (OTC) will ensure that rights, responsibilities, and prospective revenues are shared equitably between those who develop the intellectual property and the University as the provider of auspices and facilitating resources (as described in Section I 3 below).

2. Software ~~and~~, Digital Resources, and Collections of Information. Distinctions that once were common between texts intended to convey information (~~and~~which traditionally have been subject to copyright guidelines~~protection~~) and research tools (which are potentially subject to patent

guidelinesprotection) have become less tenable at a time when software is both copyrightable and potentially patentable, and when courseware ~~and~~, digital academic resources, and collections of information are characterized by a high degree of interactivity. Software development by Covered Individualscovered individuals [link to IP Policy glossary] frequently receives extensive support from the University. Similarly, digital resoureeresources for teaching and learning ~~that is, software~~ (including interactive teaching and classroom management tools, Web pages programmed in native HTML, XML, or similar protocols, or created using an authoring package or a courseware-development system), and digital content materials designed for display and dissemination over the internetInternet or over the University's own network -- frequently are based upon the work of may handsmany individuals (including instructional designers and technical staff), and ~~they frequently~~ depend upon the University's network and computer systems and the staff who support them. ~~Consequently, the University may require assignment of an ownership interest in software, including courseware and digital academic resources, developed by Covered Individuals at the University. Formal agreements for these categories of Intellectual Property must be created in order to spell out the respective rights of the individual developers and the University. However, in order to encourage the development of technology based instructional materials, the University may choose not to exercise its claim to such resources and instead to consider the copyright to lie with the developer(s). In particular, the University will not require assignment of ownership for basic web pages or entries in a course management system that are created and maintained by Covered Individuals without substantial assistance, and that simply provide information (including but not limited to reading assignments, other course requirements and links to relevant external Internet resources) specific to a faculty member's course(s) and/or information about or copies of publications and other professional activities of a Covered Individualthose systems. The creation and maintenance of collections of information also frequently require extensive technical, staff, and systems support from the University.~~

- ~~1. *Collections of Information.* The creation and maintenance of collections of information also frequently require extensive technical, staff, and systems support from the University. Consequently, the University may require assignment of an ownership interest in collections of information developed by Covered Individuals as resources for scholarship and research. Formal agreements for this category of Intellectual Property must be created in order to spell out the respective rights of the individual developers and the University. However, in order to encourage the development and maintenance of such collections of information, the University may choose not to exercise its claim to such materials and instead to consider copyright and other ownership interests to lie with the individual developer(s).~~

~~*Formal Agreements.* Formal agreements between the University and Covered Individuals who develop software, digital resources, or collections of information will be created by the **OTC**. Because ownership of Intellectual Property is divisible in many ways, these~~  
Because a goal of Georgetown University is the production and dissemination of knowledge, the University encourages covered individuals to collaborate on free or open source software projects and on open access database projects. The University makes no claim to contributions by covered individuals to such free or open source software projects or open access database projects, regardless of whether those projects arise outside or within the University.

In addition, the University cedes to the individual developers most rights to basic web pages, media files, or entries in a course management system that are created and maintained by members of the faculty or academic staff without substantial assistance, and that provide information (including but not limited to reading assignments, other course requirements, and links to relevant external Internet resources) specific to a faculty member's course(s) and/or information about or copies of publications and other professional activities of a member of the faculty or academic staff. The University also cedes copyright

ownership to the content of audio or audiovisual recordings of classroom lectures by members of the faculty or academic staff. The University considers these items to be an extension of traditional scholarly activity. However, the University reserves the right to retain copies of such materials and recordings and to make such copies available to members of the University community in a manner consistent with the University's academic and archival purposes. Other uses of such resources will be a matter for negotiation between the University and the individual member of the faculty or academic staff.

For policies with respect to works created by covered individuals pursuant to a specific direction or assigned duty, and with respect to student work, see section K 2.

In all other cases, the University claims an ownership interest in software, digital resources for teaching and learning, and collections of information that (i) are developed by covered individuals at the University utilizing the facilities, equipment, funds, or other contributions of the University to a degree that is substantially in excess of the basic support ordinarily provided to such individuals, and (ii) have the potential for commercial development. Formal agreements for these categories of intellectual property with the Office of Technology Commercialization (OTC) will describe the respective rights of the individual developers and the University. In order to encourage the development of technology-based instructional materials and collections of information, the University may choose not to exercise its claim to such resources and instead to consider the copyright to lie with the individual developer(s), or may choose to exercise its claim but also to grant the developers certain specified rights.

3. *Formal Agreements.* It is the responsibility of covered individuals [link to IP policy glossary] who develop software, digital resources, or collections of information as described in Section I.2 above to disclose the developed resources to the OTC and initiate a formal agreement process with the University, except where the resources described in Section I.2 above are developed in the course of dissertation research; in such cases, it is the responsibility of the covered individual's dissertation advisor to ensure that the developed resources are disclosed to the OTC and that a formal agreement process is initiated. Formal agreements between the University and individual developers will be maintained by the OTC. In the absence of such a formal agreement, the University will hold copyright and all other ownership rights in the intellectual property.

Because ownership of intellectual property is divisible, formal agreements will generally be based upon an unbundling and distribution of ownership rights in order to grant the developers and the University the rights ~~each finds~~ more advantageous to each and the responsibilities each is best qualified to discharge. ~~For example, if the University has made a substantial contribution (through its systems and support expertise) to the creation of software, digital resources, or collection(s) of information, a formal agreement may assign or license to the University the ability to exercise certain rights, including but not limited to:~~ For example, a formal agreement may establish revenue sharing between the University and the individual developer(s), and/or may reserve to the University the right to license the material for commercial development and use, while granting to the individual developer(s) the right to reproduce and distribute all or portions of the material for research use.

In cases where the University chooses not to exercise its claim to software, digital resources, or collections of information as described in Section I.2 above, the formal agreement nonetheless may reserve to the University the ability to exercise certain rights, including but not limited to:

- a. the right, on a limited, non-exclusive basis, for the University to make and distribute copies of the material for use in teaching, scholarship, and research within the University.

b. the right to control whether the University's name or logo is displayed in association with the material.

c. the right to require an appropriate acknowledgement of University support in the creation of the material.

d. the right to reproduce and distribute all or portions of the material in compilations or other composite works,

e. the right to reproduce and distribute portions of the material for uses directly related to advancing the mission or maintaining the culture of the University.

f. the right to be informed in advance of any licenses or assignments of the material by the author(s) or developer(s).

In addition, the formal agreement may specify certain situations or conditions that would trigger the application of a secondary policy. For example, if software, digital resources, or collection(s) of information are commercialized ~~and they generate revenues~~, the University may reserve the right to a certain percentage of royalties to recover any investment it may have made in such software, digital resources, or collection(s) of information, or it may reserve the right to an ongoing royalty stream. As a second example, if the University, as an incentive for development, pays a stipend to a researcher to create-support the creation of software, digital resources, or collection(s) of information, that stipend must may have to be repaid to the University from any revenues that accrue from the subsequent marketingcommercial exploitation of the materials.

~~2. *Responsibility to Initiate Formal Agreements.* In the case of software, digital resources, or collection(s) of information likely to require the use of University resources for creation, expansion, or maintenance, it is the responsibility of the Covered Individual(s) to initiate a formal agreement with the OTC. In the absence of an agreement to the contrary, the University will claim all authorship rights in software, digital resources, or collection(s) of information created with University assistance as works made for hire under the Copyright Act Title 17 of the United States Code. However, a Covered Individual need not report or initiate formal agreements for basic Web pages or entries in a course management system that are created and maintained by that individual without substantial assistance, and that simply provide information (including but not limited to reading assignments, other course requirements, and links to relevant external Internet resources) specific to a faculty member's course(s), and/or information about or copies of the publications or other professional activities of the Covered Individual. A Covered Individual also need not report or initiate formal agreements for that employee's personal archives of data or of other materials relating to scholarship or research.~~

4. *External Financing.* Ownership and disposition of copyrights resulting from research financed wholly or partially by governmental, industrial, philanthropic or other organizations shall be determined by the rules, regulations, and procedures of the sponsoring organizations and in accordance with the terms of related research agreements and policies of Georgetown University. As with traditional scholarship (see H 3 above), the University strongly encourages faculty members to

maximize their ownership of their funded works and to promote widespread access to those works.

## **J. Consulting**

~~Problems may attend the disposition of Intellectual Property that results from activities of Covered Individuals while engaged in the service or at the direction of a firm or institution other than the University. In general, the University recognizes the benefits of such activity to Covered Individual, and often to itself.~~

In general, the University recognizes the benefits of consulting arrangements to members of the faculty and academic staff, and often to itself. However, the University is concerned about conflicts of interest that may arise from such activity. (Please refer to the Faculty Handbook under “Extramural Professional Activity”, and the Financial Conflicts of Interest Policy.) In addition, the University is concerned not only about the potential loss of revenue but also about the imposition of noncomplete noncompete clauses that may hinder Covered Individuals members of the faculty and academic staff from pursuing the University’s University’s mission of teaching and research or prevent Covered Individuals from participating in University-sponsored research and development projects. Members of the faculty and academic staff contemplating consulting arrangements should refer to the Faculty Handbook (under “Financial Conflicts of Interest Policy” and/or “Extramural Professional Activity”) for the University’s rules governing such arrangements.

~~Consulting,~~

**K. Intellectual Property, Work for Hire, and University Resources.** ~~In the cases of consulting activities involving the use of Intellectual Property developed with University resources, the Covered Individual should provide to the OTC a copy of any contract for work sponsored by an entity other than the University when the terms of the contract vest control of any resulting intellectual property in that entity. In such cases, the University may require that a formal agreement be created concerning the ownership of such resulting intellectual property, pursuant to the procedures Student Work~~

~~1.—1. *Employees.* In general, copyrightable material created by a covered individual [link to IP Policy glossary] pursuant to a specific direction or assigned duty (other than the teaching of courses) from the University or any of its units shall be considered a work made for hire and shall be the property of the University. In cases where software, digital resources, or collection(s) of information as described in Section I4I 2 above. No consulting contract shall restrain or inordinately delay publication of the results of a researcher’s University-related activities.~~

~~2.—*Consulting, Intellectual Property, and Non-print Media.* In the cases of consulting activities resulting in the production of non-print analog are created by members of the faculty or digital instructional materials (for example, for distance learning) for an entity other than the University, the Covered Individual should provide to the OTC a copy of any contract for such activity. In such cases, the University may require that a formal agreement be created concerning the ownership of the resulting intellectual property, pursuant to Section I4 above.~~

## **K. Intellectual Property and Work for Hire**

~~*Employees.* In general, copyrightable material created by a Covered Individual pursuant to a specific direction or assigned duty (other than the teaching of courses) from the University or any of its units shall be considered a work made for hire and shall be property of the University. However, in the case of software, digital resources, collection(s) of information, or other audiovisual educational materials created by Covered Individuals academic staff pursuant to specific direction or assignment, the~~

University in its discretion may choose to share ownership with the individual developer(s). In such cases, formal agreements between the University and the individual employees will be created pursuant to the procedures described in Section ~~€4I3~~ above, except that it is the responsibility of the University department or unit overseeing creation of the material to initiate review by the ~~OTC~~.OTC.

~~2. Students. In general, the foregoing terms also apply to students at the University.~~ The University makes no claim of ownership to works, regardless of their form of expression, created by students ~~or other staff members~~ working on their own, outside of an employment relationship with the University. ~~As- However, as~~ a condition of matriculation, ~~however and in accord with academic tradition~~, the University reserves the right to make copies all traditional, customary, and reasonable uses of dissertations, works prepared for classes, and works prepared for student organizations and activities as needed for the academic, research, and archival purposes of the institution. ~~In addition, the University requires that students waive any claims against the University, its employees, or fellow students arising out of the reproduction, excerpting, and/or distribution of student-authored postings to University-sponsored courseware Web sites or course management systems as needed for the academic, research, and archival purposes of the institution.~~

~~1.~~—Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement. Students who are hired to perform specific tasks that contribute to a copyrightable work will ordinarily have no authorship or ownership rights in that work unless they have a prior written agreement with the author.