

GUIDELINES FOR UNIVERSITY  
POLICIES AND PROCEDURES ON  
COPYRIGHTABLE MATERIAL

RECEIVED  
AUG 3 1971

GENERAL STATEMENT ON UNIVERSITY POLICIES ON COPYRIGHTABLE MATERIAL  
THE EVERGREEN STATE COLLEGE  
OFFICE OF THE VICE PRESIDENT & PROVOST

Universities recognize and encourage the publication of scholarly works as an inherent part of the educational mission. Also universities acknowledge the privilege of university personnel (faculty, staff, and students) through individual initiative to write articles, pamphlets, and books that may be copyrighted by and generate royalty income for the author. The variety and number of copyrightable materials that may be created in a university community has increased significantly in recent years as have the author-university-sponsor relationships under which such materials are produced. Many institutions have well defined patent policies and procedures but few have adequate formal policies governing copyrights.

In codifying policy and procedures with respect to copyrights a university should consider the following elements:

- a. Statement of University Policy on Copyrightable Materials.
- b. Definition of Copyrightable Materials.
- c. Determination of Rights to Copyrightable Materials.
- d. Determination of Equities.
- e. Administrative Procedures Governing Copyrightable Materials.

Most universities will find that copyrightable materials pose different policy and procedural problems than inventions so that separate policies and procedures <sup>should</sup> ~~are~~ normally be ~~usually~~ adopted for copyrights and for patents. University policies and procedures adopted for copyrightable materials should be cognizant of established institutional practices with respect to the ownership and disposition of inventions. Care should be taken to coordinate the patent requirements and the copyright and publication requirements which may have been previously issued by certain sponsoring agencies.

### SCOPE OF THE COPYRIGHT

Statutory copyright is based on laws enacted by Congress. The Constitution of the United States gives Congress the power to enact laws relating to copyrights, in Article 1, section 8, which reads *"Congress shall have power ... to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."* Under this power Congress has from time to time enacted various laws relating to copyrights.

A work must be original to be copyrightable; it is not necessary that it be novel as is the case with an invention. The copyright goes to the form of expression rather than to the subject matter of the writing. A description of a machine could be copyrighted as a writing, but this would only prevent others from copying the description - it would not prevent others from writing a description of their own or from making and using the machine.

A copyright protects authors of various kinds of work defined in the law and listed in the bulletins of the Copyright Office by granting them exclusive publication rights to reproduce, publish, distribute or sell their works for a specified period of time. Copyright protection can be claimed only by the author or those authorized by him to assert this right. Works produced by an individual employed for their production are normally copyrightable by the employer and not by the author-employee. A copyright may be registered, assigned, transferred, limited, or licensed by a written agreement signed by the author or the owner of the copyright. If the original text of a work is in the public domain or dedicated to the public, it cannot be copyrighted; the right to secure copyright is lost, at the time of publication, i. e., the date on which copies are first placed on sale, sold, or publicly distributed, if an adequate notice of copyright is not on the work at that time. Under common law copyrightable material which is not placed on sale, sold, or publicly distributed is the sole property of the author and may not be reproduced or used without his permission.

The present legislation (U.S. Code, Title 17, Section 24) provides copyright protection for a period of 28 years from the date of first publication. A copyright may be renewed and extended upon application to the Copyright Office. Copyright laws are currently (1971) undergoing revision.

Property rights in copyrightable material (and the right to register under the statute) may be secured for a published work by publishing the work in printed or otherwise processed form bearing a proper copyright notice. This right may be protected by statute by acquiring a formal registration from the Copyright Office. Under certain conditions copyrights on unpublished work may be registered by filing the appropriate application form and depositing one complete copy with the Copyright Office. The various forms for registering copyrightable material of several media may be obtained from the Register of Copyrights, U. S. Copyright Office, Washington, D. C. 20025.

#### MATERIALS SUBJECT TO COPYRIGHT

The following types of material now or in the near future may be subject to copyright:

1. Books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals.
2. Lectures, musical or dramatic compositions, and unpublished scripts.
3. Films, film strips, charts, transparencies, and other visual aids.
4. Video and audio tapes and cassettes.
5. Live video or audio broadcasts.
6. Programmed instruction materials.
7. Computer programs.
8. Other copyrightable material.

Although copyright law does not specifically mention computer programs, the U. S. Copyright Office since 1964 has recognized that computer programs are copy-

rightable, and numerous programs have been copyrighted. It should be noted that certain computer programs meeting the criteria for an invention may be patentable.

#### STATEMENT OF UNIVERSITY COPYRIGHT POLICY

An institution seeking to clarify its position on the rights to and disposition of copyrightable material should develop a statement of copyright policy. This statement should be broad; it should be brief. Administrative procedures should be separate and apart from the policy statement.

The statement may acknowledge the privilege of university personnel (faculty, staff, and students) on their own individual initiative to write or otherwise generate copyrightable materials to which they have the sole rights of ownership and disposition. The statement may also cover the disposition of rights to those materials generated with significant use of university facilities and resources or as a result of assigned university duties or with support by a third-party sponsor. A general statement on royalty participation may be a part of the policy. The administrative body responsible for interpretation and administration of the copyright policy may be set forth.

#### DEFINITION OF COPYRIGHTABLE MATERIAL

An institution, as a guide to faculty, staff, and students, <sup>should</sup> may wish to define the types of copyrightable material covered by the copyright policy and to interpret the provisions that apply to certain kinds of copyrightable materials. A list of types of materials is given in the third section of these guidelines under Materials Subject to Copyright, page 3.

#### DETERMINATION OF RIGHTS TO COPYRIGHTABLE MATERIAL

To determine the disposition of rights to copyrightable materials developed by university personnel it may be helpful to assess these materials within the framework of the following four categories:

1. Individual Effort.

Rights to copyrightable material generated as a result of individual initiative, not as a specific university assignment and only incidental use of university facilities or resources, would normally reside with the author.

2. University-assisted Individual Effort

Where the university provides partial support of an individual effort resulting in copyrightable material by contributing significant faculty time, facilities, or university resources it is reasonable to consider joint rights to ownership and disposition of these materials and a sharing of royalty income.

3. University-supported Efforts

Ownership of copyrightable material developed as a result of assigned university duty may reside with the university, although some sharing of royalty income with the author may be appropriate in certain instances.

4. Sponsor-supported Efforts

The grant or contract under which copyrightable materials are generated may contain specific provisions with respect to the disposition of rights in these materials. The grant or contract agreement is between the sponsor and the university. The sponsor may specify that the materials be placed in the public domain,\* or may claim reproduction or other rights, or may assign all rights to the university. Sharing of royalty income between the sponsor and the university may be appropriate, particularly when the project involves institutional cost sharing. The nature and extent of author participation

The rights and obligations of persons who may produce copyrightable materials under sponsor supported projects should be clearly understood and set forth in university statutes or covered by an agreement between the individual or individuals and the university.

\* Such a requirement is normally undesirable from the standpoint of the sponsor, the institution, and the author.



for the crediting of part or all of the royalty from copyrightable materials to the authors and/or their academic departments. In some instances the institution may elect to leave copyrights with the author, even though the university has supported the work that generated the copyrightable materials.

If the development of the copyrighted materials has been supported by a sponsor, the university and the author are obligated to adhere to the conditions of the grant or contract as stipulated by the sponsor. The sponsor may require the return of part or all of the income derived from sale of sponsor-supported materials which are copyrighted. Institutional cost-sharing should be considered in determining the distribution of royalty income derived from copyrighted materials generated on a sponsored program. If the institution receives all or part of the income derived from the sale of such sponsor-supported materials, this income normally would be handled in accordance with established institutional policies unless special sponsor requirements prevail.

In determining university policy on the disposition of royalty income it may be desirable to consider earmarking a portion of the derived income to be held in reserve to defray costs of future revisions or for promotion of adoption of the copyrighted materials.

It is imperative that royalty income aspects of university-supported or sponsor-supported projects leading to copyrightable materials be examined thoroughly at the outset of the project and that a clear and mutually satisfactory understanding as to the disposition of copyrights and royalty income be reached between the author, university, and sponsor.

ADMINISTRATIVE PROCEDURES GOVERNING COPYRIGHTABLE MATERIALS

In adopting an institutional policy, a university may benefit from developing well-defined and codified procedures for the governance of copyrightable materials developed by university personnel. The president of the university or some other appropriately designated authority will normally have the ultimate responsibility for decisions on copyright matters. It may prove advantageous to delegate responsibility and authority on copyright matters to an appropriate administrator. This individual might be the university legal counsel, a vice president for research, the dean of the faculty, or other university administrator. The statement of policies and procedures should define clearly the responsibilities and authority of the university copyright administrator. These duties may include the providing of counseling, assistance, and other related services to university personnel on copyright matters.

Adopted procedures should provide for the copyright administrator in conference with the author and other concerned parties to arrive at a mutually acceptable copyright agreement within the provisions of university policy. One mechanism for negotiation of copyright matters is to use a three-man panel consisting of the author, or his representative, the university copyright officer and a third member agreed to by the first two. Alternatively, a copyright advisory committee may prove helpful in evaluating ownership, disposition, and the distribution of royalty income relating to copyrightable materials. Whatever the university procedure for administering copyright matters, there should be specific provisions for appeal.

The university procedures may provide for prior review of all programs expected to generate copyrightable materials with full or significant partial support by the university or a sponsor in order that an advance determination can be made wherever possible with respect to rights, disposition, and income distribution. This review would normally be accomplished by the intended authors, the copyright officer and

others as may be designated by university policy. A mutually acceptable advance agreement covering the determination of rights, disposition, and income distribution may be an important part of the project file for those projects producing copyrightable materials with partial or total support by the university or a sponsor. The advance agreement may be subject to revision as the project progresses.

Alternatively, a university may find it desirable to request an annual report from university personnel (faculty and staff) on all copyrightable material generated during the reporting period. Those materials developed with partial or full university or sponsor support could be reviewed by the university copyright officer and other designated by university procedures to make recommendations on the disposition of rights to copyrightable material, and income participation.

If a university adopts specific policies and procedures relative to the rights, disposition, and income distribution relating to copyrightable materials, it may be desirable to incorporate reference to these provisions in the employment contract.

Faculty and staff participation in the formulation of institutional copyright policies and procedures is desirable. It may also be considered desirable to have faculty and staff involved in the governance of copyright matters <sup>to assure that</sup> ~~is~~ the policies and procedures are ~~to be~~ equitable and workable. The nature and extent of student participation in copyright policies and procedures may vary with the institution and the policy of the institution with respect to copyrightable materials generated by students.

In designing and implementing institutional policies and procedures for copyrightable materials, extreme care must be taken to protect the initiative and rights of individuals. Similarly, consideration should be given to those cases where the copyrightable work is the result of a group effort. These same policies and prodecures must assure reasonable control and accountability by the university