

## **MSU Copyright Policy Handbook** **June 26, 2002**

The MSU Policy on Development of Copyrighted Materials (herein the “Copyright Policy”) was adopted by the MSU Board of Trustees on June 22, 2001. A complete copy of the Copyright Policy can be found on the web at <http://www.msu.edu/unit/facrecds/FacHand/develpcopyright.html>. This handbook has been prepared to help interpret the terms contained in the Copyright Policy and explain related administrative practices.

This handbook will be updated from time to time as new questions or policy interpretations arise. For assistance or additional information, please contact MSU Copyright Licensing by visiting Room 246 Administration Building, or by calling 517-432-4499.

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## FREQUENTLY ASKED QUESTIONS

### 1. **What is a copyright? Where can I learn more about the topic?**

An excellent starting point to learn about copyright is *Circular 1: Copyright Basics*, a publication of the U.S. Copyright Office in the Library of Congress. *Circular 1: Copyright Basics* and many more advanced publications may be found on the Web at <http://www.loc.gov/copyright/circls/>.

*Circular 1: Copyright Basics* begins with the following definition:

"Copyright is a form of protection provided by the laws of the United States (title 17, U.S. Code) to the authors of "original works of authorship," including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and

unpublished works. Section 106 of the 1976 Copyright Act generally gives the owner of copyright the exclusive right to do and to authorize others to do the following:

- + To reproduce the work in copies or phonorecords;
- + To prepare derivative works based upon the work;
- + To distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- + To perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works;
- + To display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work; and
- + In the case of sound recordings, to perform the work publicly by means of a digital audio transmission.

In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act."

Among its several other provisions, *Circular 1: Copyright Basics* states:

"Copyright protects 'original works of authorship' that are fixed in a tangible form of expression."

and

"Copyright in each separate contribution to a periodical or other collective work is distinct from copyright in the collective work as a whole and vests initially with the author of the contribution."

## 2. What is the scope of the MSU Copyright Policy?

"Development of Copyrighted Materials", was adopted by the MSU Board of Trustees on June 22, 2001. Found at <http://www.msu.edu/unit/facreeds/FacHand/developcopyright.html>, the policy is administered for the Provost by the Associate Vice President for Research & Graduate Studies.

As the official title suggests, the policy covers the ownership and licensing of copyrighted materials developed by Michigan State University personnel, and the so-called “out-bound” licensing to others of such materials when copyrights on the works are held by the MSU Board of Trustees. (As described in the Copyright Policy and explained below, MSU assigns copyright to authors in many circumstances, instead of holding them itself.)

The Copyright Policy does not cover “in-bound” licensing or other use by MSU of materials copyrighted by third parties. Additionally, the Copyright Policy does not cover patents, trademarks, service marks, or trade secrets.

The Patent Policy may be found at <http://www.msu.edu/unit/facrecds/FacHand/patents.html>. It covers all “University Inventions” as that term is defined within it:

*Any discovery or invention which a) results from research carried on by, or under the direction of, any employee of the University which is supported by University funds or by funds controlled or administered by the University, or b) results from an employee's duties with the University, or c) has been developed in whole or in part through the utilization of University resources or facilities not available to the general public shall belong to the University (“University Inventions”).*

A discovery or invention need not be patented or patentable to be a University Invention. Cell lines, plant varieties and other biological materials are examples of inventions that might be protected by other means.

The official logos of the University and its sports teams are administered and licensed by the Office of University Licensing Programs.

The University infrequently seeks trademark protection for new inventions or discoveries, as such protection is rarely meaningful until a product is nearing market introduction. (Plant varieties constitute a notable exception.) In some cases, trademarks or service marks are sought in conjunction with copyrighted materials owned by MSU, such as software or multimedia packages; questions regarding such marks should be referred to the Office of the Associate Vice President for Research & Graduate Studies.

**3. Does the Copyright Policy indicate what I may and may not copy or distribute under the doctrine of “fair use”?**

No, the Copyright Policy does not discuss the parameters for “fair use” by MSU personnel of materials copyrighted by third parties. One source of information on “fair use” questions is fact sheet “FL 102” from the U.S. Copyright Office, which may be found at

<http://www.loc.gov/copyright/fls/fl102.pdf>. Additional information on “fair use” -- and obtaining third-party permissions for other uses -- may be obtained from the MSU Libraries at <http://digital.lib.msu.edu/services/service.cfm?SID=1> or by calling (517) 432-4796.

**4. Who owns copyrights? What is the basis for the University to claim ownership of copyrightable works I create?**

*Circular 1: Copyright Basics* states:

“The copyright in the work of authorship immediately becomes the property of the author who created the work. Only the author or those deriving their rights through the author can rightfully claim copyright. In the case of works made for hire, the employer and not the employee is considered to be the author. Section 101 of the copyright law defines a "work made for hire" as: (1) a work prepared by an employee within the scope of his or her employment; or (2) 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..... The authors of a joint work are co-owners of the copyright in the work, unless there is an agreement to the contrary.”

The Copyright Policy is built upon that foundation, but through the use of four “Special Circumstance” criteria it limits institutional ownership of MSU employees’ works to a defined subset of those works employers are allowed to claim under Section 101. The Copyright Policy provides:

“The University retains the ownership of copyrighted works created by one or more of its employees within the scope of their employment whenever at least one of the following Special Circumstances applies:

1. Creation of the work involved substantial use without charge of equipment, materials, or staff services of any of the various units of the University;
2. Creation of the work was supported with money, released time, or other substantial resources from any unit of the University;
3. Creation of the work was directly commissioned by the University or one of its units, where the employee(s) who created the work did so using some part of the time for which compensation was received from any University budget, including any grant or contract budget administered by

the University or any budget based on special legislative appropriations;  
or

4. Creation of the work occurs in University-approved faculty outside work for pay, if in the opinion of the administrators approving such outside work for pay the work predictably competes with University functions or products that are, or reasonably might be, developed and offered by the University in the furtherance of its mission.”

Accompanying footnotes to the passage quoted above state:

“The use of personal computers for word-processing is not considered ‘substantial’ for the purposes of this policy; access to such equipment is provided to members of the general public at various sites on the MSU campus. Other specific examples of equipment, materials, and service uses that are considered substantial or non-substantial by the Office of the Provost may be found in a supplemental handbook.”

“‘Released time’ is an adjustment to normal assigned duties that is made to facilitate the creation of the copyrighted work.”

“‘Commissioned’ as used herein means the creation of the work was requested, initiated, authorized, or assigned by the University. It does not imply or necessitate that any supplemental payment is made.”

5. **So, if I create a copyrighted work and I avoid all four “Special Circumstance” criteria listed above, the University does not retain ownership of the work, correct?**

Correct.

6. **What do I have to do to obtain a copyright, whether for myself or for the University?**

No action is required. *Circular 1: Copyright Basics* states:

“Copyright protection subsists from the time the work is created in fixed form.”

In rare instances, MSU will register a copyright, but registration is not required for a copyright to come into existence. For more information on copyright registration, organized by media type, please see the circulars at <http://www.loc.gov/copyright/circs/>.

**7. If I use my University computer to prepare a manuscript, does that mean MSU will retain the copyright?**

No. MSU makes access to computers with word processing capability available to the general public. For that reason, use of a University computer for word processing does not represent exploitation of a special employee privilege for private gain, and does not trigger Special Circumstance #1 discussed in the response to Question #4, above.

**8. If I publish class notes or other material to the Web via my University-provided Andrew File System (AFS) disk space, does that mean MSU will claim the copyright to such work? What about other computer services?**

Web publication via AFS is permitted to all members of the student body, as well as to faculty and staff. The marginal cost of AFS space is very low, and enforcement of individual usage quotas prevents abuse of the resource. Thus Web publication via personal AFS space is considered a *de minimis* use of University facilities, and does not trigger Special Circumstance #1 discussed in the response to Question #4, above.

By contrast with AFS, other specialized computer services are not generally available; hence their use will result in MSU retaining ownership of copyrighted material. To obtain information concerning the copyright ownership implications of using a particular service, please call Copyright Licensing at 432-4499.

**9. If I ask my secretary to prepare a manuscript, does that mean MSU will retain the copyright?**

Yes. The same answer would apply if a faculty member asked a graduate assistant to prepare an annotated bibliography, or asked an MSU programmer to write software. Assignment of tasks to supervised staff is certainly a privilege deriving from University employment. Such assignments impose an opportunity cost on the institution, in-so-much as

the support staff members are unavailable to perform other institutional tasks. Thus these requests would each trigger Special Circumstance #1 discussed in the response to Question #4, above, and MSU would retain any copyright to the work created.

**10. If a faculty member prepares a copyrighted work during a sabbatical, does MSU automatically claim the copyright?**

No. By itself, salary support does not trigger Special Circumstance #2 discussed in the response to Question #4 above, regardless of whether the salary is paid during normal assignment periods or sabbatical periods. However, if summer appointment or overload pay is provided for the specific purpose of supporting preparation of a copyrighted work, that would trigger Special Circumstance #2, resulting in the University retaining the copyright.

**11. Does the University claim the copyright on work products a faculty member prepares during consulting (outside work for pay)?**

Sometimes, but not usually. The same rules apply to consulting work products as to all other employment-related copyrighted works by MSU employees. The University retains the copyright on such work when one or more of the four Special Circumstance criteria set forth in the response under Question #4 apply to the works. Special Circumstance #4 results in MSU claiming ownership of consulting work products

“...if in the opinion of the administrators approving such outside work for pay the work predictably competes with University functions or products that are, or reasonably might be, developed and offered by the University in the furtherance of its mission.”

In the absence of such competition and if the other three Special Circumstance criteria are also inapplicable, the University assigns the copyright on consulting work products to the creator(s) of the works, who may in turn assign it to others (such as the entity for which the consulting work is performed).

**12. Why does the Copyright Policy provide a special definition of “University Author”? Doesn’t the Copyright Policy apply to all MSU employees?**

The provisions of the Copyright Policy concerning the retention of copyright by MSU *versus* assignment of copyright to authors apply to all MSU employees. Certain other provisions reflect long-standing academic rights and responsibilities of “University Authors”, who are defined to be

“...anyone of the following who, in the scope of his/her employment at the University, authors or creates, either alone or in collaboration with others, a University-owned work:

- a. faculty member,
- b. specialist,
- c. librarian,
- d. executive manager,
- e. postdoctoral research fellow,
- f. research associate appointed through the academic personnel system,
- g. MSU Extension or Experiment Station field staff member,
- h. NSCL continuing appointment system staff member,
- i. graduate or graduate professional student conducting academic research or creative activity, or
- j. undergraduate student conducting academic research or creative activity.”

The Copyright Policy also provides that

“Any member of the University community who contributes to the creation of a University-owned work may be treated as a University Author with respect to that work upon the written agreement of all authors or creators of that work who are themselves University Authors.

“In addition, the Office of the Provost shall have discretion to enter into agreements whereby University Author status is granted to and accepted by other individuals who hold a copyright interest in a given work and who assign such interest to the University.

“If for a given University-owned work there exists no living or dead University Author, then the provisions of this Policy regarding University Authors are inapplicable to that work.”

The submission of scholarly manuscripts for journal or monograph publication and the revision or withdrawal of prior scholarly publications are examples of activities in which University Authors traditionally have special, academic rights and responsibilities.

**13. How can University Authors submit their manuscripts for inclusion in journals or other scholarly publications, when the journals require a copyright transfer? If a University Author obtains a grant to MSU that supports the research on which a publication is based, does this answer change?**

In the Copyright Policy, the MSU Board of Trustees has delegated to University Authors the authority to transfer copyright on such manuscripts to publishers, provided the following conditions are met:

“University Authors who create a peer-reviewed or public service/outreach work that is University-owned under the provisions of Section II are delegated authority to transfer the copyright in that work to a publisher without administrative intervention, provided all of the following conditions are met:

- a. such transfer is agreed to in advance by the complete set of authors,
- b. the work in question was not directly commissioned by the University,
- c. neither the authors nor their unit(s) will receive compensation for such transfer,
- d. such transfer is reported promptly to the University via the administrative system provided for that purpose,
- e. except for the transfer of copyright, the transfer agreement does not contractually bind the University,
- f. the work and the copyright transfer do not violate third party rights, and
- g. the work and the copyright transfer otherwise conform to scholarly norms.

This authorization may be extended to works involving compensation of authors and/or units where such compensation does not exceed a level periodically approved by the University.”

Use of funds granted to MSU (e.g., by NSF, NIH, etc.) triggers Special Circumstance #2 discussed in response to Question #4 above, and MSU holds the copyright on the manuscript. The delegation of authority to University authors, permitting transfer of copyright as discussed above, applies unchanged in such cases.

An automated system to report copyright transfer reporting (contemplated in “d” above) is under development.

**14. What philosophy underlies Section VII – Revision of University Owned Works?**

Section VII of the Copyright Policy recognizes that scholars must be free to revise their own published work in light of new research, classroom experience, critique by peers, etc. In some cases, University Authors may have an ethical responsibility to make such revisions, or even to withdraw a publication. The Copyright Policy recognizes that the revision of a work by multiple University Authors (as opposed to the creation of a new work by a subset) requires a consensus among them.

At the same time, the University must be able to commission institutional publications to meet its instructional, research, outreach, and administrative needs. With respect to derivatives of works commissioned by the University, the Copyright Policy seeks to observe the original University Authors’ right to appropriate credit for their contributions, while meeting the legitimate need of the University to initiate periodic revisions of institutional publications, videos, and other copyrighted works.

**15. If a University Author creates a University-owned work, will MSU market it to others? If so, does the University Author share in the royalties?**

Through the Copyright Licensing operation under the Associate Vice President for Research & Graduate Studies, the University will consider the sale or licensing of University-owned works to third parties. In some cases, marketing efforts approved through Copyright Licensing are undertaken by the Instructional Media Center, MSU Extension, or other units. The locus of each marketing effort is decided on a case-by-case basis. The written agreement of University Authors is a prerequisite to such sale or licensing, although such agreement may not be “unreasonably withheld” by the University Authors. The Copyright Policy sets forth a royalty-sharing payment schedule for University Authors in Section VIII.

**16. What happens to distributable copyright royalties retained by the University (i.e., royalties not received by the University Authors of successfully licensed works)?**

Per the Copyright Policy, “The University shall retain and use the remainder of the net income to encourage further development of copyrightable works.” These funds are administered for the Provost by the Associate Vice President for Research & Graduate Studies.

**17. May I market University-owned works directly from my research group, center, or unit?**

University Authors frequently create Web pages, handouts, and other letters to call attention to the availability of copyrighted materials they have created that MSU is marketing. Such marketing information is routinely reviewed and approved by Copyright Licensing, to ensure compliance with University policies and practices on use of the institutional name, risk management, etc. As a general rule, financial transactions involved in marketing University-owned works must be handled centrally rather than by authors or their unit. This creates and preserves an “arms length” relationship between the individuals who handle orders and receipts and those who have a personal expectation to receive a share of royalty revenue. It also helps ensure that the portion of royalty revenue retained by the University is used to support creation of additional copyrighted works, in accord with the Copyright Policy.

**18. Suppose a University Author wants to use royalties for research or scholarly support, rather than to receive them as personal compensation. Is that possible?**

Yes. Each University Author of a work, acting individually and without coercion from co-authors or others, may elect to waive his or her personal royalty payments in writing, and request that the funds otherwise to have been paid be devoted by MSU to the support of his or her research group or unit.

MSU welcomes such waivers and wishes to support the active research and creative efforts that generate licensable copyrighted materials. Therefore, when a personal waiver occurs, Copyright Licensing typically will devote a proportional share of the University’s retained portion of distributable royalties to the research group or unit designated by the individual waiving personal royalties, providing that the recipient group or unit is engaged in producing additional copyrighted materials. By practice, such institutional “matches” are limited to the first \$100,000 of distributable royalties. Each instance of matching is approved by the

Associate Vice President for Research & Graduate Studies on behalf of the Provost. These matches are not addressed in the Copyright Policy; administrative practices regarding them are subject to continuing review and modification in light of experience.

Michigan State University has benefited greatly from the generosity of University Authors who have waived personal royalties. At the same time, it is extremely important that senior University Authors and unit administrators avoid placing any real or apparent pressure to waive personal royalties on any University Author (such as graduate students or postdocs). Copyright Licensing will seek to ensure that each instance of waiver is voluntary on a person-by-person basis.

In some cases, a University Author who waives personal royalty payments wishes to discuss a contribution credit associated with MSU donor societies. Copyright Licensing refers such questions to University Development, typically through the dean's office associated with the University Author.

**19. Can MSU license copyrighted materials in return for corporate stock instead of or in addition to traditional royalty payments? How do University Authors benefit in such a case?**

MSU has only recently entered into agreements involving equity in lieu of cash payments for intellectual property licenses. Under the interim policy and practices currently being refined, equity received for licenses is held by the MSU Foundation. Although an inventor's share of the value of such equity can be determined and paid with relative ease in the case of stock from a publicly traded company, equity from other sources (such as a pre-IPO start-up firm) can pose various special issues involving the timing of payments to inventors under the Copyright Policy. The Associate Vice President for Research & Graduate Studies can provide current information on the evolving institutional posture regarding equity-based licensing arrangements.

**20. Isn't some software potentially patentable as well as copyrighted? How is this handled?**

All software is protected under copyright law, and in the absence of a patent its licensing is governed by the Copyright Policy. In some cases, MSU software may also be patentable, and in such cases its licensing would be governed by the MSU Patent Policy as well. The Associate Vice President for Research & Graduate Studies oversees implementation of both policies, and is responsible for harmonizing the application of the two policies for patentable software.

If the decision has been made to protect software by obtaining a patent, the patent rights and copyrights are typically sold or licensed together, in which case the royalty distribution in the Patent Policy will apply. The distribution set forth in the Copyright Policy will apply otherwise.

**21. How do I know if an invention is covered by the current Copyright Policy or the old Copyright Policy?**

All copyrighted material created on or after June 22, 2001 is covered by the current Copyright Policy. Earlier copyrighted material is covered by the old Copyright Policy. However, since the royalty sharing formula in the current Copyright Policy is more favorable to University Authors, Copyright Licensing will apply the current payment schedule to any University-owned work which did not return more than \$1,000 in collective royalty share to the University Author(s) prior to June 22, 2001, even if the work was created before that date.

**22. Who owns students' class assignments, theses, and dissertations?**

The Copyright Policy states:

“Students who author or create copyrighted works which are submitted to meet course requirements own the copyrights in such works, even if they have been created using University facilities. Neither the course instructor nor the University may utilize or distribute student-owned copyrighted works for purposes beyond those of the course in which they are submitted without obtaining the written permission of the student. Students also own the copyrights in their theses and dissertations.”

Copyright Licensing routinely advises faculty who desire to obtain student permission for use of their classwork beyond the course to wait until after course grades are awarded before presenting the request to the student. This avoids the appearance of a *quid pro quo* connection between the grant or refusal of permission by the student and the award of a grade by the instructor.

**23. My contract or grant funding source demands that I promise it copyright ownership on my work products as a condition of support. May I apply for or accept a contract or grant under these conditions?**

Michigan State University strongly discourages this practice, in part because of the potential loss of revenue to the institution and University Authors, and in part because of the threat this practice poses to academic freedom. (Absent a contractual provision to the

contrary, the copyright owner can decide whether the research results ever see the light of day through publication. It also gains control of revision, emendation, and withdrawal of publications.) Approval for such contracts and grants is reluctantly given on an exception basis, taking into account the nature of the funded effort to be undertaken and the likely publishable work products, if any. At a minimum, exceptions require that all potential University Authors involved in the project receive warning -- prior to commencing work -- that their normal prerogatives and royalty expectations have been curtailed or eliminated in the funding agreement governing the project. Generally, such funding arrangements are to be avoided.

**24. I have many other questions....how can I get more information?**

Ms. Loraine J. Hudson directs Copyright Licensing; she may be reached at 432-4499 or through e-mail at [ljh@msu.edu](mailto:ljh@msu.edu).