

Drake University Copyright Policy and Rules

Faculty members and other employees of the University regularly develop works that are "copyrightable." Drake University recognizes that it is the tradition and responsibility of academe to generate and transmit ideas and knowledge. The University desires and intends to encourage such work vigorously. It is also the historic and vital purpose of the copyright laws to encourage and protect such activity. The objective of copyright is, in the words of the U.S. Constitution, to "promote the progress of science and useful arts." To achieve that objective, authors are given exclusive rights under the Copyright Act to reproduce their works, to use them as the basis for derivative works, to disseminate them to the public, and to perform and display them publicly. Drake University, like other institutions of higher learning, interprets and applies the law of copyright so as to encourage the discovery of new knowledge and its dissemination to students, to the profession, and to the public.

5.211 Definition

Copyright protection subsists in all original works of authorship fixed in any tangible medium of expression, now known or later developed, from which the work can be perceived, reproduced, or otherwise communicated, either directly or indirectly, with the aid of machine or device, such as a computer; a CD, tape or phonograph player; VCR or motion picture projector. This protection subsists in such works whether published or unpublished. Works of authorship include the following categories:

1. Any written works, including books, journal articles, texts, glossaries, bibliographies study guides, teacher's or laboratory manuals, syllabi, lecture notes, tests, and proposals
2. Lectures, musical or dramatic compositions, and unpublished scripts
3. Films, filmstrips, charts, transparencies, and other visual aids
4. Video and audio tapes and cassettes
5. Live video and audio broadcasts
6. Programmed instruction materials
7. Computer programs
8. Pantomimes and choreographic works
9. Pictorial, graphic, and sculptural works
10. Sound recordings
11. Architectural works
12. Web pages and web based courses

5.212 Policy and Rules

General Rule. It has been the tradition at Drake University, and is the prevailing academic practice, to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes. The University adheres to this practice regardless of the physical medium in which these "traditional academic works" appear, that is, whether on paper or in audiovisual or electronic form. Thus, this practice will also ordinarily apply to the development of courseware for use in programs or distance education.

Special Situations. Situations do arise, however, in which the University may fairly claim ownership of, or an interest in, copyright in works created by faculty (or staff) members. Three general kinds of projects fall into this category: special works created in circumstances that may properly be regarded as "made for hire;" negotiated contractual transfers; and "joint works."

- a. Works Made for Hire. The pertinent definition of "work made for hire," contained in the Copyright Act, is "a work prepared by an employee within the scope of his or her employment." In the typical work-for-hire situation, (1) the employer is the motivating factor in producing the work, i.e., the work is created at the employer's insistence and expense; (2) the employer has the right to direct and supervise the manner in which the work is performed; (3) the content and purpose of the employee-prepared work is under the control and direction of the employer; and (4) the employee is accountable to the employer for the content and design of the work. Because the faculty member rather than the University determines the subject matter, intellectual approach and direction, and the conclusions of traditional academic works, the latter do not constitute "works made for hire."

Although traditional academic work that is copyrightable--such as syllabi, lecture notes and courseware, books and articles--cannot normally be treated as works made for hire, some works created by faculty and staff members do properly fall within that category, allowing the University to claim copyright ownership. Works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed works made for hire. Even absent such prior written specification, ownership will vest in the University in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports prepared by a dean or chair or members of a faculty committee, or college promotional brochures prepared by an administrator or faculty member.

The Copyright Act also defines as a "work made for hire" certain works that are commissioned from one who is not an employee but an "independent contractor." The University will own the copyright in such a commissioned work when the author is not a college or university employee, or when the author is such an employee but the work created falls outside the normal scope of that person's employment duties (such as a professor of art history commissioned by the University under special contract to write a catalog for the campus art gallery). In such situations, for the work-made-for-hire doctrine to apply there must be a written agreement so stating and signed by both parties; the work must also fall within a limited number of statutory categories, which include instructional texts, examinations, and contributions to collective work.

- b. Contractual Transfers. In situations in which the copyright ownership is held by the faculty (or staff) member, it is possible for the individual to transfer the entire copyright, or a more limited license, to the University or to a third party. Under the Copyright Act, a transfer of all of the copyright or of an exclusive right must be reflected in a signed document in order to be valid. When, for example, a work is prepared pursuant to a program of "sponsored research" accompanied by a grant from a third party, a contract signed by the faculty member providing that copyright will be owned by the University will be enforceable. Similarly, the University may reasonably request that the faculty member--when entering into an agreement granting the copyright or publishing rights to a third party--make efforts to reserve to the University the right to use the work in its internally

administered programs of teaching, research, and public service on a perpetual, royalty-free, nonexclusive basis.

- c. Joint Works. Under certain circumstances, two or more persons may share copyright ownership of a work, notably when it is a "joint work." The most familiar example of a joint work is a book or article written, fully collaboratively, by two academic colleagues. Each is said to be a "co-owner" of the copyright, with each having all the usual rights of the copyright owner (i.e., to license others to publish, to distribute to the public, to translate, and the like) provided that any income from such uses is shared with the other. In rare situations, an example of which is discussed in the paragraph immediately below, it may be proper to treat a work as a product of the joint authorship of the faculty member and the University, so that both have a shared interest in the copyright. These are situations in which (i) the University is a substantial initiating force in the development of the work and its content, approach, and design; and (ii) development of the work is made possible by the University's investment through direct funding of significant and exceptional resources, i.e., beyond what is customarily provided by the University to faculty members.

The development of new instructional technologies may raise a question of joint authorship between a faculty member and the University. For example, courseware prepared for programs of distance education will typically incorporate instructional content authored, and presented, by faculty members; but the University may contribute specialized services and facilities to the production of the courseware that go beyond what is customarily provided to faculty members generally in the preparation of their course materials. Where the University simply supplies "delivery mechanisms," such as computer technology or videotaping, editing, and marketing services, the University will not be regarded as having contributed the kind of "authorship" that is necessary for a "joint work" that automatically entitles it to a share in the copyright ownership. If, however, the University, through its administrators and staff, effectively determines or contributes to such detailed matters as substantive coverage, creative graphic elements, and the like, and the University assists in development through direct investment of significant and exceptional resources, it has a stronger claim to co-ownership rights.

5.213 Presumption and Procedure

Questions of "work-for-hire" or "joint authorship" may arise as between the faculty member and the University as to the ownership of the copyright in copyrightable material. In all cases it shall be presumed that the faculty member is the exclusive owner of the copyright in all original works authored by the faculty member as to which copyright protection subsists. Only in cases satisfying the definition of work-for-hire and joint authorship stated in Section 3.532 may the University assert a claim of ownership. In any case in which the University intends to assert a claim of ownership in such work(s), the University shall disclose such intention and negotiate its claim, and any arrangement inconsistent with the presumption of exclusive faculty ownership shall be reduced to a written agreement, in advance of any conduct by the University on which it bases its claim of ownership.

Whoever owns the copyright, the University may reasonably require reimbursement for any financial or technical support beyond what is customarily provided by the University to faculty members. That reimbursement might take the form of future royalties or a nonexclusive, royalty-free license to use the work for internal educational and administrative purposes. Conversely, where the University holds all or part of the copyright, the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works by that faculty member. In the context of distance education

courseware as to which the University may qualify as a joint author as described above, the faculty member should also be given rights in connection with its future uses, not only through compensation but also through the right of first refusal in making new versions or at least the right to be consulted in good faith on reuse and revisions.

*This section is adapted and substantially derived from The Statement on Copyright of the American Association of University Professors. That Statement may be found in *Academe*, May/June 1999 (Vol. 85, No. 3) pp. 43-45.43

Passed by Faculty Senate Spring 2000.
Drake University Faculty Manual; Section 5.21