

Policy on Copyright (CA)

RESEARCH

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Related Policies:
Faculty Handbook

**Responsible
Office/Department:**
Center for Research
Innovation (CRI)

Keywords: Copyright;
Intellectual Property

I. Purpose and Scope

The objective of this policy and the associated administrative procedures is to enable Northeastern University to continue to foster the free and creative expression and exchange of ideas and comment; to preserve traditional university practices and privileges with respect to the publication of scholarly, instructional or artistic works; to establish principles and procedures for equitably sharing income derived from works of authorship produced at or for the university; and to protect the university's rights and assets.

The principal objectives of this policy are:

- 1) to encourage creative research, innovative scholarship, and a spirit of inquiry leading to the generation of new knowledge;
- 2) to encourage the broadest utilization of the findings of university research to provide the maximum benefit to the public;
- 3) to establish principles for determining the rights and obligations for the university and authors with respect to the rights of authorship;
- 4) to safeguard the intellectual property rights of both the author and the university and to define the equitable disposition of the interest therein; and
- 5) to provide incentives to authors in the form of professional recognition, continuing research support, and direct financial compensation.

II. Definitions

1) Under the Copyright Act, R.S.C. 1985 c.C-42, as amended, federal statutory copyright exists (subject to certain conditions) in every original literary, dramatic, musical and artistic work. Protectable works include:

- a. written or printed works such as books, journal articles, poems, manuals, memoranda, syllabi, bibliographies, tests, computer programs, computer-driven displays, programmed instructional material and databases;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music;
- d. lectures, presentations and live video or audio broadcasts;
- e. pantomimes and choreographic works;
- f. pictorial, graphic, and sculptural works, including photographs, diagrams and sketches;
- g. films, filmstrips, charts, transparencies and other visual aids;
- h. motion pictures and other audiovisual works such as videotapes, audio tapes, videodiscs and cassettes; and
- i. sound recordings.

Common Law copyright protection of a work exists in very limited circumstances before it is fixed in tangible form, and trade secret protection is available for any material that provides a business advantage not generally known to the public.

III. Policy

Scope of Copyright Protection

1) The scope of copyright protection is a matter of federal law governed by the *Copyright Act*, R.S.C. 1985 c.C-42, as amended (the "**Act**"). This policy is provided to identify selected copyright principles and is not intended to constitute a full description of the applicable law. Inquiries in specific cases should be directed to the Provost's Office.

2) Copyright protection for an original work of authorship extends only to the expression which constitutes the work and not to any idea, principle or discovery embodied in the work. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described may be freely copied, assuming no other intellectual property right, such as a patent or trade secret, applies.

Copyright protection only prevents copying of the copyrighted work, and does not control an independently produced similar work, provided that there was no exposure

to the original work. Moreover, ownership of copyright is distinct from the ownership of any material object in which the work is embodied. Transfer of the ownership of any object does not of itself convey any rights in the copyrighted work embodied in that object. For example, i-Phone purchases a videotape, one does not automatically obtain any copyright interest in the work on the tape, such as the right to make a public performance of the recorded work. Furthermore, in the absence of an agreement, transfer of the ownership of a copyright does not convey property rights in any material object.

3) The rights of the copyright owner vary with the nature of the work. These rights include the exclusive right to: a) reproduce the copyrighted work; b) distribute copies by sale or otherwise. For some works, the right include the exclusive right to display or perform the work. The rights of copyright are subject to certain defined limitations and exceptions, including, but not limited to, the right of others to make 'fair dealing,' as defined by the Act, of a copyrighted work. 'Fair dealing' includes the reproduction of portions of the copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship or research. Fair dealing should not be relied upon without the advice of counsel.

Ownership and Disposition of Copyrightable Material

1) The initial ownership of copyright in a work depends on how it is created, and may reside in either the author(s) or the author's employer. The term 'author' shall be defined for purposes of this policy to mean the individual(s) responsible for the creation of a work. Where there is a question concerning the identity of the author(s) of a work, the Provost or his or her designee shall make a good faith determination of authorship, which shall be final and binding on all parties. In making this determination, the deciding party is to be guided by applicable law.

2) In the case of any work which is created or developed in the course of or pursuant to an agreement for sponsored research or pursuant to any other written agreement, including an agreement between an author(s) and the university, copyright ownership shall be determined in accordance with the terms of such agreement. In the absence of such terms, the ownership of copyright in such work shall be determined by reference to paragraphs 3), 4), 5), and 6) of this Section. It is anticipated that such written agreements may contain other restrictions or obligations affecting material provided or developed pursuant to the agreement. In such cases, persons using or developing such materials shall abide by such restrictions and obligations.

3) All works created or developed by university Faculty, staff or other employee within the scope of his or her employment shall be considered work made in the course of employment, pursuant to s. 13(3) of the Act, and copyright ownership thereof shall reside in the university. Notwithstanding the foregoing, works created by Faculty for use in courses in the university may be used by such Faculty as a contribution to other works provided that appropriate notice and acknowledgement of the university's ownership of copyright is included in any such other work.

4) Copyright ownership of any work which is created or developed by any person, including, but not limited to Faculty, staff, employees and students, with the significant use of funds, facilities, space, equipment, materials or other resources of, or administered by, the university shall reside in the university, and must be assigned to the university by the relevant author. Except as provided in paragraph 3) of this Section, the university will not normally construe the payment of salary from unrestricted funds nor the provision of office and library facilities as constituting significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the university. Use of laboratory and/or computer facilities or assistance from one or more Faculty or staff to an author specifically pertaining to the work constitutes significant use of university resources. In all cases the Provost or his or her designee shall make a good faith determination concerning significant use, which shall be final and binding on all parties.

5) Copyright ownership in any work, other than in a thesis,¹ which is not within the provisions of paragraphs 2) 3) and 4) of this Section shall reside in the author. Copyright ownership in theses shall be determined as provided in paragraph 6) of this Section.

6) Notwithstanding any provision herein to the contrary, in the case of a thesis generated by research performed in whole or in part by a student in the course of or pursuant to an agreement for sponsored research or other written agreement, including an agreement between an author(s) and the university, or utilizing equipment or facilities provided to the university under conditions that impose copyright restrictions, copyright ownership or control shall be determined in accordance with such agreement or restrictions. In the absence of such agreement or restrictions, copyright ownership in such a thesis shall reside in the student; however, the student, as a condition of a degree award, must grant the university the royalty-free right to reproduce and publicly distribute copies of the thesis for limited and non-commercial purposes.

7) Where necessary to secure to the university an ownership of copyright in accordance with paragraphs 2) and 4) of this Section or the rights of reproduction and distribution in accordance with paragraph 6) of this Section, all Faculty, staff, employees, students, consultants, and others authorizing works for or on behalf of the university shall assign such person's rights of copyright, or grant the specified rights of reproduction and distribution, to the university. The university reserves the right to use, at its discretion, the materials or portions of any work created or developed in the course of an author(s)'s relationship with the university, or otherwise covered by this policy, for promotional, professional, or non-commercial purposes on a royalty-free basis.

Copyright Revenues

1) Except as may be provided in any other controlling document, revenues received by the university through fees or royalties for use of works in which the university has acquired rights under paragraphs 2), 3), 4), and 6) of the above Section, will be apportioned in accordance with paragraph 4) of this Section among the author(s), the university, and the unit (if one exists) within the university where the works originated. The term 'unit' as used herein shall include, without limitation, department, administrative unit, group or institute, and functions of which are separately budgeted

2) Prior to any distribution under paragraphs 3), 4), or 5) of this Section, the university reserves the right at its discretion to deduct from gross revenues all or any portion of:

- a. litigation and other expenses reasonably incurred in enforcing or defending the copyright against third parties;
- b. costs involved in licensing the copyrightable work;
- c. fees and expenses for registering the copyright; and
- d. the university's production and development costs.

3) The author(s) and the university are authorized to conclude a written agreement concerning the distribution of revenues. The author(s), are representative of the unit and the Provost or his or her designee may negotiate such a written agreement, to be executed by the author(s) and the Provost or his or her designee, encompassing the following:

- a. the distribution of revenues;
- b. the schedule for revenue distribution; and

- c. where applicable (especially to encourage the creation and development of non- print materials), advances against royalties.

4) Where no written agreement with respect to revenue distribution exists, the following distribution shall apply:

- a. to the university, 60%;
- b. to the author(s), a total of: (i) 35% of the first \$50,000 in gross revenues; (ii) 25% of the next \$50,000 in gross revenues; and (iii) 15% of the gross revenues thereafter; and
- c. to the unit, a total of: (i) 5% of the first \$50,000 in gross revenues; (ii) 15% of the next \$50,000 in gross revenues; and (iii) 25% of the gross revenues thereafter.

5) For purposes of paragraph 4) above, in the case of joint authors, the direct royalty distribution designated for an author shall be to the joint authors as a group, to be divided equally between the authors, unless the authors provide the university with an alternative royalty distribution schedule agreed upon by them. If the authors are associated with different units, the royalty distribution to the units shall be to the units jointly to be divided equally, unless the university is provided with an alternative royalty distribution schedule agreed upon by the heads of the respective units and the Provost or his or her designee. In the event a unit ceases to exist, the distribution of the unit's funds shall be determined by the Vice President/Treasurer upon recommendation of the Provost or his or her designee.

6) Except as may be prohibited by law or any other controlling document, the university reserves the exclusive right at its discretion to contract with third parties for the exercise of any of its rights of copyright.

Revenues accruing from such agreements shall be considered part of the revenues of the copyrightable works and shall be distributed in accordance with the provisions set forth in this section.

Copyright Procedure

1) Where the university has determined that it is in its best interests to protect works in which it owns or is entitled by agreement or operation of law to own any rights of copyright, it may at its discretion register its claim to copyright. The

author(s) of the work shall fully and promptly cooperate with the university and take such actions and execute such documents, including, but not limited to, assignments and applications for registration, which shall, in the opinion of the Provost or his or her designee, be reasonably necessary to perfect and confirm the university's rights of copyright.

2) In all cases where the university chooses to publish² a work, it shall include a copyright notice in the required form and position. The notice must contain three elements:

- a. the symbol ©; [(P) for sound recording];
- b. the name of the copyright owner: NORTHEASTERN UNIVERSITY; and
- c. the year of first publication. This is the year in which copies of the work were first placed on sale, sold, or publicly exhibited or distributed.

Advice of counsel should be obtained regarding the proper use of copyright notice.

Policy on Trade Secrets and Protection of Computerware

1) Except where provided to the contrary in other controlling documents, ownership of computer databases, software and firmware produced at the university, along with any rights of copyright pertaining thereto, shall reside in the university (and must be assigned by the relevant author, if required) wherever such materials are created a) by employees in the course of their employment; b) under contract by or for the university; or c) with significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the university, as described in Section d above. It should be noted that sponsored research agreements usually contain clauses affecting the ownership and disposition of computer software, firmware and databases, providing in some cases that the sponsor or the university is the owner. The Provost's office should be consulted to determine the meaning and scope of any such clauses.

2) Copyright protection alone may be inadequate for computerware and certain other materials. For this reason, computer software, firmware and databases owned or controlled (and all source code related thereto) by the university shall be maintained as trade secrets of the university until released by the Senior Vice President/Treasurer upon recommendation of the Provost or his or her designee. In addition, the Provost or

his or her designee may identify other materials or classes of materials to be treated as trade secrets. Where any material is to be treated as a trade secret, the following steps shall be taken to protect such status.

- a. The material and any copies thereof shall be physically secured against access by unauthorized individuals.
- b. Access to the material and any copies thereof shall be limited to designated individuals who shall be as few as possible and who shall be instructed and obligated to protect any such trade secret status.
- c. The material and any copies thereof shall bear a notice as follows: "This material is confidential and proprietary to Northeastern University. Access to this material is limited to authorized individuals. Use, reproduction or disclosure is prohibited unless authorized in writing by the university."

3) Initial findings with respect to the release of trade secrets of the university shall be made by the University Patent Committee and shall be communicated to and reviewed by the Provost or his or her designee. If release is authorized, the principal investigator or other Faculty member directing the research in the course of which computer databases, software, firmware or other trade secrets are developed may permit their distribution subject to conditions which protect their commercial value and are consistent with any grants or contract under which protect their commercial value and are consistent with any grants or contracts under which such works are developed. Databases so released may be publicly accessed (except in cases where confidential information or privacy considerations are involved, such as student, personnel, and patient records) so long as substantial copying is prevented.

4) It should be noted that software, firmware, databases and other trade secrets may be provided to the university from outside sources under conditions restricting their use or disclosure. Individuals authorized to access such materials shall treat them as required by the terms under which they are provided to the university.

Miscellaneous Provisions

1) Employer Agreements

The university may require Faculty, staff, or students to sign agreements implementing this policy as a condition of employment or as a condition of participation in a sponsored project, as may be necessary to comply with the terms of grants and contracts, or to establish record title in certain materials in the university. The university

may hold legally responsible and/or impose sanctions upon employees responsible for significant violations of the terms of this policy, including but not limited to actions such as the publication other than under university copyright of materials with respect to which the university is the copyright owner under the law or the provisions of this policy.

2) Copying of Works Owned by Others

Members of the university community are warned to observe the rights of other copyright owners.

Policies pertaining to copying for classroom use or library purposes are set forth in "Use of Copyrighted Material in Classes," are posted at appropriate university locations and are available from the University Publishing Group.

3) General Advice and Assistance

Designated personnel in the Provost's Office are available to advise on questions arising under this policy and to assist with the negotiation and interpretation of the provisions of proposed formal agreements with third parties. All determinations or interpretations to be made under this policy by the Provost or his or her designee shall be made in substantial conformity with the Copyright Act and controlling case law thereunder, where applicable. Questions regarding the specific terms and conditions of individual contracts and grants, or regarding rules, regulations, and statutes applicable to the various government agencies, may be addressed to the Provost's Office.

IV. Additional Information

N/A

V. Contact Information

Center for Research Innovation

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[1] A 'thesis' shall be defined herein as a student work representing significant original or independent research and for which the student receives a very substantial amount of credit toward a degree or certificate. Where there is a question concerning whether or not a student work is a thesis, the Provost or his or her designee shall make a good faith determination concerning this issue, which shall be final and binding on all parties.

[2] 'Publication,' under the *Copyright Act*, includes making copies of a work available to the public, by any means. A public performance or display of a work does not in itself constitute publication.