

Resolution to Revise the Copyright Policy

Whereas the faculty senate passed a resolution at its meeting of Feb 14, 2001 requesting that the dean of the faculty work with the provost to review the university copyright policy; and

Whereas the provost in consultation with the dean of the faculty appointed a committee to review the university's copyright policy; and

Whereas the committee has widely circulated a draft of its report, reviewed the comments received, and finalized the report;

Be it resolved that the faculty senate accepts the report, and requests that the university revise its Copyright Policy in line with the report, as follows:

DEFINITIONS

Change the subtitle from "Definitions of Copyrightable Material" to "Definitions".

Delete from the Copyright Policy the definitions of "traditional work" and "encoded work" as well as the paragraph leading into those definitions.

Add to the policy the following definitions:

"works of authorship": material that is copyrightable; may include lecture notes, textbooks, articles, works of fiction, visual arts, software and musical compositions regardless of the media in which the works are produced or the forms of dissemination e.g. print or electronic.

"substantial use of University resources": the use of University resources such as funding, space or facilities not ordinarily provided to or available to all, or virtually all, members of the faculty of that department or field. For example, contributions of instructional and/or technical support to create digital course materials and/or to transform existing materials into digital format can constitute "substantial use" of University resources where such contributions exceed the level of support available to faculty in that department or field. For any given department, unit or individual, what constitutes a usual resource will depend upon the functions and responsibilities of that department, unit, or individual. For example, access to a chemistry laboratory may be a usual resource in chemistry, but would probably be considered an unusual resource in English literature. A further elaboration of this concept can be found in the "Elaboration of Definition of Substantial Use" included as an Appendix to this Policy. Questions about whether use of a particular resource constitutes substantial use should be directed to the individual with administrative responsibility for the resource.

"work for hire": the Copyright Act. provides that "a work prepared by an employee within the scope of his or her employment" is a work for hire. The employer (i.e., the University) is the "author," and hence the owner, of works for hire. There is a long-established tradition within academia exempting scholarly publications by faculty from the "work for hire" doctrine.

OWNERSHIP AND DISPOSITION OF COPYRIGHTABLE MATERIAL

Revise the existing language under II. Work for Hire to read:

The copyright to material that is created by a non-academic employee within the scope of University employment shall be the property of the University unless there is a written agreement to the contrary. Such agreements may be appropriate where a staff member is creating an academic work such as a scholarly article or conference presentation with the permission of, but little guidance from, his or her supervisor.

The copyright of material that is created by an academic employee pursuant to a specific direction or assigned duty from the University or any of its units shall be the property of the University. Such specific duties may include requests that a faculty member develop labs, case studies or other curricular material to be used by members of the department or college other than or in addition to the faculty author. Other examples include course descriptions written for the course catalog and works created in the course of an administrative assignment, e.g. committee reports. A teaching assignment shall not constitute a specific direction or assigned duty conferring on the University copyright ownership in lecture notes and other instructional materials.

Revise the existing language in the first sentence of III. Use of University Resources to read:

Copyright ownership of works of authorship that are created with substantial use of University resources shall reside with the University.

Substitute "Faculty Senate" for "FCR" in the last sentence of this section.

RESOLUTION OF DISPUTES

Replace the first sentence with:

Disputes arising out of the application of this policy and the ownership of copyrights shall be brought to the Provost. The Provost will appoint an ad hoc committee and designate a chair. The committee will consist of a combination of administrators, faculty, staff and/or students as appropriate given the nature of the complaint and the respective roles of the parties involved.

Insert the following new sections into the policy:

COLLABORATIVE WORKS

Unless the contributions are made under circumstances that bring them within one of the exceptions delineated in OWNERSHIP AND DISPOSITION OF COPYRIGHTABLE MATERIAL above, the allocation of rights among multiple authors is largely a matter for them to resolve, ideally through an explicit agreement about these matters.

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COPYRIGHT NOTICE AND REGISTRATION

In those cases where the University is the owner of copyright, the following notice should be included:

Copyright © [year] Cornell University. All Rights Reserved.

The date in the notice should be the year in which the work is first published, i.e. distributed to the public or any sizable audience.

Within the University, the individual colleges or administrative units in which works are created have responsibility for the administration of copyrights and responding to

requests for permission to use the copyrighted material for nonprofit educational purposes. It is therefore recommended that the name and address of the department to which readers can direct permission requests be included in the notice:

Requests for permission to reproduce this work should be referred to the Department of _____ at _____ . The Office of University Counsel and the Cornell Research Foundation are available to assist with commercial sales or licenses.

Departments may opt to register the copyright with the United States Copyright Office. Forms to do so may be obtained from the Copyright Office web site, <<http://www.copyright.gov>>. Questions concerning copyright notices and registration should be addressed to the Office of University Counsel.

WORKS BY NON-EMPLOYEES AND INDEPENDENT CONTRACTORS

Whenever possible, the University should acquire copyright ownership, as well as ownership of the physical work, with respect to works created for the University by independent contractors such as consultants, photographers and web page designers. A written agreement is needed to achieve this result. The Office of University Counsel is available to assist in the preparation of such agreements.

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May 1, 2003
Committee on Intellectual Property