# THE UNIVERSITY OF MICHIGAN

## STANDARD PRACTICE GUIDE

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| **SECTION:** | General University Policies and Procedures | **Number:** | 601.3-2 |
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| **ISSUED BY:** | Provost and Executive Vice President for Academic Affairs | | |

Approved by the Regents on November 14, 2002

## COPYRIGHTED WORKS CREATED AT OR IN AFFILIATION WITH THE UNIVERSITY OF MICHIGAN

### Preamble

The University of Michigan's central mission is the creation, preservation, and dissemination of knowledge through teaching, research, and public service. Changes in information technology and copyright law require clarification of the rights and responsibilities that accrue from the creation of works of authorship (hereinafter "works")[1] in the University context in order for individuals who create, use, and disseminate intellectual property to fulfill their respective functions in and outside the academy.

Copyright includes a bundle of rights—including rights to ownership, reproduction or copying, preparation of derivative works, distribution, public display, and public performance. General principles regarding this bundle of rights in the University context are set forth below. In particular instances, written agreements may be necessary to modify the rights outlined below, or to clarify the rights and responsibilities of interested parties to a greater level of specificity.

This policy applies to works produced by University faculty, staff, students, other members of the University community, and contractors.

### POLICY

Ownership principles and other interests applicable to general categories of works (based on the context of the creation of works and the identity of their creators) are identified below (section I). The policy also sets forth other relevant considerations involving use of the University's name, seal, or marks (section II); administration and implementation (section III); and policy interpretation and dispute resolution (section IV).

### I. Categories of Works

A. Faculty Works

1. Ownership Principles

Consistent with academic freedom and tradition, all faculty[2] (including full-time, part-time, adjunct, and emeritus faculty) own and control instructional materials and scholarly works created at their own initiative with usual University resources. "Usual University resources" are those resources commonly provided or made available to similarly situated faculty. They include, for example, ordinary use of resources such as the libraries; one's office, computer and University computer facilities; secretarial and administrative support staff; and supplies. 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.

Examples of faculty-owned works created at faculty members' own initiative with usual University resources may include, but are not limited to: lecture notes, transparencies, case examples, textbooks, interactive textbooks, other works of nonfiction or novels, software, CD-ROMs, articles, books, literary works, poems, musical compositions, visual works of art, and other artistic creations regardless of the media in which the works are produced or the forms of dissemination (e.g., print or electronic).

2. University Community Interests

Even though individual faculty own the works described in (I)(A)(1) above, the University community as a whole has interests in being able to use such works for educational and administrative purposes, consistent with the University's educational mission and academic norms. Faculty members should keep these purposes in mind in creating and disseminating instructional materials and scholarly works.

The University shall be permitted to use materials created for ordinary teaching use in the classroom and in department programs (such as syllabi, assignments, and tests) for administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.

Faculty members are encouraged to share their instructional materials and courseware with their University colleagues for internal instructional, educational, and administrative purposes. When publishing scholarly works, faculty creators are encouraged to provide rights for use for the University community.

The University also has an interest in ensuring that works created by its own faculty are not used to compete with or undermine the University's educational mission or activities. Consistent with conflict of interest and commitment principles, faculty with full-time appointments at the University should not use (or permit others to use) their works in ways that compete with the University's courses, or its educational programs or activities-unless prior written permission is obtained from the appropriate dean, unit director, or executive officer, or their designee(s). This provision applies to works developed for compensation at other educational institutions, including for-profit and online institutions. It does not apply

to works created in conjunction with professional activities in conformance with University norms such as, but not limited to: sharing syllabi or other course materials with colleagues at other non-profit educational institutions; ordinary outside consulting; participation in professional or scholarly organizations; scholarly presentations and publications; pursuit of future employment opportunities; and public service.

B. Staff Works

1. Ownership Principles

Although the University owns works created by staff within the scope of their employment duties or with unusual University resources (as discussed in section I(C) below), the University does not claim ownership of works created by staff members at their own initiative, outside the scope of their employment, and without unusual University resources (e.g., scholarly or artistic works).

C. University Works

1. Ownership Principles

Consistent with its legal and fiduciary responsibilities, the University owns particular works that are:

a) created in whole or in part by faculty members, when creation of those works is dependent upon the provision of unusual University resources as specially authorized by University administrators such as deans, department chairs, unit directors, or their designees. "Unusual University resources" are resources such as financial, technical, personnel, or other forms of support beyond the type or level of resources commonly provided to similarly situated faculty. Unusual University resources may include, for example, an extraordinary quantity or quality of media development, significant research assistance, or access to or use of other special, limited University facilities or resources.

Pursuant to agreements with the creators, the University may decide to forego or modify its rights to such works.

b) created as a specific requirement of employment or pursuant to an assigned institutional duty that may, for example, be included in a written job description or an employment agreement so as to qualify as works made for hire. Such works may include those whose creation is instigated or facilitated by a unit of the University for the express purpose of making such works available to individuals or entities other than, or in addition to, the creator(s)

for use in teaching, research, patient care, public information, or other University activities.

The University does not, however, claim ownership of faculty-created instructional materials or courseware merely because it requires faculty members to teach courses as part of their regular responsibilities. The University may claim ownership of certain instructional materials or courseware, including online course materials, when the University has specifically requested such materials and either invested unusual University resources in them as described in (a) above, or specifically compensated faculty-creators (e.g., with additional financial compensation, release time, etc.) for the development of the materials.

Similarly, the University does not claim ownership of faculty-initiated scholarly works based merely on general expectations that faculty members will publish such works.

c) created in the course of an administrative assignment (e.g., a report for a university committee).

d) created as part of sponsored projects, pursuant to the terms of the governing contracts (see I.F).

The University retains the rights to commercialize such works, as well as all other rights under copyright law.

2. Faculty and Staff Interests

Even though the University owns the works described in (I)(C)(1) above, individual faculty and staff may have interests in using them or receiving credit for their participation in such works, particularly works which they created or to which they contributed.

In the absence of contractual or other legal restrictions to the contrary, the University grants faculty non-exclusive rights to use and distribute University-owned works they created for non-commercial purposes. Accordingly, faculty members who leave the University may continue to use at another nonprofit institution or organization for teaching, research, and other non-commercial purposes, all University-owned works they created.

Faculty creators of University-owned instructional materials who are still employed by the University have the right of "first refusal" in making new versions. The creators of University-owned instructional materials who have left the University have the right to be consulted in good faith on reuse and revisions (e.g., for online instructional materials or courseware). In order to protect academic integrity, the creators may request that such works be withdrawn from use in University activities if they become obsolete or are

otherwise deemed inappropriate for further educational use. Creators also have the right to have their names removed from such works if they so desire.

In accordance with academic tradition and any applicable legal considerations, the University will acknowledge creators and developers (including faculty, staff, and students) who have made a substantial contribution to University-owned works-unless those individuals request otherwise. For example, the members of a University committee would ordinarily be acknowledged in a committee report.

Creators and developers of University-owned works shall not undermine the University's efforts to commercialize those works.

Creators and developers of University-owned works may, however, share in the revenues in appropriate circumstances pursuant to written agreements with the University.

D. Student Works

1. Ownership Principles

Students who create academic works while at the University (e.g., dissertations, theses, student projects) own the copyright to such works, unless: (1) the works qualify as works made for hire in the course of employment at the University; or (2) a written transfer of copyright is obtained.

2. University Community Interests

Students are frequently involved in the creation of works in consultation with, or under the supervision of, University faculty and staff. Such works may be related to coursework, research, extracurricular activities, or other University projects. In some circumstances, it is difficult to determine whether and to what extent students are acting as agents or employees of the institution. Accordingly, written agreements with students regarding copyright should be executed whenever the University or its representatives have any doubt about copyright ownership of student-created works in which the University believes it has ownership or other interests.

E. Collaborative Works

Works created collaboratively by students, staff, faculty, and/or others present special challenges with regard to copyright. Such works may be owned in whole or in part by the University if they fall within one of the categories described in (I)(B) above. When works are created collaboratively with other entities or institutions, the University's interests and rights in such works shall be recognized and protected as consistent with this policy. If the parties intend for a work to be jointly owned for purposes of copyright, such an intent should be set forth clearly in writing at the beginning stages of such a project.

Even if ownership is held by a single entity (such as the University), the rights to use such works can often be divided and shared so as to meet the needs of each party. For example, multiple parties may have non-exclusive rights to copy, display, or distribute a particular work.

In the case of some collaborative works, especially those involving members of different categories within the University community (e.g., faculty and students; staff and students), the parties involved may decide to assign copyright to the University in order to coordinate distribution, use, and (when appropriate) revenue sharing.

F. Sponsored Works

Works created in the course of sponsored projects are governed by the terms of the sponsor agreements, when applicable.

G. Works by Non-Employees/Contractors

Generally, the University requires copyright as well as physical ownership of works prepared expressly for the University by non-employees, such as consultants or contractors retained by the University, or students who are compensated for such work. In order to claim copyright ownership, a written agreement should be executed in which the non-employee and the University both acknowledge University copyright ownership.

## II. Use of the University's Name, Seal, or Marks

Use of the University's name, seal, or marks in connection with works, other than by way of identification of the creators as faculty members, researchers, other employees or students at the University, is itself use of a significant University resource, thus triggering an interest on the part of the University. Additionally, use of the University's name, seal, or marks can affect the reputation and academic standing of the institution. Faculty members, researchers, other employees, and students (as well as their respective departments and schools) may not participate in the creation or use of works that might give the impression of University sponsorship when there is none. Any use of the University name, seal, or marks (other than to identify creators by their titles or affiliations with the University) in connection with works created by faculty members, researchers, other employees, or students must be approved in advance by the University in accordance with University policies.

Similarly, the University must approve in advance the use of its name, seal, or marks in connection with any works created under collaborative agreements with outside entities (other than to identify creators by their titles or affiliations with the University).

## III. Administration and Implementation

Copyright to all University-owned works shall be held (and registered, when appropriate) in the name of the Regents of the University of Michigan.

Within the University, the individual departments, schools, or units in which works are created will ordinarily have primary responsibilities for the administration of copyright rights and permissions. Any commercial sale or licensing of University-owned, copyrightable works shall follow normal University procedures.

Copyrights may also be held separately by entities that are affiliated with the University, but legally independent or autonomous.

## IV. Policy Interpretation and Dispute Resolution

This copyright policy and its implementation may require interpretation and review. Every attempt should be made to resolve disputes informally, with the assistance of one or more of the support services provided by the University as discussed below.

Policy Information: Information about this policy and its application is available from the following sources: the Offices of the Provost at the Ann Arbor, Dearborn, or Flint campuses (for policy clarification), the Office of the General Counsel (for legal clarification), and the Office of Technology Transfer (for matters regarding patents and commercialization of intellectual property).

Informal Resolution: If an issue arises with regard to the interpretation of this policy and cannot be resolved by the parties themselves, one or more of the parties may go to the appropriate supervisor, department chair or unit head (or his or her designee(s)). If the matter cannot be resolved at the departmental or unit level, or if the parties involved are from different departments or units, it may be necessary to bring the matter to the attention of a dean or director. At any time during this process, informal consultation regarding interpretation of this policy is available from the offices listed above under "Policy Information."

Formal Resolution: If informal procedures and consultation do not provide resolution of a dispute or policy issue, it may be necessary to resort to formal procedures for policy interpretation and dispute resolution. Any member of the University community may file a request for formal dispute resolution or policy interpretation with the Offices of the Provost at the Ann Arbor, Dearborn, or Flint campuses. 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. Members of the committee will be selected from a pool of candidates nominated by the Senate Advisory Committee on University Affairs (SACUA) and by other appropriate governing and administrative bodies.

The decisions of the committee may be appealed to the President (or his or her designee). The decisions of the President (or designee) shall be final.

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The information presented here is intended for informational purposes and should not be construed as legal advice. If you have specific legal questions pertaining to the University of Michigan, please contact the Office of the Vice President and General Counsel.

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[1] As defined in federal copyright law, a copyrighted work is an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship (including some computer programs) include the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works.

Copyright protection does not "extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work."

See 17 U.S.C. §102.

[2] As defined in Regents Bylaw 5.01 and in the Faculty Handbook, "faculty" at the University includes members of the teaching and research staff; the executive officers; the directors of various teaching, research and library units; librarians, curators, and archivists.