

University Policy Number: 4002

Subject: Copyright in University Works

Responsible Parties: Vice President for Research and Economic Development, Office of Technology Transfer, Intellectual Property Committee, Provost, Senior Vice President

Procedures:

Related University Policies: University Policy Number 1104 – Use and Reproduction of Copyrighted Materials, University Policy Number 4003 – Patenting University Inventions,

I. PURPOSE AND SCOPE

George Mason University is committed to the dissemination of knowledge in works created by its faculty, staff, and students. The purpose of this policy is to encourage the free and open exchange of ideas through copyrighted works and to –

- Clarify rights of authorship and ownership in works addressed by United States copyright law, affirming the university's commitment to the "traditional works" doctrine under which, with certain specific exceptions, copyright in works authored and created at the university by faculty and students is the property of their authors and creators;
- Provide for the equitable sharing of the financial benefit from university-owned copyrighted works;
- Clarify roles and responsibilities for implementation of the copyright policy, including the role of a faculty-based Intellectual Property Committee to resolve disputes; and
- Conform the university's copyright policy to Virginia law.

This policy addresses the ownership of, benefit from, and related matters concerning, copyright in works created by George Mason University employees and students.¹ University Policy Number 1104 – Use and Reproduction of Copyrighted Materials addresses the use and reproduction by university employees and students of materials in which the university does not hold copyright.

This policy is required by State law to cover certain persons. Virginia Code, section 23-4.3 B, requires that employees be bound by the university's copyright policy as a condition of employment.

¹ Definitions of "employee," "faculty," "staff," and "student" as used in this policy are found in Part III.

Article I, section 8, clause 8 of the United States Constitution grants to the Congress the power “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the Exclusive Right to their respective Writings and Discoveries.” Pursuant to that authority, Federal copyright law in Title 17 of the United States Code protects original works of authorship that are fixed in any tangible medium of expression. The categories of copyrightable works include –

- Literary works;
- Musical works, including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings; and
- Architectural works.

Aspects of software that can be fixed in a tangible medium of expression are copyrightable as “literary works.” Certain semiconductor “mask works” are afforded protection under 17 U.S.C. Chapter 9 – Protection of Semiconductor Chip Products.² This policy applies to mask works to the extent consistent with the provisions of that statute.

The owner of a copyright has, subject to the limitations in 17 U.S.C. Chapter 1, the exclusive rights –

- To reproduce the work;
- To make derivative works based on the work;
- To distribute copies of the work to the public;
- To perform the work publicly; and
- To display the work publicly.

Under the law, if copyright in a work is held jointly, each owner has all these rights, as well as an obligation to the other owners to share income from the exercise of these rights.

² The term “mask work” and other related terms are defined at 17 U.S.C. 901.

II. POLICY STATEMENT

A. COPYRIGHT OWNERSHIP

1. WORKS CREATED BY FACULTY

a. General provisions. It is the policy of the university that the creator of a traditional work holds the copyright in that work, subject to the exceptions described below.³ A traditional work is a pedagogical, scholarly, literary, or aesthetic work (including computer software) in any medium that is created by the faculty member within the scope of his or her regular university employment. The university retains a nonexclusive, nontransferable, paid-up license to use faculty-created traditional works for the university's educational and research purposes, except that the license is revoked if the creator determines that revocation is required by a third party for publication of the work.

The university makes no claim of copyright ownership in works created entirely outside the scope of a faculty member's employment.

There are four exceptions to this general rule on ownership of copyright in traditional works:

i. Directed works. The university holds copyright in a traditional work that is created by a faculty member at the express written direction of the university but outside the scope of his or her regular employment unless the faculty member and the university, prior to the creation of the work, enter into a written agreement providing that the faculty member will hold copyright. The Vice President for Research and Economic Development or that officer's designee enters into the agreement on behalf of the university.

ii. Sponsored programs. Copyright ownership in traditional works created under a contract, grant, or other agreement between the university and a third party may be specified in the agreement as the university and the third party determine. Unless the agreement requires that the university hold copyright in such a work, the university treats it as a traditional work.

iii. Substantial use of significant university resources. The university holds copyright in a traditional, non-patentable work that is created with substantial use of significant university resources and has considerable potential commercial value, except that the university makes no claim of copyright ownership in a work that is created pursuant to an agreement between the creator and a third party for the creation of the work.

³ Creators are reminded that they bear the responsibility for defending their copyrights against infringement. The university may provide creators with assistance but is not required to do so.

Substantial use of significant university resources occurs when a work is created with the substantial use of significant university equipment or facilities, the use of special financial assistance from the university, or the dedicated assistance of university administrative employees not engaged in teaching or research. The use of a university computer or servers or of incidental supplies, or the occasional use of university administrative employees or shared facilities, would typically not be a basis for university ownership of the copyright.

The university makes no claim of copyright ownership in a non-patentable work created with substantial use of significant university resources if (1) the university does not hold copyright under either of the exceptions in this Part II (A)(1)(a)(i) or (ii), and (2) all known creators of the work agree to make it available under either an open content license acceptable to the Vice President (including, but not limited to, Creative Commons' "Attribution No Derivatives," "Attribution Share Alike," and "Attribution" licenses) or, in the case of software, an open source license that meets the requirements of The Open Source Definition, Version 1.9, of the Open Source Initiative. The Vice President may update the requirements for an open source license under this policy.

iv. Patentable works. The university generally holds copyright in a traditional work that is also patentable, including patentable software, when the university has a claim to ownership of the patent. The Vice President or that officer's designee claims and disclaims copyright ownership in such a work on behalf of the university by providing notice to all creators.

The university makes no claim of ownership of the copyright or the patent in copyrightable and patentable software if (1) the university does not hold copyright under either of the exceptions in this Part II (A)(1)(a)(i) or (ii), and (2) all known creators and inventors of the software agree to make it available under an open source license that meets the requirements of The Open Source Definition, Version 1.9, of the Open Source Initiative. The Vice President may update the requirements for an open source license under this policy.

b. Course materials. Course materials in any medium that are prepared by faculty in connection with their academic responsibilities at the university are traditional works as described in Part II (A)(1)(a) and are subject to the provisions of this policy that apply to those works. Examples of course materials are course notes, course descriptions, outlines, syllabi, reading lists, assignments, examinations, and, for the purpose of this policy, records of the delivery or presentation of the course in any medium. Course materials created by faculty for additional compensation by the university are considered directed works under Part II (A)(1)(a)(i).

The use outside the university of course materials in which a faculty member holds copyright is subject to the following constraints grounded in considerations of conflict of commitment, conflict of interest, and use of university resources:⁴

i. Except for adjunct faculty, a faculty member may not, while employed by the university, use course materials prepared in connection with his or her academic responsibilities at the university for on-line teaching purposes in substantial competition with the university, or make these materials available to others with the intent that they be used for those purposes, without the permission of his or her Dean or Institute Director. A faculty member may use these materials or make them available to others for short, not-for-credit courses without obtaining the Dean's or Director's permission.

ii. A faculty member may not use the university's name, or permit it to be used by others, in connection with the commercial use of course materials for teaching purposes outside the university except to identify the member's affiliation with the university. Exceptions to this constraint must be approved by the authorized university official.

2. WORKS CREATED BY STAFF

a. Works created within scope of employment. The university holds copyright in works that are created by university staff members within the scope of their regular university employment. The university makes no ownership claim to works created entirely outside the scope of a staff member's employment.

b. Directed works. The university holds copyright in works that are created by university staff members at the express written direction of the university but outside the scope of their regular employment unless the staff member and the university, prior to the creation of the work, enter into a written agreement that the staff member will hold copyright. The Vice President for Research and Economic Development or that officer's designee enters into the agreement on behalf of the university.

3. WORKS CREATED BY STUDENTS

a. Works created as a student. Students generally hold copyright in works that they create as students, such as papers, theses, dissertations, software code, or artistic or musical works. The sole exception is internships with outside employers; copyright ownership in works created by a student in the course of outside employment that is a part of his or her academic work may be specified in an agreement between the university and the employer.

⁴ The "Policy Statement on Full-Time Instructional Faculty Teaching at Other Institutions," adopted by the Faculty Senate on March 20, 2002, is fully consistent with this policy and remains in effect.

The university retains a nonexclusive, nontransferable, paid-up license to use works created by students as students for the university's educational and research purposes, except that the license is revoked if the creator determines that revocation is required by a third party for publication of the work.⁵

b. Works created as a university employee.

i. In the case of a student who is employed in an instructional or research capacity, copyright ownership in works created within the scope of the student's employment is governed by the provisions of Part II (A)(1)(a), relating to works created by faculty. Likewise, the use outside the university of course materials prepared by a student in connection with his or her employment in an instructional capacity is subject to the constraints outlined in Part II (A)(1)(b).

ii. In the case of a student who is employed in a staff capacity, copyright ownership in works created within the scope of the student's employment is governed by the provisions of Part II (A)(2), relating to works created by staff.

c. Personal works. The university makes no ownership claim to works created entirely outside the scope of a student's employment and not as a part of his or her academic work.

B. ADMINISTRATIVE ORGANIZATION

1. RESPONSIBLE OFFICERS AND ORGANIZATIONS

The following officers and organizations are responsible for the administration of this policy:

a. Vice President for Research and Economic Development. The Vice President for Research and Economic Development is responsible for the overall administration, interpretation, and application of this policy. The responsibilities of this officer include deciding questions concerning the application of this policy to ownership of copyright in works under Part II (A) and the allocation of net income from these works under Part II (E)(3). In specific and unusual circumstances, the Vice President may approve deviations from this policy and resolve questions relating to the subject matter of the policy but not clearly addressed by it.

b. Office of Technology Transfer. The Office of Technology Transfer (OTT) serves as the Vice President's principal staff office for copyright matters. OTT advises faculty, staff, and students on matters within the scope of this policy.⁶

⁵ The university's use of works created by students may also be limited by law, such as statutory protections of students' rights to privacy. In addition, it may be appropriate to obtain a student's permission before disseminating his or her work.

⁶ The university's Copyright Office in the University Library advises the university community on the use and reproduction of copyrighted materials.

c. Intellectual Property Committee. The Intellectual Property Committee hears appeals from decisions of the Vice President for Research and Economic Development on disputes under this policy, as described in Part II (F), and provides advice and recommendations to the university administration on copyright policy and procedures.

d. Provost. The Provost hears appeals from decisions of the Intellectual Property Committee on disputes under this policy, as described in Part II (F).

e. Senior Vice President. After considering the recommendation of the Vice President for Research and Economic Development, the Senior Vice President decides whether the university will commercialize a work and assigns copyright in the work, as described in Part II (D).

2. INTELLECTUAL PROPERTY COMMITTEE

a. Membership. The Intellectual Property Committee is comprised of seven members, three appointed by the Faculty Senate, three appointed by the Vice President for Research and Economic Development, and one appointed jointly by the Faculty Senate and the Vice President. All members must be members of the faculty and knowledgeable of intellectual property matters.

b. Meetings. The Committee meets annually in September and at other times at the call of the Chair or the Vice President for Research and Economic Development.

c. Terms. Committee appointments are for three years, beginning on September 1 and ending on August 31, except that, of the original appointments, (1) two (one by the Faculty Senate and one by the Vice President) are for one year, (2) two (one by the Faculty Senate and one by the Vice President) are for two years, and (3) the remaining appointments (one by the Faculty Senate, one by the Vice President, and the joint appointment of the Faculty Senate and the Vice President) are for three years. Original appointees serve from the date of their appointments through the first subsequent August 31 in addition to their terms as described in the preceding sentence. Members may serve successive terms.

d. Chair. The Committee selects the Chair⁷ from among its members at its annual September meeting. The Chair serves until the earlier of the next annual meeting or the expiration of the Chair's term as a member of the Committee. The Chair may serve successive terms.

e. Vacancies. If a vacancy occurs on the Committee before the expiration of a member's term, a successor is appointed to fill the unexpired term in the same manner as the original member was appointed. If a member goes on an extended period of leave, a

⁷ The Chair of the Intellectual Property Committee serves ex officio as a full voting member of the Board of Directors of George Mason Intellectual Properties, Inc.

replacement to serve until the member returns is appointed in the same manner as the member on leave was appointed. If the Chair goes on an extended period of leave, the Committee selects a replacement from among its members to serve until the Chair returns.

C. PROCEDURES FOR NOTIFICATION

1. The creator of a work in which the creator reasonably believes that the university holds, or may hold, copyright under Part II (A) must notify the university of the existence of the work promptly upon its creation if the creator has reason to believe that the work may have commercial value or that the university may wish to register the copyright. The notification must be provided in writing to the Director of the Office of Technology Transfer (OTT) and include the following information --

- A description of the work;
- The names and employing units of all the creators of the work;
- All sources of funding that supported the creation of the work;
- In the case of a jointly-created work, the percentage of the creator's share of net income derived from the work that is claimed by each creator under Part II (E)(3); and
- Any other information that OTT may require.

2. The creator of a work may request that the university provide the creator with a statement that the creator holds copyright in the work by submitting the request and the basis for the request in writing to the Director of the Office of Technology Transfer. The Director responds to the request by providing a written determination of copyright ownership and the basis for that determination within 60 days of receipt of the request. If the Director does not respond within the prescribed period, the creator may submit the request to the Chair of the Intellectual Property Committee described in Part II (B)(2). If the Intellectual Property Committee does not respond to the request within 15 days, the creator holds the copyright.

D. PROTECTION AND COMMERCIALIZATION

1. University decision to commercialize.

a. To commercialize a work in which it holds copyright, the university usually assigns copyright in the work to George Mason Intellectual Properties, Inc. (GMIP).⁸ In rare circumstances, the university seeks to commercialize the work itself or assigns copyright to the Innovative Technology Authority; to an entity whose purpose is to

⁸ Under contract with the university, George Mason Intellectual Properties, Inc. commercializes copyrighted works and distributes the income from the commercialization of those works. GMIP negotiates licensing agreements for the commercialization of copyrighted works in its sole discretion, subject to the requirements of this policy and of the contract between GMIP and the university.

manage intellectual property on behalf of nonprofit organizations, colleges, and universities; or to another party. The assignee commercializes the work by entering into one or more licensing agreements with other parties or, subject to the provisions of Part II (D)(3), by assigning copyright to another party to commercialize the work.

b. The Senior Vice President decides whether the university will assign a copyright in a work for commercialization after receiving the recommendation of the Vice President for Research and Economic Development.

c. The creator of a work in which the university holds copyright must provide reasonable assistance to the university or its assignee for the commercialization of the work, including execution of documents required for commercialization.

2. Works in which the university does not hold copyright.

If the creator of a work or another party who holds copyright wishes the university to become involved in its commercialization, that party must first assign copyright in the work to the university. The university may accept or decline the offer of such an assignment. The university accepts an assignment by entering into an agreement that sets out the rights and responsibilities of the parties, including how revenues will be shared. The Vice President for Research and Economic Development or that officer's designee signs the agreement on behalf of the university.

3. Requirements for assignments of copyrights held by the university.

The university assigns copyright in a work to be commercialized by entering into an agreement with the assignee. The university enters into such an agreement only if –

a. The university will retain a nonexclusive, nontransferable, irrevocable paid-up license to use the work for the university's teaching, research, and other non-commercial purposes;

b. Except for GMIP, the assignee will return the copyright to the assignor if the work is not commercialized under terms included in the assignment agreement;

c. Any further assignment of the copyright by the assignee will meet the requirements of Part II (D)(3)(a) and (b); and

d. Further assignment of the copyright by the assignee in the circumstances described in Part II (D)(4) is prohibited.

4. Approval by Governor in certain circumstances.

The university must obtain the Governor's prior written approval for the assignment of copyright in a work if –

a. The work was developed wholly or predominantly through the use of state general funds, exclusive of capital assets; and

b. Either the work was developed by an employee of the university acting within the scope of his or her assigned duties, or the proposed assignee is a party other than GMIP, the Innovative Technology Authority, or an entity whose purpose is to manage intellectual property on behalf of nonprofit organizations, colleges, and universities.⁹

E. INCOME FROM WORKS IN WHICH THE UNIVERSITY HOLDS COPYRIGHT

This Part II (E) governs the allocation of royalties and other income from works in which the university holds copyright unless an agreement between the university and the creator of the work provides otherwise. The university's patent policy governs the allocation of income from software and other works in which the university owns both copyright and patent.

1. GROSS INCOME

For the purpose of this policy, gross income derived from a copyrighted work includes, but is not limited to –

- a. Option fees;
- b. License fees;
- c. Running royalties;
- d. Minimum royalty payments;
- e. Milestone payments;
- f. Proceeds from the sale of stock or other equity in the licensee company; and
- g. Funds and other compensation received as a result of the resolution of disputes related to the work.

Gross income does not include revenue received under sponsored program agreements related to the work.

2. NET INCOME

Net income is gross income derived from the copyrighted work less the following costs where they are specifically identified with the work --

⁹ Virginia Code, section 23-4.4 A.

a. The costs of developing the work for license (including the costs of reimbursable university services needed for that purpose, as agreed to by the creator and the university or its assignee);

b. The legal costs of commercializing and licensing the work;

c. The cost of marketing the work;

d. The costs of ensuring licensee performance; and

e. Payments required by the sponsored program agreement under which the work was created.

3. DISTRIBUTION OF NET INCOME

a. Net income is administered by George Mason Intellectual Properties, Inc. (GMIP) pursuant to agreement with the university, subject to this policy.

b. Net income from a copyrighted work is distributed as follows, except that the distribution of income from a work that is also patentable is governed by University Policy Number 4003 -- Patenting University Inventions:

i. Creator. The creator (or creators) receives fifty percent of net income. The creator receives his or her share irrespective of any change in his or her employment. If the creator dies, that share goes to his or her estate.

ii. Creator's employing unit. The school, college, institute, or equivalent non-academic unit in which the creator holds an appointment at the time the work is created receives ten percent of net income, irrespective of any change in the creator's assignment within the university or any change in his or her employment. If the creator holds an appointment in more than one unit, the unit's share is distributed in proportion to the creator's percentage appointment, as expressed in his or her letter of appointment.

iii. George Mason Intellectual Properties, Inc. GMIP administers the remainder of net income pursuant to its agreement with the university.

c. The distribution of net income from the work may be revised by the Vice President for Research and Economic Development to take account of the costs of litigation or other costs arising from disputes related to the work.

4. CREATOR'S ACCESS TO INFORMATION

The creator of a work in which the university holds copyright, or the creator's authorized representative, has the right to review the income and expenses that form the

basis for the calculation of gross income, net income, and the distribution of net income related to the work

F. DISPUTE RESOLUTION

This Part II (F) addresses the process for resolving disputes concerning this policy.

1. Appeals to Intellectual Property Committee. As described in Part II (B), the Vice President for Research and Economic Development is responsible for the overall administration, interpretation, and application of this policy. Any party who is covered by this policy may appeal to the Intellectual Property Committee a decision of the Vice President for Research and Economic Development concerning—

- The ownership of copyright in a work;
- The allocation of royalties and other income from a copyrighted work; or
- Any other issue arising under the terms of the policy.

2. Procedure for appeals. A party may appeal the decision of the Vice President by submitting a request for review of the decision to the Office of Technology Transfer (OTT), which transmits the request to the Chair of the Intellectual Property Committee.

If the appellant is a member of the university staff, the Chair invites the Staff Senate to appoint two members of the staff to participate in the review. The Committee meets, considers the matter on appeal, and issues a decision. If the Committee does not meet to consider the matter within 30 calendar days of the Chair's receipt of the request, or if the Committee does not issue its decision on the matter within 90 calendar days of the date of receipt, the appellant may appeal the Vice President's decision directly to the Provost by submitting a request for review to OTT. If the Committee issues a decision, a party may appeal that decision to the Provost by submitting a request for review of the decision to OTT.

3. Final decisions. The Provost issues any decision on an appeal under this policy within 60 calendar days of receipt. If the Provost does not issue a decision within this period, the decision being appealed is final. A decision of the Provost on an appeal is final.

G. CONFLICTING AGREEMENTS

An employee of the university and a student who is not a university employee may not enter into any third-party agreement concerning a copyrighted work that conflicts with this policy, except that the Vice President for Research and Economic Development may grant exceptions upon the recommendation of –

- The employee's Dean, Institute Director, or Vice President; or
- The student's program head.

III. DEFINITIONS

“Employee” means a person who works for the university full-time or part-time and is paid through the university’s payroll system.

“Faculty” means an employee who is appointed as a member of the instructional, research, administrative, professional, or visiting faculty, including adjunct faculty, or as a post-doctoral fellow. For the purpose of this policy, administrative and professional faculty are considered faculty when performing instructional, research, or other scholarly functions.

“Staff” means an employee who is not a member of the faculty or a student. For the purpose of this policy, administrative and professional faculty are considered staff when performing administrative and professional functions.

“Student” means a person who is officially enrolled in a course or program of study offered by the university.

If a person is covered by more than one of these definitions, the applicable provisions of this policy are those that relate to the person’s status when the copyrighted work was created.

IV. EFFECTIVE DATE, REVIEW, AND APPROVAL

This policy is effective upon approval by the Board of Visitors. The policy will be reviewed and, if necessary, revised every five years or sooner if circumstances require. Any revision will take effect at the beginning of the first university fiscal year following its approval unless the revision specifies a different date.

Approved:

Senior Vice President

Date: February 18, 2008

Provost

Date: February 18, 2008

Date: _____

Board of Visitors