

COPYRIGHT OWNERSHIP POLICY

I. Policy Statement

Portland State University (University) is committed to academic freedom and strives to place copyright ownership with the Faculty authors and creators of scholarly, academic, and artistic works, except in certain circumstances.

II. Reason for Policy/Purpose

This policy promotes the University's scholarly, academic, and service missions by establishing a framework for the ownership and disposition of copyright for materials created by University employees and students. Establishing a framework for ownership and disposition of copyright materials provides clear guidance to University Faculty, Staff, and students regarding their rights in created material. By establishing Faculty and student ownership in their scholarly, academic and artistic works, the University fosters an environment of creativity and scholarship and encourages professional advancement. This policy's purpose is to protect the academic freedom enjoyed by Faculty, to establish Faculty ownership except in limited circumstances, and to establish permissions between Faculty and the University for use of copyright materials owned by each. This policy also sets forth the University's expectations for copyright ownership of works created by students and non-Faculty Staff and for the disposition of copyright to external sponsors of Faculty projects. By clarifying copyright ownership and permissions, the University protects public resources and establishes expectations for employees who contribute to the University in the course of their employment.

III. Applicability

This policy applies to all students, employees, contractors, schools, colleges, and administrative units of the University.

IV. Definitions

Commercial Use: A grant of copyright right, transfer of copyright ownership, or sale of Copyright Materials to a third party which is either contingent on monetary consideration or which allows that third party to further grant rights or sell Copyright Materials for monetary consideration.

Copyright Materials: Original works of authorship or creation to which copyright accrues and that are authored or created by Faculty or Staff.

Course Materials: Copyright Materials whose copyright is owned by a Faculty member and which are used by that Faculty member for teaching a registered course at University.

Faculty: All academically-ranked Faculty of the University.

PSU Copyright Material(s): Copyright Materials for which the copyrights are either owned by the University under the Work for Hire Rule, assigned to PSU voluntarily, or required to be assigned to the University under the exceptions to the University's waiver of the Work for Hire Rule for Faculty.

Scholarly Work: Includes, but is not limited to, Faculty authored or created textbooks, pedagogical materials, journal articles, white papers, monographs, plays, poems, musical compositions, visual arts and other works of artistic imagination. As guidance, Scholarly Work are often objects that fulfill the requirement of 'scholarship' under a field- and department-relevant promotion and tenure review process.

Separate Agreement: A formal (*e.g.*, a contract to create materials) or informal (*e.g.* email exchange) written agreement between the University and Faculty regarding the ownership of Copyright Materials to be created using University resources, such as the creation of Copyright Materials for a University-funded or -directed project, or the creation of Copyright Materials while under a course release.

Sponsored Project(s): Research or service undertaken by Faculty utilizing any external funding source, such as grants, gifts, contracts, or awards.

Staff: University employees who are not academically ranked.

Unit: The administrative area within the University that has provided resources specifically for the creation of Copyright Material under a Separate Agreement.

Work for Hire. As used in this policy, the term has the same meaning as in section 101 of the Copyright Act of 1976, as amended. Generally, a "work for hire" is a work prepared by an employee within the scope of his or her employment or by a third party hired by the University to perform services or undertake other work through which Copyright Materials are created.

V. Policy

1.0 Copyright Ownership

1.1 Faculty Ownership, University Waiver of Work for Hire. Subject to the limitation set forth below, the University by this policy waives its rights under the Work for Hire rule for Faculty and acknowledges that Faculty author(s) or creator(s) of Copyright Materials hold the original copyright to Copyright Materials created while employed by the University. This waiver is subject to the following exceptions, under which the Work for Hire rule still applies:

- 1.1.1** Copyright Materials developed under a Sponsored Project;
- 1.1.2** Copyright Materials developed under a Separate Agreement where ownership to Copyright Materials is not otherwise addressed.

1.2 Copyright ownership under Separate Agreements. When entering into Separate Agreements, the University and the Faculty member may agree that either the Faculty member or the University will own the copyright in Copyright Materials created under the Separate Agreement. This Separate Agreement will be made between the Faculty member and the Unit. In proposing University ownership of Copyright Materials in Separate Agreements, the Unit should consider both the level of University resources to be used in the Separate Agreement and any anticipated incorporation of pre-existing Faculty-owned Copyright Materials. No Separate Agreement shall change any part of this policy.

1.3 Scholarly Work Exemption. To the extent that dissemination of a Scholarly Work requires a copyright assignment to a third party of PSU Copyright Materials which would otherwise be required to be assigned to the University under the exceptions to the University's waiver of the Work for Hire rule, and to the extent that such PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or Separate Agreement, PSU will not assert its ownership in the copyright to such materials. The University will endeavor in all cases to preserve the publishing rights of Faculty members when entering Sponsored Project agreements. The University recommends that when entering into agreements for the publication and distribution of Copyright Materials, authors make arrangements allowing them to archive their materials in PDXScholar, the University's open access institutional repository.

1.4 University Ownership of Copyright Materials created by Staff. Staff are subject to the Work for Hire rule, and Copyright Materials authored or created by Staff within the course and scope of their employment are PSU Copyright Materials.

1.5 Students' Ownership of Student-Created Works. Each student holds the copyright to Copyright Materials that the student authors or creates, unless the creation/authorship of such Copyright Materials was performed by the student under a Sponsored Project, under a Separate Agreement, or in a student's capacity as Staff.

A student may voluntarily grant permissions to or transfer copyright to the University or to another entity. Such permission or transfer should be in a writing agreed to by the student. Faculty and Staff shall not infringe a student's Copyright Material, in their capacity as a University employee or otherwise. The University shall not require a student's assignment of Copyright Materials to the University or to a third party to fulfill any academic requirement, nor shall the University deny any academic requirement activity in response to a student agreeing to assign their copyright to a third party. The University will seek to advise and help students understand their rights under copyright law.

- 1.6 **Digital Transfer.** The uploading of Copyright Material to an online teaching platform or other transfer to digital medium operated by the University shall not change the ownership of the original Copyright Material unless explicitly agreed by the copyright owner of such Copyright Materials.

2.0 Copyright Permissions

- 2.1 **Blanket University-to-Faculty Permissions for PSU Copyright Materials.** The University by this policy grants a non-exclusive, non-commercial copyright license in PSU Copyright Material to the Faculty author(s) or creator(s) of that PSU Copyright Material, provided that the PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or are not licensed or expected to be licensed to a third party. Faculty are encouraged to further distribute such PSU Copyright Materials, when applicable, for public benefit under appropriate non-commercial open source (<http://www.opensource.org/>) or creative commons (<http://creativecommons.org/>) licenses. This grant to Faculty may terminate if the University licenses PSU Copyright Materials to a third party for Commercial Use. Such Commercial Use licenses may be first executed only with the acknowledgment of the Faculty author or creator.

- 2.2 **Limited, Revocable Faculty-to-University Permissions for Course Materials for Teaching University Courses.** For purposes of allowing the free flow and sharing of materials and pedagogy among Faculty, upon first using Course Materials in a registered course, all Faculty grant to the University, to the extent they have ownership in or permissions for Course Materials, a non-exclusive, non-commercial copyright license in those Course Materials for the purpose of teaching University-registered courses, provided that (a) the University, Faculty or Staff using such Course Materials makes a good faith effort to inform the Faculty author(s) or creator(s) of such use (for which a sample form is provided in Link to Related Forms), and (b) that any use of such Course Materials includes attribution to the original author(s) or creator(s) and any contributors to derivative works. The Faculty author(s) or creator(s) of such Course Materials may revoke permission at any time

by providing written notice to the administrative head of their department, school, or college. However, permission will last for one academic term beyond revocation to provide time to replace or remove Course Materials from current teaching materials. (A sample form for revocation of these permissions is provided in Links to Related Forms.) While this permission is in place, Faculty will upon request provide copies of Course Materials to the University.

2.3 Faculty-to-University Permissions for Course Materials for Archiving, Accreditation and Accommodations. Upon first using Course Materials in a registered course, all Faculty grant to the University, to the extent they have ownership in or permissions for Course Materials, a non-exclusive, non-commercial copyright license in those Course Materials for the purpose of archiving, accreditation, and making derivatives for the purpose of accommodation and accessibility (such as may be required under the Americans with Disabilities Act).

2.4 Digital Transfer. The uploading of Copyright Material to an online teaching platform or other transfer to digital medium operated by the University may require permissions from the owner of copyright to the Copyright Material; however, for Course Materials these permissions by this policy shall be subordinate to a Faculty member's ability to revoke permissions to use Course Materials as provided in section 2.2 above, and Faculty shall have the ability to require such Course Materials be removed from the digital medium for the purposes of teaching registered courses.

3.0 Faculty disclosure. Faculty using or distributing PSU Copyright Materials under the license granted in section 2.1 above have an obligation to mark PSU Copyright Materials as “© Portland State University.” Faculty who wish to use or distribute PSU Copyright Materials for Commercial Use shall seek an appropriate license by disclosing the PSU Copyright Materials to the University's Office of Innovation & Intellectual Property.

4.0 Independent Contractors of Works Created Under Contract. Where the University hires third-parties to perform services or undertake other work where Copyright Materials are created, it is the general practice of the University to retain the copyright ownership in those works under the Work for Hire rule. Such materials will be PSU Copyright Materials.

5.0 Collaborative and Joint Works. When individuals collaborate to author Copyright Materials, a "joint work" often results, in which all the rights holders jointly hold nonexclusive rights to use the work. For example, Copyright Materials may be authored or created by both Faculty and Staff working on a project and this collaboration may result in a joint work(s) where the copyright is owned jointly by both the University and the Faculty member(s) and the work created is both PSU Copyright Materials and Faculty-owned Copyright Materials. Prior to authoring or creating such works, Faculty, other University employees, and students who collaborate with each other or with non-University third-parties

(*e.g.*, volunteers, visitors, other collaborators) are encouraged to describe or determine the disposition of the resulting copyright. A sample form is provided in Links to Related Forms.

6.0 Licenses to Third Parties. The license of PSU Copyright Material from the University to third parties for Commercial Use, or for any use in exchange for license fees, including all terms and execution of such license agreements, is the sole responsibility of the Office of Innovation & Intellectual Property under the Vice President for Research & Strategic Partnerships.

7.0 Sponsored Projects.

7.1 When negotiating agreements with external parties for Sponsored Projects, the University shall endeavor to retain PSU ownership of copyright for any Copyright Materials created by Faculty and/or Staff under the Sponsored Project. The University may grant rights in PSU Copyright Materials created under a Sponsored Project to an external sponsor commensurate with the purpose of the agreement and the nature of the Sponsored Project, but will not grant a license for Commercial Use in a Sponsored Project agreement unless a separate license to such rights is executed through the Office of Innovation & Intellectual Property.

7.2 For Sponsored Projects or other contracts (*e.g.*, procurement contracts) under which the University is primarily performing a service or allowing use of University equipment without significant intellectual input from Faculty or Staff (*e.g.*, centers with published external user rates in the University Fees and Fines book), the University may assign ownership of Copyright Materials created under the Sponsored Project to the external sponsor provided that Faculty and Staff performing the project acknowledge in writing that for that Sponsored Project:

- 7.2.1 No students will create Copyright Materials for the Sponsored Project,
- 7.2.2 Only Copyright Materials created under the Sponsored Project will be assigned, and no previously created Copyright Materials shall be included,
- 7.2.3 University Faculty and Staff will have no right to use the assigned Copyright Materials unless otherwise permitted, and
- 7.2.4 University Faculty and Staff will have no right to publish the assigned Copyright Materials unless otherwise permitted.

In addition, the external sponsor must acknowledges in writing that:

- 7.2.5 No export-controlled information in the Copyright Materials will be assigned, and
- 7.2.6 The University is under no obligation to seek export control licenses for such information.

VI. Procedure

1. Policy Interpretation and Dispute Resolution

- 1.1 This policy and its implementation may require interpretation and review. University stakeholders should make every attempt to resolve disputes informally with the assistance of one or more of the following: the Office of Innovation & Intellectual Property (for overall policy clarification and matters regarding Commercial Use of PSU Copyright Materials), the Office of Academic Affairs (for issues involving Course Materials and Separate Agreements), and the Sponsored Projects Administration in Research and Strategic Partnerships (for obligations or issues related to Sponsored Projects).
- 1.2 If informal procedures and consultation do not provide resolution of a dispute or policy issue, University stakeholders may request that the President convene a Copyright Advisory Committee to recommend a resolution to the President. The Copyright Advisory Committee will be composed of no fewer than nine individuals, shall be chaired by the Director of Innovation & Intellectual Property, or President's alternate designee, and have as administrative members representatives from the Office of General Counsel, the Office of Academic Affairs, and when the dispute involves a Sponsored Project, the Sponsored Projects Administration, with the remainder of the committee being filled by Faculty as designated by the president of the Faculty Senate. The President will make a final decision regarding the dispute or policy issue after receipt and review of the Copyright Advisory Committee's recommendations.

2. Revenue. On a quarterly basis, and after the recovery of reasonable direct expenses, the Office of Innovation & Intellectual Property shall distribute any licensing revenue received by the University for the granting of licenses to PSU Copyright Materials, including fees, milestone payments, running royalties, liquidated equity, and any other cash received, in the manner described below. It is the intent of the University that licensing revenue distributed internally be used as long as available to support ongoing innovation activities of the unit that generated the licensed PSU Copyright Material, and that such funds should not be removed from the assigned department, school, college, or project, or charged administrative overhead fees for their use.

- 2.1 For PSU Copyright Materials that are under continual development within the University and licensed non-exclusively primarily to end users or consumers of the materials:
 - 2.1.1 10% to the Office of Innovation & Intellectual Property, and
 - 2.1.2 90% to an internal account controlled by the lead Faculty or Staff on the project that created the PSU Copyright Materials.

- 2.2 For PSU Copyright Materials in substantially complete form that are licensed for Commercial Use to third parties who have responsibility for selling the PSU Copyright Materials to end users or consumers:
- 2.2.1 25% to the department or center in which the author(s) or creator(s) of the PSU Copyright Materials primarily developed the PSU Copyright Materials,
 - 2.2.2 25% to the Office of Innovation & Intellectual Property, and
 - 2.2.3 50% directly as royalties to the author(s) or creator(s) of the PSU Copyright Materials.
- 2.2.3.1 If there are multiple authors/creators, or contributors who are not legal authors/creators but whose contribution the authors/creators would like to recognize, PSU requires the authors/creators to reach written agreement, recorded with the Office of Innovation & Intellectual Property, on how to further divide this 50%. If no agreement can be reached, the Vice President for Research & Strategic Partnerships will decide on the revenue split for the authors/creators.

VII. Links To Related Forms

[Name As It Appears In the Form Title, with hyperlink](#)

1. Form of communication to Faculty regarding use of Course Materials.
2. Form for revocation of Faculty license to University for Course Materials
3. Form for discussion of joint works.
4. Form for internal acknowledgement when assigning PSU copyright in Sponsored Projects.

VIII. Links To Related Policies, Procedures or Information

1. Case studies and examples of policy in practice.
2. PSU Copyright Guidebook.

IX. Contacts

If you have any questions regarding this policy, please contact the Office of Innovation & Intellectual Property at iip@pdx.edu (for policy clarification and matters regarding commercialization of intellectual property) or the Sponsored Projects Administration in Research and Strategic Partnerships at rspspa@pdx.edu (for obligations stemming from sponsored activity).

X. History/Revision Dates [use this date format: May 27, 2012]

Adoption Date: [date policy first approved by UPC and is in effect]

Policy History: Pursuant Section 170 Chapter 768 2013 Oregon Laws, effective July 1, 2014, this policy supersedes Oregon Administrative Rules 580-43-0011; PSU Standard (Former OUS Internal Management Directive) Licensing, Patent, Educational, and Professional Materials Development 6.205 through 6.255; and the University Copyright Policy, maintained by PSU Library.

Reaffirmation Date: [date UPC concurs with responsible officer that an existing policy requires no change, and remains in effect]

Revision Date: [date policy has been changed and reapproved]

Next Review Date: Month, Day, Year [*at least* every five years, sooner as needed]

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XI. Policy Adoption/Reaffirmation/Revision Approvals

Approved _____ Date _____
PORTLAND STATE UNIVERSITY PRESIDENT

Approved _____ Date _____
PORTLAND STATE UNIVERSITY GENERAL COUNSEL

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