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PROPOSED SUBSTITUTE DRAFT

UNIVERSITY OF MISSISSIPPI COPYRIGHT OWNERSHIP POLICY

[Adapted from the policies of Yale, Alabama, Montana, Northeastern, Utah, Oklahoma, Colorado and the UM proposal]

Preamble

In the course of teaching, research and other intellectual and administrative activity at the University of Mississippi, faculty, staff, postdoctoral fellows and postdoctoral associates, students and others may create works that are protected by copyright. The federal Copyright Law provides that most original works of authorship are protected by copyright automatically when they are fixed in tangible form. Copyrightable works of authorship include books, articles and other written works; musical and dramatic works; pictures, sculptures and other works of art; computer software; and electronic chip designs. Works by faculty, staff, postdoctoral fellows, postdoctoral associates and students may be found in any of these categories.

The University of Mississippi (UM) strongly affirms its commitment to provide an environment that supports the generation and dissemination of knowledge for the public good. UM embraces the longstanding academic tradition that the institution, the public, and the author are well served when scholarly, aesthetic, and pedagogical pursuits result in the sharing of knowledge with colleagues and the public through formats traditional to academe, such as scholarly books or articles, papers at professional conferences, works of art and musical compositions, and textbooks. UM is pleased to share in the prestige accorded the creators of such materials and endorses the belief that the institution and the public it serves benefit from the stimulating educational environment encouraged by their creation and publication. As a matter of fundamental policy, the University encourages the wide dissemination of scholarly work produced by members of the Ole Miss community, including copyrightable works.

UM also recognizes that changes in technology and society both reflect and result in changes in the role of the University and its personnel, and in the responsibility of the institution to the public it serves. Increasingly, outcomes of research have potential for success in a commercial as well as an academic sphere, a potential whose realization offers benefits in addition to the enhancement of education and research but whose development requires extensive and directed support. UM acknowledges its obligation to its researchers to make this extensive support available and its obligation to the State of Mississippi to contribute to the economic development of the state and to the financial health of this institution. UM therefore has the responsibility both to promote the commercial development of research outcomes and to share in the benefits of commercial success. Further, UM has the responsibility to protect the academic traditions that have so long and so well served institutions of higher education.

The University of Mississippi Copyright Policy is based on the belief that these responsibilities are not in conflict; rather, together, they offer new opportunities. UM accepts an active role in promoting the development of copyrightable materials in a manner consistent with the public interest, and acknowledges that the public interest requires both academic excellence and responsible fiscal management. This Policy is written with the intention of promoting excellent, innovative research by identifying and protecting the rights of the University, its personnel, and the public.

Ownership of Copyright

It is traditional at the University of Mississippi, as at other universities, for creative works of faculty members to be deemed the property of the creator, who is considered to be entitled to determine how the works are to be disseminated and to keep any income they produce. This tradition reflects the University's commitment to encourage members of the Ole Miss community to write and to publish what they wish.

The University recognizes that changes made to the Copyright Law in 1976, its amendments and cases interpreting it have made parts of the law of copyright ownership unclear. This lack of clarity may cast some doubt on faculty or staff ownership of the copyright in works created in connection with their University work. Under the current Copyright

Law, the copyright to a work created by a person in the course and scope of his or her employment belongs to the employer rather than to the individual creator. This provision has led many experts to conclude that the copyright in many works created by University faculty and staff in connection with their work for the University may be the property of the University. In order to remove any doubt cast by the lack of clarity in the law and in recognition of our longstanding practice and tradition, the University disclaims any ownership interest in the copyright of works created by faculty, staff, postdoctoral fellows and postdoctoral associates and students, whether in traditional or nontraditional forms, except in the following cases:

Supervised Works: The University will own the copyright to works created

(i) by student employees in the course of their assigned duties of employment, including duties as teaching or research assistants, or

(ii) by faculty members, staff members or postdoctoral fellows or associates as part of an assigned task where the University

(a) specifically assigns an individual to create a particular work or

(b) selects or supervises choice of subject matter and supervises content, course, and direction of the effort to create the work or retains editorial control over the final work product.

Supported Works: In the event that extraordinary assistance (assistance exceeding usual department or area policy) is provided by the University, the creator may be required to share copyright ownership with the University. Reimbursement of extraordinary costs and/or a division of royalties may be required. When extraordinary assistance is provided, it is the responsibility of the department chairperson or area head to notify the faculty member in writing that the assistance to be provided exceeds usual and customary support. Extraordinary assistance does not include

1. use of office space, laboratories, studios, libraries
2. use of library collections, subscriptions or services
3. customary use of secretarial or other staff assistance
4. computer time or computer or lab equipment on hand
5. network or Internet access
6. standard office equipment and supplies
7. summer or other research grants at ordinary levels
8. sabbaticals, reduced teaching loads or other commonly granted forms of release time
9. other support customarily provided to faculty and staff.

Sponsored Works: Where copyrighted materials are developed by an investigator in the course of sponsored research funded by an outside agency, ownership of the copyright will be determined by the applicable terms of the funding agreement. The University reserves the right to seek copyright ownership as appropriate during negotiation of the award or externally sponsored program. If the agreement is silent on copyright ownership, then the creator of the work will have full ownership of the copyright in any works created in the course of sponsored research.

Commercial Development of Works

The University reserves the right to commercially develop any work in which it owns or shares ownership of the

copyright.

When UM is the sole owner of the copyright in the work, it has the sole right to

- × determine whether to register the copyright, to take other action to protect its interests, or to place the material in the public domain;
- × determine the manner in which the material is to be distributed to or used by others;
- × determine the charges (if any) for use of the materials;
- × decide to assign title to the creator, or to a third party.

When UM and the creator share ownership of the copyright, both owners have the right to register the work, to grant nonexclusive licenses to use the work, and to assign their interests in ownership to a third party.

When ownership of copyright vests in the creator, the creator may choose to assign any or all rights in the copyrightable material to UM or to a third party. UM may require the creator to assign partial ownership of the copyright to the University in exchange for assistance in commercially developing and exploiting a work. Copyright law requires that all assignments must be made in writing and must be signed by the assignor. Agreements affecting ownership interests in copyrights should specify the division of proceeds from the work between the University and the creator.

UM is obligated to make a timely determination of its interest in registering the copyright in any work in which it owns or shares ownership of the copyright. UM is further obligated to demonstrate due diligence in efforts to commercialize UM-owned copyrightable materials, or to release all or part of its interest to the creator. Should UM fail to demonstrate due diligence, the creator has the right to request in writing that copyright be assigned to him/her or to a specified third party. Such a request will be made to the Associate Vice Chancellor for Research.

If UM decides not to continue efforts to commercialize and/or market the materials, the Associate Vice Chancellor for Research will notify the creator in writing. The creator then has the right to request that copyright be assigned to him/her or to a specified third party. The notification in writing will include the understanding that further efforts to commercialize and/or market the materials will be at the creator's expense, on his/her own time, and will involve no extraordinary support from the University.

The University will provide a reasonable opportunity for the author's consultation with respect to use made of a copyrighted work within the university or before any license for its use outside of the university is granted. UM will make every effort to involve the creator(s) in consultations regarding distribution, sale, and/or marketing of university-owned copyrightable materials.

Reimbursement of Costs and Royalty Sharing

As a general policy, when the University has provided extraordinary support for the production and/or commercialization of a work, 20% of the gross proceeds will be retained by the creator and 80% of the gross proceeds will be returned to the University until the University has been reimbursed for all extraordinary support used to produce and market the work. Once the University has been reimbursed for extraordinary support expenses, royalties will be divided between the creator and the University as follows:

- a) to the author(s), a total of:
 - (i) 75% of the first \$50,000 in gross revenues;
 - (ii) 60% of the next \$50,000 in gross revenues; and
 - (iii) 50% of the gross revenues thereafter; and

b) to the author's department or unit

(i) 20% of the first \$50,000 in gross revenues;

(ii) 25 % of the next \$50,000 in gross revenues; and

(iii) 30 % of the gross revenues thereafter; and

c) to the University's Office of Research 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) 20% of the gross revenues thereafter

For purposes of the paragraph 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.

University Nonexclusive License to Use Work for Instructional Purposes

University of Mississippi faculty, staff, postdoctoral fellows and postdoctoral associates and students, as a condition of employment or admission to the University, agree to grant the University a free nonexclusive instructional use license for any work that they create in connection with their employment or matriculation at the University.

Procedures

Disclosure

Materials are copyrightable at the time the work is created in a fixed form. In the case of supervised works, therefore, ownership vests in the University at that point. It is the responsibility of the University employee who assigned a supervised work to the creator to inform the University of the possible creation of a copyrightable work to which UM has or may have a claim. Disclosure of the creation must be in writing, submitted to the Associate Vice Chancellor for Research with copies to the creator's department chair/unit director and dean/division head, with sufficient detail about the work and its creation to allow determination of ownership.

When extraordinary assistance is provided which may lead to the creation of a supported work, it is the responsibility of the department chairperson or area head to notify the faculty or staff member and the Associate Vice Chancellor for Research in writing that the assistance to be provided exceeds usual and customary support. It is then the responsibility of the creator to notify the department chairperson or area head and the Associate Vice Chancellor for Research when a work is created in fixed form that relies upon the extraordinary support.

Determination of Ownership

Personnel of the Office of Research will acknowledge receipt of the Disclosure of creation of a work, request more information if necessary, examine the work and the Disclosure, and review the work's copyrightability, commercial potential, and UM interest. Within 30 days of receipt of the Disclosure, the Associate Vice Chancellor for Research will make a determination regarding UM's interest in the work and will notify the creator in writing of the determination, with copies to the creator's department chair/unit director and dean/division head. If it is determined that UM has an ownership interest in the copyright of the work but does not wish to pursue its rights, notification to the creator will include the understanding that further development of the work will be at the expense of the creator, on his/her own

time, and with no further extraordinary support from the University.

Release of University Interest in Copyright

If the Office of Research does not wish to register the copyright and pursue commercial exploitation of a work in which it has an ownership interest in the copyright, the employee may obtain a written release from the Chancellor and may then register the copyright in the work entirely in his/her own name. Upon written request for release by the employee, the Office of Research will respond within thirty (30) days.

Appeals

If the creator disagrees with a determination that UM owns or shares an ownership interest in the copyright to the work, the creator may appeal in writing to the University Copyright Committee, outlining

- (a) the circumstances under which the copyrightable materials were created and developed and
- (b) the creator's official duties, as given on his/her contract with UM or as otherwise assigned at the time of the creation of the materials.

Any appeal must be made within 30 days of receipt of the Determination of Ownership. The Committee will make a decision within 45 days of receipt of the appeal. Copies of the appeal and the decision must be provided to the Provost, the Office of Research, the creator's department chair/unit director and dean/division head and the creator.

University Copyright Committee

The University shall have a standing University Copyright Committee that shall consider and investigate disputes among administrators, faculty, or staff and shall recommend appropriate resolutions to the Provost. The Committee's responsibilities shall include, but not be limited to, disputes concerning:

1. Whether extraordinary support has been provided,
2. Ownership of works which may be supervised, supported or sponsored works,
3. Distribution of royalties

The University Copyright Committee shall have as its members one member appointed by and serving at the pleasure of the Provost, two members appointed by the Provost from at least four nominations made by the Staff Council, and four members appointed by the Provost from at least four nominations from the Faculty Senate.

The four members appointed from the nominations submitted by the Faculty Senate shall serve four-year, staggered terms to be determined by the Provost. The two members appointed from Staff Council nominations shall serve two-year terms, with one member's term expiring each year. As each member's term expires, the appropriate group shall send at least two nominations for each vacancy for the Provost's consideration.

Each member of the Committee shall have one vote. The Committee shall keep its own records, determine its own procedures, and elect its own chair who shall report to the Provost. The Committee may also review this policy from time to time and may recommend changes to the Provost.

Variations from the Policy

From time to time, it may be in the best interests of the creator and the University to enter into an agreement concerning copyright ownership or commercial development of a work that differs from the terms of this policy. In all such cases,

the agreement must be in writing and signed by the creator, the dean or department head, the Office of Research and the Provost or Chancellor. Such agreements should be concluded as soon as practical in the development of the work to protect the interests of both parties and to prevent misunderstandings.

Effective Date of Policy

This policy shall become effective upon signing of the next years employment contracts or the beginning of the next academic year after adoption or approval by the IHL Board.