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The University of Mississippi Copyright Policy – Final Review Draft

Preamble

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 long-standing 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.

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 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 and renewed opportunities, energies, and directions. UM accepts an active role in promoting the development of copyrightable materials in a manner consistent with public interest, and acknowledges that 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.

A. Foundation and Scope of the UM Copyright Policy

United States Copyright law designates the employer as the owner of copyrightable work prepared by employees within the scope of their employment. Hence, The University of Mississippi, by law, is entitled to ownership of copyrightable materials created by UM personnel in the performance of their duties. However, UM elects to relinquish its claim to ownership of certain of those materials, in keeping with academic tradition and in pursuit of an appropriate public good. This University of Mississippi Copyright Policy identifies the copyrightable materials to which UM will exercise its rights and establishes procedures for determining and protecting those rights. Ownership of materials not described in this policy can be assumed to belong to the creator.

B. Definitions

Assignment of Copyright: Assignment of copyright refers to the designation before copyright of an owner other than the one specified by this policy. Any or all rights exclusive to the copyright owner may be so assigned.

Copyright: The exclusive right to reproduce, prepare derivative works from, distribute copies, transfer ownership (by rental, lease, or lending), perform publicly, or display the copyrighted work, or to authorize another person to perform any of those actions.

Copyrightable Materials: Materials subject to copyright protection are original works of authorship fixed in any tangible medium of expression now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include literary works; musical works (including accompanying words); dramatic works (including accompanying music); pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion picture and other audiovisual works; sound recordings; and architectural works. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles or discoveries, even when presented in copyrightable form.

Creation of Copyrightable Materials: A copyrightable work is "created" when it is fixed in a tangible medium from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Creator/Creators: The term designates the individual, group, department, or unit creating the copyrightable material.

Externally Sponsored Program: Externally Sponsored Programs are projects supported financially by non-University (external) entities through such mechanisms as grants, contracts, and cooperative agreements.

Fair Use: Use of a copyrighted work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. In determining whether "fair use" has been made of a work in any particular case, other factors to be considered will include the following: the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; the nature of the copyrighted work; the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and the effect of the use upon the potential market for or value of the copyrighted work.

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Income: Income refers to any form of income resulting from the exercise of rights exclusive to the copyright owner, including but not limited to income derived from the sale, distribution, or licensing of copyrighted materials.

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Public Domain: A work is said to be placed "in the public domain" when it is made available for use by anyone at anytime, without explicit authorization. A work in the public domain is outside copyright protection.

Student: The term "Student" refers to any full-time or part-time undergraduate or graduate student, regardless of whether the student receives financial aid or remuneration in any form from UM (see *Section C. Student Work*).

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Substantial Use: Substantial Use of University resources occurs when

1. University funds are directly allocated for the development or creation of copyrightable material (see *Section D. University-Owned Materials*); OR
2. development or creation involves the use of University facilities other than libraries and offices; equipment other than standard office equipment; supplies in excess of \$100 total value; services of UM personnel during their scheduled work time to such an extent that the usual work of the department/unit is disturbed; and other resources.

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Transfer of Ownership: Transfer of ownership occurs after copyright has been obtained and may apply to any or all of the exclusive rights granted copyright owners. The written agreement of transferal must be signed by both parties to a transferal. The transfer of copyright ownership may be recorded in the U.S. Copyright Office.

UM Personnel: The term "UM Personnel" includes all faculty and staff with full, part-time, or adjunct status, and any other employee, agent, or Fellow of the University, during the course of employment.

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University: "University" refers to The University of Mississippi at its Oxford campus and those locations administered from the Oxford campus.

Work Made for Hire: A work made for hire is a work prepared by an employee within the scope of his or her employment, or a work specially ordered or commissioned, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

C. Student Work

Even though a student may not be employed by the University, copyrightable material created by the student may be covered by this Policy under the following conditions:

1. Students who have completed theses and dissertations are subject to the policies governing UM retention and use of a specific number of copies of those works. Students should check with their departments and with the Graduate School to determine policies relevant to theses/dissertations in their departments.
2. Students contributing collaboratively with an academic employee in the production of copyrightable materials have the same rights and responsibilities as do academic employees. Rights to the materials created, including provisions for income-sharing, should be established in writing at the outset of the collaboration.
3. The University may claim copyright to student-created materials whose sole or partial intent is to have commercial value and whose development or creation involves Substantial Use of University Resources (see *Section B. Definitions*).
4. If the provisions of this Policy are in conflict with copyright agreements with an employer other than UM, it is the responsibility of the student to see that conflicts are resolved before copyrightable materials are produced.

Students who create copyrightable materials in their coursework or as a condition of degree award may choose to assign copyright to UM (see *Section F. Assignment of Copyright*).

D. University-Owned Materials

UM exercises its claim to ownership of copyright in materials that fall under one or more of the categories below. Should the University decide to waive its right to ownership of materials it would ordinarily claim, a written agreement between UM and the creator(s) will establish the variation from policy before the creation of such materials (see *Section E. Variations from Policy*). The following are the categories under which UM owns or could own copyright:

Substantial Use

In keeping with academic tradition, The University relinquishes its rights to copyrightable works created by UM personnel in the performance of their duties, whose sole intended purpose is to disseminate the results of academic research, scholarly study, pedagogical activity, or artistic endeavors. If works are created by University personnel with the sole or partial intent to have commercial value, then the University does not relinquish its rights to copyright to materials created through substantial use of University resources.

University Works

Copyrightable materials developed or created as a result of a University assignment or commission will be regarded as works made for hire. Such materials are characterized as follows:

1. They are developed or created during the performance of tasks routinely assigned to a specific job position, such as institutional computer programmer or staff writer. The production of such works would ordinarily be included among the duties listed in a position announcement. A faculty member's general obligation to produce scholarly work does not constitute a "University Work," unless the creation of such work is a specific assignment. OR,
2. They result from a specific University commission to an individual to create a particular work, such as a monograph to mark an institutional milestone. Such a commission will be marked by a written agreement between UM and the creator.

Externally Sponsored Works

UM reserves the right to seek copyright ownership as appropriate during negotiation of the award or externally sponsored program. When copyrightable materials result from work performed in the course of a sponsored program, ownership of copyright will be determined by the provisions of the sponsor's contract with or award to the University.

E. Variations from Policy

In specific cases, exceptions to the policies and procedures established in this Policy may be made, provided that UM and the creator sign a written agreement establishing the change. Normally, such an agreement is signed before the material is created. The agreement will be signed by the creator(s) and the appropriate administrative/supervisory official(s), (such as Director/Chair and Dean) with the final concurrence of the Associate Vice Chancellor for Research. The creator of the work may initiate this process by consulting his/her immediate supervisor.

F. Assignment of Copyright

This Policy does not preclude the copyright owner from assigning any or all rights in copyrightable material to another party, provided both parties agree such an assignment is to their benefit. When ownership to copyright vests in the creator, the creator may choose to assign any or all rights in copyrightable material to UM or to a third party. Likewise, when UM owns copyright, UM may choose to assign any or all rights in copyrightable material to the creator or to a third party.

G. Use and Sale of Copyrightable Materials

Rights of Ownership

In the case of creator-owned copyrightable materials, the creator has sole right to license, sell, distribute etc., including the right to assign title to UM or to a third party for purposes of commercializing or marketing the material.

In the case of copyrightable materials owned by the University,

UM has the sole right to

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

UM is obligated to make timely determination of its interest in registering the copyright and 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 Substantial Use of University resources (as defined in *Section B. Definitions*).

Consultation

UM will make every effort to involve the creator(s) in consultations regarding distribution, sale, and/or marketing of university-owned copyrightable materials.

Income-sharing

In the case of University-owned copyrightable material other than University Works, UM is obligated to share with the creator any income derived from the license, distribution, or sale of the copyrighted material, with the following provisions:

Initial income will be applied to reimbursement of out-of-pocket expenses entailed by the Office of Research in registering, developing, and marketing the copyrighted materials. Thereafter, the next \$5000.00 of income will be given to the creator(s) of the material. After the first \$5000.00 and through the first \$100,000.00 of income, the creator(s) and the University will receive the following proportion of the income, as long as the income continues: 45% to the creator, 12.5% to the creator's department, 2.5% to the creator's dean's office, and 40% to the Office of Research. After the first \$100,000.00 of income, the creator and the University will receive the following proportion of the income, as long as the payments continue: 25% to the creator, 20% to the creator's department, 5% to the creator's dean's office, and 50% to the Office of Research. In all instances, out-of-pocket fees and related expenses will be deducted before income is distributed to the creator and the University.

In the case of University Works, UM is under no obligation to share income with the creator(s), but may choose to do so. Any such income-sharing agreement must be signed by the creator, his/her Department Chair and Dean, and the Associate Vice Chancellor for Research prior to the creation of the materials (see *Section E. Variations from Policy*).

Special situations may require written variation from the provisions governing distribution of income derived from University-owned copyrightable materials. Any such arrangement will be in the form of a written agreement, signed by the creator, his/her Department Chair and Dean, and the Associate Vice Chancellor for Research prior to the creation of copyrightable materials.

H. Consulting Agreements

Work done by UM personnel serving as consultants to outside firms is regulated by the UM Consulting Policy. It is the responsibility of UM personnel serving as consultants to ensure that provisions in consulting agreements regarding creation, development, and ownership of copyrightable materials are not in conflict with the UM Copyright Policy. Provided there is no conflict with this Policy, ownership of copyrightable materials resulting from outside consulting will be as specified by the terms of the consulting agreement.

When UM hires a consultant, arrangements for ownership of copyrightable materials will be specified in the consulting agreement. Under the Copyright Act as it currently exists, ownership of copyrightable materials resulting from work performed by non-employees such as consultants, independent contractors, etc., vests in the creator and not in the University, unless ownership is otherwise assigned by written agreement between the parties. Examples of such work might include reports, computer software, architectural drawings, and artistic works.

I. Procedures

Disclosure

Materials are copyrightable at the time the work is created in a fixed form. In the case of University-owned materials, therefore, ownership vests in the University at that point. It is the responsibility of the creator to inform the University of the 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.

Determination of Ownership

Personnel of the Office of Research will acknowledge receipt of the Disclosure, 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 owns 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 Substantial Use of University resources (as defined in *Section B. Definitions*).

Appeals

If the creator disagrees with a determination that UM owns copyright to the work, the creator may appeal in writing to the Provost, 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. In deciding the appeal, the Provost will seek the recommendations of the University Research Board, and will make a decision within 45 days of receipt of the appeal. Copies of the appeal and the Provost's decision must be provided to the creator's department chair/unit director and dean/division head.

J. Originality

It is the responsibility of the creator to ensure that copyrightable materials are original and that, where use is made of copyrighted materials owned by others, the rights of copyright owners have been observed. In the case of University Works, UM assumes that the materials as created are original or that use within the work of materials copyrighted by others has constituted "fair use" as it is defined by U.S. Copyright Law, or that the written consent of the copyright owners has been obtained.

K. Agreement to the UM Copyright Policy

This Policy is binding on the University and on its employees as a condition of their employment at the University. The University may choose to implement formal agreement procedures, but this Policy is valid and applicable when approved by the Chancellor and the Board of Trustees.