

## **COPYRIGHT OWNERSHIP POLICY**

Note: This policy may be superseded by a University-wide policy.

### **I. PURPOSE**

The Copyright Policy of Wake Forest University School of Medicine is intended to:

- A. Encourage research and teaching by rewarding the Authors of intellectual works, by assisting them in implementing their ideas, and by providing a system for the encouragement of scholarship and creative activity;
- B. Serve the public interest by providing means through which intellectual works may be made available to the public; and
- C. Protect the rights of the University, its faculty, its staff, and its students with regard to intellectual works developed at the University.

### **II. DEFINITIONS OF COPYRIGHTABLE WORKS**

Copyrightable works can be divided into two categories: "device-like" and "informational". These categories are defined as follows, taken from the Inventions and Patents Policy adopted by the Board of Trustees in February 1999:

"Inventions" are tangible or intangible inventions, discoveries, or other innovations, whether or not patentable or reduced to practice. Inventions include "device-like" software or other "device-like" copyrightable material that like a device, is intended and likely to result in the accomplishment of a task or in allowing the user to produce, manage, analyze, or manipulate a product, such as data text, a physical object, or more software. Device-like software or material acts as a tool or building block in the accomplishment of such a task or in the creation or management of such a product or result. Inventions do not include "informational" software or other "informational" copyrightable material, which may be interactive, to the extent it is intended to inform or educate the user. In the case of software or other copyrightable material that is both device-like and informational, appropriate distinctions will be made in accordance with the principles of this policy.

Device-like works are governed by the existing Inventions and Patent Policy and are not the subject of this policy. This policy only addresses informational or "instructional" works.

### **III. OWNERSHIP AND DISPOSITION OF INFORMATIONAL WORKS**

Subject to a perpetual royalty-free license to the University to use such works for purposes related to the furtherance of its mission, copyright ownership of all informational works by faculty, other employees, or students shall vest in the Author except under any of the following circumstances:

- A. Subordination to Other Agreements - Copyright ownership of all material that is developed in the course of or pursuant to a sponsored research or other agreement to which the University is a party shall be determined in accordance with the terms of the sponsored research or other agreement. In the absence of terms specifically assigning ownership, the copyright shall become the property of the University only if the terms of such agreement directly or indirectly create University obligations as to intellectual property developed there under or if ownership is conferred upon the University by operation of another provision of this Policy;

- B. Work for Hire - The copyright of material that is created pursuant to a specific direction or assigned duty from the University or any of its units shall be the property of the University; and
- C. Use of University Resources - Copyright ownership of works that are developed with "more than incidental use" of University resources, specialized equipment, funds, space, time, or facilities shall belong to the University. "More than incidental use" of University resources would include, but is not limited to: the use of research-related facilities, equipment, or supplies provided by the University for academic or research purposes; use of "on-the-job" time, personnel, or student employees; or any use of funds or research-related materials of the University or administered by or on behalf of the University. The following would typically not constitute "more than incidental use" of University resources: use of routinely available, office-type equipment, including desktop computers and commercially-available software, reference material or other reference resources collected on the University campus, and which are generally available to the public in non-University locations. However, ownership of scholarly academic papers will reside with the Author, even if developed with substantial use of University resources.

#### IV. STUDENTS

Work created by students is additionally subject to the following rules:

- A. The University makes no claim to copyright ownership of works created by students working on their own (i.e. not within the scope of an employment relationship with the University or with one of its employees, and not making "more than incidental use" of University resources);
- B. Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement;
- C. Students who are hired to perform "specific tasks" that contribute to a copyrightable work will ordinarily have no rights to ownership of that work, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright of the rest of the work will ordinarily retain copyright ownership of the portion contributed by the student; or
- D. Students working collaboratively with faculty or other employees on projects that result in informational copyrightable work may be granted the same rights and obligations of copyright ownership as would another academic employee working collaboratively on the project. Students and academic employees are encouraged to establish these rights at the outset of their collaboration.

#### V. RESOLUTION OF DISPUTES

The Dean will appoint a standing copyright review committee composed of faculty and appropriate administrative staff. If a question as to whether a title is in the Author or the University arises with respect to works falling into the three categories described in paragraphs IIIA-C, the issue shall be promptly disclosed in writing to the Legal Department for an opinion. In cases where there is a difference of opinion on ownership of informational materials or other provisions of this policy, the Dean may refer the issue to

the Committee and the Committee will recommend to the Dean a final disposition. The Dean's decision is binding on all parties.

#### VI. RECOGNITION OF AUTHOR'S DESIRE FOR INTELLECTUAL CONTROL

In recognition of the Author's desire to maintain intellectual control of his or her work, the University will give consideration to views of the Author as to disposition of intellectual property rights when it takes title to a copyrightable work under this Policy. Where the University owns a copyright under this Policy, the Author will be permitted to continue to use the work for his or her own non-commercial purposes. Distribution, if any, to academic colleagues outside of the University or to institutions will be permitted under approved written agreements.

#### VII. ASSIGNMENT TO AUTHOR

In cases where the University has copyright ownership of a work under this Policy, the University may, upon request and for good cause shown, assign copyright ownership to the Author subject to a perpetual royalty free license to the University to use the work for its own purposes. Such requests should be submitted to the Dean.

#### VIII. REQUIREMENT OF DISCLOSURE

If the faculty member makes a reasonable determination that a work described in paragraphs IIIA-C is patentable, or is copyrightable software, the Author should disclose the work to the Office of Technology Asset Management for an evaluation.

#### IX. INDEPENDENT CONTRACTORS

Under current law, ownership of works created by outside consultants and independent contractors could reside in such individuals and not in those hiring them to perform the work at issue. It is important to note that students and non-academic employees working outside the scope of University employment may be considered independent contractors for such purposes. Therefore, those hiring outside consultants and independent contractors should observe the precaution of having a written agreement including an assignment of copyright. Assistance in drafting such agreements can be obtained from the Legal Department.

#### X. COPYRIGHT ROYALTIES

Except in the case of Works for Hire, described in paragraph IIIB above, royalty income received by the University through the sale, licensing, leasing, or use of copyrightable material, which the University owns pursuant to any section of this policy, shall be distributed in accordance with the distribution provisions of the University's Inventions and Patents Policy, as amended from time to time.

#### XI. RESPONSIBILITIES OF PARTIES

It is the responsibility of the University and all members of the University community to ensure adherence to this Policy.

Students, faculty and staff have the obligation to:

- A. Make themselves aware of and adhere to restrictions on or rights in copyrightable material deriving from agreements between the University and contracting or granting agencies or other interested third-parties, or deriving from any University interest pursuant to this Policy. The Office of Research will assist Authors concerning their responsibilities;
- B. Inform the Office of Technology Asset Management of material that should be copyrighted in the name of the University pursuant to the provisions of this Policy, and to cooperate with the University in obtaining such copyright protection;

- C. Obtain permission from the Dean's office to publish, in journals or other media, materials to which the University owns the copyright pursuant to this Policy, such permission not to be unreasonably withheld; and
- D. Ensure that students or contractors working collaboratively or under their direction (whether or not for pay) on projects that may result in copyrightable material, have signed appropriate agreements concerning the assignment of copyright to the Author or to the University, or such other disposition of rights to copyright as shall be appropriate pursuant to this Policy. Such agreements shall also clarify to students their rights to include or copyright any part of the work that they may wish to include in theses or dissertations. At the request of the Dean, the Legal Department will assist Authors in this regard.

## XII. COPYRIGHT AGREEMENTS

The policies set forth above constitute an understanding that is binding on the University, and on its academic and non-academic employees, students, and others as a condition of their participation in University research programs or their use of University funds, time, facilities, and resources. The University may request formal copyright agreements to implement the policy as appropriate, but the absence of such executed agreements shall not obviate the applicability of this Policy.

## XIII. APPENDIX: ILLUSTRATIVE EXAMPLES OF OWNERSHIP

- A. A faculty member writes a book in her office during normal working hours using her university-provided word processor. Since the work is "informational" and does not involve "more than incidental use" of university resources, she owns the copyright in the work.
- B. A faculty member collaborates with an academic computing specialist to develop software to interactively teach a topic in pathology. Since the work involves "more than incidental use" of University resources, the faculty member and the University jointly own the work, with ownership share in proportion to the contribution of each.
- C. A faculty member writes an article, which includes several illustrations prepared by the institution's media department and paid for by the faculty member's discretionary funds. At this point, the faculty member holds the copyright to the illustrations. Upon submitting the article for publication, the faculty member assigns the copyright for the illustrations to the publisher. If the faculty member wishes to use these illustrations in another publication, he/she must obtain permission from the copyright holder (publisher).
- D. A faculty member develops a program that enables faculty to easily put courses online. This software is "device-like" in that it is a tool for creation and presentation of informational content, rather than informational in itself. Thus, this software does not fall under this Policy. Instead, it is an "invention," and falls under the Inventions and Patents Policy. Ownership resides with the University, with the Author receiving a share of all revenues as specified in the Inventions and Patents Policy.
- E. A scientist extensively uses laboratory resources to conduct research that is reported in a scholarly publication. Although this

involves "more than incidental use" of University resources, the work is a scholarly paper and is thus excluded from the provisions of paragraph III C of the above section on ownership. The Author owns the paper, not the University.

- F. A faculty member uses an unpaid student assistant to take photographs to illustrate an instructional CD-ROM the faculty member is creating, using "more than incidental" University resources. Because of the "more than incidental" use of University resources, the University owns the portion of the work created by the faculty member, but the student also has the copyright in the resulting multimedia work. Such joint ownership may make it difficult to market the CD-ROM.