

## INTERIM POLICY

### UNIVERSITY SPONSORED EDUCATIONAL MATERIALS

#### I. PURPOSE

Governors State University (GSU) is an institution dedicated to research, discovery, and dissemination of knowledge to educate students and serve the public. GSU encourages faculty, staff, and students to engage in creative enterprises likely to generate new ideas and discoveries, and to share their results in creative works. The following establishes a policy governing the ownership of intellectual property in order to achieve those ends in accordance with applicable University policies and laws of the United States.

#### II. DEFINITIONS

- A. “Educational materials”, as herein used, means a particular expression of creative endeavor that may be expressed as a copyrightable work.

University sponsored works shall be created under mutual agreement and a university sponsored educational materials form signed. They shall include situations in which the author/producer has employed in his/her developmental work, and without personal charge to him/her, substantial University resources, excluding normal secretarial assistance.

Educational materials shall be considered University-sponsored even in the absence of a University sponsored educational materials form when the University asserts and the Copyright Administrator finds that substantial University resources were used in their production

- B. “Copyrightable work” shall include any material that is copyrightable under the laws of the United States (17 U.S.C.A. 101 et seq. as amended) and shall include, but not be limited to, printed material, art, music, computer software or databases, audio and visual materials, circuit diagrams, engineering and architectural drawings, dramatic compositions, works intended for presentation and/or use on the Internet or an intranet, choreographic works, and pictorial or graphic works fixed in any tangible medium of expression.
- C. “Copyright rights” shall include all rights recognized under sections 106 and 106A of the Copyright Act of 1976 as amended (17 U.S.C.A. 101 et seq.).

D. “Work for hire” shall have the same meaning as provided under Section 101 of the Copyright Act of 1976 as amended (17 U.S.C.A. 101) except as herein provided and shall mean

1. A work prepared by an employee within the scope of his or her employment or
2. A work specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, including telecourses, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

For the purpose of the foregoing sentence,

- a. A “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work. Examples of supplementary works include but are not limited to forewords, afterward, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.
- b. An “instructional text” is a literary, pictorial, or graphic work prepared for publication in any format, including machine-readable format, and intended for use in systematic instructional activities.
- c. “Scope of employment” as used herein shall be presumed not to include
  - i. Works which result from activities required of University personnel which are performed for promotion and tenure purposes;
  - ii. Works that result from independent efforts unless such works are specifically so identified within the contract of employment with the individual University employee or constitute “university-supported works,” as defined below.

E. “University-supported work” shall mean a work of a creator which is substantially the result of University support or would not have come into existence but for University support. It does not include

1. Works made in the course of independent efforts nor
2. Scholarly articles published in journals independent of the University, theses or dissertations of students, materials for courses as defined by UCC such as syllabi and course descriptions. All or part of a course syllabus may, however, be copied and used by any individual charged with teaching a different section of a course than that for which the syllabus was originally prepared.
3. Books, articles, or similar works the intended purpose of which is to disseminate the results of normal academic research or scholarly study. This policy does not affect

the traditional University practice under which members of the University community have personal ownership of books or similar materials which were not commissioned by the University and the preparation of which was not supported or assisted in any substantial way by or through any University agency established to furnish such support or assistance.

4. Works developed without the use of appreciable University support and used primarily for the purpose of assisting or enhancing the employee's teaching, administrative or research assignment; or
  5. Preparation and publication of texts utilizing normal secretarial resources and/or the author's own professional time are specific examples of what shall not be considered substantial support.
- F. "University support" shall include the use of University funds, personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organizations which are arranged, administered, or controlled by the University.

University support does not include the normal use of offices, classrooms, equipment, staff, or facilities in the course of normal teaching, service, administration or research assignments.

- G. "Independent efforts" with respect to works means that
1. The ideas for the work came from the creator,
  2. The work was not made with the use of University support, and
  3. The University bears no responsibility for opinions expressed in the work.

### III. SCOPE

- A. To the extent this policy applies, it extends to all faculty, students, staff, and others who may be engaged in the production of University-sponsored educational materials.

### IV. POLICY

- A. It is the policy of Governors State University that the copyright or any particular rights associated with a copyright of or in any copyrightable work shall belong to the author or creator thereof except as herein provided. If the author or creator of the work is an employee of the University, the copyright shall be deemed to belong to the University to the extent that the work may be considered a "work for hire" as defined herein. In demonstrating that a work is for hire, the burden of proof lies with the University.

- B. If the work is considered a “work for hire” as defined above, the copyright or any specific copyright rights therein, as defined above, will be deemed to subsist in the University and may be assigned or licensed by the University without consent or permission from the employee.
- C. If the work is considered a “work for hire” as defined above, unless otherwise agreed as part of particular agreements entered into between the employee and the University regarding the creation of such works, including University-supported works, the employee shall retain a nonexclusive license in the work insofar as the exercise of those rights is necessary or convenient to the performance of normal teaching, administrative or research assignments.
- D. If the work is considered a “work for hire” as defined above, the University and the employee may enter into any other such arrangement regarding employee exercise of copyrights in such works as may be agreeable to both parties including licensing, releasing, or assigning back to the employee the full copyrights in such works
- E. In every case of “work for hire”, the employee must be clearly and plainly informed by the University in writing before initiating a work that the intellectual property to be produced is on a “work for hire” basis.
- F. In every case of “work for hire”, a written agreement must specify the rights of each party to alter the work for hire or any part of the work for hire.
- G. Where the University claims ownership as a result of university sponsorship, University-sponsored educational materials shall be licensed only after a written agreement with the author/producer has been approved by the Copyright Administrator, specifying how much, if any, of the net income (net after sales and distribution costs) shall be paid to the author/producer.

V. INTERPRETATION AND ADMINISTRATION OF POLICY

A. Copyright Administrator

- 1. The President shall designate an appropriate officer of the University as Copyright Administrator to administer the provisions of this policy.
- 2. Where the Copyright Administrator determines that copyright coverage should be obtained on University-sponsored materials, the Copyright Administrator will initiate the copyright application. The Copyright Administrator shall represent the University in negotiating all agreements with authors/producers pursuant to this policy.

B. Copyright Committee

- 1. A University committee on copyrights shall be established. Composition of the committee shall be as follows:

2. Six faculty members, one from each college, and one each from CELCS and the University Library, appointed by the Faculty Senate.
  3. Two voting members appointed by the President.
  4. The Copyright Administrator shall call meetings and facilitate discussion.
  5. Representatives from Auxiliary Services will be advisory resources for the committee.
  6. Presidential Appointees will serve at the pleasure of the President. Faculty members will serve for two academic years with the exception that for the first year two faculty persons chosen by lot from among the four will serve for one year, after which time the vacancies will be filled for two-year terms.
  7. This committee is charged to advise the Copyright Administrator on matters relating to implementing this policy. The committee shall hear disputes that might arise between individuals or between individuals and the University regarding interests in materials covered by this policy and the maintenance, revision, use, and distribution of such materials. The committee shall make recommendations to the Copyright Administrator, who shall decide such disputes.
  8. The committee shall periodically review this policy and recommend changes to this policy to the Provost, Educational Policy Committee, and the University President.
- C. Nothing in this policy shall be construed to prevent any person from undertaking appropriate action in an appropriate court of law or elsewhere.

## VI. OWNERSHIP OF RIGHTS

- A. Ownership of rights in University-sponsored educational materials shall be vested in the University.

## VII. USE OF PROPERTY

- A. Two categories of use are differentiated for purposes of this policy:
  1. Use internal to the University: use by any unit of the University for instruction or education, either on campus, off campus, or through any form of distance learning, such as television or the Internet.
  2. Use external to the University: all uses by an entity other than by a unit of the University or uses other than for instruction or education; for example, use by educational institutions other than the University, use by governmental and other nonprofit institutions, and use resulting from lease or other contractual arrangements for commercial distribution of the property.

- B. Use of University-sponsored educational materials prepared under this policy shall be subject to the following conditions as long as the author/producer of University-sponsored educational materials remains affiliated with the University:
1. Unless otherwise stipulated in written agreement between the author/producer and the University, the author/producer may specify revision of the property prior to any instance of internal or external use. The author/producer has the right of first refusal when revision to his or her property is solicited.
  2. If the revision the author/producer desires is deemed not feasible by the University, the author/producer may ask that the property be withdrawn from use. The materials will be withdrawn from use at the end of the then-current trimester.
  3. If the property requires continuous maintenance and updating, the author/producer will have the obligation of providing such maintenance unless otherwise specified in a written agreement.
  4. If the University-sponsored property is used internally without revision for a period of three calendar years, it shall be the policy of the University to ask the author/producer and the appropriate University instructional unit to review the property and determine whether it shall continue to be used.
- C. Licensing for sale of University-sponsored property for external use shall be preceded by a written agreement between the University and author/producer specifying the conditions of use and including provisions protecting the rights of the author/producer.

VIII. COMPENSATION FOR PRODUCTION, SALE, RENTAL, OR OTHER USE

- A. The author/producer of University-sponsored educational materials shall generally not receive compensation other than his or her regular compensation from the University for the production and normal internal use of intellectual property.
- B. Direct sale or rental of University-sponsored intellectual property to other tax-supported institutions in the State of Illinois shall not include a royalty mark-up.
- C. Where the University licenses external use of materials, the written agreement with the author/producer shall reflect the following guidelines:

<u>Net Income</u>	<u>Share of Author/Producer</u>	<u>Share of University</u>
\$0 – 5,000	80%	20%
\$5,000 – 10,000	50%	50%
\$10,000 +	25%	75%

- D. Persons other than the author/producer shall not share in royalties unless specified by prior written agreement.

IX. PROTECTION AND LIABILITY

- A. The Copyright Administrator shall investigate allegations of unauthorized use or copyright infringement of University-sponsored intellectual property and shall recommend appropriate action. If such action is started by the University, all costs of such action shall be borne by the University. Subject to any grant or contractual limitations, all proceeds in excess of such costs shall be shared by the University and the author/producer as specified in Section VII.3.
  
- B. Before any use is made of University-sponsored intellectual property, the author/producer shall certify in writing to the Copyright Administrator that, to the best of his or her knowledge, the property does not infringe on any existing copyright or other legal rights. The Copyright Administrator will require the author/producer to indemnify and hold harmless the University for all costs to which it may become subjected as the result of actions against the University and/or the author/producer for infringement of copyrights or other legal rights pertaining to the property.

Effective June 1982  
Revised September 29, 2004