

**TITLE:** Intellectual Property (Copyright)

**ORIGINATOR:** Chief Academic Officer

**APPROVAL DATE:** March 6, 2013

**EFFECTIVE DATE:** March 6, 2013

**PURPOSE:** To designate Mississippi University for Women's policy for intellectual property rights as they pertain to copyrights and to IHL 807: Policy on Intellectual Property

**REVIEWER AND** Chief Academic Officer

**REVIEW DATE:** Fall 2018 and every 5 years thereafter

### **NARRATIVE AND SCOPE**

Mississippi University for Women (MUW) affirms its commitment to provide an environment that supports the generation and dissemination of knowledge for the public good. MUW embraces the academic tradition that the institution, the public and the author/creator are benefited when scholarly, pedagogical and aesthetic pursuits result in the sharing of knowledge through traditional formats such as books or articles, papers or presentations at professional conferences, works of art and musical composition and textbooks. MUW is pleased to share in the prestige earned by the creators of such materials and understands that the institution and the public benefit from the enhanced educational environment resulting from their creation and publication.

MUW also recognizes that changes in technology both reflect and result in changes in the role of the university and its personnel, and in the responsibilities to the public it serves. Outcomes of research have potential for success in addition to the enhancement of education and research, but this research may require extensive and directed support by the institution. MUW acknowledges its obligation to its researchers, scholars and creative artists and writers: to make financial support or release time available when possible. MUW has an obligation also to the State of Mississippi to contribute to the economic development of the state and also to the financial health of this institution. MUW therefore has a dual role to promote the commercial development of research outcomes and share in the benefits of commercial success.

MUW's Intellectual Property (Copyright) Policy is based on the premise that these roles and responsibilities are not in conflict. MUW accepts an active role in promoting the development of copyrightable materials in a manner consistent with IHL policy, with public interest, academic excellence and responsible fiscal management. United States copyright law designates the employer as the owner of copyrightable work prepared by employees within the scope of their employment. MUW relinquishes its claim to ownership of certain materials

(as identified later in this policy), in keeping with academic tradition and in support of its personnel and the public good. This MUW Intellectual Property (Copyright) Policy identifies the copyrightable material to which MUW will exercise its rights and establishes procedures for determining and protecting those rights. Ownership of materials not described in this policy may be assumed to belong to the author/creator.

## DEFINITIONS

1. Intellectual Property: Property that derives from the work of the mind or intellect, including, but not limited to, an idea, invention, creative publication or piece, process, program, data, formula or patent. Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, architectural designs, and instructional works such as lectures, and class materials (including but not limited to: electronic instructional materials).
2. Copyright: The exclusive right to reproduce, prepare derivative works from, distribute copies, transfer ownership (by rental, lease, or lending), perform publicly, or display publicly the copyrights work, or to authorize another person to perform any of those actions.
3. Non-patented Technology: (Know-how) Refers to unique processes or techniques that are utilized in the development of or in procedures followed in the course of research or in the use of an invention. The key to determining whether a process falls under this definition is whether the end result could not be obtained in a satisfactory manner without the knowledge.
4. 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. Copyright protection does not extend to ideas, procedures, processes, systems, methods of operation, concepts, principles or discoveries, even when presented in copyrightable form.
5. 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.
6. Creator(s)/Author(s): Designates the individual, group, department or unit creating the copyrightable material.
7. Patentable Materials: are items other than software that reasonably appear to qualify for protection under Title 35, Section 101, USC of the United States or other protective statutes.

8. Trademark: means all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logo-types associated with Intellectual Property developed as a result of research conducted by MUW personnel.
9. Software: means one or more computer programs existing in any form, along with any associated operational procedures, manual or other documentation, whether or not protectable or protected by patent or copyright.
10. Substantial Use of University Resources: occurs when development of creation involves the use of University resources **beyond** the following:
  - a. customary use of assigned office space, laboratories, or studios, or of libraries; of library collections, subscriptions or services; of secretarial or other staff assistance; of computer time or computer or lab equipment on hand; of network or Internet access; of standard office equipment and supplies.
  - b. sabbaticals; summer or other research grants provided by the University or University-affiliated units; other support customarily provided to faculty and staff.
11. Nominal Use of University Resources: is use that is customary or usual given the employee's appointment and academic assignments. For example the use of an office computer, photo copier, telephone, office supplies, secretarial assistance, and other assigned resources in the ordinary support of his or her responsibilities and assigned activities is considered to be nominal. University personnel may make such nominal use of university resources and devote office time in carrying out a range of professional activities.
12. 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.
13. Royalties: A form of income that is received by the inventor and the university as a result of a license granted to a company or other entity to develop, manufacture, or otherwise use or produce the invention for sale or distribution. The royalty rate is discussed below.
14. Student: Any full-time or part-time undergraduate or graduate student enrolled at Mississippi University for Women.
15. MUW Personnel: All full-time or part-time faculty and/or staff at Mississippi University for Women.
16. University: Refers to Mississippi University for Women (MUW) at its Columbus campus and any locations administered from the Columbus campus.

## STUDENT WORK

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 or scholarship relationship with the university or with one of its employees, and not making Substantial Use of University Resources.

1. 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.
2. 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.
3. Students working collaboratively with University employees on projects that result in copyrightable work may be granted the same rights and obligations of copyright ownership as would another University employee working collaboratively on the project. Students and University employees should establish these rights at the beginning of their collaboration.
4. Student work created for university publications including, but not limited to, *The Spectator*, *Visions*, *The Meh Lady* yearbook and/or *The Dilettanti Literary and Art Magazine* is to be considered the property of the University, unless specifically limited by the student in advance of the publication date.
5. Students may also be subject to rules and restrictions of their unit or of the Graduate School that are not inconsistent with the University Copyright/Intellectual Property Policy. For example, students who copyright their Honors College Theses, their master's theses or their dissertations must grant the University rights to reproduce and distribute copies of their works in accordance with the policy of the University, college, department or other unit.

### **OWNERSHIP OF COPYRIGHT**

As is typical at other universities, copyrightable works of an employee are the property of the creator, who is entitled to determine how the works are to be disseminated and to keep any income they produce. This practice reflects the University's commitment to encourage members of the University 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. In order to remove any question which could arise because of a lack of clarity in the law and in recognition of longstanding practice and tradition, the University disclaims any interest in the copyright of works created by faculty and staff, whether in traditional or nontraditional (including digital) forms, EXCEPT in the following cases:

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

1. by student employees in the course of their assigned duties of employment, including duties as teaching or research assistants, or
2. by faculty members, staff members 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, including commissioned work, or retains editorial control over the final work product.

*Supported Works:* In the event that Substantial Use of University Resources is involved, the creator and the University will share copyright ownership. Reimbursement of Substantial Use costs and/or a division of royalties may be required.

*Externally 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 for itself and/or its employees as appropriate during negotiation of the award or externally sponsored program. If the agreement is silent on copyright ownership, then the ownership of the copyright in any works created in the course of externally sponsored research, retreats, workshops or awards will follow this policy.

### **COMMERCIAL DEVELOPMENT OF WORKS**

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

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

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

When MUW 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 to copyright vests in the creator, the creator may choose to assign any or all rights in the copyrightable material to MUW or to a third party. MUW 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.

MUW is obligated to make timely determination of its interest in registering the copyright in any work in which it owns or shares ownership of the copyright. MUW is further obligated to release all or part of its interest to the creator. Should MUW fail to demonstrate due diligence, the creator has the right to request in writing that the copyright be assigned to

her/him or to a specified third party. Such a request will be made to the Provost/Vice President for Academic Affairs (P/VPAA). If MUW decides not to continue efforts to commercialize and/or market the materials, the Provost/Vice President for Academic Affairs will notify the creator in writing. The creator then has the right to request that copyright be assigned to her/him 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 her/his own time, and will involve no Substantial Use of University Resources. The University will consult or provide a reasonable opportunity for the creator'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. MUW 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**

Generally, when Substantial Use of University Resources has been provided in support of the production and/or commercialization of a work, 40% of the gross proceeds will be retained by the creator and 60% of the gross proceeds will be returned to the University until the University has been reimbursed for all Substantial Use of University Resources provided for producing and marketing the work. Once the University has been reimbursed for Substantial Use expenses, royalties will be divided between the creator and the University as follows:

1. the first \$20,000 to the creator(s);
2. to the creator(s), a total of
  - a. 75% of the first \$100,000 in gross revenues over \$20,000;
  - b. 65% of the gross revenues thereafter.

For purposes of the paragraph above, in the case of joint creators, the direct royalty distribution designated for a creator shall be to the joint creators as a group, to be divided equally between the creators, unless the creators provide the University with an alternative royalty distribution schedule agreed upon by the joint creators.

### **UNIVERSITY NONEXCLUSIVE LICENSE TO USE WORK FOR INSTRUCTIONAL PURPOSES**

MUW faculty, staff and students, as a condition of employment or admission to the University, agree to grant the University a free nonexclusive right to use for instructional purposes any work that they create in connection with their employment or matriculation at the University. This includes University online course materials as well as physical classroom displays created with Substantial Use of University Resources.

### **OPERATING DETAILS AND PROCEDURES**

#### **1. 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 MUW has or may have a claim. Disclosure of the creation must be in writing, submitted to the P/VPAA in writing that the assistance to be provided may constitute Substantial Use. In cases where the creator is the signatory officer of a department, college or other unit director, she/he must notify her/his immediate superior and the P/VPAA. It is then the responsibility of the creator to notify her/his superior when a work is created in fixed form that relies upon Substantial Use of University Resources.

## 2. Determination of Ownership

The P/VPAA in consultation with the University Legal Counsel 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 MUW interest. Within 30 calendar days of receipt of the Disclosure, the P/VPAA will make a determination regarding MUW's interest in the work and will notify the creator in writing of the determination, with copies to the creator's department chair and dean or unit head. If it is determined that MUW 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 Substantial Use of University Resources.

## 3. Release of University Interest in Copyright

If the Office of Academic Affairs 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 P/VPAA and may then register the copyright in the work entirely in his/her own name. Upon written request for release by the employee, the Provost/Vice President for Academic Affairs will respond within 30 calendar days.

## 4. Appeals

If the creator disagrees with a determination that MUW owns or shares an ownership interest in the copyright to the work, the creator may appeal in writing to the P/VPAA, who will refer the issue to the University Faculty Appeals Committee (P.S. #3528). The appeal must outline:

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

Any appeal must be made within 60 calendar days of receipt of the Determination of Ownership. The Faculty Appeals Committee will make a decision within 30 calendar days of receipt of the appeal. Copies of the appeal and the decision must be provided to the President, the P/VPAA, the creator's supervisor and/or dean and the creator.

If the creator is not a faculty member, the review, incorporating 4a and 4b above, will be made by the employee's supervising cabinet member with a right of appeal to the University President.

Works created within the scope of employment by individuals who do not have faculty or faculty-like appointments will be owned by the University.

5. 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 materials to which the University owns or shares copyright, MUW 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.

6. Agreement to the MUW Intellectual Property/Copyright Policy

This policy is binding on the University and on its employees as a condition of employment at the University, and is valid and applicable when approved by the President and the IHL Board of Trustees.