



INTELLECTUAL PROPERTY RIGHTS AND RESPONSIBILITIES

Policy Number: CU-AA-08

PURPOSE

The purpose of this policy is to establish intellectual property guidelines for the institution and for faculty members regarding copyright and permissible use practices for faculty scholarship, teaching materials generally, and materials specifically developed for online teaching.

SCOPE

This policy is applicable to all faculty, regardless of rank or term of service.

POLICY

It is the policy of Concord University to acknowledge, respect, and, as appropriate, protect the ownership rights of individuals, the University, and any jointly-owned intellectual property.

CLARIFICATION OF OWNERSHIP RIGHTS

Faculty Ownership Rights

A faculty member has and retains ownership of intellectual property rights regarding individual scholarly research, scholarly publication, or the productions of creative work or materials.

Joint Ownership Rights

Materials developed for coursework, such as syllabi, classroom resources, or any materials developed for pedagogical purposes in specific courses, including online courses, will be considered to be "jointly owned" by the university and the faculty member who developed them, meaning that said materials may be used freely by both parties.

University Ownership Rights

Works-for-hire, that is pedagogical materials developed through an arrangement involving monetary or other compensation, are considered to be owned solely by the university.

DETERMINATION OF OWNERSHIP OF SCHOLARLY AND CREATIVE WORKS

Traditionally, faculty members at most colleges and universities are deemed to own the copyright in books, articles, instructional materials, and other scholarly writings. In recognition of this traditional practice, and specifically in support of faculty freedom to teach, write, and publish as they wish, the University affirms that copyrightable works created, made, or originated by a faculty member shall be the sole and exclusive property of the faculty author except when he or she voluntarily chooses to transfer such property in full or in part, or as described in the following cases:

Special Projects. The University will own the copyright in works created by faculty members as part of a project the nature of which lies outside the normal academic or administrative duties of a faculty member as specified in the relevant Board of Governors Policies and where the

faculty members enter voluntarily into a written agreement that such works will be owned by the University.

Sponsored Research or Sponsored Project. Where copyrighted materials are created by an investigator in the course of sponsored research funded by an outside agency, copyright ownership will be determined by the applicable terms of the funding agreement.

Substantial Use of University Resources. Substantial use projects shall be identified as such early in the development stage and a written agreement shall be executed between the faculty member and the University. The faculty member and the University shall jointly own such works.

OWNERSHIP OF PEDAGOGICAL MATERIALS

Pedagogical material, such as course syllabi and classroom resources, including online materials, are jointly owned by the faculty members who create them and the University. They can be used by faculty if they teach elsewhere and by the University as “master syllabi” and as common course material to be used by any faculty member teaching the same course. Recorded lectures or other materials of a more personal nature are not included in this statement and will not be shared.

ADMINISTRATION OF COPYRIGHTABLE WORKS

Below are the conditions and parameters of the responsibilities and obligations regarding copyright protections within specific categories.

Faculty Works Not Work-for-Hire

For those works of which faculty members own the copyright, the faculty members are free to register the copyrights and are wholly responsible for protecting the works from infringement.

Institutional Works or Work-for-Hire

For those works of which the University owns the copyright, whether because the works were created by an employee other than a faculty member, or were developed by a faculty member under a special project, the creator will disclose the created works to the University as soon as possible after creation.

Syllabi created in whole or in part by non-faculty academic employees or instructional designers are considered work-for-hire.

The University will register the copyright if appropriate and protect the work from infringement if necessary.

Jointly Owned Works

For those works which are jointly owned by the University and one or more faculty members, the University will register the copyright, if appropriate, and will protect the work from infringement if necessary.

Works Created as Sponsored Research or Sponsored Projects

For those works created as a result of sponsored research or sponsored projects, administration and ownership of the works will be determined by the terms of the sponsorship agreement.

Student-Created Works

Any copyrightable works resulting from student participation in faculty research projects will be owned by the faculty member(s) although it is assumed that such student participation will be credited.

PROCESSES

DISTRIBUTION OF INCOME

Below are the conditions and parameters of the distribution of income in cases where there is outright ownership by the University, joint ownership between the University and faculty, or where specific responsibilities are outlined in agreements in the case of sponsored research or sponsored projects.

Faculty-Created Works Owned by the University

For those faculty-created works assigned to, or initially owned by, the University, the creator will receive fifty percent of the net royalties which accrue to the University. The University portion of such net royalties will be administered by the academic administration. One-half of such royalties will be given to the University department of the creator of the work. Generally, the other half of the University's share of royalties will be used to stimulate further research, if the royalties resulted from research; royalties resulting from course-related works will be used to fund further course development. The University reserves the right, at its discretion, to deduct from the University's share of royalty income, prior to any such distribution, expenses properly attributable to the development or protection of the material, including litigation, which may be incurred in enforcing or defending the copyright or in licensing the copyrightable material.

Faculty-Created Works Jointly Owned with the University

For those works which are jointly owned by the University and one faculty member, fifty percent of the net royalties will be attributed to the University share and divided as described in the preceding paragraph. The other fifty percent will go in its entirety to the faculty member. For those joint works with two or more faculty authors, net royalties will be divided in equal shares among the joint owners, with the University share divided as described in the preceding paragraph and the faculty shares payable directly to them.

Works Created as Sponsored Research or Sponsored Projects

Income from works created as sponsored research shall be disposed of in accordance with the terms of the underlying contract or grant. In the absence of such terms, the works created shall be the property of the University, and net royalties received by the University will be distributed as described in the first paragraph of this section.

USE OF COPYRIGHTED MATERIALS IN ONLINE TEACHING

Under Section 110 of the Copyright Act, as revised and expanded by the TEACH Act of 2002, faculty members may use copyrighted materials in their online classes. There are requirements that must be met, and the most relevant are noted here:

- The materials to be used are specifically for students in the class.
- Only those students will have access to the materials.
- The materials are directly related and of material assistance to the teaching content.
- The class is part of the regular offerings of Concord University.

- The materials are of the proper type and amount the law authorizes (i.e. reasonable and limited parts of a dramatic, literary, musical, or audiovisual work)
- A notice stating that the materials are protected by copyright will be included.
- The students' ability to further distribute the materials will be limited.
- The materials will be made available to the students only for a period of time that is relevant to the context of the class session.
- Copies of the materials other than the one needed to make the transmission will not be made.

There is more information about the TEACH Act as well as a checklist of additional requirements at <https://guides.lib.utexas.edu/copyright/teachact>.

DEFINITIONS

As a way to clarify terms and definitions, the list below delineates with greater detail the assumptions and scope of the term as its used in this context.

Copyrightable Materials

Under federal copyright law, copyright protection subsists in "original works of authorship fixed in any tangible means 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." 17 U.S.C. Sec. 102. Copyright exists from the moment of creation of the work. Copyright protects the expression of an idea, but not an idea itself. Works of authorship include the following categories:

- literary works;
- musical works, including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works;
- pictorial, graphic, and sculptural works;
- motion pictures and other audiovisual works;
- sound recordings; and
- architectural works.

Exclusive Rights

Subject to certain limitations contained in the Copyright Act, the owner of a copyright has the exclusive right to do and to authorize any of the following:

- to reproduce the copyrighted work;
- to make derivative works based on the copyrighted work;
- to distribute copies of the copyrighted work by sale, gift, rental, lease, or lending;
- in the case of literary, musical, dramatic, and choreographic works, and motion pictures and other audiovisual works, to perform the copyrighted works publicly;
- in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission. 17 U.S.C. Sec. 106.

Employee and Faculty

The term “employee” shall mean any person receiving regular compensation from Concord University in exchange for specified services. University employees include faculty, staff, and administrators, whether full- or part-time. University employees do not include independent contractors or those persons whose primary connection to the University is that of student.

Sponsored Research and Sponsored Projects

The terms “sponsored research” and “sponsored projects” refer to research activities or other work performed by a University employee for compensation from any agency, organization, or person external to the University, which research activity or other work may result in the creation of copyrightable works.

Substantial Use of University Resources

Substantial use includes projects undertaken by a faculty member with the benefit of extraordinary funds, facilities, or opportunities which the faculty member would not ordinarily be entitled to have for any chosen project. Ordinarily available resources include office space and personal office equipment, office computer workstations, library and other information resources, and the means of network access to such resources, including information available on University servers and the Internet, funding, and ordinarily available audio and video resources.

Royalties

The definition of net royalties shall be determined by agreement between the faculty author(s) and the University and incorporated into the specific written agreement as referenced in the first two paragraphs under Distribution of Income. It should be noted that tuition income does not constitute royalty income.

RESPONSIBILITY FOR IMPLEMENTATION

The Provost shall have primary responsibility for overseeing and managing copyright issues.

AUTHORITY FOR INTERPRETATION

The final authority for interpretation of this policy rests with the Provost.

AMENDMENTS

This Policy may be amended to change names, links to information, and contact information without resorting to the rulemaking process.

Federal and State laws, rules and regulations change. Any portion of this policy and process document may be modified in practice to ensure the due process rights of the individuals involved are provided and to conform with any current Federal and State law, rules and regulations. Subject to the institution’s rulemaking policy, the institution will change this policy to conform to the most current laws and regulations within a reasonable time of discovering the change.

REFERENCE / AUTHORITY

- 17 U.S. Code Section 102 – Subject Matter of Copyright: In General
- 17 U.S. Code Section 106 – Exclusive Rights in Copyrighted Works
- 17 U.S. Code Section 110 – Limitations on Exclusive Rights: Exemption of Certain Performances and Displays

APPROVAL

Intent to Plan/ Revise Approved by the Board of Governors: April 20, 2021

Approved by the Board of Governors: June 15, 2021

Effective Date: June 15, 2021