

JACKSON STATE UNIVERSITY

COPYRIGHT POLICY

I. Summary

United States Copyright law establishes the employer as the “author” and hence the owner of copyrightable work prepared by employees within the scope of their employment. Ownership in a work for hire may be relinquished only by an official of the University authorized to do so. This Jackson State University (JSU) Copyright Policy establishes that all rights in copyright shall remain with the creator, except in specified cases where law or sponsored agreements require otherwise.

This document describes JSU policies and associated administrative procedures for copyrightable materials and other intellectual property. Its objectives are:

- To enable the University to foster the free and creative expression and exchange of ideas and comments;
- To preserve traditional University practices and privileges with respect to the publication of scholarly works;
- To establish principles and procedures for sharing income derived from copyrightable material produced at the University; and
- To protect the University’s assets and licensing authority.

II. Definitions

- 2.1 Copyright: The exclusive right of the author or originator of literary, artistic, productions or works to reproduce, publish, lease or sell same.
- 2.2 Copyrightable Works: Materials subject to copyrightable protection are original works of authorship which have been 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. These works include the following categories:

- 2.2.1 Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- 2.2.2 Musical works including any accompanying music;
- 2.2.3 Pictorial, graphic and sculptural works, including photographs, diagrams, sketches and integrated circuit masks;
- 2.2.4 Motion pictures and other audiovisual works such as videotapes;
- 2.2.5 Sound recordings; and
- 2.2.6 Computer software and information technology.
- 2.3. Creation of Copyrightable Materials. A copyrightable work is “created” when it is 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.
- 2.4. Externally Sponsored Works. Externally Sponsored Works are productions substantially financially supported by non-University entities through such mechanisms as grants, contracts, and cooperative agreements.
- 2.5. Fair Use. Fair Use of a copyrightable work for purposes such as criticism, comment, news reporting, teaching, scholarship or research is not an infringement of copyright. Determining factors of whether “fair use” has been made of a work include: the purpose and character of the use – including whether such use is of a commercial nature or is for a not-for-profit educational purposes; the nature of the copyrightable work; the amount and substantiality of the portion used in relation to the copyrightable work as a whole; and the effect of the use upon the potential market for or value of the copyrightable work.
- 2.6. 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 copyrightable materials.
- 2.7. Investigator. The individual who actually conducts a research investigation.
- 2.8. Public Domain. A work is placed “in the public domain” when it is made available for use by anyone at anytime, without explicit authorization or restrictions on use. A work in the public domain is outside of copyrightable protection.
- 2.9. Student. Any person enrolled for course study at the University on a full-time, part-time, undergraduate or graduate basis.

2.10 Substantial Use. Substantial Use of University resources occurs when development or creation involves the use of University resources beyond the following:

2.10.1 Customary use of:

- assigned office space, laboratories, or studios, or libraries;
- library collections, subscriptions or services;
- secretarial or other staff assistance;
- computer time or computer or lab equipment on hand;
- network or Internet access; and
- standard office equipment and supplies.

2.10.2 Sabbaticals; summer or other research grants provided by the University or University affiliated entities; or other support customarily provided to faculty and staff.

2.11 Transfer of Ownership. The agreement to convey exclusive rights of copyrightable works to another. Said agreement must be in writing and signed by all parties to the transfer. The transfer of copyrightable ownership may be recorded in the U.S. Copyright Office.

2.12 University Personnel. University personnel include all faculty and staff with full-time, part-time, or adjunct status, and any other employee, agent or Fellow of the University.

2.13 University. University refers to Jackson State University located in Jackson, Mississippi.

2.14 Works For Hire. Work prepared by an employee within the scope of his or her employment. This definition includes works prepared by employees in satisfaction of sponsored agreement between the University and outside agencies. Certain commissioned works also are works for hire if the parties so agree in writing.

III. Scope of Copyright Protection

Copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it may be embodied, illustrated, or explained. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process describe could be freely copied unless it enjoys some other protection, such as a patent.

Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and display or perform the work publicly. Ownership of copyright is distinct from the owner of any material object in which the work may be embodied. For example, if one purchases a videotape, one does not necessarily obtain the right to make a public showing for profit.

IV. Ownership of Copyright

It is the policy of the University that all rights in copyright shall remain with the creator unless the work is a work-for-hire, is supported by a direct allocation of funds through the University for the pursuit of a specific project, is commissioned by the University, or is otherwise subject to contractual obligations.

4.1. Books, articles, and Similar Works, Including Unpatentable Software. In accord with academic tradition, except to the extent required by the terms of funding agreements, the University does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. The University claims no ownership of popular nonfiction, novels, poems, musical compositions, unpatentable software, or other works of artistic imagination which are not institutional works (see below). If title to copyright in works defined within this section vests in the University by law, the University will, upon request and to the extent consistent with its legal obligation, convey copyright to the creators of such works.

4.2 Institutional Works. The University shall retain ownership of works created as institutional rather than personal efforts as described below:

4.2.1. Supervised Works: The University will own the copyright to works created by student employees in the course of their assigned duties of employment, including duties as teaching or research assistants, or by faculty members, staff members or postdoctoral fellows or associates as part of an assigned task where the University specifically assigns an individual to create a particular work or selects or supervises choice of subject matter and supervises content, course, and direction of the effort to create the work or retains editorial control over the final work project.

4.2.2 Supported Works: In the event that substantial use of University resources is involved, the creator and the University will share copyrightable ownership. Reimbursement of substantial use costs and/or division of royalties may be required.

4.2.3 Externally Sponsored Works: Where copyrightable 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 the negotiation of the award or externally sponsored program. If the program is silent on copyright ownership, then the creator of the work will have full ownership of the copyright in any works created in the course of sponsored research.

4.2.4 **Work-for-Hire:** Works created for University purposes in the course of the creator's employment, or works resulting from simultaneous or sequential contributions over time by numerous faculty, staff and/or students are owned by the University. For instance, work assigned to programmers is "work-for-hire" (regardless of whether the work is in the course of externally-sponsored research, University research, or non-research activities), as is software developed for University purposes by students and staff working collaboratively. The University owns all rights, intellectual and financial, in such works.

4.3 **Works of Non-Employees.** Under the Copyright Act, works of non-employees such as consultants, independent contractors, etc. are owned by the creator and not by the University, unless there is a written agreement to the contrary. As it is University policy that the University shall retain ownership of such works (created as institutional rather than personal efforts), the University will generally require a written statement from non-employees that ownership of such works will be assigned to the University.

Examples of works which the University may retain non-employees to prepare:

Reports by consultants or subcontractors

- Computer software
- Illustrations or designs
- Artistic Works

4.4 **Student Work.** The University makes no claim to copyright ownership of works created by students working on their own. Such works include those of students created in the course of their education, such as dissertation, papers and articles, not within the course and scope of their employment relationship with the University or with one of its employees, and not making substantial use of University resources.

4.4.1 Students working on a project governed by an agreement to which the University is a party shall be governed by the terms of that agreement.

- 4.4.2 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.
- 4.4.3 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 outset of their collaboration.
- 4.4.4 Students may also be subject to rules and regulations of their unit or department that are not inconsistent with the University Copyright Policy.
- 4.5 Videotaping and Related Classroom Technology. Courses taught and courseware developed at the University belong to the University. Any courses which are videotaped or recorded using any other media are University property, and may not be further distributed without permission from the academic dean or director. Blanket permission is provided for evanescent video or other copies for the use of students, if for other University purposes. Prior to videotaping, permission should be obtained from anyone who will appear in the final program.
- 4.6 Ownership of materials not described within this copyright policy can not be presumed to be the property of the creator.

V. Reimbursement of Costs and Royalty Sharing

University resources are to be used solely for University purposes and not for personal gain or personal commercial advantage, nor for any other non-University purposes. However, when substantial use of University resources has been provided in support of the production of a work, a deduction of 15% to cover administrative overhead of the University's Research Office of the gross proceeds, followed by deduction for any directly assignable expenses (i.e. patent filing fees). After deductions gross revenues are divided as follows: one-third to the creator, and two-third to the University.

Royalty will normally be allocated in accordance with the University's Patent Policy. If copyright protection alone is claimed, royalties normally will be allocated in a similar manner, with the "creator's share" allocated among individuals identified by the investigator (or department head if not under a sponsored agreement), based on their relative contributions to the work. Where royalty distribution to individuals would be impracticable or inequitable (for example, when the copyrightable material has been developed as a laboratory project, or where individual royalty distribution could distort academic priorities), the "creator's share" may be allocated to a research or educational account in the laboratory where the copyrightable material

was developed. Such determination will be made on a case-by-case basis by the Office of Research and after consultation with the principal investigator or department head, and is subject to the approval of the Provost/Vice President for Academic Affairs.

VI. Procedures

- 6.1 Disclosure. Materials are copyrightable at the time the work is created in a fixed form. In the case of supervised works, ownership vests in the University at this time. It is the responsibility of the University employee who assigned a supervised work to inform the University of the possible creation of a copyrightable work to which the University may have a claim. Disclosure of the creation must be in writing, submitted to the Vice-President of the Office of Research with copies to the creator's department chair and dean/division head, with sufficient detail about the work and its creation to allow determination of ownership.

When substantial use of University resources is provided which may lead to the creation of supported work, it is the responsibility of the department chair or director to notify the faculty member, the dean or department head, and the Office of Research in writing that the assistance to be provided may constitute "Substantial Use". In cases where the creator is the signatory officer of a department or other unit, he/she must notify his/her immediate superior and the Office of Research. It is then the responsibility of the creator to notify the department chair or unit director, dean or division head and the Office of Research when a work is created in fixed form that was provided Substantial Use of University resources.

- 6.2 Determination of Ownership. Personnel of the Office of Research 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 University interest. Within 45 calendar days of receipt of the Disclosure, the Vice-President for the Office of Research will make a determination regarding the University'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 the University 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.
- 6.3 Release of University Interest in Copyright. If the Office of Research does not wish to register the copyright and pursue commercial exploitation, the employee may obtain a written release from the Vice-President of the Office of Research and may then register the copyright in the work entirely in his/her own name. Upon written request for release by the employee, the Office of Research will respond within 45 calendar days.

- 6.4 Appeals. If the creator disagrees with a determination that the University owns or shares an ownership interest in the copyright to the work, the creator may appeal in writing to the Provost/Vice President for Academic Affairs who will refer the appeal to the University Copyright Appeals Committee. The appeal must outline:

- (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 the University or as otherwise assigned at the time of the creation of the materials.

Any appeal must be made within 45 calendar days of receipt of the Determination of Ownership. The Provost/Vice President for Academic Affairs will make a decision within 45 calendar days of receipt of the appeal. Copies of the appeal and the decision must be provided to the Vice President for Research, the creator's department chair/unit director and dean/division head and creator.

- 6.5 University Copyright Appeals Committee. The University shall have a standing University Copyright Appeals Committee that shall consider and investigate disputes among administrators, faculty, staff or students and shall recommend appropriate solutions to the Vice-President of the Office of Research and Provost/Vice President for Academic Affairs. The Committee's responsibilities shall include, but not be limited to, disputes concerning:
- (a) whether Substantial Use of University resources has occurred;
 - (b) ownership of works which may be supervised, supported or externally sponsored works; and
 - (c) distribution of royalties, including determination of the amount of reimbursement to the University in cases of Substantial Use.

VII. OTHER INTELLECTUAL PROPERTY

- 7.1 Trade and Service Marks. Trade and service marks are distinctive words or graphic symbols identifying the sources, product, producer, or distributor of goods or services. Trade or service marks relating to goods or services distributed by the University shall be owned by the University. Examples include names and symbols used in conjunction with computer programs or University activities and events. Consult the Office of Finance and Administration for information about registration, protection, and use of marks.
- 7.2 Patents. See JSU Policy on "Inventions, Patents and Licensing".
- 7.3 Proprietary Information. Proprietary information arising out of University work (e.g. actual and proposed terms of research agreements, financial arrangements, or confidential business information) shall be owned by the University. "Trade

Secret” is a legal term referring to any information, whether or not copyrightable or patentable, which is not generally known or accessible, and which gives competitive advantage to its owner. Trade secrets are proprietary information.

- 7.4. Tangible Research Property. The University encourages the prompt and open exchange, for others scholarly use of software, firmware and biological material resulting from research.

VIII. General Provisions

- 8.1 Contractual Obligations of the University. This Copyright Policy shall not be interpreted to limit the University’s ability to meet its obligations for deliverables under any contract, grant or other arrangement with third parties, including sponsored research agreements, license agreements and the like.
- 8.2 Patent and Copyright Agreement. All faculty, staff, student employees, graduate students and postdoctoral fellows must sign the JSU University Patent and Copyright Agreement. In addition, non-employees who participate or intend to participate in research projects at the University must also sign. See Research Policy Handbook document entitled “Inventions, Patents and Licensing”. Questions regarding licensing and royalty-sharing should be addressed to the Office of Research Development Support and Federal Relations.
- 8.3 Assignments. No assignments, license or other agreement may be entered with respect to copyrighted works owned by the University except by an official specifically authorized to do so.
- 8.4 Information Technology. The Office of Research and the Office of Information Technology (“IT”) seek the most effective means of information technology transfer for public use and benefit, and toward that end, are responsible for the evaluation, marketing, negotiations and licensing of University-owned inventions or copyrightable materials with commercial potential.

Computer databases, software and firmware and other copyrightable works owned by the University, are licensed through IT and the Office of Research Development Support and Federal Relations. Exceptions to this procedure must be approved in advance by the President.

- 8.5 Use of The University Name in Copyright Notices. The following notice should be placed on University-owned materials in order to protect the copyright:

Copyright © [year] Jackson State University, ALL RIGHTS RESERVED

No other institutional or departmental name is to be used in the copyright notice, although the name and address of the department to which readers can direct inquiries

may be listed below the copyright notice. The date in the notice should be the year in which the work is first published, i.e. distributed to the public or any sizable audience.

Additionally, work may be registered with the United States Patent and Trademark Office using its official forms. Forms may be obtained from the Office of General Counsel, to which questions concerning copyright notices and registration also may be addressed.

- 8.6 Copyright Agreements. The Office of Human Resources is responsible for getting a Patent and Copyright Agreement signed, normally at the time of the individual's initial association with the University.
- 8.6 Copying of Works Owned by Others. Members of the University community are cautioned to observe the rights of other copyright owners. Contact the Provost/Academic Vice President Office for University policies pertaining to copying for classroom use. Policies regarding copying library purposes may be obtained from the Office of the Director of Libraries.
- 8.7 Sponsored Agreements. Contracts and grants frequently contain complex provisions relating to copyright, rights in data, royalties, publication and various categories of material including proprietary data, computer software, licenses, etc. Questions regarding the specific terms and conditions of individual contracts and grants, or regarding rules, regulations and statutes applicable to the various government agencies, should be addressed to the University's Sponsored Programs Office.
- 8.8 Physical embodiments of copyrightable works may also be subject to the University's policies on Tangible Research Property.
- 8.9 Agreement to University Copyright Policy. This Policy is binding on the University and on its employees as a condition of their employment with the University.
- 8.10 Variations from Copyright Policy. From time to time, it may be in the best interests of the creator and the University to enter into an agreement concerning copyright ownership or commercial development of a work that differs from the terms of this policy. In all such cases, the agreement must be in writing and signed by the creator, the dean or department head, Vice-President for Research, and Vice-President for IT (if information technology related), and Provost/Vice President for Academic Affairs. Such agreements should be concluded as soon as practicable in the development of the work to protect the interests of both parties.
- 8.11 Contracts. The Office of General Counsel must approve University contracts prior to execution which are made subject to this Policy.
- 8.12 Effective Date of Policy. This Policy shall become effective upon execution by the President of the University.

APPROVED _____ DATE _____
Dr. Ronald Mason, Jr.
President