

Proposed Northwestern University Copyright Policy

February 2005

This document was prepared by an ad hoc group of faculty members and the Office of the Provost.

PREAMBLE

Reaffirming Northwestern's long-standing commitment to excellence in its research and teaching missions, this Copyright Policy recognizes that freedom for members of the University community to create new works and to choose the appropriate forum for their public dissemination is central to achieving excellence. The intellectual autonomy of researchers and teachers is the engine that drives innovation, and the creator's right to hold copyright to his or her works guarantees that autonomy.

This Policy also recognizes the value of the intangible benefits that the University derives from the wide dissemination of its members' creative works, particularly the affirmation that Northwestern provides a vibrant and supportive environment for innovative creators. Such an environment enables the University to attract researchers and teachers of excellence and to retain those who are already part of the Northwestern community.

At the same time, a proper balance must be maintained between Northwestern's tradition of individual academic/creative freedom and its commitment to providing financial support for creative endeavors in all academic areas of the University. To meet this commitment, as faculty and students become ever more active in the creation of new domains of knowledge, additional sources of revenue must be identified. Because copyrightable works created by members of the academic community in new media, such as computer software, may provide the opportunity for significant revenues from distribution or licensing in the future, this Policy provides opportunities for the University to invest in the creation of such products and to share in distribution and licensing revenues. These revenues, in turn, can be allocated to support creative works throughout the University.

Notwithstanding the general principle set forth in this Policy that copyright ownership resides with the Creator(s) of copyrightable works, members of the faculty are reminded that the provisions of Northwestern University's policies on Conflict of Commitment and Conflict of Interest remain in effect. Any development or use of copyrighted material by members of the faculty must be consistent with the provisions of those policies.

A. POLICY STATEMENT ON COPYRIGHT

A.1. *Copyright Policy*

A.1.a. Creator Rights

This Policy affirms that, other than the four categories of exceptions noted below (in Sections A.2.a., A.2.b., A.2.c., and A.2.d.), the members of the Northwestern University Academic Community¹ shall own in their individual capacity the copyright to all copyrightable works they create at the University resulting from their research, teaching, artistic creativity, or writing. As a copyright owner they have the rights to use, copy, reproduce, modify, display, perform, distribute, create derivative works, and to permit others to do the same, if their work is an original, tangible, written, visual, or musical work of authorship, and therefore protectable by U.S. and other countries' copyright laws. As a copyright owner they shall have the rights to hold and register copyrights in their own name, protect and enforce their copyright interest, and license, transfer or assign their copyright interest to others, such as publishers or distributors, and to collect revenues from doing so. In all cases other than the exception categories noted in Section A.2. below, any and all revenues derived from copyrighted works belong wholly to their creator(s) or the copyright holder(s) to whom the creator(s) has assigned their copyright interest. This policy applies to copyrightable works that are Traditional Works and to those that are Non-Traditional Works, defined for purposes of this Policy as Computer Software.

A.1.b. University Rights

In the case of Traditional Works (defined in Section B.4) that are not instructional materials, the Creator shall grant, or use best efforts to cause others to grant, to the University a perpetual, royalty-free right and license to use, perform, display, copy, or reproduce such works, for all traditional, customary or reasonable academic or research purposes of the University. In the case of Traditional Works that are instructional materials integral to the administration of an academic program (such as laboratory manuals, placement tests, internship handbooks, etc.), the University shall also have a perpetual, royalty-free right and license to use, reproduce, modify and create derivatives of such works, for all traditional, customary or reasonable academic purposes of the University. When it proposes to exercise this right and license for instructional materials, the University shall make reasonable efforts to consult with the Creator(s); any conflicts between the University and the Creator(s) regarding such exercise will be resolved as set forth in section D.3. (below). In the case of Computer Software created by members of the Northwestern University Academic Community in the course of their employment the Creators shall grant to the University a perpetual, non-exclusive, royalty-free right and license to use,

¹ This term, and all other capitalized terms are defined in Section B.

perform, display, copy, reproduce, modify and create derivatives of such works for all traditional, customary or reasonable academic or research purposes of the University. Creators agree to respond to reasonable and non-burdensome University requests related to the aforementioned use of such works and to cooperate with the University in executing any and all written assignments or license documents as are reasonably requested by the University to effectuate the foregoing licenses to the University. Creators who believe that a University request for cooperation in endeavors such as the reproduction, modification, or creation of derivatives of works is unreasonable or burdensome may employ the Dispute Resolution process (see D.3., below).

A.1.c. Applicability

Acceptance of and compliance with the Northwestern University Copyright Policy are conditions of employment or enrollment at the University. This Policy will be administered by the Faculty Copyright Committee under the administrative oversight of the Vice President for Research (as delineated in Section D.).

A.2. *Exceptions*

A.2.a. Work Covered By Other Agreements

In cases of Work Covered By Other Agreements (defined in Section B.3.) the terms of this Northwestern Copyright Policy will apply, except to the extent they conflict with the Other Agreement. In those cases, the Other Agreement takes precedence and may dictate that the University or a third party owns the copyright to such work and determine how the proceeds from licensing or distributing such work are to be shared. In cases where a copyrightable work has been produced with support to Northwestern University from a government agency or other external source whose grant specifies that the copyright for any work created under the grant is the property of the University (as grantee), then, if permitted under the applicable grant terms, the University assigns the copyright ownership to the work to the creator(s), subject to the following conditions: i) The creator will be bound by all conditions attached to the grant and imposed by the government granting agency or other external source; and ii) If the work is Non-Traditional, a) the creator(s) may decide to distribute such work freely and openly without consulting the University; however, if they distribute the work freely, they must accompany distribution with the statement attached to and incorporated as part of this policy as Appendix 2; and b) any creator(s) desiring to license the work for commercial purposes will do so according to the terms set forth in 6.e of the Standard Copyright Agreement and any revenue derived from such work will be shared with the University according to the terms described in the Standard Copyright Agreement in force at the time the grant was received.

Please note that in some cases involving a Work Covered by Other Agreement, the University's Patent and Invention Policy may also apply and may be in conflict with this Copyright Policy. If so, the Patent and Invention Policy will take precedence over this Copyright Policy.

A.2.b. Work For Hire

Copyright to works created under the condition of Work For Hire (defined in Section B.2. for purposes of this Copyright Policy) is owned by the University. The University has the rights to hold and register copyright to a Work for Hire in its own name, to protect and enforce its copyright interest, and to license, transfer or assign its copyright interest to others, such as publishers or distributors, and to collect revenues from doing so.

A.2.c. Non-Traditional Works involving the investment of Extraordinary Resources by the University

In the case of Computer Software (what are referred to in this Policy as Non-Traditional Works as defined in Section B.5) in which the University has invested Extraordinary Resources (defined in Section B.6), the Creator shall own the copyright to such Non-Traditional Work; provided, however, that the University is entitled to share in the revenues generated by licensing copyrighted works created and owned by members of the Northwestern Academic Community when all three of the following conditions are met:

- (1) The created work is not a Traditional Work
- (2) The University has made an investment in the work of Extraordinary Resources, and
- (3) An agreement incorporating terms of the Standard Copyright Agreement has been signed by both parties prior to the University investment of Extraordinary Resources (as provided in Section C. and Appendix 1).

Please note that there may be a case of a Non-Traditional Work involving investment by the University of Extraordinary Resources that also falls into one or more other categories of exceptions in this Copyright Policy, such as a Work Covered by Other Agreement, or a Work covered by the Northwestern University Patent and Invention Policy. The terms of this Copyright Policy shall be applicable to such a Work except to the extent it is in conflict with such Other Agreement or the Patent and Invention Policy, in which case the applicable provisions of the Other Agreement or Patent and Invention Policy, as the case may be, shall apply and take precedence over this Policy.

A.2.d. Patent Policy Exemption

If a copyrightable work is created by a member of the Northwestern University Academic Community during the course of making a discovery or invention that falls within the scope of the Northwestern University Patent and Invention Policy

and that work is integral to, or embodies a patentable invention, then the copyrightable work shall be treated as part of the invention and shall be covered by the Northwestern University Patent and Invention Policy. The foregoing exemption does not apply to written articles, publications or presentations describing patentable inventions covered by the Northwestern University Patent and Invention Policy; these copyrightable works are deemed to be Traditional Works and the copyright thereto is owned by the Creator pursuant to the provisions of this Copyright Policy. Nonetheless, the Creator must make such Traditional Works available to Northwestern University on a royalty-free basis when such materials are needed in connection with the University's efforts to patent or license a discovery or invention.

B. DEFINITION OF TERMS

B.1. Northwestern University Academic Community

The Northwestern University Academic Community consists of all members of the University faculty (including instructors, lecturers, as well as tenured, tenure-track, visiting, adjunct, research, clinical, and contributed service faculty), as well as all the University's postdoctoral fellows, graduate students, and undergraduate students. It also includes administrative personnel when they act in the capacity of faculty or students.

B.2. Work For Hire

For purposes of this Copyright Policy only, Works For Hire are (i) either those works created by members of the Northwestern University Academic Community or by non-faculty staff in the performance of an administrative duty for the University; or (ii) those works created by a member of the Northwestern Academic Community employed by the University on a Work For Hire (as defined in this Section B.2.) basis by explicit, mutual, prior agreement, as indicated by a signed and dated Work for Hire agreement in which the parties express their agreement that the University own the copyright to such works created. The University shall own the copyright to such Works for Hire and all revenues derived therefrom. Although works created by members of the Northwestern Academic Community in the course of research, teaching, or artistic labor might in certain circumstances constitute Works Made for Hire under the U.S. Copyright Act, they are not Works For Hire for purposes of this Copyright Policy.

B.3. Work Covered By Other Agreements

In some cases copyright ownership and/or disposition of licensing revenue from copyrighted works may be determined by the terms of another agreement, such as an externally funded grant or sponsored research or professional services contract, or in the exceptional case of a Creator signing over his or her copyright to the University by an explicit, mutual, and prior agreement, and which has been signed and dated by the both the Creator and University.

B.4. Traditional Works

Traditional Works include published articles, books (fiction or non-fiction), artworks, music, instructional materials, and other creative products, regardless of their method of distribution (e.g., whether they are distributed in traditional print form or in digital or electronic form). Instructional materials created by members of the Northwestern Academic Community—defined as those resources created specifically for the purposes of instruction, including syllabi, lectures and lecture notes, and presentations—are considered Traditional Works and the copyright is owned by their Creator pursuant to the provisions of this Policy. Copyright ownership and creative control of those Traditional Works have been the sole property of their creators by academic custom. Under this Policy, they will continue to be so held, and their creators will continue to derive any and all licensing revenues from those works and be responsible for liabilities arising from such works as they have in the past.

B.5. Non-Traditional Works (i.e. Computer Software)

Computer Software, for the purposes of this policy, is defined as the source code and/or object code of computer applications and subroutine libraries, together with the documentation of their operation. All other works in the form of computer software fall under the category of Traditional Works and are expressly excluded from this policy, including computer-generated works of art or music or the content of a Traditional Work that is recorded in a software medium.

B.6. Extraordinary Resources

It is in the best tradition of Northwestern University to support the research and pedagogy of its faculty and students in a variety of manners: with salaries, academic leaves and topped-up leaves, with center-based fellowships, with course development monies and classroom software, with access to scholarly and artistic resources (libraries, media labs, theater infrastructure, and other facilities), with various graduate fellowships (dissertation year fellowships and Presidential fellowships), with various undergraduate fellowships (undergraduate research grants), and with ordinary assistance with computer hardware, software, and networking. None of these (or anything analogous) should be considered the allocation of Extraordinary Resources for purposes of this Copyright Policy. In most cases, start-up funds allocated to new members of the faculty are ordinary resources; nonetheless, the University reserves the right in special cases to designate some or all of a start-up package as “extraordinary resources” and to require recipients to complete a Standard Copyright Agreement.

Extraordinary Resources should be considered the allocation of a “substantial” amount of money—or the equivalent value in the assignment of University staff—which has been specifically directed to foster the development of a particular scholarly, artistic, or commercial project. In this context, “substantial” is defined as: An allocation to a Creator in any twelve-month period equal to or greater than one-third (33 percent) of the most recently available average salary for Northwestern University faculty (assistant

professor and above) as reported to the AAUP and published annually in the March/April issue of *ACADEME*.²

Cost-share contributions to grants that are paid out of University funds and reductions in Facilities and Administration charges on sponsored projects below the ordinary amount for the unit, the category of sponsor, and the category of work will be considered Extraordinary Resources if, when combined with other extraordinary resources they exceed the threshold for a “substantial” amount of money as specified in this policy. For purposes of this Copyright Policy only, government or private sponsored research monies shall not constitute a University investment of Extraordinary Resources. In contrast, government or private sponsored research monies do constitute University resources under the Northwestern University Patent and Invention Policy.

C. STANDARD COPYRIGHT AGREEMENT

C.1 The Standard Copyright Agreement (attached as Appendix 1, which is herein incorporated as part of this policy) is used in cases of Work Covered By Other Agreements and in cases of Non-Traditional Works which involve the investment of Extraordinary Resources by the University. In the latter cases, the Agreement must be signed in advance of the allocation of Extraordinary Resources by the member of the Northwestern Academic Community who is accepting the Extraordinary Resources on behalf of the Creator(s) of the anticipated work and by the person with authority for allocating the resources, e.g., the Vice President for Research, the Director of Information Technology, or the relevant dean or department chair. Any person with authority for allocating such extraordinary resources must a) inform the Vice President for Research before resources are allocated that a Standard Copyright Agreement will be signed or b) seek from the Vice President for Research approval to waive in a particular case the requirement for such an agreement. Should a project that initially receives only ordinary funding or staff support at some point be allocated Extraordinary Resources, a Standard Copyright Agreement must be executed prior to the allocation of additional funds making the University investment exceed the Extraordinary Resources threshold. In the absence of a signed and dated Copyright Agreement, the Creator(s) of the work will own the copyright to the creative work with rights to any and all revenues derived from all the products of that work.

C.2. It is to be expected that all the provisions in the “Standard Copyright Agreement” (found in Appendix 1) are the norm. In certain rare cases, however, it may be permissible to modify provisions in the Standard Copyright Agreement to take into account conditions particular to the case in hand. For instance, in situations where the University makes an allocation of Extraordinary Resources to a project already underway, the terms of the revenue sharing in provision 6.F of the Standard Copyright Agreement. might be altered. In all such cases, however, any modifications must be agreed to in advance by the Creator(s) and the Vice President for Research, and included as an amendment to the Standard Copyright Agreement.

² The figure reported by Northwestern for publication in 2005 was \$112,000.

D. GOVERNANCE

D.1. Administration

The administration of this Copyright Policy will be the responsibility of Office of the Vice President for Research.

There will be a standing Faculty Copyright Committee (“The Committee”) to consider revisions to this Policy and to review disputes. The Committee will be composed of five members: two non-administrative faculty members appointed by the University administration and three appointed by the General Faculty Committee. The Committee shall meet at least once a year.

D.2. Policy Revisions

Policy changes must be approved by the Faculty Copyright Committee, and then released to the university community for 90-day period of comment before the Committee makes a final recommendation to the administration for action by the Board of Trustees.

D.3. Dispute Resolution

If Creator(s) ask the Vice President for Research for a review of decisions relating to the Copyright Policy, the Vice President will inform the Faculty Copyright Committee. Members of the Faculty Copyright Committee will meet with the Creator(s), vote on the Committee’s recommendations, and report the Committee’s findings to the Vice President for Research and the Creator(s) in a timely manner. The Vice President for Research will then make a recommendation to the Provost for final action. If any of the parties to the dispute are still dissatisfied, they may appeal to the Steering Committee on Technology Transfer and Copyright, chaired by the President; if (s)he serves as a member of that Committee, the Provost will recuse him/herself from that discussion. The Faculty Copyright Committee will meet within sixty days of a faculty member’s request for review. The Steering Committee on Technology Transfer and Copyright will meet within six months of the receipt of an appeal. In both cases, the period between the University Commencement Exercises and the beginning of fall classes on the Evanston campus and official University holidays (e.g., winter and spring vacations) will not be counted as the time period within which such appeals must be heard.

At least once a year, the Faculty Copyright Committee shall issue a report to the university community concerning the disputes it has heard since the previous report. This report should list the number of disputes, their nature, the recommendations of the Committee, and the final disposition of the dispute. This report should be written in a way that protects the privacy of the individuals involved.

APPENDIX 1

NORTHWESTERN UNIVERSITY STANDARD COPYRIGHT AGREEMENT

1. The following is an agreement between [insert name(s)] (the “Creator(s)”) and Northwestern University (the “University”).
2. The Creator(s) acknowledge the prospective allocation by the University of Extraordinary Resources toward a Computer Software project that may result in Works that are subject to copyright protection. (For a definition of the terms in capital letters, see the Northwestern University Copyright Policy.)
3. These activities (“Activities”) consist of: [Insert brief description].
4. Any copyrightable Non-Traditional products (“Works”) of these Activities are subject to this agreement.
5. Anyone who makes a significant creative or scholarly contribution to the Works (except for work done by Work-for-Hire (as defined in the Northwestern University Copyright Policy) staff or by faculty or students under a signed and dated Work-for-Hire agreement) shall be considered a potential Creator of that Work, and the assignment of their relative contribution shall be made by a separate agreement signed by the co-creators at the time of disclosure of the Work.
6. The Creator(s) and the University agree to the following:
 - (a) Unless expressly stated otherwise in an agreement or a policy applicable to facts falling into one of the exception categories enumerated in Section A.2. of the Northwestern University Copyright Policy, the copyright to the Works belongs to the Creator(s).
 - (b) The Creator(s) are required to disclose to the University any Works that are created as a result of the Activities. The disclosure will list the Creator(s) and describe possible opportunities for distribution or licensing (commercial or noncommercial) of the Works.
 - (c) Content and editorial control over the Works rests solely with the Creator(s).
 - (d) As copyright owner, the Creator(s) have the right to use, copy, modify, display, perform, create derivative works, and distribute the copyrightable work and the right to permit others to do so.
 - (e) The right to choose distribution channels and licensing schemes (including free or open distribution) is to be decided by joint agreement between the University and the Creator(s), with the creator(s) generally taking the lead in securing such agreements. Before entering into any formal agreement with a third party, the Creator(s) must submit

the agreement for review by the Office of the Vice President for Research. Unless the Vice President for Research notifies the Creator(s) within 30 working days of his receipt of the proposed agreement that the proposed agreement is unacceptable, the Creator(s) will be free to enter in to that agreement. In the case of disagreement between the University and the Creator(s), the matter will be submitted to the governance procedure of the Northwestern University Policy on Copyright. Before engaging in free or open distribution of works falling within the purview of the Standard Copyright Agreement, the Creator(s) must submit an application to the Open Distribution Review Committee (ODRC), which group will consist of five persons, including three designated by the General Faculty Committee and two by the Vice President for Research. Unless the ODRC notifies the Creator(s) within thirty working days, not including the period between June 15 and September 15, that the application has been denied, the Creator(s) may distribute the work as proposed. Denial of an application to ODRC may be appealed according to the Dispute Resolution process described in D.3 of the Copyright Policy..

(f) Revenue from licensing of the Works will be distributed in the following manner (as a percentage of gross revenues):

- 45% to the Creator(s) as personal income
- 15% to a discretionary research account held for Creator(s)
- 25% to the University
- 10% to Creator(s)'s department(s)
- 5% to the Creator(s)'s school(s)

The Creator(s) agree to ensure that licensing revenue other than the 45 percent earmarked for the Creator(s) as "personal income" is directed to the University, and the University may demand an accounting of licensing revenue received by the Creator(s) related to works subject to a Standard Copyright Agreement.

(h) If any of the Creator(s) leaves the University, he or she retains copyright ownership under provision 6.a., editorial control under provision 6.c., and the right to create derivative works and/or designate others to create derivative works under provision 6.d. Any Creator who leaves the University is also still subject to the disclosure requirements of provision 6.b. The University and all Creator(s) will continue to share revenue according to the terms of provision 6.f. even after a Creator has left the University. If all creators leave the University, then the portion formerly distributed to the discretionary research account will now accrue to the University. If, however, the University fails to renew the Creator's faculty appointment, then, in addition to his or her share of the 45 percent that is to be distributed to the Creator as personal income, the departing Creator will also receive his or her share of the 15 percent that would go into the discretionary research account as direct personal income.

7. The distribution of revenues among multiple Creators is to be determined by a separate agreement among the Creators at the time of their disclosure of any potential Works. The resolution of disputes among Creators regarding distribution over revenues and decisions

covered by this agreement is to be conducted through the dispute resolution process specified by the Northwestern University Policy on Copyright.

8. Any modifications to the terms of the agreement must be explicitly stated in an attached Amendment to this Standard Copyright Agreement, which is to be duly signed and dated by both the Creator(s) and the University at the time of the signing of the Standard Copyright Agreement.
9. For this agreement to be valid, it must be signed and dated by both the Creator(s) and the relevant officer of the University in advance of the allocation of the “extraordinary resources.” This agreement applies only to the copyrightable works created during the course of the Activities described in provision 3. above. All other copyrightable works created by a Creator in connection with their employment or enrollment at Northwestern University are subject to the Northwestern University Copyright Policy, and if applicable, may also be subject to the Northwestern University Patent and Invention Policy.

CREATOR(S):

NORTHWESTERN UNIVERSITY:

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Print Name: _____

Title: _____

Date: _____

APPENDIX 2

LANGUAGE WHICH MUST BE INCLUDED WITH FREE AND OPEN DISTRIBUTION
OF SOFTWARE PRODUCED UNDER CIRCUMSTANCES SET FORTH IN THE
NORTHWESTERN UNIVERSITY COPYRIGHT POLICY AT
A.2.a. (WORK COVERED BY OTHER AGREEMENTS)

*Permission is hereby granted for non-profit educational and research use of {name of work} ©
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forbidden without prior written permission of {name of creator}.*