

Memorandum

To: Faculty Senate

From: Dr. Larry A Robinson
Provost and Executive Vice President



Date: April 12, 2016

Re: Copyright Ownership Policy

The Office of the Provost is in receipt of your communication that the Copyright Ownership Policy was passed by voice vote at the Faculty Senate meeting of March 11th.

We accept this policy, which arose from collaborative efforts to clarify important ownership issues regarding online course development, and we appreciate the time and the commitment of all who played a role in achieving this result.

Copyright Ownership Policy

Introduction

A great university's most valuable asset is the human and intellectual capital of its faculty, students and staff. Seton Hall University (the "University") seeks to encourage and support the scholarly, pedagogical, and service activities of its faculty, its students, and its staff, consistent with the University's Catholic educational mission. The purpose of this Copyright Ownership Policy (the "Policy") is to encourage and reward creativity and innovation within the University community.

1. **Scope of Policy.** This Policy applies to all faculty members, students, and staff members of the University on all campuses. This Policy is supplemental to the Copyright Policy of the University, <https://www.shu.edu/offices/policies-procedures/copyright.cfm>, which addresses the use of copyrighted material, and this Policy is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in copyrighted works created in connection with external funding.

2. **Definitions.**
 - (a) **Academic Work Product.** "Academic Work Product" means any scholarship or academic research produced by a faculty member, student, or staff member, including, but not limited to books, articles, papers, monographs, websites, blogs, and similar scholarly material. It also includes architectural drawings, musical compositions, films, works of art, works of fiction, or other creative or artistic works.

 - (b) **Teaching Work Product.** "Teaching Work Product" means work produced by a faculty member related to the preparation, design, and content of a course, including, but not limited to course syllabi, course notes, presentation materials, examples, case studies, simulations and class exercises, videos, test questions, assignments, and similar pedagogical material.

 - (c) **Administrative Work Product.** "Administrative Work Product" includes non-academic work such as committee reports, annual reports, promotional publications, official letters, and university communications.

 - (d) **Substantial University Resources.** "Substantial University Resources" means University funds, facilities, equipment, or other resources not ordinarily used by all or most faculty members, such as audio production, video production, webcasting, or teleconferencing facilities, including, but not limited to the resources and services of the Teaching, Learning and Technology Center.

“Substantial University Resources” does not include normal office space, salary, library resources, or laptop/desktop computers ordinarily assigned to faculty members.

- (e) **University Facility.** “University Facility” means any building owned, leased, or otherwise licensed by the University, and it includes any space used by the University for the instruction of students of the University.

3. **Ownership of Academic Work Product.**

- (a) Consistent with academic tradition, a faculty member, student, or staff member who is the creator of any Academic Work Product is the author of any such work and retains all copyright in any such work, subject to the provisions in paragraphs 3(b) & (c), below. To the extent any such works may be deemed a work for hire under the law, the University shall execute any assignment of rights as shall be necessary to vest ownership of all such works in the faculty member, student, or staff member.
- (b) The University owns the Academic Work Product of any faculty member, student, or staff member when the work was created at the University’s direction, unless the University enters into a written agreement that provides otherwise. The University owns Academic Work Product created by staff members within the scope of their employment and by faculty members who hold administrative appointments when the Academic Work Product was created in the scope of his or her administrative appointment. The University also owns Academic Work Product created by students employed by the University when the Academic Work Product is created within the scope of their employment. Nothing in this paragraph shall be understood to impinge upon faculty members’ and students’ rights and obligations to choose and pursue areas of study and to share the results of those studies with the public, colleagues, and students.
- (c) Academic Work Product that is created as a result of external funding is owned by the University (or another entity) when the terms of the funding require that the copyright be in the name of the University (or other entity).
- (d) The University reserves the right to use Academic Work Product of faculty members, staff, and students for administrative and academic purposes, consistent with its fair use rights under 17 U.S.C. § 107.

4. Ownership of Teaching Work Product.

- (a) A faculty member is the author of and owns the copyright in any Teaching Work Product that the faculty member develops, so long as the creation of the Teaching Work Product does not involve the use of Substantial University Resources. To the extent any such work may be deemed a work for hire under the law, the University shall execute any assignment of rights as shall be necessary to vest ownership of any such work in the faculty member.
- (b) When a faculty member creates Teaching Work Product that is developed as part of the faculty members' contractual course load and involves the use of Substantial University Resources, the faculty member (i) is the author of and owns the copyright in the underlying creative content of the Teaching Work Product, such as the content of lectures and scripts, tests, quizzes, and assignments and (ii) grants the University a perpetual, worldwide, non-exclusive license to exploit all the rights of copyright in the work, including the rights for the use, reproduction and creation of derivative works of such creative content, subject to the provisions of paragraphs 4(c)-(e), below. Tangible works developed as part of such Teaching Work Product, such as a website, audio productions or video productions, are owned by the University and may be used by the faculty member so long as the faculty member is employed by the University. Any use of such tangible works outside the University by the faculty member, however, requires specific written approval of the Provost of the University, or his designee.
- (c) When a faculty member develops Teaching Work Product as set forth in the preceding paragraph (4(b)), the faculty member shall receive reasonable compensation for his or her effort that extends beyond what would be required in the ordinary course of teaching a course under paragraph 4(a). The amount of such compensation shall be approved, in writing, by both the Dean of the college or school offering the course and by the Provost of the University, or his designee, but in no event shall be less than the minimum per credit value set forth in Appendix A to this policy. No agreement to pay such compensation shall be binding upon the University without these written approvals.
- (d) When a faculty member substantially revises or updates an online course, the faculty member shall receive reasonable compensation. The amount of such compensation shall be approved, in writing, by both the Dean of the college or school offering the course and by the Provost of the University, or his designee, but in no event shall be less than the minimum per credit value set forth in Appendix A to this policy. No agreement to pay such compensation shall be binding upon the University without these written approvals.

- (e) To the extent that the exercise of the University's rights under paragraph 4(b) is in a course within the faculty member's contractual teaching load, no further remuneration beyond that provided for in paragraph 4(c) shall be due to the faculty member for the exercise of any such rights.
- (f) When an faculty member creates Teaching Work Product that is developed outside the faculty members' contractual course load and teaches it in off-campus, off-site, distance, on-line or Internet-based classes or programs, the faculty member will receive the customary compensation due for the faculty member teaching a course in excess of his or her contractual teaching load, in addition to any compensation provided for under paragraph 4(g).
- (g) When a faculty member creates Teaching Work Product that is developed outside the faculty members' contractual course load and involves the use of Substantial University Resources, the faculty member and the University shall reach a separate agreement with respect to such Teaching Work Product that shall govern copyright ownership and transfer and any other related issues. Such agreement shall provide that the faculty member shall receive reasonable compensation for the creation of such work, but in no event shall be less than the minimum per credit value set forth in Appendix A to this policy. The amount of such compensation shall be approved, in writing, by both the Dean of the college or school offering the course and by the Provost of the University, or his designee. No agreement to pay such compensation shall be binding upon the University without these written approvals.
- (h) In the event the exercise of the University's rights under paragraph 4(b) involves the distribution, display, transmission, performance or other availability of the Teaching Work Product without the involvement of the faculty member, and such distribution, display, transmission, performance or other availability of the Teaching Work Product is to an extraordinary number of students, or is otherwise an extraordinary deviation from what the faculty member and University would have expected at the time of the creation of the work product, the faculty member shall be entitled to petition the Intellectual Property Committee for reasonable additional compensation for such further distribution, display, transmission, performance, or other availability of the Teaching Work Product. The payment of such additional compensation shall also require the approval of the Provost of the University, or his designee. For the purposes of this paragraph, there shall be a rebuttable presumption that the distribution, display, transmission, performance or other availability of Teaching Work Product to more than 150 students in an academic year represents an "extraordinary number."

- (i) The University reserves the right to use Teaching Work Product for administrative and academic purposes, consistent with its fair use rights under 17 U.S.C. § 107.
 - (j) Nothing in this Policy addresses what compensation the University owes to a faculty member who creates Teaching Work Product as part of a course that is not a part of the faculty members' contractual course load and that does not involve Substantial University Resources.
- 5. **Course Titles, Catalog Listings, Basic Topics, and Departmental Courses.** Nothing in paragraph 4 above shall be read to suggest that any faculty member holds any copyrights or other intellectual property rights in the title, catalog listing, or list of basic topics required to be covered in a standard course. Such materials are considered the "idea" of the course, or, to the extent they may comprise copyrightable expression, are considered Administrative Work Product pursuant to paragraph 6 below. Faculty members do not have any copyrights or other intellectual property rights in course-related work product developed by a committee pursuant to departmental requirements, unless work is specially commissioned for a project as defined in paragraph 7 below.
- 6. **Ownership of Administrative Work Product.** Administrative Work Product produced by a faculty member, student (in the course of employment), or staff member is considered work for hire and any copyright thereto vests in the University.
- 7. **Specially Commissioned Works.** The University may, from time-to-time, specially commission architectural drawings, musical compositions, films, works of art, works of fiction, or other creative or artistic works, beyond the faculty member's ordinary teaching and scholarly requirements. The faculty member and the university shall reach a separate agreement with respect to such specially commissioned works that shall govern copyright ownership and transfer and any other related issues. Such agreement shall at least: (1) provide that the faculty member shall receive reasonable compensation for the creation of such work; and (2) specify the royalty, if any, the faculty member may receive for continued exploitation of the work. No agreement under this paragraph shall be binding upon the University unless the separate agreement has been signed and approved by the Provost or his designee.
- 8. **Dramatic or Musical Performances or Other Cultural Exhibitions.** If a performance or exhibition of a work authored by a faculty member is held in a University Facility, or mounted or produced using University funds, any royalties or fees generated by the work shall be retained by the University, unless otherwise negotiated. If the performance or exhibition is held in a non-University Facility, royalties or fees shall be retained by the faculty member pursuant to any agreement between the faculty member and the non-University Facility.

- 9. Reproductions of Lectures and Performances.** Lectures and performances by faculty members for “in-person” classes that are video or audio recorded, or otherwise memorialized in analog, digital, or any other form of media yet to be developed, by the University or its agents, shall not be used in online, distance learning, or other educational formats, without the written permission of the faculty member. Nothing in this Copyright Ownership Policy, however, shall prohibit the University or its agents from providing video or audio recordings of lectures or performance or memorializations in other media of the faculty member’s lecture or performance to students enrolled in the “in-person” class as part of that “in-person” class. In addition, a faculty member is prohibited from distributing outside the University any form of recording of lectures or performances that are given by the faculty member as part of the faculty member’s departmental duties, except as set forth in paragraph 4(b). The right of the faculty member to distribute recording or lectures or performances created as part of work created pursuant to paragraphs 4(f) or 7 shall be set forth in the separate agreement, but in the absence of explicit permission in the separate agreement, the faculty member shall have no such right.
- 10. Intellectual Property Committee.** There shall be a standing Intellectual Property Committee comprised of representatives from the faculty, selected by the Provost in consultation with the chair of the Faculty Senate, and the Provost’s office. At least half of the Intellectual Property Committee will be faculty members. The Intellectual Property Committee shall be responsible for advising the Provost about (i) the application, interpretation, and administration of this Policy; (ii) the modification of this Policy; and (iii) the resolution of disputes arising under this Policy. In addition, the Intellectual Property Committee shall advise the Provost on revisions to the minimum payment amounts set forth in Appendix A
- 11. Shared Governance Regarding Curriculum.** Policies related to intellectual property are distinct from the policies and procedures for approval and review of new and existing programs inherent in shared governance and specified in the Faculty Guide. Nothing in this Policy shall be read to modify or otherwise change those requirements.

Responsible Offices

Office of the Provost
Deans’ Offices

Related Policies

Copyright Policy of the University, <https://www.shu.edu/offices/policies-procedures/copyright.cfm> (addressing use of copyrighted material)

Approved

By President Esteban, on the recommendation of the Executive Cabinet, on ----

Effective Date

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Appendix A

The minimum per credit values are as follows:

For creation of Teaching Work Product using Substantial University Resources as part of a faculty member's contractual teaching course load (paragraph 4(b) & (c)), \$1000 per credit

For a substantial revision or update of Teaching Work Product using Substantial University Resources (paragraph 4(d)), \$1000 per credit

For creation of Teaching Work Product using Substantial University Resources outside of a faculty member's contractual teaching course load (paragraph 4(g)), \$1000 per credit