Title: Copyright Use and Ownership

Purpose: In pursuit of its mission and consistent with applicable laws and policy, UNC Asheville encourages faculty, staff, and students to make appropriate use of intellectual property and to share the results of their work. The following establishes policy to govern the use and ownership of intellectual property in order to achieve those ends in accordance with provisions of the *Copyright Use and Ownership Policy of the University of North Carolina* (UNC) and applicable intellectual property laws of the United States.

Scope: This policy applies to UNC Asheville faculty, staff, and students as well as to external contractors and organizations providing research or program support.

Policy: **1. Administrative Responsibility**

1.1 The Provost is responsible for implementing this policy. Duties include but may not be limited to:

1.1.1 Implementing the UNC Copyright Policy to include developing, with the assistance of the proposed UNCA Intellectual Property Committee, policies and procedures designed to supplement and interpret the ownership aspects of the policy.

1.1.2 Providing advice regarding ownership of specific works.

1.1.3 Releasing institutional rights.

1.1.4 Accepting an assignment of rights to UNCA from an author or creator of a work.

1.1.5 Contracting for the terms of transfer, shared ownership, and/or commercialization of copyrighted works at UNCA.

1.1.6 Determining the applicability of the "work for hire" doctrine and the suitability of waiving that doctrine in individual cases.

1.2 Day-to-day operational responsibility is delegated to the University Librarian.

2 Creation and Duties of the University Intellectual Property Committee

2.1 Composition

2.1.1 The Faculty Welfare and Development Committee recommends to the Provost faculty appointments to the committee for staggered three-year terms. The Committee shall be constituted as follows:

- UNCA faculty:
  - Humanities (1)
  - Sciences (1)
  - Social Sciences (1)

- *Ex officio*:
  - An Associate Vice Chancellor of Academic Affairs designated by the Provost
  - Chief Research Officer
  - Director, Information Technology Services
  - Director, Special Academic Programs
  - Director, University Printing
  - Director, University Publications
  - University's General Counsel (non-voting)
  - University Librarian

2.1.2 *Ex officio* and appointed positions, with the exception of the University's General Counsel, shall each have one vote on the overall Committee.

2.2 Duties

2.2.1 The Intellectual Property Committee (IPC) shall have such responsibilities as the Provost may specify concerning copyrights and patents, including but not limited to the following duties:

2.2.1.1 Propose to the appropriate advisory and governing bodies revisions to UNCA's policies on the use of copyrighted materials (e.g., classroom distribution of photocopies, web site content, online service provider exemptions under the Digital Millennium Copyright Act) and the ownership of intellectual property.

2.2.1.2 Recommend to the Provost a continuing program to educate UNCA faculty, staff, and students about the use of intellectual property.

2.2.1.3 When new guidelines become available from the UNC system, propose to the appropriate advisory and governing bodies revisions to UNCA's policies on the use of copyrighted materials and the ownership of intellectual property to ensure UNCA compliance with system parameters.

2.2.1.4 Monitor developments in intellectual property law as it relates to changes in instructional and communications technology in order to propose to the appropriate advisory and governing bodies revisions to UNCA's policies on the use of copyrighted materials and the ownership of intellectual property.

2.2.1.5 Carry out duties currently ascribed to the UNCA Patent Committee in section 9.4, 6(b) of the UNCA *Faculty Handbook*.

2.2.1.6 Provide advice to UNCA personnel concerning interpretation of UNCA intellectual property policies and procedures.

2.2.1.7 Under procedures specified below, hearing and recommending to the Provost resolution of disputes involving copyright ownership and questions of fair use.

3 Use of Copyrighted Works by Faculty, Staff and Students

3.1 Appropriate Use of Copyrighted Works

3.1.1 UNCA is committed to complying with all applicable laws regarding copyrights. As an institution devoted to the creation, discovery and dissemination of knowledge, UNCA supports the responsible, good faith exercise of full fair use rights, as codified in federal law at *17 U.S.C. § 107*, by faculty, librarians, staff and students in teaching, research, and service activities.

3.1.2 Except as allowed by law, it is a violation of this Policy and law for UNCA faculty, staff or students to reproduce, distribute, display publicly, perform, digitally transmit (in the case of sound recordings), or prepare derivative works based upon a copyrighted work without permission of the copyright owner.

3.2 Fair Use ; Permissible Use

3.2.1 Under United States Copyright law, the "fair use doctrine" allows certain specified uses under certain situations of a copyrighted work without requiring prior permission of the copyright holder. As stated in the *Copyright Use and Ownership Policy of the University of North Carolina,* UNCA supports "the responsible, good faith exercise of full fair use rights, as codified in *17 U.S.C. § 107*, by faculty, librarians, and staff in furtherance of their teaching, research and service activities."

3.2.2 Elements of Fair Use; Good Faith Consideration Required

3.2.2.1 UNCA faculty or staff who propose to make fair use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a fair use analysis. These factors are:

3.2.2.1.1 The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
3.2.2.1.2 The nature of the copyrighted work;
3.2.2.1.3 The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
3.2.2.1.4 The effect of the use upon the potential market for or value of the copyrighted work.

3.2.3 Procedure for Making Fair Use Determinations

3.2.3.1 The Intellectual Property Committee shall issue and as necessary revise guidelines to assist UNCA faculty, staff and students in making fair use evaluations. Faculty, staff or students who require assistance with fair use questions are encouraged to consult the University Librarian.

3.2.4 Infringement

3.2.4.1 Determination of whether a specific use of a copyrighted work may constitute infringement shall be made by the University Librarian in consultation with the University's General Counsel. Appeals shall be processed in accordance with Section 6 of this Policy.

4 Copyright Ownership

4.1 Ownership of copyright in copyrighted works shall depend on the category of the work in question and on the status of its creator. Categories of work defined under this Policy include:

- Traditional Works or Non-Directed Works;
- Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources;
- Directed Works;
- Sponsored or Externally Contracted Works;
- Works Made for Hire;
- Works by Independent Contractors; and
- Student Works.

4.2 Works Created by Faculty or EPA (exempt from State Personnel Act) Non-Faculty Employees

4.2.1 Traditional Works or Non-Directed Works

4.2.1.1 **Definition** -- Traditional Works or Non-Directed Works are pedagogical, scholarly, literary, or aesthetic works resulting from non-directed effort.

4.2.1.2 Ownership

4.2.1.2.1 The creator of such a work shall own the work unless it involved the use of "exceptional" resources in its creation (see 6.3) or is a Directed Work, a Sponsored or Externally Contracted Work requiring UNCA ownership of copyright, or a Work for Hire (defined below). As a condition of employment, faculty and EPA non-faculty creators of a Traditional or Non-Directed Work created in the course and scope of their employment at UNCA shall be deemed to have granted UNCA a non-exclusive, non-transferable, royalty-free license to use the work for University's UNCA's own educational or research use unless such a license will impede scholarly publication or similar activities.

4.2.1.2.2 Traditional Works or Non-Directed Works for which authorship cannot be attributed to one or a discrete number of authors but instead result from simultaneous/sequential contributions over time by multiple authors shall be owned by UNCA.

4.2.1.3 Commercialization ; Assignment to University

4.2.1.3.1 UNCA does not have the financial resources, staff, or expertise to assist in the commercialization of traditional copyrighted works. UNCA encourages faculty, staff, and student creativity as well as commercialization of the results.

4.3 Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources

4.3.1 **Definition --** Exceptional use of University resources has occurred where UNCA has provided support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EPA non-faculty employees. Exceptional use of University resources may include:

- Waiver of fees normally required to use specialized facilities such as equipment, production facilities, service laboratories, specialized computing resources, and studios;
- Institutional funding or gifts in support of the work's creation; and
- Reduction in levels of teaching, service or other typical university activities (e.g., course load, student advising responsibilities, division/department meetings, office hours, administrative responsibilities) specifically to facilitate creation of the work.
- And other related sources.

4.3.2 Ordinary or limited use of computers, laboratory space, libraries, office space or equipment, routine secretarial services at routine levels, telephones and other informational resources shall not be considered exceptional use of UNCA resources.

4.3.3 Ownership

4.3.3.1 UNCA shall own traditional works or non-directed works involving exceptional use of UNCA resources. Whether an individual work has been created through exceptional use of UNCA resources shall be determined initially by the chair or director of the department in which the creator has principally been involved or from which he or she has received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty or staff in that department. The chair's recommendation shall be transmitted in writing for review and approval by the Provost in a form to be specified by the Provost with a copy to the author. The Provost will communicate his or her decision to the department chair and author. Disputes shall be handled in accordance with Section 6 of this policy.

4.3.4 Release to Creator

4.3.4.1 Having considered the recommendation of the department chair as outlined above, the Provost may release or transfer UNCA's rights in a Traditional Work or Non-Directed Work created through exceptional use of UNCA resources to the work's creator through an appropriate written agreement.

4.3.4.1.1 Release Agreement

4.3.4.1.1.1 Any agreement for release to a creator of a Traditional Work or Non-Directed Work created through exceptional use of university resources shall include provisions that:

4.3.4.1.1.1.1 UNCA shall have a non-exclusive, non-transferable, royalty-free license to use the work for UNCA's own educational or research use; and

4.3.4.1.1.1.2 If commercialization of the work generates income, either (a) the creator shall reimburse UNCA for the exceptional resources provided the creator, or (b) the creator shall share income from such commercialization with UNCA, in an amount to be negotiated between the creator and the Provost. Unless otherwise directed by the Provost, proceeds from commercialization of the work shall be allocated to the creator's department.

4.3.4.1.1.2 Selection of Release Options ; Appeal

4.3.4.1.1.2.1 The Provost, on consultation with the creator's chair, shall determine which of the options available under item 4.3.4.1.1.1.2 will be selected in conjunction with the release of such a work to its creator. Disputes regarding whether a work has been created through use of exceptional UNCA resources shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified in Section 6. However, decisions regarding financial terms made under item 4.3.4.1.1.1.2 shall not be subject to appeal under Section 6 of this Policy, "Dispute Resolution." In the event that the creator and UNCA are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with UNCA.

4.3.5 Directed Works

4.3.5.1 **Definition** -- Directed Works are works that are specifically funded or created at the direction of UNCA. Such funding need not constitute exceptional use of UNCA resources in order for the work to be considered a Directed Work.

4.3.5.2 Ownership

4.3.5.2.1 UNCA shall own copyright in Directed Works. Where practicable in the estimation of the creator's chair or supervisor, and subject to any additional terms or limitations made necessary by UNCA licensing agreements, the creator shall be granted a non-exclusive, non-transferable, royalty-free license to the work for the creator's own educational or research use.

4.3.5.3 Release

4.3.5.3.1 UNCA may release or transfer ownership in a Directed Work to the creator.

4.3.5.4 Release Agreement -- Any agreement for release to a creator of a Directed Work shall include provisions that:

4.3.5.4.1 UNCA shall have a non-exclusive, non-transferable, royalty-free license to use the work for UNCA's own educational or research use; and

4.3.5.4.2 If commercialization of the work generates income, either (a) the creator shall reimburse UNCA for the resources provided the creator in conjunction with creation of the work, or (b) the creator shall share income from such commercialization with UNCA, in an amount to be negotiated between the creator and the Provost. Unless otherwise directed by the Provost, proceeds from commercialization of the work shall be allocated to the creator's department.

4.3.5.5 Selection of Release Options ; Appeal

4.3.5.5.1 The Provost, on consultation with the creator's chair, shall determine which of the options available under paragraph 4.3.5.4.2 will be selected in conjunction with the release of such a work to its creator. Disputes regarding whether a work is a Directed Work shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified below. However, decisions regarding financial terms made under paragraph 4.3.5.4.2 shall not be subject to appeal under Section 6 of this Policy, "Dispute Resolution." In the event that the creator and UNCA are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with UNCA.

4.3.6 Joint Ownership

4.3.6.1 In addition to the foregoing provisions for release to the creator of a Directed Work, UNCA, through the Provost in consultation with the creator's chair, and the creator may alternatively negotiate for joint ownership of the work.

4.4 Sponsored or Externally Contracted Works

4.4.1 **Definition --** A Sponsored or Externally Contracted Work shall be any copyrighted work developed using funds supplied under a contract, grant, or other arrangement between UNCA and a third party, including a sponsored research agreement.

4.4.2 Ownership

4.4.2.1 The creator of a Sponsored or Externally Contracted Work shall own the work unless the agreement expressly requires copyright ownership by UNCA or conveyance of rights to a third party. As a condition of employment, faculty and EPA non-faculty creator-owners of a Sponsored or Externally Contracted work shall be deemed to have granted UNCA a non-exclusive, non-transferable, royalty-free license to use the work for UNCA's own educational or research use.

4.4.2.2 UNCA will own a Sponsored or Externally Contracted Work where the relevant agreement requires copyright ownership by UNCA or conveyance of rights to a third party, in which case UNCA will convey rights to the third party as required. In such cases the creator of the copyrighted work shall be required to report the work to the Provost, using such forms and procedures as that Office develops. Where a proposed sponsored research agreement or research grant will require that copyrighted works be owned by UNCA or a third party, the UNCA Office of Sponsored Scholarship and Programs shall inform the relevant Principal Investigator of the copyright provisions and secure his or her consent in writing to such provisions before the agreement is signed or the grant accepted.

4.4.3 Release

4.4.3.1 Sponsored or Externally Contracted Works owned by UNCA may be released to the creator or jointly assigned to the creator and UNCA, through the procedures mandated for Directed Works, where UNCA has ascertained that such release will not conflict with the terms of the relevant agreement or grant or with written consent of the other party to the agreement or grant.

4.5 Works Created by SPA (State Personnel Act) Employees Considered Works Made for Hire

4.5.1 **Definition --** For purposes of this Policy, a "work made for hire" is:

- A work prepared by an employee within the scope of his or her employment; or
- A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

4.5.2 Ownership

4.5.2.1 Works made for hire by SPA staff shall be owned by UNCA. Exceptions to University ownership may occur where:

4.5.2.1.1 UNCA with approval of the Provost enters into an agreement with an SPA employee in advance of creation of the copyrighted work specifying that the work shall be owned in whole or in part by the employee; or

4.5.2.1.2 University ownership is waived by the Provost.

4.6 Works by Independent Contractors

4.6.1 Works produced for UNCA by independent contractors shall be considered Works Made for Hire and shall be owned by UNCA. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized UNCA official, including but not limited to a provision specifying UNCA ownership of copyrighted works produced by the independent contractor.

4.7 Student Works

4.7.1 **Definition --** Student Works are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by UNCA students. UNCA students include undergraduates, graduate students, visiting students, post-baccalaurete students, and non-degree students enrolled in credit-producing courses.

4.7.2 Ownership and Use

4.7.2.1 Students shall own copyright in Student Works except in the following cases:

4.7.2.1.1 UNCA shall own a Student Work that is a Sponsored or Externally Contracted Work where this Policy so requires, and ownership and use of such works shall be as specified in section 4.4.

4.7.2.1.2 Student Works created in the course of the student's employment by UNCA shall be considered Works Made for Hire, and ownership and use of such works shall be as specified in section 4.5.

4.7.2.1.3 Student Works that constitute notes of classroom and laboratory lectures and exercises may be derivative works. Use of these for commercial purposes may violate the ownership rights of the person delivering the lecture.

5 Works Subject to Both Copyright and Patent Protection

5.1 Where an invention is thought to be subject to protection under both patent law and copyright law, if UNCA determines to retain title to its patent rights, the inventor/creator shall assign copyright to UNCA. On commercialization of such works, the inventor/creator shall be compensated in accordance with the provisions of the UNCA Patent Policy and procedures.

6 Dispute Resolution

6.1 Jurisdiction

6.1.1 Any UNCA faculty, staff employee, or student may seek resolution of a dispute regarding ownership of a copyrighted work or a determination of infringing use governed by this Policy by filing a written request with the Provost. The Provost shall refer such requests to the Chair of the University Intellectual Property Committee, who shall appoint a panel consisting of the three faculty members and the chair of the Intellectual Property Committee to hear such disputes.

6.2 Conduct of Appeal

6.2.1 At its discretion the dispute resolution panel may elect to conduct a hearing into the matter or may make a recommendation based upon the written record, provided that all parties to the dispute are given an opportunity to present evidence and arguments in support of their respective positions. Each party shall provide the other party with a copy of any written materials submitted to the panel simultaneously with submission of such materials to the panel. Any hearing will be conducted following procedures set forth by the panel or promulgated by the Intellectual Property Committee. No party shall have the right to be represented by counsel before the panel, but any party may be accompanied at a panel hearing by an adviser of his or her choosing, who shall not participate in the hearing.

6.3 Disposition

6.3.1 Each panel shall within forty-five days of appointment report its findings and conclusions to the Provost in writing along with a written recommendation for disposition of the matter. For good cause the Chair of the Intellectual Property Committee may extend the time period for such report by not more than an additional thirty days. Copies of such findings, conclusions and recommendations shall be provided to all parties. On receipt of such findings, conclusions and recommendation, the Provost shall issue a written decision in the matter. The Vice Chancellor's decision shall be final, subject to appeal to the Board of Trustees and provisions of the Code of the University of North Carolina.

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