FAQs for Copyright Ownership Policy

Why is the Copyright Ownership Policy being revised?

UC’s Copyright Ownership Policy has not been updated since 1992 and has been due for a revision for some time. There have been repeated areas of concern and confusion over the years, including the copyright status of non-patented software created by faculty as well as some of the key definitions. Among other items, the definition of who is eligible to claim copyright ownership has been expanded (see “Academic Authors” definition in Section II).

What kind of works are eligible for copyright ownership?

Copyright protection is automatic for any “original work of authorship” created by a university author and “fixed in any tangible medium of expression.” Examples include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recording, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium. Copyright does not protect facts or ideas. To learn more about copyright generally, visit the UC Copyright website at http://copyright.universityofcalifornia.edu/.

What is a Scholarly & Aesthetic Work?

As defined in the policy, “Scholarly & Aesthetic Work” is a work authored by certain UC employees within the scope of their employment and in connection with their teaching, research, or scholarship. This can include works such as: journal articles, scholarly papers and books, poems, films, course syllabi, computer software, and other similar works. “Scholarly & Aesthetic Works” generally do not include documents created by non-academic UC staff employees in the course and scope of their employment.

Who owns a Scholarly & Aesthetic Work?

Under U.S. copyright law, your employer normally owns the copyrights in works created within the scope of your employment. However, in recognition of an academic tradition and the nature of Scholarly & Aesthetic Works, under this policy, UC transfers any ownership interest it has in those copyrights back to their individual authors, except under certain circumstances (see next FAQ).

When does UC keep copyright in Scholarly & Aesthetic Works?

UC generally retains copyright in a Scholarly & Aesthetic Work if: (1) the work is sponsored by a third party funder; (2) it would be a breach of either policy, law, or contract to transfer the copyright back to the author; or (3) UC provided significant financial support for the work (see Section III.A.1 of the policy as well as the FAQs on Significant University Resources below).
Are all UC employees considered Academic Authors?
No. As defined in this policy, “Academic Authors” is a narrower term than “Employees.” To be considered an Academic Author, a UC employee must have a general obligation to create copyrightable scholarly or aesthetic works as part of that person’s UC employment. See first definition in Section II.A of the policy.

Is software covered under the revised policy?
Yes. Software is expressly identified as an example of a work whose copyright may be transferred to Academic Authors, so long as the other requirements of “Scholarly & Aesthetics Works” category (Section III.A.1) are met. However, even when the copyright is transferred to the Academic Author, UC continues to own the patent rights created in that software, if any. Patent rights in university inventions are governed by the UC Patent Policy and must still be disclosed to the appropriate campus technology transfer office. If there is any inconsistency between the copyright policy and the UC Patent Policy, the terms of the UC Patent Policy govern.

Can I use software that I created for commercial purposes?
The answer depends largely on the ownership status of the copyright in the software as well as the existence (if any) of underlying patent rights in the software. Questions should be addressed to the campus's intellectual property licensing office where software issues can be disclosed. The appropriate campus licensing offices can assist you in determining: ownership status of the software (or related works); whether UC’s copyright and/or patent ownership policies apply; and whether the software can be made available for commercial purposes.

How do I know whether I have used Significant University Resources when creating my copyrightable work?
Use of University Resources becomes “significant” when the university’s financial or facility resources used to create the copyrightable work are in excess of those resources generally available to similarly situated employees or students.

The following likely will not be deemed to constitute “Significant University Resources”:
- Salary or student financial aid
- Campus-wide resources, e.g., libraries, networks and servers, computer labs open to students/faculty
- General amenities, e.g., office, laptop computer, office supplies, basic administrative and IT support
Use of any of the following likely will be deemed to constitute “Significant University Resources”
- Funds administered by, or under the control, responsibility, or authority of, the University
- Unreimbursed use of dedicated equipment and resources not generally open to similarly situated employees or students, as applicable

**Is financial aid considered Significant University Resources for purposes of the Copyright Ownership Policy?**

No. Under this policy, student financial aid does not fall within the definition of Significant University Resources.

**How does this revised Copyright Ownership Policy affect students?**

The revised policy clarifies that students, including graduate students, are the copyright owners of their theses, dissertations, and other student-created copyrightable works. (Section III.A.3.) Under specific circumstances, however, copyrightable works created by students are owned by the University. Those circumstances include if the work:

1. was created primarily in the course or scope of the student’s UC employment;
2. involved the use of Significant University Resources;
3. is a Sponsored Work, Contracted Facilities Work, or Commissioned Work (as those terms are defined in the policy); or
4. was created under a separate agreement that specifies a different copyright owner.

**Are all copyrightable works created in the course of a sponsored research agreement owned by either the sponsor or UC?**

No. Only those works that are created in the “direct performance” of a written agreement between UC and a sponsor can be considered a Sponsored Work. (See Section II, definition of “Sponsored Works.”) The revised policy now includes the word “direct” – a limitation intended to provide greater clarity and greater opportunities for Academic Authors to own the copyright in works created in connection with, but not directly in performance of, a sponsored project. For example, while a written report specified as a deliverable of a sponsored project likely would be considered “in direct performance” of a written agreement, copyrightable materials created as a by-product of the report (and not specified as a deliverable of the sponsored research project), such as a scholarly article discussing certain aspects of the report, would likely not be considered in the “direct performance” of a sponsorship agreement.

The revised copyright policy does not change the ownership status of laboratory notebooks “and other original records of the research” deriving from sponsored research agreements. Such “original records of the research” are typically considered owned by the University.
pursuant to the Academic Personnel Manual 020 (UC Regulation No. 4). While the creators of such research records may make copies for their own personal use, the original copies of such records should be archived on the relevant campus.

How does this policy interact with contracts and agreements between UC and other parties (e.g., external grant award contracts, agreements with represented employees, etc.)?

If the relevant agreement between UC and a granting agency, bargaining unit, or another third party is inconsistent with this Copyright Ownership Policy, the agreement prevails. For example, if there are any inconsistencies between this policy and an agreement governing copyright ownership by represented union employees, the provisions of the union agreement prevail (see Section III.E).

How does this policy interact with UC’s Open Access policies?

This policy determines copyright ownership, while UC’s Open Access (OA) policies have no bearing on the copyright ownership determination. For example, the Academic Senate OA policy states: “This policy does not transfer copyright ownership, which remains with Faculty authors under existing University of California policy.” The copyright ownership determination arising out of this Copyright Ownership Policy does, however, have some impact on certain provisions of the OA policies. For example, the Presidential OA policy for non-Academic Senate employees outlines different procedures for obtaining waivers depending on whether the author owns the copyright in their scholarly articles, as determined by “the 1992 UC Copyright Policy or its successor.” Under the revised Copyright Ownership Policy, more academic authors likely will own the copyright in their scholarly articles, but this policy does not change anything in the OA policies themselves.

For the purposes of copyright ownership, does it matter whether the UC employee was paid, unpaid, or employed only part-time?

For copyright ownership under this policy, it generally does not matter whether the UC employee was unpaid, employed part-time, or on a temporary leave. The term “employees” is broadly defined in Section II of the policy to mean “all individuals employed or appointed by the University in any capacity regardless of whether they are (1) faculty, staff, administration, or students, or (2) employed full-time, part-time, or in a temporary capacity” (emphasis added). Therefore, so long as other relevant requirements are satisfied, then unpaid or part-time UC employees are eligible to own copyright to works they create.

Who can I ask for help understanding copyright at UC?

For questions about this policy, contact the “Contact” person identified on the first page of the policy. Assistance is also available at individual campus and lab locations. As noted in Section IV (Compliance and Responsibilities), Chancellors, Laboratory Directors, and their delegates can issue guidelines and supplementary local policies. They can also grant

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permission to use materials in cases when a copyright is owned by the University. A list of local contacts with authority over copyright matters is available at http://copyright.universityofcalifornia.edu/resources/permissions.html. Depending on your question and location, your campus counsel, campus policy office, or other campus-based resources may be able to help.