

COPYRIGHTS

POLICY NUMBER: HYB-COPYRIGHTS

POLICY TYPE: HYBRID

RESPONSIBLE OFFICIAL: PROVOST & EXEC. VICE PRESIDENT FOR ACADEMIC AFFAIRS

RESPONSIBLE OFFICE: GRADUATE EDUCATION, RESEARCH AND OUTREACH

EFFECTIVE DATE:

NEXT REVIEW DATE: BOARD APPROVAL PLUS FOUR (4) YEARS

SUPERSEDES POLICY DATED: 11/11/2009 (INTELLECTUAL PROPERTY)/THIS POLICY IS INCLUDED IN FACULTY HANDBOOK APPENDIX F & SEC. 16.16

BOARD OF REGENTS REPORTING (CHECK ONE):

☒ PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM)

☐ PRESIDENTIAL REPORT (INFORMATION ONLY)

I. POLICY STATEMENT

A. RIGHTS AND OBLIGATIONS OF THE PARTIES

1. Traditional Works

In keeping with longstanding academic custom, Northern Kentucky University (NKU or University) recognizes faculty ownership of copyrights in textbooks, monographs, papers, articles, musical compositions, replication packages, software, works of art and artistic imagination, unpublished manuscripts, dissertations, theses, popular nonfiction, novels, poems, and the like that are created by its faculty. Also included are course materials such as syllabi, workbooks, and laboratory manuals. The University has not and will not claim any ownership rights to such Traditional Works. Similarly, the University has not and will not claim ownership of Traditional Works created by its other employees or students.

As copyright owner, the Creator(s) 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, the Creator(s) 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 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) have assigned their copyright interest.

2. Externally Sponsored Works

In cases where a copyrightable work has been produced with support to NKU 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: (a) the Creator will be bound by all conditions attached to the grant and imposed by the government granting agency or other external source; and (b) if the work is Non-Traditional, (i) 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 following statement:

Permission is hereby granted for non-profit educational and research use of {name of work}. Any other use, for commercial purposes or otherwise, is expressly forbidden without prior written permission of {name of Creator}.

and (ii) any Creator(s) desiring to license the work for commercial purposes will do so according to the terms set forth in an agreement with the University and any revenue derived from such work will be shared with the University according to the terms described in the agreement in force at the time the grant was received.

3. University Sponsored Works

The University claims ownership in Works for Hire that arise from works created as the result of specific assignments; works supported by a direct allocation of University funds for the pursuit of a specific project; and works that are specially commissioned by the University. For example, works produced in certain University units whose specific mission includes the production of works for instructional, public service, or administrative use and who employ staff and faculty for the purpose of producing such works are deemed to be Works for Hire and, therefore, the property of 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 faculty member's general obligation to produce scholarly works or to perform curriculum development activities for the faculty member's own courses does not constitute a specific University assignment, nor is the payment of regular salary, the use of office and library facilities, sabbatical, fellowship or internal grant awards, or the provision of incidental clerical support or reasonable data and word processing considered a direct allocation of University funds for the purposes of this paragraph.

A faculty member's work will not be deemed a Work for Hire by virtue of the faculty member's receipt of instructional design support, unless otherwise agreed in writing by the faculty member.

A copyrightable work created by faculty will not be deemed a Work for Hire unless the faculty member agrees to that designation in writing at or near the time the work is commissioned or delivered.

4. University Supported Works

The University claims copyright to works produced with Substantial University Resources. The payment of regular salary, the use of office and library facilities, or the provision of incidental clerical support or reasonable data and word processing is not considered a use of Substantial University Resources for purposes of this paragraph. Receipt and use of instructional design support by a faculty member do not constitute Substantial University Resources, unless otherwise agreed in writing by the faculty member.

All proposals for use of Substantial University Resources must be approved in advance by the Provost or designee, upon recommendation of the Intellectual Property Committee.

Proposals for the use of Substantial University Resources should specify how projected income from the work would compensate the University for its expenditures (including costs associated with obtaining the copyright and in its licensing, sale, enforcement, and use) and how Net Royalties from any income would be distributed.

5. Creator Rights and Obligations

- a. The Creator shall report promptly all University Sponsored Works and University Supported Works to the Office of Graduate Education, Research and Outreach. The disclosure by Creators shall include a disclosure of the circumstances under which the work was created, a description of any University resources that were used, and any financial or other relationship with a third party that might affect the University's rights in the work (for example, any consulting agreements or third-party funding agreements pursuant to which a work was created).

If the Creator is uncertain whether the University claims copyright ownership in a work pursuant to this policy, the work should be disclosed.

This policy shall not be construed to require Creators to disclose or report to the University the creation of Traditional Works.

- b. Upon request, the Creator shall acknowledge in writing the University's ownership of all rights, title, and interest in and to University Sponsored Works and University Supported Works.
- c. The Creator shall cooperate:
 - i. In executing any legal documents that pertain to licensing, sale, use, or other related activities;
 - ii. In any litigation arising out of the work; and
 - iii. In reasonable marketing and commercialization efforts related to the work.
- d. After disclosure to the University of a work, the Creator shall receive notice within a reasonable time of the University's intention to retain title to the work.
- e. The Creator shall receive a share of any royalties or licensing fees that may be due in accordance with an applicable agreement.
- f. The Creator shall receive title to any work for which the University chooses not to retain title.
- g. The Creator shall have the right of timely publication of the work, consistent with any applicable licensing agreement.

6. University's Rights and Obligations

- a. The University shall keep the faculty, staff, and students apprised of the University's policy on copyrightable works and of any university-wide agreements with external sources that may be in effect regarding the evaluation and/or marketing of such works.
- b. After a work is reported, the University shall act in a timely manner to determine whether the University chooses to retain title and thereafter shall give notice within a reasonable time to the Creator(s) regarding whether the University intends to retain title to the work.
- c. The University shall assign to the Creator(s) title to any work subject to this rule and for which the University chooses not to retain title.

7. Royalties for University Sponsored and University Supported Work

"Net Royalties" shall be defined as gross royalties received by the University in each fiscal year minus the sum of the following:

- a. any royalty shared with other entities (e.g., as required by an agreement with a funding source or as the result of an inter-institutional agreement with a co-owner of the University work or as a result of a third-party commercialization partnership) during the corresponding fiscal year and
- b. any fees or costs directly attributable to the University work being licensed incurred during the corresponding fiscal year. Examples of such direct fees are fees for legal advice, fees arising out of litigation, copyright registration fees, trademark registration fees, fees from commercialization, and marketing costs. Indirect University overhead and other University costs normally associated with the operation of a university and not directly attributable to the University work shall not be deducted from gross royalties or otherwise allocated to costs or fees associated with the University work.

For all copyrightable works for which the University receives royalties, the royalties received by the University shall normally be distributed each fiscal year as follows:

- a. Zero dollars (\$0) to ten thousand dollars (\$10,000) in total Net Royalties:
100% to the Creator(s)
- b. Total Net Royalties in excess of ten thousand dollars (\$10,000) to two hundred fifty thousand dollars (\$250,000):
60% to the Creator(s)
40% to the University or NKURF, at the University's option. Allocation within the University will be determined by the Provost or designee on a case-by-case basis.
- c. On total Net Royalties in excess of two hundred fifty thousand dollars (\$250,000):
50% to the Creator
12.5% to the college to support faculty research and creative activity
12.5% to the department, program, or school to support faculty research and creative activity
10% to the University or NKURF, at University's option
15% to the Office of the Provost to provide commercialization support

Any Net Royalties received by the University, department, program, school, or college shall be administered by the Provost's Office and shall be used to support scientific research and education.

If there is more than one Creator, the University shall distribute the Creators' share of any Net Royalties equally by default, or in accordance with their mutually agreed apportionment. In the event the Creators are unable to reach a mutual agreement on apportionment, the Intellectual Property Committee will make a recommendation to the President regarding apportionment, and the President shall decide. College and department, program, or school share of any Net Royalties will be apportioned in accordance with the percentage distributions allocated to the Creators who are associated with the participating colleges and departments, programs, or schools.

Upon the Creator's death, royalties will continue to be paid to the deceased's estate for as long as they are generated.

There may be instances where there are agreements developed in the course of commercialization that change the royalty distribution percentages.

B. PATENT POLICY EXEMPTION

If a copyrightable work is created by a member of the University Academic Community during the course of making a discovery or invention that falls within the scope of the NKU Inventions and Patents policy ([link](#)) 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 NKU Inventions and Patents policy.

This exemption does not apply to written articles, publications, or presentations describing patentable inventions covered by the NKU Inventions and Patents policy; provided the invention has been properly disclosed to NKU per the Inventions and Patents policy first, these copyrightable works are deemed to be Traditional Works and the copyright thereto is owned by the Creator. Nonetheless, the Creator must make such Traditional Works available to NKU 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.

C. TRANSFER OF INTELLECTUAL PROPERTY TO THE CREATOR(S)

If the University has determined that a work subject to University copyright ownership under this policy has no likely commercial value, and subject to the terms of any applicable agreements with third parties or legal obligations under which the work was created, the University will consider a request by the Creator to transfer copyright ownership in the work to the Creator, subject to a no cost irrevocable royalty-free license to the University to use the work for its own non-commercial purposes. The Provost or designee is responsible for reviewing and approving such requests when appropriate. Approval may be conditioned upon reimbursement of the University by the Creator for out-of-pocket expenses the University has incurred in connection with the work, including legal and marketing expenses (if any). The University will act as expeditiously as reasonably possible in considering such requests by Creator(s).

D. OTHER AGREEMENTS INVOLVING COPYRIGHT

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 case of a Creator signing over their copyright to the University by an explicit and mutual agreement, and which has been signed and dated by both the Creator and University.

In addition, it is not uncommon for investigators to conduct research in cooperation with colleagues at other universities. The University recognizes that to continue these relationships it must be willing to consider a variety of contractual terms and conditions. An agreement put in place between the institutions may supersede this policy.

E. ASSIGNMENT BY THE UNIVERSITY TO NKURF

The University may assign its interest in copyrightable works to the Northern Kentucky University Research Foundation (NKURF), which will advise and assist the Office of the Provost in performing its responsibilities under this policy.

F. TRADEMARKS

Use of NKU's name, logo, or marks must be consistent with the guidelines established in the [NKU Brand and Visual Identity Guide](#), promulgated by Marketing and Communications. Marks affiliated with intellectual property owned by NKU are also owned by NKU, and all rights are retained by NKU and/or NKURF.

G. COPYRIGHT NOTICE

The following notice on University-owned material should be displayed on copyrighted material:

Copyright © (year), Northern Kentucky University.

II. ENTITIES AFFECTED/APPLICABILITY

This policy shall be applicable to all units of Northern Kentucky University (NKU), including its colleges, schools, departments, centers, institutes, and libraries, and to all NKU faculty and staff, and to any other persons, including students, who are aided by the substantial use of University facilities, staff, or funds.

This policy applies to "original works of authorship" protectable under state and federal intellectual property laws irrespective of the format or medium of expression, including written materials; sound recordings; videotapes; films; computer programs; computer-assisted instruction materials; works of art including paintings, sculpture, and musical compositions; and all other material that may be eligible for copyright protection.

III. DEFINITIONS

University Academic Community

The NKU University Academic Community consists of all members of the NKU faculty (including instructors, lecturers, tenured, tenure-track, visiting, adjunct, research, and clinical faculty), as well as all the University's postdoctoral fellows, graduate students, and undergraduate students. It also includes administrative personnel/staff and/or volunteers (collectively, referred to herein as "non-faculty staff").

Creator

A Creator is a member of the NKU University Academic Community, including non-faculty staff, who creates a unique work that may be eligible for copyright or trademark protection.

Works for Hire

For purposes of this Copyrights policy only, Works For Hire are (i) either those works created by members of the NKU 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 NKU Academic Community or non-faculty staff employed by the University on a Work For Hire basis, meaning that the creation was specifically directed by the University for its own use. These agreements must happen prior to the work being undertaken, and be explicit and mutual, as indicated by a signed and dated Work for Hire Agreement in which the parties express their agreement that the University owns the copyright to such works created.

Traditional Works

Traditional Works include published articles, books (fiction or non-fiction), artworks, music, replication packages, software, 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 University Academic Community—defined as those resources created specifically for the purposes of instruction, including, but not limited to, syllabi, lectures and lecture notes, and presentations—are considered Traditional Works, and the copyright is owned by their Creator.

Substantial University Resources

Substantial University Resources are the allocation of a significant amount of money or significant use of specialized equipment or other University resources that have been specifically directed to foster the development of a particular scholarly, artistic, or commercial project. In most cases, start-up funds allocated to new members of the faculty are ordinary resources, not Substantial University Resources. Nonetheless, the University reserves the right in special cases to designate some or all of a start-up package as Substantial University Resources and to require recipients to complete a Standard Copyright Agreement.

By contrast, NKU supports the research and pedagogy of its faculty and students in a variety of manners, including salaries; academic leaves; fellowships; non-contract support from the [Center for Innovation in Learning and Teaching Technology \(CILT\)](#); course development monies and classroom software; access to scholarly and artistic resources (libraries, media labs, theater infrastructure, and other facilities); various research grants; and ordinary assistance with computer hardware, software, and networking. None of these (or anything analogous) should be considered the allocation of Substantial University Resources for purposes of this Copyrights policy.

For purposes of this Copyrights policy only, government or private sponsored research monies shall not constitute Substantial University Resources. However, agreements related to these monies may result in the University retaining rights to creations developed.

Trademark

A trademark is any word, name, symbol or device, or any combination thereof, whether or not registered as a trademark, that is used to identify goods or services and distinguish them from those manufactured or sold by others.

IV. RESPONSIBILITIES/ADMINISTRATION

The Office of the Provost is responsible for overseeing administration of the University's copyright program, including assuring that valuable property rights are retained by the University in a manner consistent with this policy and the following:

1. Provide information on copyrights and the University Copyrights policy to the University Academic Community.
2. In consultation with the Office of General Counsel and Vice President for Legal Affairs, determine the rights of the University in any copyrightable works created or to be created with Substantial University Resources.
3. Develop and approve agreements for the use of Substantial University Resources in the creation of copyrightable works.
4. Provide assistance in securing the copyright to any works in which the University has rights.
5. Exercise responsibility for marketing, licensing, or distributing copyrightable works in which the University has rights.

6. Arrange distribution of royalty income.
7. Subject to the supervision of the contracting officer, approve terms for licensing, sale, assignment, transfer, or other disposition of the University's property rights in copyrightable materials.

The Provost has directed the Office of Graduate Education, Research and Outreach to be primarily responsible for these functions.

V. POLICY DETERMINATIONS; INTELLECTUAL PROPERTY COMMITTEE

Determinations to be made by the University under this policy, including whether to claim or retain title to a copyrightable work, shall be made by the Provost or designee.

In addition, there shall be established a university Intellectual Property Committee, which shall report to the Provost or designee. The committee shall be composed of no more than five (5) members, three (3) appointed by the Provost or designee, and two (2) appointed by the president of the Faculty Senate, and shall be chaired by one of the members.

Specific functions of the Intellectual Property Committee shall be the following:

- A. Provide advice, as requested, to the Provost or their designee as to whether the University should:
 1. Prepare and prosecute an intellectual property application on a university work.
 2. Determine if a reported work falls outside the scope of this policy.
 3. Waive some or all University rights in a university work to the Creator(s).
- B. Act as a fact-finding body and make recommendations to the Provost or designee on any disagreements arising out of the administration of this policy.
- C. Resolve disputes between the Creator and the University.

The Provost designates the Vice Provost of Graduate Education, Research and Outreach as its designee for purposes of this section.

VI. REFERENCES AND RELATED MATERIALS

RELATED POLICIES

Inventions and Patents

REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
Revision & Name Change	
Revision & Faculty Handbook Appendix F & Sec. 16.16 (Intellectual Property)	November 11, 2009
Formerly Administrative Regulation AR-II-2.0-4 & Faculty Handbook 16.16 (Intellectual Property)	November 9, 2005

COPYRIGHTS

PRESIDENTIAL APPROVAL

INTERIM PRESIDENT

Signature

Date

Cady Short-Thompson

BOARD OF REGENTS APPROVAL

BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- ☐ This policy was forwarded to the Board of Regents on the ***Presidential Report (information only)***.
Date of Board of Regents meeting at which this policy was reported: ____/____/____.
- ☐ This policy was forwarded to the Board of Regents as a ***Presidential Recommendation (consent agenda/voting item)***.
- ☐ The Board of Regents approved this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)
- ☐ The Board of Regents rejected this policy on ____/____/____.
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

EXECUTIVE SECRETARY TO THE BOARD OF REGENTS

Signature

Date

Tammy Knochelmann