Copyright Ownership

I. POLICY SUMMARY

This policy establishes a framework for copyright ownership of copyrightable works created at the University of California (“University”). This policy embodies the academic tradition of granting copyright ownership to certain university personnel for their scholarly and aesthetic works, while maintaining consistency with U.S. copyright law – which, as a default, provides copyright ownership to an employer for works prepared by its employees within the scope of their employment.

DRAFT – September 2019
II. DEFINITIONS

**Academic Authors** means Employees who have a general obligation to create copyrightable scholarly or aesthetic works.

**Contracted Facilities Works** means works created (1) by non-University personnel or by University personnel acting outside the course or scope of their employment, (2) through the use of University Facilities, and (3) generally pursuant to a written agreement.

**Employees** means 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.

**Independent Academic Effort** means inquiry, investigation, or research carried out to advance knowledge or the arts where the specific choice, content, course, and direction of the effort is determined by the Academic Author without direct assignment or supervision by the University.

**Scholarly & Aesthetic Works** means works authored by Academic Authors within the scope of their employment as part of or in connection with their teaching, research, or scholarship. Common examples of Scholarly & Aesthetic Works include journal articles, scholarly papers, textbooks, other books, short stories, poems, case examples, course materials, lecture notes, musical compositions/arrangements and recordings, lyrics, architectural drawings, software, visual works of art, sculptures, and other artistic creations, among others, regardless of the medium in which those works are fixed or disseminated.

**Significant University Resources** means University Resources beyond the usual support provided by the University and generally available to similarly situated Academic Authors or, as applicable, students. For the purposes of this definition, “usual support provided by the University and generally available to similarly-situated Academic Authors” includes customary administrative support, library facilities, office space, personal computers, access to computers and networks, and regular salary.

**Sponsor** means an organization or agency that provides funding, equipment, or other support for the University to carry out a specified project pursuant to a written agreement. Sponsors include federal, state, local, and other entities as well as private industry entities, educational institutions, and private foundations.

**Sponsored Works** means works that are created by or through the University in the direct performance of a written agreement between the University and a Sponsor. Sponsored works generally do not include journal articles, lectures, books, or other works created through Independent Academic Effort and based on the findings of the sponsored project, unless the relevant agreement with the Sponsor states otherwise.
University Facilities means buildings, equipment, and other facilities under the control of the University that are designated by the appropriate Chancellors, Laboratory Directors, or Vice Presidents as requiring an advance agreement, from either non-University personnel or University personnel acting outside the scope of their employment, concerning the disposition of any copyrightable works that are created with the use of these facilities.

University Resources: means either (1) University Facilities or (2) funds, regardless of source, that are administered by – or under the control, responsibility, or authority – of the University.

III. POLICY TEXT

A. Copyright Ownership by Category of Works

1. Scholarly & Aesthetic Works. When the "work made for hire" provision in U.S. copyright law applies, the University owns the copyright for copyrightable works prepared by its employees acting within the scope of their employment. However, given the academic tradition of granting copyright ownership to some academic personnel for certain works, the University hereby transfers the copyrights it may own in Scholarly & Aesthetic Works to Academic Authors who prepared those works using Independent Academic Effort.

   Notwithstanding the previous sentence, the University does not transfer the copyrights in Scholarly & Aesthetic Works that: (a) are either Sponsored Works, Commissioned Works (as that term is used Section III.A.5 below), or Contracted Facilities Works; (b) would put the University in violation of, or conflict with, an applicable contract, policy, or law; or (c) were created with Significant University Resources.

2. Personal Works. As between the University and its Employees, copyright ownership of works prepared by Employees outside the course or scope of their University employment and without use of University Resources resides with the Employees, unless a relevant agreement states otherwise. For purposes of this policy, works created through non-University consulting activities may be considered a Personal Work so long as such non-University consulting activities do not interfere with the Employee’s regular University duties, do not use University Resources, and are not prohibited by terms of the University’s employment contract or other applicable agreements or policies.

3. Student Works. As between the University and its students, copyright ownership of works prepared by University students (including graduate students) resides with such students, unless the work: (1) was created primarily in the course or scope of the student’s University employment; (2) involved the use of Significant
Copyright Ownership

University Resources; (3) is a Sponsored Work, Contracted Facilities Work, or Commissioned Work; or (4) was created under a separate agreement that specifies a different copyright owner. For the purposes of this section, a student's financial aid is not considered Significant University Resources. Absent unusual circumstances, copyright ownership of theses or dissertations authored by University students resides with such students.

4. **Sponsored Works.** Ownership of copyrights to Sponsored Works resides with the University, unless the relevant agreement with the Sponsor states otherwise. For any agreement providing ownership of Sponsored Works other than by the University, the University generally requires a free-of-cost, nonexclusive, worldwide license to such works consistent with the University's missions of teaching, research, and public service.

5. **Commissioned Works.** When the University commissions the creation of a work, ownership of the copyright to that work generally must reside with the University (absent compelling circumstances) and must be specified in a written agreement. For any agreement providing ownership of such commissioned work by a person or entity other than the University, the University generally requires a free-of-cost, nonexclusive, worldwide license to the commissioned work consistent with the University's missions of teaching, research, and public service.

6. **Contracted Facilities Works.** Ownership of copyrights to a Contracted Facilities Work generally must be governed by a contract between the University and the user of the University Facility regarding use of the specified University Facility. In the absence of an agreement, the University generally owns the copyright to the Contracted Facilities Works.

7. **Institutional Work.** Except as otherwise provided in this policy or by written agreement, the University owns all copyrights to works either (1) prepared by its Employees within the course or scope of their employment, or (2) created with the use of Significant University Resources.

**B. Copyright Ownership of Jointly Created Works**

Copyright ownership of jointly-created works involving University personnel will be determined by assessing the Category of Works and resulting ownership rights pursuant to Section III.A above. The copyright rights among joint copyright owners are governed under U.S. copyright law.

**C. Release of University Rights**

The University may release its copyright ownership rights to the creators of the works when, as determined by the University: (a) there are no overriding or special obligations to a Sponsor or other third parties; and (b) the best interests of the University would be served by releasing its ownership rights. Such release of ownership rights must be
contingent on an agreement by the creator(s) that no further effort on, or development of, the work will be made using University Resources and that the University is granted a free-of-cost, nonexclusive, worldwide license to the work consistent with the University's missions of teaching, research, and public service.

**D. Licensing and Royalties**

The University may assign or license its copyrights to others. Royalty or other income received from such transactions may be shared with the creators of such works, as determined by the appropriate Chancellor, Laboratory Director, or Vice President (or their delegates) and/or by local policies. The determination of an appropriate income distribution, if any, back to the creators should take into account each creator’s contribution, the University's costs, any provisions imposed by Sponsors or other funding sources, and any other applicable agreements concerning the copyright.

**E. Union Employees**

If any inconsistency exists between this policy and a union agreement governing copyright ownership by Employees represented by a union, the copyright ownership provisions of such union agreement in effect at the time the work was created prevails.

**IV. COMPLIANCE / RESPONSIBILITIES**

For copyrightable works under their respective jurisdictions, the University’s Chancellors, Laboratory Directors, and Vice Presidents are authorized to do – or to delegate the authority to do – any of the following:

A. Issue guidelines, implementing procedures, and supplementary local policies consistent with this policy – including directives regarding licensing, distribution of royalty income, and other rights related to copyrights;

B. Identify certain projects or University Facilities as having special copyright obligations and issue guidelines, implementing procedures, local policies, or copyright assignments in works created through such projects or University Facilities;

C. Register copyrights, accept copyrights from third parties, and sell, assign, or grant licenses in such copyrights – all of the foregoing in the name of The Regents of the University of California; and

D. Release the University’s copyright ownership rights pursuant to Section III.C.

**V. PROCEDURES**

Academic Authors participating in a sponsored project must have an agreement on file with the appropriate campus office (e.g., sponsored projects office or the industry contracts office) that acknowledges: (1) individual and joint responsibility to create and
deliver Sponsored Works to the Sponsor (as required by the terms of the sponsored project agreement) or to the University when so requested, and (2) that copyright ownership of Sponsored Works will reside with the University, unless reserved to the Sponsor or otherwise provided for in the sponsored project agreement, pursuant to Section III.A.4 above.

VI. RELATED INFORMATION

- University of California policy on “Ownership of Course Materials” (9-25-2003)
- University of California policy on “Copyright and Fair Use” (7-9-2015)
- University of California policy on “Open Access” (10-23-2015)
- Open Access Policy of the University of California’s Academic Senate (7-24-2013)
- University of California’s “Copyright” website, available at http://copyright.universityofcalifornia.edu/
- University of California policy on “Use of Recordings of Course Presentations” (9-23-2005)

VII. FREQUENTLY ASKED QUESTIONS

Frequently Asked Questions may be accessed at [URL].

VIII. REVISION HISTORY

- April 24, 1961 – The Office of the President issued a systemwide regulation regarding the University policy’s on copyright ownership.
- November 1, 1962 – The Office of the President issued another systemwide regulation concerning “the administration of copyrights obtained in the name of The Regents of the University of California.”
- August 1, 1975 – The original systemwide policy, titled “University Copyright Policy,” was issued.
- August 19, 1992 – The last substantive revision of this policy occurred in 1992 when the previous policy was issued.
- June 1, 2012 – This policy was reformatted into the standard template for systemwide policies.
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 a 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

FAQs for revised Copyright Ownership Policy, September 2019 draft p.4
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.