

# UNIVERSITY OF SCIENCE & ARTS OF OKLAHOMA

## COPYRIGHT POLICY

### Policy

The University of Science and Arts of Oklahoma recognizes that copyrights are protected by the Constitution and the laws of the United States to promote the progress of science and the arts by securing for limited times the exclusive rights to an individual's works and writings. The basic objectives of the University's policy concerning copyrights include the following:

- A. To maintain the University's academic policy by encouraging research and scholarship without regard to potential gain from royalties or other income.
- B. To make materials eligible for copyright, created pursuant to university objectives, available to the public under conditions which promote their effective use.
- C. To provide adequate incentive and recognition to faculty, staff, and students through proceeds derived from their work.

### Definitions

- A. Inventions -All discoveries, programs, processes, methods, uses, products, or combinations, whether already patented or eligible for patent at any time, under the current Federal Patent Act.
- B. Written Materials - All literary, dramatic, artistic and musical materials or works and all other materials or works including computer programs published or unpublished, copyrighted or eligible for copyright, at any time under the Federal Copyright Act.
- C. Recorded Materials -All audio tapes, video tapes, film, or other recordings or transcriptions, published or unpublished, whether or not copyrighted or eligible for copyright, at any time under the Federal Copyright Act.
- D. Materials - Written and recorded materials.
- E. University Personnel - Part-time and full-time members of the faculty, staff, and all other agents and employees, and students of the University.

### Regulations

- A. Under the Copyright Revision Act of 1976, (17 U.S.C. 101 etseq.), original works are protected by copyright from the time they are fixed in a tangible medium of expression.
- B. All University personnel, in accordance with the University's policy of promoting creative and scholarly activities, are free to develop, create, and publish works eligible for copyright.

- C. Copyrighted works produced by university personnel, except as noted in the paragraph E. of this section, are the property of the creator. All rights afforded copyright owners under Section 196 of the Act reside with the creator unless he or she has assigned or licensed any of the rights. Decisions relative to registering works with the copyright office are left to the individual creator.
- D. Works specifically commissioned by the University under Section 201(b) of the Act belong to the University. As copyright owner, the University makes decisions relative to registering commissioned works. Royalties for University-commissioned copyrighted works may be shared by the University and the creator(s) of the work subject to the discretion of the University. Disputes arising over royalty sharing shall be referred to the University Research Committee, which will in turn recommend to the President.
- E. All noncommissioned copyrightable material, developed with the significant use of funds, facilities, or equipment, administered by the University, become the property of the University. However, the University recognizes and reaffirms the traditional academic freedom of its faculty, staff, and students to publish freely without restriction. In keeping with this philosophy, the University does not construe the provision of office or library facilities as constituting significant use of university facilities, nor does it construe the payment of salary as constituting significant use of university funds, except for those situations where the funds, facilities or equipment specifically support development of such material.
- F. Faculty, staff, and students shall own all rights to materials prepared at their initiative including all royalties from publication or distribution of such materials, except as noted in paragraph E above.
- G. Works produced under a specific contract or grant agreement between the University and a governmental or other agency, or any other organization, are subject to the terms of the grant or contract for purposes of copyright. If copyright ownership is not specified, such rights shall reside with the creator(s).
- H. Where University service units are involved with the production of a substantially completed copyrightable product, royalties shall be distributed between the copyright owner and the University as provided in a written agreement, prior to completion. However, when a written agreement has not yet been completed, the distribution of royalties will be evenly divided between the creator and the University. If disputes arise, the matter shall be referred to the University Research Committee which will in turn recommend to the President.
- I. The University Research Committee, as noted above, will investigate, and make appropriate recommendations to the President. The committee's responsibilities shall include, but not be limited to, disputes concerning ownership of university commissioned works; terms of commissions; distribution of royalties for university-produced works; and distribution of royalties for works that may have necessitated specific and unusual University expenses. (Regents, 4-17-86).

## Peer-to-Peer Sharing

Science & Arts complies with the Digital Millennium Copyright Act (DMCA). Unauthorized distribution of copyrighted material, including unauthorized peer-to-peer file sharing, may subject the party to civil and criminal liabilities.

The university has an established procedure of identifying alleged copyright infringers.

- A. Bandwidth is monitored on the campus network. In addition, the university uses data-filtering rules on our campus firewall to make peer-to-peer file sharing the lowest priority on the network as well as throttling the pipeline, as needed, to minimal bandwidth to make potential file sharing extremely slow.
- B. If a complaint is made regarding network slow-downs, bandwidth is examined for high users.
- C. When students activate their network services, they must sign a form indicating that they have read and understand Science & Arts Acceptable Use Policy.
- D. Science & Arts continually reviews its procedures for effectiveness and relevance. The quantity of complaints is low, and recidivism is rare.

## Disciplinary Actions

Repeated notices can result in an investigation of alleged violations of the student conduct code and will be submitted to the Dean of Students or other designated employee for disciplinary actions. Faculty and Staff who are suspected of copyright infringement will be reported to the Vice-President of Academic Affairs and/or the Vice-President of Human Resources.

Additional information on the student Code of Conduct and disciplinary actions can be found in the [Student Handbook](#).

## Violations

Any person injured by a violation of section 1201 or 1202 of the DMCA, may bring a civil action in Federal court. Section 1203 gives courts the power to grant a range of equitable and monetary remedies similar to those available under the Copyright Act, including statutory damages. The court has discretion to reduce or remit damages in cases of innocent violations, where the violator proves that it was not aware and had no reason to believe its acts constituted a violation. (Section 1203(c)(5)(A)). Special protection is given to nonprofit libraries, archives, and educational institutions, which are entitled to a complete remission of damages in these circumstances. (Section 1203(c)(5)(B)).

In addition, it is a criminal offense to violate section 1201 or 1202 willfully and for purposes of commercial advantage or private financial gain. Penalties include:

- A. Statutory penalties are found at 18 U.S.C. § 2319. A defendant, convicted for the first time of violating 17 U.S.C. § 506(a) by the unauthorized reproduction or distribution, during any 180-day period, of at least 10 copies or phonorecords, or 1 or more copyrighted works, with a retail value of more than \$2,500 can be imprisoned for up to 5 years and fined up to \$250,000, or both. 18 U.S.C. §§ 2319(b), 3571(b)(3).

- B. Defendants who have previously been convicted of criminal copyright infringement under 18 U.S.C. § 2319(b)(1) may be sentenced to a maximum of 10 years imprisonment, a \$250,000 fine, or both. Finally, a defendant is guilty of a misdemeanor violation if he violated rights other than those of reproduction or distribution or has reproduced or distributed less than the requisite number of copies, or if the retail value of the copies reproduced or distributed did not meet the statutory minimum, or if other elements of 17 U.S.C. § 506(a) are not satisfied. Misdemeanants can be sentenced a maximum of one year and can be fined a maximum of \$100,000. *See* 18 U.S.C. §§ 2319(b)(3), 3571(b)(5).
- C. Sentences for criminal copyright infringement and trademark counterfeiting are currently determined by reference to section 2B5.3 of the *Sentencing Guidelines*. That guideline establishes, as a Specific Offense characteristic, that if "the retail value of the infringing items exceeded \$2,000," then the guideline level is to be increased by the corresponding number of levels from the table in section 2F1.1. The Commentary further makes clear that the term "infringing items," as used above, "means the items that violate the copyright or trademark laws (not the legitimate items that are infringed upon)." It is not entirely clear, however, what is meant by "retail value" in this context, and courts have relied upon a number of methods to achieve equitable results. Prior to the sentencing phase in intellectual property cases, prosecutors are advised to consult with the Criminal Division's Computer Crime and Intellectual Property Section, and to review pertinent portions of that Section's *Intellectual Property Rights Prosecution Manual*.
- D. These sentencing provisions affect the plea negotiation process in two ways. First, because a plea involving these enhanced penalties must include recognition of the number of infringing copies involved in the offense, the prosecutor must establish a factual record to support the sentence. In addition, by tying the most severe sanction to copyright recidivists, 18 U.S.C. § 2319 introduces an additional element into plea negotiations. In cases involving individual and corporate defendants, prosecutors may wish to obtain individual pleas, since those pleas could be used in subsequent prosecutions to enhance a defendant's sentence.

Digital Millennium Copyright Act of 1998