



University of Toronto

OFFICE OF THE VICE-PRESIDENT - RESEARCH AND INTERNATIONAL RELATIONS

April 9, 2002

Memorandum to: Committee on Academic Policy and Programs

From: Heather Munroe-Blum

For: Meeting of April 17, 2002

Agenda Item: 4

Item Identification: Copyright Policy

Sponsors: Professor Heather Munroe-Blum
Vice-President – Research & International Relations

Professor Adel Sedra
Vice-President and Provost

Jurisdictional Information:

The Committee on Academic Policy and Programs reviews research policies, including intellectual property policies, on behalf of the Academic Board. The Academic Board is required by its terms of reference to consider research policies and forward recommendations to the Governing Council.

Previous Action Taken: None

Action Sought:

That the Committee recommend to the Academic Board the following:

- (a) THAT the University of Toronto Copyright Policy, dated April 9, 2002, be approved.
- (b) THAT the University of Toronto Policy on Copyright and Other Proprietary Rights (May 19, 1977) and the University of Toronto Policy on Computer Software (April 14, 1988) be repealed.

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- (c) THAT the University of Toronto Inventions Policy be amended as outlined in the memorandum from Vice-President Heather Munroe-Blum, dated April 8, 2002.

Items of Significance:

- The Task Force on Intellectual Property Relating to Instructional Media has recommended that the current Policy on Copyright and Other Proprietary Rights (1977) and the Policy on Computer Software (1988) be replaced by a new Copyright Policy.
- Under the proposed new Copyright Policy, copyright in works created by University faculty, librarians and students would be vested in the authors. The main exceptions to this rule would be (1) works created in the course of the author's employment by the University, with the exception of works arising from research and instructional activities of faculty or librarians; (2) works specifically commissioned by the University under written agreement with the author.
- Under the proposed new Copyright Policy, where commercialization of the work is contemplated and the work was created with "substantial use of University resources" (which the Policy defines), the author and the University must negotiate a revenue-sharing agreement.
- The proposed repeal of the Policy on Copyright and Other Proprietary Rights and the Policy on Computer Software will necessitate an amendment to the definition of "Invention" in the University's Inventions Policy to ensure that non-instructional software, research data and research tools are covered by the Inventions Policy.



University of Toronto

OFFICE OF THE VICE-PRESIDENT - RESEARCH AND INTERNATIONAL RELATIONS

April 8, 2002

MEMORANDUM

TO: Committee on Academic Policy and Programs

FROM: Heather Munroe-Blum

RE: Copyright Policy

Background

Last year, I created with the Provost a Task Force on Intellectual Property Relating to Instructional Media. Chaired by Dean Ron Daniels of the Faculty of Law, the Task Force has examined the emerging new forms of instructional media and the factors involved in their creation and legal protection. It has also analyzed the intellectual property policies relevant to instructional media, both at the University of Toronto and at peer institutions, notably in the United States.

Early this year, the Task Force published a draft report in which it recommended that the University adopt a new Copyright Policy. This draft report was made available to the University community both electronically and through publication in the *Bulletin*. Led by Dean Daniels, consultations on the report were held on all three campuses. In addition, members of the University community were able to provide comment through a special bulletin board created off the Provost's website. Following consideration of the results of these consultations, the Task Force has prepared and submitted its final Report, which is attached.

The Provost and I want to thank Dean Daniels and his colleagues for their thorough examination of this topic and their thoughtful recommendations. To implement those recommendations, we are now presenting a draft Copyright Policy.

The Old Copyright Policy

In 1977, the Governing Council passed a *Policy on Copyright and Other Proprietary Rights*, which was meant to cover all intellectual property, patentable as well as copyrightable, created by University faculty and students. For a variety of reasons, the Governing Council went on to pass additional policies to deal specifically with certain

types of intellectual property, such as inventions and software, thus greatly limiting the 1977 Policy's area of jurisdiction. The Policy's effectiveness was further weakened by the ambiguity of its terms. With the exception of books and articles, copyright in works created by faculty and students was vested in the University – but authors were granted the rights usually associated with copyright, such as the right to negotiate with publishers and receive royalties. Because of the confusion this caused, the 1977 Policy fell into disuse, leaving a policy vacuum.

As long as most works created by faculty and students were published in print form, this vacuum did not present a huge problem. But with the advent of digital media and the Internet, it has created uncertainties that could inhibit the creation of instructional works. The Task Force on Technology-Enhanced Education has urged that the University's intellectual property policies "be designed to encourage, rather than constrain, the [University's] ability to share expertise and scholarship with the world." The current *Policy on Copyright and Other Proprietary Rights* is inconsistent with that aim.

The Proposed Copyright Policy

Consistent with the recommendations of the Daniels Report, the proposed new Copyright Policy would ensure that, except in certain defined circumstances, authors will own copyright in the works they create. For printed works, this will simply confirm the status quo, but for other works, such as courseware or databases, it will remove an ambiguity in the University's existing Policy. There would be two main exceptions to the ownership of copyright by the authors:

- works created in the course of the author's employment by the University. This would, for example, include software created by programmers hired by the University for that purpose. However, the new Policy specifically excludes works arising out of the research or instructional activities of faculty or librarians.
- works specifically commissioned by the University under a written agreement with the author.

While confirming the author's copyright, the proposed Policy provides that, where the work is to be commercialized, the author must disclose his or her intentions to the University. It is important to note that "commercialization" does not include publication of a book by a university or other academic press. If it is software created for non-instructional purposes, it will be treated as an invention under the Inventions Policy. If it has been created using "Substantial Use of University Resources," a revenue-sharing agreement with the University must be negotiated. The Task Force proposes a strict definition of "Substantial Use," and this has been incorporated into the draft Policy. The draft Policy also provides that, whenever possible, "Substantial Use" should be identified at the time of the investment by the University, so that the author is aware of the need for a revenue-sharing agreement later on.

Effect on Other Policies

If the Governing Council approves the proposed Copyright Policy, it would have the following effect on other policies:

- The Policy on *Copyright and Other Proprietary Rights* (1977) and the *Policy on Computer Software* (1988) should be repealed.
- The definition of “Invention” in the *Inventions Policy* (1990) would have to be amended. The *Inventions Policy* makes reference to the *Policy on Computer Software* in the definition of “Invention.” Once the Software Policy has been repealed, the definition will have to be amended to refer to the new Copyright Policy. This will be the subject of another memorandum.

Recommendation

That the Committee recommends to Academic Board that the attached Copyright Policy be approved, and that accordingly the *Policy on Copyright and Other Proprietary Rights* and the *Policy on Computer Software* be repealed.

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COPYRIGHT POLICY

Preamble

This **Copyright Policy** has the following basic objectives:

- To determine the ownership of copyright works created by members of the University community.
- To foster the creation and development of copyright works in support of the University's academic mission.
- To provide for the equitable sharing of the revenues arising from copyright works between authors and the University.

1. Definitions

The following capitalized terms, whether used in the singular or plural, have the following meanings in this Policy:

- 1.1 “**Administrative Staff**” means the employees of the University, University College, the constituent colleges and the federated universities who are not members of the Teaching Staff [*University of Toronto Act*, S.O. 1971, c. 56, s. 1(1)(aa), as amended by S.O. 1978, c. 88].
- 1.2 “**Author**” means any member of the University's Teaching Staff or Administrative Staff, any student of the University and any visitor to the University, who has written or created a Work.
- 1.3 “**Commercialize**” and “**Commercialization**” mean to make a Work available outside of the University on a for-profit basis, but does not include publication or distribution of conventional texts by a recognized university or other academic press.
- 1.4 “**Connaught Fund**” means the fund administered by the University's Connaught Committee, or any similar fund established by the University to support research.
- 1.5 “**Computer Software**” means any set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer to bring about a specific result.
- 1.6 “**Copyright**” has the meaning prescribed by the *Copyright Act*.
- 1.7 “**Copyright Act**” means the Canadian *Copyright Act* (R.S.C. 1985, c. C-42), as amended, or any successor legislation thereto.
- 1.8 “**Instructional Software**” means Computer Software designed for instructional purposes that provides for interaction with the user, or makes use of multimedia products, or both, and includes technology-enabled learning products in electronic format.

- 1.9 **“Moral Rights”** means all of the Author’s rights to claim authorship and to protect the integrity of a Work under the *Copyright Act* and applicable law.
- 1.10 **“Net Revenue”** means the royalty, licensing and other income or equivalent financial return received from the Commercialization of a Work created with Substantial Use of University Resources, less legal and other fees incurred directly in the process of establishing and maintaining the legal protection of those rights.
- 1.11 **“Substantial Use of University Resources”** means the extraordinary provision of resources by the University, which includes, without limitation: release time from regularly assigned duties where the primary purpose of this is the creation of a Work; direct discretionary investment by the University of funds or staff, or the purchase of special equipment for the creation of a Work; extraordinary use of multimedia production personnel and facilities; and, extraordinary use of computing resources. It would not normally include basic salary or the provision of overhead costs associated with the University’s administration of external funds.
- 1.12 **“Teaching Staff”** means the employees of the University, University College, the constituent colleges and the arts and science faculties of the federated universities who hold the academic rank of professor, associate professor, assistant professor, full-time lecturer or part-time lecturer, unless such part-time lecturer is registered as a student, or who hold any other rank created by the University and designated by it as an academic rank [*University of Toronto Act*, S.O. 1971, c. 56, s. 1(1)(m), as amended by S.O. 1978, c. 88].
- 1.13 **“University”** means the Governing Council of the University of Toronto, as represented by its duly appointed officers and officials and their designates.
- 1.14 **“University Revenue”** means the portion of Net Revenue received by the University under this Policy.
- 1.15 **“Work”** means any architectural, artistic, choreographic, cinematographic, dramatic, literary, musical, scientific, technical or other work in which copyright may subsist under the *Copyright Act* and applicable law, but excludes any Computer Software that is not Instructional Software.

2. Rights in the Work

- 2.1 The University will own Copyright in all Works which are:
- (a) created by an Author in the course of the Author’s employment by the University; or,
 - (b) specifically commissioned by the University under a written agreement in which the Author assigns Copyright in the Work to the University.

For the purposes of this Policy, research and instruction, or the creation of instructional Works, including Instructional Software, undertaken by members of the University’s Teaching Staff or librarians shall not be deemed to be made or undertaken in the course of their employment by the University.

- 2.2 In all other cases, the Author will own Copyright in the Work, except to extent that any rights in the Work have been granted to a third party under a prior written agreement signed by the University and acknowledged in writing by the Author.
- 2.3 Where the University owns Copyright in a Work created other than in the course of employment, the Author will:
- (a) retain all Moral Rights in the Work;
 - (b) have the right to revise the Work at reasonable intervals; and,
 - (c) have a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license to use, revise and modify the Work for non-commercial purposes.
- 2.4 Where the University does not own Copyright in Work created with Substantial Use of University Resources, the University will:
- (a) have the right to receive a share of Net Revenue, in accordance with Section 3 of this Policy; and,
 - (b) have a perpetual, irrevocable, royalty-free non-exclusive, non-transferable license to use, revise and modify the Work for research and teaching purposes within the University, provided that:
 - i. the license will not confer any commercial rights to the University; and,
 - ii. the University will not publish any revised version of the Work without the Author's prior written consent.
- 2.5 To encourage awareness of rights and obligations under this Policy and reduce the possibility of misunderstanding, circumstances involving Substantial Use of University Resources should be identified in advance of the creation of a Work whenever possible. Since practices and procedures on such matters may vary in different divisions of the University, divisions are encouraged to develop their own guidelines in furtherance of this Policy, subject to the approval of the Vice-President and Provost and the Vice-President, Research and International Relations. The object of such guidelines will be to create an atmosphere that encourages the creation of Works, without interfering with freedom of inquiry or causing unnecessary administrative burdens.
- 2.6 Computer Software that is not Instructional Software will deemed to be an "Invention" under the *Inventions Policy* (May 30, 1999, as amended), and the rights and obligations with respect to such Computer Software and the disposition of revenues therefrom shall be in accordance with the *Inventions Policy*.
- 2.7 Notwithstanding any statement elsewhere in this Policy:
- (a) if an Author also holds an appointment with an affiliated teaching hospital or other external institution, the determination of rights in a Work and the allocation of Net Revenues arising out of its Commercialization shall be subject to the terms and conditions of agreements between the University and the hospital or

other institution in force at the time of the disclosure of the Work, or, in the absence of such an agreement, to negotiation between the institutions involved;

- (b) all agreements existing at the time of the adoption of this Policy between the University and Authors, or the University and governments, corporations and other third parties relating to Works and/or Authors shall remain in full force; and,
- (c) the rights and obligations set out in this Policy may be modified by written agreement between an Author and the University.

3. Disclosure and Revenue Sharing

- 3.1 If an Author wishes to Commercialize a Work created with Substantial Use of University Resources, the Author will disclose the Work to the University by completing a disclosure form and submitting it to the Vice-President, Research and International Relations or his/her designate(s) without unreasonable delay. Works which comprise an instructional course shall not be considered Commercialized simply because the tuition income from the course exceeds the cost of mounting the course.
- 3.2 The Author may consult with the University's appropriate officials with respect to the various options available to the Author regarding Commercialization and of sources of information about those options. If the Author wishes to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author will enter into a revenue sharing agreement with the University, under which the University will receive 25% of the Net Revenue which the Author may receive, payable on an annual basis.
- 3.3 If the Author does not wish to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author may offer to assign Copyright in the Work to the University. If the University accepts the assignment, the Author will enter into an assignment and revenue sharing agreement with the University under which the Author will receive 25% of the Net Revenue which the University may receive, payable on an annual basis.
- 3.4 In cases where the respective contributions of the Author and the University vary substantially from the norm, the respective shares of Net Revenue may be varied accordingly by agreement to reflect the relative contributions of the Author and of the University.
- 3.5 University Revenue shall be divided as follows, unless otherwise agreed by the Vice-President, Research and International Relations:
 - (a) For cumulative University Revenue up to \$100,000:
 - Author's Department 50%
 - Author's Faculty 20%
 - University Distribution 30%

(b) For cumulative University Revenue above \$100,000:

Author's Department 15%
Author's Faculty 15%
Connaught Fund 70%

4. Arbitration

- 4.1 If a dispute arises between an Author and the University with respect to the application of this Policy, the dispute shall be referred for decision to a Board of Arbitration composed of one member nominated by the Author, one member nominated by the University and one member selected by the first two or, in the absence of an agreement between them, by the Dean of the Faculty of Law of the University.
- 4.2 Until a decision is given by the Board of Arbitration, no action shall be brought by the Author against the University, or by the University against the Author, in any court of law on any matter arising out of this Policy.

5. Application of Policy

- 5.1 This Policy applies to all Works created after the date fixed for implementation of this Policy by the University, and to trademarks relating to those Works. This Policy does not apply to Works created in the course of demonstrably private research unrelated to the Author's University functions or in the course of private consulting activities to outside bodies, or to trademarks relating to those Works.
- 5.2 This Policy replaces the *Policy on Copyright and Other Proprietary Rights* (May 19, 1977) and the *Policy on Computer Software* (April 14, 1998).
- 5.3 Three years after the date fixed for implementation of this Policy, the Vice-President, Research and International Relations and Vice-President and Provost shall appoint a committee to review this Policy and its implementation, and if appropriate, to recommend revisions to this Policy.