

NOTICE OF PROPOSED REGULATION

Date: December 22, 2011

REGULATION TITLE:
Copyright and Works

REGULATION NO.:
UCF-2.033

SUMMARY OF PROPOSED REGULATION: This is a new regulation. Previously, copyright interests and works at the University were addressed as part of Regulation UCF-2.029. This regulation describes rights in copyright for works created at the University. This regulation also expresses the University's policy to encourage university personnel to produce copyrightable works that contribute to their professional stature, public knowledge, and the University's mission. As part of encouraging the production of works, the University disclaims certain interests and shares the benefits of others with the University personnel who create the works.

AUTHORITY: BOG Regulation 1.001

NAME OF PERSON WHO INITIATED PROPOSED REGULATION:
Dr. Tony Waldrop, Provost and Executive Vice President

COMMENTS CONCERNING THE PROPOSED REGULATION SHOULD BE SUBMITTED WITHIN 14 DAYS OF THE DATE OF THIS NOTICE TO THE CONTACT PERSON IDENTIFIED BELOW. The comments must identify the regulation you are commenting on.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED REGULATION IS:

Regulations Administrator
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FULL TEXT OF THE PROPOSED REGULATION:

UCF-2.033 Copyright and Works

(1) General.

- (a) This Regulation applies to all University Personnel, as defined in section (2)(a). Nothing herein shall be deemed to limit or restrict the University's full exercise of its legal rights and authority.

- (b) The University possesses all rights to and has the authority, at its option, to take any action necessary and proper to secure Intellectual Property owned by the University, and the University may take all steps necessary and proper to protect and enforce its rights. University profits derived from Intellectual Property subject to this Regulation shall be shared with the Inventor and/or Creator in accordance with this Regulation, Regulation UCF-2.029, any applicable collective bargaining agreements, and policies or procedures established by the University, including the Office of Research and Commercialization. In the unlikely event of a conflict between any departmental or university policy and this Regulation, this Regulation will control.
- (c) The purpose of this Regulation is to describe rights in Copyright at the University and to encourage University Personnel to produce copyrightable works that contribute to their professional stature, public knowledge, and the University's mission. The University encourages the creation of original works of authorship and the free expression and exchange of ideas. This Regulation is intended to embody the spirit of academic tradition, which respects faculty's interests in their scholarly works, and is otherwise consistent with United States copyright law, which provides the University ownership rights to employment-related works.
- (d) The ongoing revolution in the use of information technology for the production and dissemination of knowledge enables Faculty to create new forms or types of scholarly works, to communicate with new types of materials, and to reach new audiences. The dramatic changes in the manner and use of information technologies has caused the University to be increasingly involved in diverse use of media that generate and draw upon a variety of materials that may be protected by Copyright and that may also be suitable for patent, trademark, and/or trade secret protection. The University, as both a producer and user of such materials, needs to provide clear guidance relating to ownership and use of such materials, as well as rights to income produced by distribution of such materials. Yet, the University recognizes that proper balance must be maintained between academic tradition and the University's commitment to providing an environment that supports creative endeavors in all academic areas. This Regulation is intended to clarify the rights of University Personnel by identifying copyrightable materials

and by stating University-wide policies governing ownership and use of copyrightable material and the rights to income produced from any distribution thereof.

- (e) This Regulation addresses only Copyrights in Works. Rights in Inventions, Trademarks, and Trade Secrets are addressed in University Regulation UCF-2.029, and in applicable collective bargaining agreements.

(2) Definitions. For purposes of interpreting and applying the substantive provisions of this Regulation, the following definitions apply:

- (a) “University Personnel” shall mean all full-time and part-time employees of the University, whether or not they are members of a collective bargaining unit, including all faculty, staff, and post-doctoral fellows; appointees of the University who receive University Support (as defined below), including volunteers, adjuncts, and courtesy faculty; persons paid by or through the University, including contractors and consultants; and anybody working under University auspices and anybody receiving University Support. Students, including undergraduate, graduate and professional students, who are encompassed within any of these categories, shall be considered University Personnel for purposes of this Regulation.
- (b) “Copyright” means the intangible property right granted by federal law, Title 17 of the U.S. Code, to the Creator(s) of an original work of authorship fixed in a tangible form of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. An original work of authorship may be literary, dramatic, musical, artistic, or any other creative work, whether published or unpublished. Copyright provides the owner(s) with certain rights in a work, including the right to reproduce the work, to prepare derivative works, to distribute the work, to perform/display the work, and to prevent others from doing same. The term also includes copyright protection that may be granted by foreign governments.
- (c) “Work” means, in accordance with Title 17 of the U.S. Code, any original work of authorship that is or may be subject to Copyright. “Work” includes but is not limited to printed material (such as books, articles, memoranda, and texts), computer software or databases, audio and visual material, circuit diagrams,

architectural and engineering drawings, lecture, musical or dramatic compositions, musical works, dramatic works, motion pictures, multimedia works, web pages, sound recordings, choreography, and pictorial or graphic illustrations or displays, and any creative expression of a Trademark used in connection with these items. Instructional Material and Instructional Technology Material are two types of Work. “Work” does not include patentable material, which is encompassed within the definition of Invention; an Invention may also include a related Work. Rights to Inventions are addressed in University Regulation UCF-2.029 Patents, Trademarks, and Trade Secrets.

- (d) “Creator” shall mean any University Personnel who create(s) a Work.
- (e) “University Support” shall mean the non-incidental use of University funds, personnel, facilities, equipment, materials, technical information, or students in creation or making of a Work or Invention; but does not include the inconsequential use of resources made available to the University community for common use. “University Support” includes support provided by other public or private organizations when it is arranged, administered or controlled by the University, including but not limited to research and investigations that are sponsored by the University and/or that are carried out by public funds.
- (f) “Work for Hire” shall mean, as defined in Section 101 of the Copyright Code,
 - (i) a Work that is prepared by an employee within the scope of his or her employment; or
 - (ii) a Work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in writing that the work shall be considered a work made for hire. In accordance with academic tradition, scholarly or artistic works for which the intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression, and much intellectual content developed by faculty for ITV and Web-based courses, are selectively excluded by the University from the definition of Work for Hire for the purposes of this Regulation (see Section (3)(a)(iii)).

- (g) “Outside Activity” means private practice, private consulting, additional teaching or research, financial interest, or other activity, compensated or uncompensated that: (i) is not part of the University-Personnel’s assigned duties, 2) is not compensated by the University, and 3) that does not involve University Support. Outside Activity is subject to the requirements of this Regulation and other University Policies and Regulations, including but not limited to University Regulation UCF-3.018.
- (h) “Instructional Material” means a Work that is developed by University Personnel to be used by students or instructors as a learning resource to help students acquire knowledge or skills or develop cognitive processes. Instructional Material may be printed material (such as a class notes packet) or may be embodied in Instructional Technology Material (such as a digital transmission).
- (i) "Instructional Technology Material" means Instructional Material that requires the availability of electronic, electro-mechanical, or solid-state physics-based equipment to be used as a learning resource. “Instructional Technology Material” includes video and audio recordings or transmissions, motion pictures, films, slides, photographic and other similar visual materials, live video and audio transmissions, electronic and digital media, computer programs, computer assisted instructional course work, programmed instructional materials, three dimensional materials and exhibits, web pages, electronic, electro-mechanical, or solid-state physics-based equipment, and combinations of the above, which are prepared or produced to be used as a learning resource for or to enhance instruction. All distance and distributed learning courses and/or modules prepared by University Personnel are included in this definition.
- (j) “Intellectual Property” refers to Works, Inventions, Trademarks and Trade Secrets.
- (k) “Trademark” means a name, symbol, figure, letter, word or mark adopted and used to designate the source of goods and/or services arising from an Invention or a Work.

(3) Rights to Copyrighted Works

- (a) *Works owned by University Personnel.*

- (i) *Works created as a result of Independent Efforts.* “Independent Efforts” means, with respect to a Work: that the idea came from the Creator(s); that the Work was made without University Support; and that the University is not responsible for any opinions expressed in the Work. A Work made in the course of Independent Efforts is the property of the University Personnel who created it. The Creator(s) of a Work made in the course of Independent Efforts shall, upon request of the University, provide documentation to substantiate his or her or their Independent Efforts.
- (ii) *Works created as a result of Outside Activity.* University Personnel may, after reporting the details in accordance with applicable University Regulation and procedures, engage in Outside Activity. University Personnel engaged in Outside Activity should use great care to determine that the Intellectual Property clauses in any agreement(s) related to the Outside Activity do not involve conflict of interest problems or are not in actual conflict with sponsored grants or contracts, or with University regulation or policy. If the individual seeking to engage in an Outside Activity is asked to sign an agreement relating to the Outside Activity that purports to waive any University right(s) in any Intellectual Property, a copy of this Regulation shall be provided to the person asking for a waiver before the Outside Activity begins. University Personnel are not authorized to waive University rights, and any such waiver is deemed rejected by the University unless specifically accepted by, as appropriate, the Provost or Vice President of Research & Commercialization or designees. All Works created from authorized Outside Activity, as defined in this Regulation, are the property of the Creator. University Personnel seeking to engage in Outside Activity are advised to review the terms of University Regulation 3.018 and any applicable collective bargaining agreement.
- (iii) *Scholarly or Artistic Works* In accordance with academic tradition, and unless required by Federal and State laws or regulations, or the terms of any applicable sponsored agreements, or as excepted below in (3)(b), the University shall **not** assert rights to the following Works:

- (A) scholarly or artistic works, regardless of their form of expression, for which the intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression, such as textbooks, other works of popular nonfiction, novels, monographs, articles submitted to or published by scholarly and professional journals, bibliographies, poems, novels, dramatic works, pictorial or sculptural works, films, videotapes, musical compositions, or other scholarly or artistic expressions in any medium;
 - (B) the intellectual content developed by faculty for ITV and Web-based courses.
- (b) *Works Owned by the University.* Notwithstanding academic tradition, the availability and use of new media technologies has impacted the process of creation of scholarly or artistic Works. In many cases, the use of new media technologies requires increased involvement by the University in the form of financial support, expert services, equipment, and other facilities beyond the base level of support and common resources provided to University Personnel. The University shall hold rights in Copyright to Works that are created by University Personnel and that are supported by a direct allocation of University funds, are commissioned by the University, are Works for Hire, or are made with University Support. That is, subject to ownership terms specified and agreed upon in writing by the University, the University asserts copyright ownership in any Work where:
 - (i) the Creator was expressly commissioned in writing to produce or participate in the production of the Work with University funds for a specific University purpose ; or
 - (ii) the Creator was expressly assigned in writing by the University to produce, or participate in the production of the Work; or
 - (iii) the Creator was a faculty administrator or a non-faculty employee acting within the scope of his or her employment ; or
 - (iv) the Creator was substantially assisted by a support agency of the University, received assistance in the form of released time, or received

University Support, including grants and contract funds administered by the University, for the creation of the Work; or

- (v) the Creator employed in his/her developmental work, beyond incidental levels and without personal charge, the equipment, materials, or staff services of any centers, departments or agencies established or supported by the University primarily to assist in developing and producing Works; or
- (vi) authorship cannot be attributed to one or a discrete number of authors but rather results from simultaneous or sequential contributions over time by multiple University Personnel, such as software tools developed and improved over time by multiple individuals. Joint authorship is not the determining factor; rather, the University looks to determine whether authorship or creation is so diffuse as to be non-attributable.

(4) Disclosure/University Review. All materials in which the University may have an interest under the provisions of this Regulation shall be disclosed to the Provost or designee, who will review and make a recommendation to the President or designee for final determination.

- (a) In general, the Creator(s) need not disclose Works described in section (3)(a)), except for Works also meeting the description in section (3)(b-). Any University Personnel having questions, either in planning for or preparing a Work, as to whether certain materials will be considered Works Owned by the University should initiate an inquiry to Provost or designee; however, a resulting advisory opinion as to the character of a Work is subject to final clarification by the Provost or designee when creation of the Work is completed. Even if a Work is not otherwise required to be disclosed in accordance with this Regulation, a Work must be disclosed if its production, dissemination, or use raises a possible conflict of interest.
- (b) Disclosure of a Work shall include an outline of the project and the conditions under which the Work was completed.
- (c) The University shall inform the Creator(s) promptly whether a disclosed Work should be considered a Work Owned by the University, within the meaning of this Regulation, and within ninety days (90) days from the date of disclosure whether the University will assert an interest in the Work.

- (d) In the event the University elects to formally protect the University's rights in the Work, the Creator(s) will promptly execute any and all necessary documents to affirm, publicly formalize, and record the transfer of all rights to the University or to the UCF Research Foundation, Inc. (UCFRF), according to the sole discretion of the University. If the University requires an assignment to UCFRF and UCFRF asserts its interests in the Work, UCFRF shall allocate and distribute funds in accordance with the same requirements applicable to the University.
- (e) The Creator(s) shall not commit any act that would tend to defeat the University's interest in the Work, and shall take any necessary steps to protect such interests. The Creator(s) shall assist the University in obtaining executed documentation, including but not limited to assignments or releases, from any contributor to or subject appearing in a Work, or otherwise giving financial or creative support to the development or use of a Work.
- (f) If the University asserts its interests in a Work, the parties will prepare an agreement, to include provisions relating to the creation, use, and revision of such Works by the University and/or Creator(s), the identification of the Creator(s) as the author(s) of the Work, as well as provisions relating to the use or revision of such Works by persons other than the University or Creator(s). All such agreements shall comport with and satisfy any preexisting and authorized commitments arising from University Support. This provision shall not apply to Works for Hire; pursuant to Federal Copyright Law, the University is the Creator of a Work for Hire.

(5) Commercialization of Works. In addition to clarifying ownership, this Regulation is also intended to strengthen and protect the reputation of the University. That is, when the University's name is associated with a work of scholarship or Instructional Materials, the interest of the University and its community of scholars and researchers are affected, and the University must exercise quality control with respect to the use of its name. As such, for Works in which the University does not have an ownership interest or in which the University has waived its ownership interest, the University's name may be referenced relative to its relationship with the Creator, but written authorization must be sought from the President or designee for any further use of the University name.

- (a) The commercialization of Works will be undertaken under the auspices of the University. All costs and expenses of registering, developing, and marketing of Works owned by the University, including those which may lead to active licensing of a Work, shall be paid by the University. With the exception of Works for Hire, the University will not undertake any such commercialization without the agreement of the Creator(s), and the Creator(s) shall share in any proceeds in accordance with this Regulation and any applicable policies and procedures established by the Vice President of Research & Commercialization including the applicable UCFRF Guidelines and Procedures for Distribution of Funds. The University's costs and expenses shall be recovered before any division of revenue is made. Proceeds allocated to the Creator(s) from a Work that results from research done in a thesis or dissertation or in connection with a thesis or dissertation related project, shall be divided between the faculty member who directed the research and the graduate student(s) who created the Work in a manner that reflects their relative contributions to the Work as determined by the Provost or designee.
- (b) University Personnel, notwithstanding copyright ownership, may not commercialize Works defined under Sections 3(a)(iii)(1) and 3(a)(iii)(2), including but not limited to course content or courseware taught or created at the University, without approval of the President or designee.
- (c) With the exception of Works for Hire, licensing or sale or publication of Works for external and commercial use shall be preceded by a written agreement between the University and the Creator(s) specifying the conditions of use, including provisions concerning the right of the Creator(s) to revise the Works or to withdraw them from use, and the distribution of net royalty income. Use by the University and other institutions in the Florida State University System shall be royalty free.

(6) University Withdrawal and Transfer of Rights to Creator(s).

At any stage of registration or commercialization, the University in its sole discretion may elect to transfer all of its rights in a Work to the Creator(s), upon the Creator's request, whereafter the Work shall become the property of the Creator and none of the costs incurred by the University or on its behalf shall be assessed against the Creator. Under these circumstances,

and further subject to paragraph (7), the Creator's request may be granted if it does not violate any legal obligations of or to the University; limit appropriate uses of the Work by the University; or create a conflict of interest for University Personnel.

(7) Release of University Interest.

In the event the University elects not to assert its interest in a Work Owned by the University, as defined in (3)(c), the Work shall be released to the Creator(s) upon the Creator's request. The University's release of the Work shall be contingent upon the execution of a written agreement with the Creator(s) (i) granting the University a right to a ten percent (10%) share of proceeds arising from or attributed to the Intellectual Property valuation of the Work and received by the Creator(s) from a third-party for commercialization or publication of the Work, or transfer of ownership of the Work, and (ii) granting the University a royalty free right to use the Work for educational and research purposes of the University

(8) Employment Status.

For all Works created by University Personnel, irrespective of ownership and with the exception of those arising from Independent Efforts or authorized Outside Activity, if the Creator(s) terminates employment with the University, the University retains the right to continued internal use of the Works in accordance with this Regulation, unless different conditions for subsequent internal use have been arrived at by joint written agreement of the Creator(s) and the University. Additionally, subject to any third-party obligations, for those Works Owned by the University, the Creator(s) may make personal and professional use of the Works for non-commercial purposes, at no cost, irrespective of employment status with the University. For purposes of this regulation, non-commercial purposes means not-for-profit personal, research and educational purposes only.

Authority: BOG Regulation 1.001, Florida Statutes 1004.23. History –New _____-11.