

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: March 14, 2025

REGULATION TITLE:

Copyright and Works

REGULATION NO.:

UCF-2.033

SUMMARY OF REGULATION AMENDMENT:

This regulation is being amended to: (i) add clarifying language in section (3)(b) regarding the character of proceeds that are shared and circumstances of a written agreement regarding such sharing; (ii) add references in Section (3)(b) to defined terms “Scholarly Works” and “Instructional Material”, to conform to language adopted in the 2024-2027 Collective Bargaining Agreement ratified December 5, 2024; and (iii) add language in Section (4)(c) to clarify the University notification following a disclosure review, as to whether or not the University will assert its ownership. In addition, references to the Vice President for Research and Innovation have been updated to reflect the correct title and new structure, and references to the Provost have been removed.

AUTHORITY: BOG Regulation 1.001

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT:

Sandra Sovinski, Deputy General Counsel for Research

COMMENTS CONCERNING THE PROPOSED REGULATION AMENDMENT 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 AMENDMENT IS:

Regulations Administrator
4365 Andromeda Loop N.
Millican Hall, Suite 360
Orlando, FL 32816-0015
Phone: (407) 823-2482
e-mail: regulations@ucf.edu

FULL TEXT OF THE PROPOSED REGULATION AMENDMENT:

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 the University's designated Intellectual Property owner, the University of Central Florida Research Foundation, Inc ("UCFRF"). In the unlikely event of a conflict between any departmental or university or direct support organization policy and this Regulation, this Regulation will control.

- (c) 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, compositions (e.g. written, musical and/or dramatic), motion pictures, multimedia works, web pages, sound recordings, choreographic works, pictorial or graphic illustrations or displays, and any creative expression of a Trademark used in connection with these items. "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 (i) the appreciable use of University resources, such as funds, personnel, facilities, equipment, materials, technical information, or students, (ii) course release, and/or (iii) support provided by other public or private organizations when it is arranged, administered or controlled by the University or a University direct support organization. For a use of University resources to be appreciable, it must go beyond the resources commonly or routinely provided or made available to similarly situated employees for the performance of their assignment. For example, the routine use of resources such as the libraries; one’s office, office computer, and other University computer facilities; and office supplies, is not considered appreciable University Support.
- (f) “Outside Activity” means private practice, private consulting, additional teaching or research, financial interest, or other personal commitment, e.g., service on a Board of Directors, participation in a civic or charitable organization, political activity, etc., whether compensated or uncompensated, that: (i) is not part of the University Personnel’s assigned duties, (ii) is not compensated by the University, and (iii) that does not involve University Support. Outside Activity is subject to the requirements of Chapter 112, Part III, Florida Statutes, “Code of Ethics for Public Officers and Employees,” this Regulation and other University Policies and Regulations, including but not limited to University Regulation UCF-3.018.
- (g) “Intellectual Property” refers to Works, Inventions, Trademarks and Trade Secrets.
- (h) “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.
- (i) “Online Course” means a course that requires student access to an University online learning environment, and includes but is not limited to, courses taught under World Wide Web (“W”), Mixed Mode/Reduced Seat Time (“M”), Video Streaming (“V”), Video Streaming/Reduced Seat Time (“RV”), and Active Learning/Reduced Seat Time (“RA”) course modalities.
- (j) “Independent Creative Efforts” means, with respect to a Work: that the idea came from the employee Creator(s); that the Work was made without the use of University Support; and that the University is not responsible for any opinions expressed in the Work.

(3) Rights to Copyrighted Works.

- (a) *Works created as a result of Independent Creative Efforts.* A Work made in the course of Independent Creative Efforts is the property of the University Personnel who created it, who each have the right to determine the disposition of such Work and the revenue derived from it, in accordance with U.S. copyright law. The Creator(s) of a Work made in the course of Independent Creative Efforts shall, upon request of the University, provide documentation to substantiate his or her or their Independent Creative Efforts.
- (b) *Works created as a result of University-Supported Efforts.* A Work not made in the course of Independent Creative Efforts is the property of the University and is hereby assigned to the University by the Creator(s), and such Creator(s) shall share in any licensing or assignment proceeds therefrom.

1. Notwithstanding the above,

- a. the University shall not assert ownership rights to Works for which the intended purpose is to disseminate the results of academic research, scholarly study, and/or creative efforts (“Scholarly Works”).
- b. the University shall not assert ownership rights to Works developed without appreciable University Support and used solely for the purpose of assisting or enhancing the employee’s instructional assignment. Examples include case studies, textbooks, laboratory manuals, and class notes produced in connection with regular scheduled courses of instruction, regardless of modality. (The Works described in 3(b)(1)(b-d), collectively, “Instructional Material”)
- c. Instructional material developed or substantially revised for an Online Course without University Support and without the use of UCF online instructional design services shall be the property of the Creator(s) and is hereby assigned to such Creator(s) by the University, subject to the retained rights set forth in section (3)(b)1d (i) through (iii).
- d. Instructional material developed or substantially revised for an Online Course with the use of UCF online instructional design services shall be the property of the Creator(s), subject to a retained right by the University to continued internal use of the Online Course, including the instructional material, for instructional purposes, and subject to the retained rights set forth in section (3)(b)1d(i) through (iii). Unless Creator(s) agree otherwise, in writing as long as they are employed by the University, such Creator(s) shall have the exclusive right to revise the Online Course, provided that the University shall not be obligated to provide further resources for such revisions unless they are requested by the University or agreed upon jointly by the University and the Creator(s).
 - (i) If a Creator who develops or substantially revises an Online Course ceases to be employed by the University, the University shall possess and expressly retains the right to continued internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes for no more than the five (5) full academic years following the employee’s separation from the University. The owner (Creator) may continue to make personal and professional use of the instructional material, at no cost to and with no obligation by the University after termination of their employment, subject to any third-party obligations.
 - (ii) If a Creator who develops or substantially revises an Online Course is unexpectedly unable to complete that employee’s instructional assignment as to such Online Course, the University shall possess and expressly retains the right to internal use of such Online Course, including the right to

revise, reproduce, or make derivative works, of the instructional materials for instructional purposes and to the extent necessary to ensure successful completion of the instructional assignment.

- (iii) In any Online Course where the University exercises its rights to internal use of instructional materials for instructional purposes, acknowledgment and attribution of the Creator(s) will be included.

- 2. Without limiting the above, the University asserts copyright ownership in any Work where:
 - a. 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
 - b. the Creator was expressly assigned in writing by the University to produce, or participate in the production of the Work; or
 - c. the Creator was a faculty administrator or a non-faculty employee acting within the scope of his or her employment; or
 - d. 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.

- (c) *Works created as a result of Outside Activity.* Subject to the requirements of Chapter 112, Part III, Florida Statutes, “Code of Ethics for Public Officers and Employees”, this Regulation and other University Policies and Regulations, including but not limited to University Regulation UCF-3.018, University Personnel may, after reporting the details in accordance with applicable University Regulation and procedures, engage in Outside Activity, including employment pursuant to a consulting agreement. An employee who proposes to engage in such Outside Activity shall furnish a copy of this Regulation and, where applicable, Article 18 of the Collective Bargaining Agreement, to the outside employer/party prior to the time a consulting or other agreement is signed or, if there is no written agreement, before the employment/activity at the outside employer/party begins. 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. 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 ~~for~~ Research and Innovation 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.

(4) Disclosure/University Review. Upon the creation of a Work and prior to any publication, Creator(s) shall disclose to the University's representative, any Work that was not made in the course of Independent Creative Effort and/or that is not a Scholarly Work or Instructional Material. The University's representative shall assess the relative equities of the Creator and the University in the Work.

- (a) 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 the Vice President for Research and Innovation Provost or designee; however, a resulting advisory opinion as to the character of a Work is subject to final clarification by the Vice President for Research and Innovation 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) within ninety days (90) days from the date of disclosure whether the University seeks to assert its~~an~~ interest in the Work, and if there are multiple creators of a Work and the creators do not agree that each creator should equally share in any licensing or assignment proceed distributions according to University policy, a written agreement shall thereafter be negotiated to reflect the interests of the applicable~~both~~ parties (~~the Creator and the University~~), including provisions relating to the equities of the employee and/or the allocation of proceeds resulting from such Work shall be made in accordance with the University's policy on copyrights and patents. The agreement will also include provisions relating to the creation, use, and revision of such Works by the University and/or Creator(s), as well as provisions relating to the use or revision of such Works by persons other than the University or Creator(s), as applicable. All such agreements shall comport with and satisfy any preexisting terms or commitments to outside sponsoring contractors or agencies.
- (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 UCFRF. UCF or UCFRF, as applicable, 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 or employee's interest in the Work, such as making a public disclosure prior to the University obtaining intellectual property protection, and shall take any necessary steps to protect such interests. The Creator(s) shall assist the University in obtaining releases from persons appearing in, or giving financial or creative support to, the development or use of the Work in which the University asserts an interest. The Creator(s) shall certify that such development or use does not infringe upon any existing copyright or other legal right.

(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 interests 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.
- (b) 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. The University's costs and expenses shall be recovered before any division of revenue is made.

(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 originating Creator(s), upon such Creator's request to the Vice President for Research and Innovation. The Creator's request shall be granted if it does not violate any legal obligations of or to the University; limit appropriate uses of the Work by the University; create a conflict of interest for the University Personnel Creator(s); or otherwise conflict with specific goals of the University.

*Authority: BOG Regulation 1.001, Florida Statutes s. 1004.23. History –New 1-24-12.
Amended 12-3-20, _____-25.*