

NOTICE OF PROPOSED REGULATION AMENDMENT

Date: October 30, 2020

REGULATION TITLE:
Copyright and Works

REGULATION NO.:
UCF-2.033

SUMMARY OF REGULATION AMENDMENT: This regulation is amended to conform with Article 18 of the CBA which was ratified earlier this year. Several sections have been rearranged to enhance readability, in view of the substantive amendments. Additionally, several definitions were updated, and several were removed that are no longer relevant. Two new definitions were added, "Online Course" and "Independent Creative Efforts". New language was added to clarify the respective rights of employees and the University in online course materials. Language was also added to clarify that the UCF Research Foundation, Inc is the university's designated Intellectual Property owner.

AUTHORITY: BOG Regulation 1.001

NAME OF PERSONS WHO INITIATED PROPOSED REGULATION AMENDMENT:
Sherry Andrews, Associate General Counsel and Associate Provost
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 Commercialization, 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) ~~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, compositions (e.g. written, musical and/or dramatic), ~~compositions, musical works, dramatic works,~~ motion pictures, multimedia works, web pages, sound recordings, choreographic works, ~~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 (i) the appreciable use of University resources, such as funds, personnel, facilities, equipment, materials, technical information, or students, (ii) course release, and/or (iii) 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 or a University direct support organization, including but not limited to research and investigations that are sponsored by the University and/or that are carried out by public funds. 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) ~~“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)~~ (g) “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.
- ~~(h)~~ (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)~~ (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.—~~

- (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 owned by University Personnel.~~
 - (i) ~~Works created as a result of Independent Creative 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 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 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.

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.

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. ~~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. Upon the creation of a Work and prior to any publication, Creator(s) shall disclose to All materials in which the University may have an interest under the provisions of this Regulation shall be disclosed to the University's representative Provost or designee, any Work that was not made in the course of Independent Creative Effort. The University's representative shall assess the relative equities of the Creator and the University in the Workwho 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~~seeks an interest in the Work, and a written agreement shall thereafter be negotiated to reflect the interests of 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). 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 ~~to the University of Central Florida 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, 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 ~~executed documentation, including but not limited to assignments or releases;~~ from persons ~~any contributor to or subject~~ appearing in, ~~a Work,~~ or ~~otherwise~~ giving financial or creative support to, the development or use of thea 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.
- (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 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. ~~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 originating Creator(s), upon suchthe Creator's request to the Vice President for Research., 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 shall~~ 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 the University Personnel Creator(s); or otherwise conflict with specific goals of the University.

~~(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 s. 1004.23. History -New 1-24-12. Amended