

Intellectual Property Policy

The purpose of this policy is to ensure fairness and equity in the development and dissemination of useful creations, products, or processes at Union Institute & University (hereinafter referred to as "UI&U"). This policy clarifies individual and institutional copyrights, patent rights, and other intellectual property rights associated with ownership and with the distribution of benefits that may be derived from the creation of various types of intellectual property. This policy applies to all full-time or part-time employees of UI&U who may create intellectual property while under contract with UI&U. This policy also clarifies rights pertaining to learners' academic creations.

General Policy

Ownership of the various rights associated with copyright and patent are dependent upon the specific type of intellectual property involved. UI&U asserts a limited ownership interest in some of these rights to the extent set forth below. Unless otherwise provided for under this policy, rights associated with a work produced as a work-made-for-hire, works supported by a direct allocation of funds through UI&U for the pursuit of a specific project, works commissioned by UI&U, or other works that make "substantial use" of UI&U's resources or personnel, shall belong to (or be assigned to) UI&U. As further set forth below, where UI&U owns rights to particular intellectual property, the creator of that intellectual property may also be entitled to share in the royalties generated by that intellectual property.

In keeping with the norms of academic tradition, except to the extent set forth in this policy, UI&U does not claim ownership to pedagogical, scholarly, or artistic works. These works include those of learners created in the course of their education, such as dissertations, papers and articles. UI&U claims no ownership in popular nonfiction, novels, textbooks, poems, musical compositions, or other works of artistic imagination which are not institutional works and did not make significant use of UI&U resources or the services of UI&U non-faculty employees working within the scope of their employment.

I. DEFINITIONS AND COMMENTS

Copyright

"Copyright" is the intangible property right conferred by Federal statute for an original work fixed in a tangible medium of expression. Copyright provides the owner with the following exclusive rights in a work: the right to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.

Institutional Works

"Institutional works" include works that are supported by a specific allocation of UI&U funds or that are created at the direction of UI&U for a specific UI&U purpose. "Mediated courses" (defined below), "mediated courseware" (defined below), instructional materials, degrees, certificates, workshops and seminars are institutional works when the assignment creating the intellectual property is made to a faculty member or employee in the normal course of their employment contract, and the assignment is made by the administrator to whom the faculty member or employee reports under that contract. UI&U shall retain ownership of works created

as institutional works. Institutional works also include works whose authorship cannot be attributed to one or a discrete number of authors.

Mediated Courses

“Mediated courses” are defined as courses taught primarily through electronic media, such as web-based, videotaped, audio taped, or distance-learning courses. These courses have the capability of being duplicated and disseminated electronically.

Mediated Courseware

“Mediated courseware” is defined as teaching aids created or deployed electronically. Mediated courseware may incorporate text, graphics, video, and audio elements. Examples of such materials include without limitation: hypertext modules; simulation software; web sites; and databases containing numbers, images, or text and faculty prepared resource aids to support faculty-guided independent tutorial instruction.

Quality Teaching

“Quality teaching” refers to standards as defined by the employing academic program where the faculty member is appointed. Should a question arise about whether an innovation is required for “quality teaching,” a written opinion will be obtained from the unit leader (program or school head, dean, etc.). The faculty member need not obtain a written opinion before undertaking the innovation; however, failure to obtain an advance opinion means that the faculty member will be bound by a later determination made in the sole discretion of UI&U that the innovation was required for “quality teaching.”

Rights, Responsibilities, and Liabilities

Ownership of intellectual property implies responsibility and liability as well as the right to control use of the property. The owners of intellectual property as described in this document will be responsible for assuring the proper use by others of materials for which copyright, patent rights, or other intellectual property rights are held.

Learner Creation or Work

A “learner creation or work” is a work produced by a registered learner without the use of UI&U funds (other than learner financial aid) that is produced outside any UI&U employment (including work study), and is not a sponsored or commissioned work by UI&U, a cooperative employer, or other outside agency.

Substantial Use

“Substantial use” of institutional resources means that in connection with the project at issue the creator of the materials received staff, salary, or material support beyond that normally provided to a typical faculty member at UI&U for activities within the scope of regular employment. Examples of non-significant use include ordinary use of desktop computers and UI&U libraries. Should a question arise about whether support is beyond the norm, the unit leader (program or school head, dean, etc.) will provide a written opinion concerning the level of use of UI&U support and facilities. The employee may or may not obtain such an opinion prior to commencing the project. However, an employee who fails to request and receive such an advance opinion will be bound by any later determination made in the sole discretion of UI&U that the employee made substantial use of institutional resources.

Work-Made-for-Hire

“Work-made-for-hire,” as used in this policy, is defined by the federal Copyright Act as a work prepared by an employee within the scope of the employee's employment. The Copyright Act further provides that in the case of work-made-for-hire, the employer owns all of the rights comprised in the copyright. Where expressly stated in this policy, UI&U has modified the work-made-for-hire doctrine in a manner designed to allow faculty, staff, and learners to benefit substantially from their creative works. In implementing the policy, and in resolving questions that may arise, UI&U will use the definition of work-made-for-hire that is established under federal statute (without regard to any judicially created “teacher exception rule”).

II. COPYRIGHTABLE PROPERTY

A. MEDIATED COURSES, MEDIATED COURSEWARE, AND INSTITUTIONAL WORKS

1. Self-initiated mediated courses/courseware

a. Self-initiated course material developed without assistance of UI&U support units.

The employee who develops a course/courseware shall be considered the "initiator" of the course/courseware when developing an idea for a new course/courseware, or when changing an existing course/courseware beyond the level ordinarily required for quality teaching. In this case, notwithstanding the work-made-for-hire doctrine, the ownership of both the content and presentation shall remain with the initiator. No royalty, rent, or other consideration shall be paid to the employee when that mediated course/courseware is used by anyone for instruction at UI&U, and such mediated course/courseware shall not be used or modified by other UI&U staff without the consent of the initiator. Even though the initiator owns the course/courseware/institutional work, the initiator shall not sell, lease, rent, or otherwise use it in a manner that competes with for-credit or revenue-producing offerings of UI&U unless that use has received the approval of the program head or dean.

Approval to offer the course outside of the institution can be requested through the program head or dean. Approvals shall be forwarded to the provost and shall be granted in the sole discretion of UI&U. If approval is granted, the initiator shall reimburse UI&U from revenues derived from offering the course/courseware for any substantial use of institutional resources. As owner of the materials, the initiator is responsible for securing and maintaining any and all copyright permission related to the content or presentation of the course/courseware and for responding to any other legal actions resulting from the use of the material. These provisions shall continue to apply to the course/courseware developed during the initiator's employment at UI&U after the initiator's employment terminates for any reason.

Common examples applicable to UI&U and its faculty include development of course material associated with credit or non-credit bearing independent studies, courses, cohort courses, online courses, hybrid courses or seminars and residential graduate seminars.

**b. Self-initiated course material developed with assistance of
Union Institute & University Support Units**

When employees develop mediated courses/courseware (both content and presentation) without specific direction from UI&U or its agents and make use of the services of campus or UI&U support units (such as technology support units, etc.) in its development, UI&U makes no claim to the content of the course/courseware, notwithstanding the work-made-for-hire principle. However, the ownership of the specific presentation or materials created by the support unit shall remain with UI&U. A written agreement that specifies the respective contributions of the employee and of the support unit(s) shall be prepared by the employee. If an employee fails to have such a written agreement prepared and signed by an authorized representative of UI&U prior to the use of the support unit, the employee is bound by any later UI&U determination made in its sole discretion regarding the respective contributions of the employee and the support unit. Except as otherwise agreed by UI&U, no royalty, rent, or other consideration shall be paid to the employee when that mediated course/courseware is used by anyone for instruction at UI&U.

Such mediated course/courseware shall not be used or modified without the consent of the creator(s). If the creators wish to use the presentation or materials in a manner that competes with for-credit or revenue-producing offerings of UI&U, they must obtain the approval of their program head and dean and also of the director of any and all support units, which aided in the creation of the presentation. This approval to offer the course outside of the institution can be requested through the program head, dean, and support unit director. Approvals shall be forwarded to the provost and approval shall be granted or withheld in the sole discretion of UI&U. If UI&U grants approval, UI&U, as owner of the copyright of the material created by the support unit, will provide the employee with a limited license to use the material and will share revenues derived from offering the course in a manner similar to the sharing of royalties from patents. The creator is responsible for securing and maintaining all copyright permission related to the content. The support units involved in the creation of the presentation will secure and maintain any and all copyright permission related to presentation of the course/courseware and to responding to any other legal actions resulting from the use of the presentation.

Common examples applicable to UI&U and its faculty include development of course content, syllabi and corresponding resource material associated with credit or non-credit bearing undergraduate or graduate level online course instruction when commissioned independent studies, courses, cohort courses, online courses, hybrid courses or seminars and residential graduate seminars.

2. Institution-directed Mediated Course/Courseware and Institutional Works

When UI&U specifically directs the creation of a mediated course/courseware or institutional work as described in this policy, the resulting course/courseware or institutional work, and any rights inhering in it, belong to UI&U. UI&U shall have the right to revise it and decide how the mediated course/courseware or institutional work may be used in instruction. The institution in its sole discretion

may specifically agree to share revenues and control rights with the creator. At the time of the assignment of the task to an employee, the UI&U administrator who has directed creation of course/courseware will inform the employee assigned to this task in writing of UI&U's right of ownership and where necessary, the employee shall assign any intellectual property rights relating to the creation to UI&U. The faculty member may request an agreement on the sharing of revenue and control. If the employee and administrator cannot reach agreement, the matter may be referred to the provost for resolution. UI&U will provide the resources to secure any and all copyright permissions related to the content or presentation. UI&U shall retain and manage any copyright permission. UI&U will be responsible for responding to any other legal actions resulting from the use of the material.

In the case of mediated courses, courseware, and institutional works, developed as a collaboration among various campuses of UI&U, the courses, courseware, and institutional works shall belong to UI&U because the creation of such is institution-directed and institution-supported. Reservation of any limited rights to the creator(s) in the courses, courseware, or institutional work shall be determined by a written stipulation signed by affected parties prior to the creation of the work. Delay or failure in reaching agreement shall not excuse the employee from any obligation to complete the mediated course, courseware, or institutional work as directed by the supervising administrator.

Common examples applicable to UI&U and its faculty include work commissioned by UI&U under written contract to a faculty employee, adjunct faculty employee or independent contractor to development online courses and courseware as part of a newly designed degree program (i.e., course developer).

B. MATERIALS OTHER THAN MEDIATED COURSES, COURSEWARE, OR INSTITUTIONAL WORK

These provisions shall apply to materials which do not fall into the category of mediated courses, mediated courseware, or institutional work.

1. Scholarly and Artistic Work

Notwithstanding substantial use of institutional resources or the work-made-for-hire doctrine, the ownership of textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, syllabi, lecture notes, and like works shall reside with the creator and any revenue derived from the creator's work shall belong to the creator.

UI&U includes in its interpretation of scholarly works those presented at professional meetings or electronically distributed. World Wide Web pages, transparencies for projection, electronic presentation, etc., of scholarly activity remain the property of the creator as stated in this section.

2. Manuscripts for Academic Journals

Notwithstanding any use of institutional resources or the work-made-for-hire doctrine, the ownership of manuscripts for publication in academic journals shall reside with the creator and any revenue derived from the works shall belong to the creator.

Ownership is limited to the scholarly work and does not necessarily extend to data or other scholarly information which the scholar may have collected or obtained during the course of the project, or to other creations which may be based on the same scholarly information. If the scholar's project is supported by funds or other resources from agencies external to UI&U and requires substantial use of UI&U resources, the ownership and location of the scholarly information will be determined by an agreement between UI&U and the agency, or by the published requirements of the agency. In the absence of such requirements or agreements, and for projects which receive no external support, and where substantial use of campus or UI&U resources has been made, the data and other scholarly information collected as a result of the scholarly activity of an UI&U employee will remain the property of UI&U and will reside physically within UI&U or one of its campuses.

C. OBSERVANCE OF COPYRIGHTS

UI&U respects the intellectual property rights of others. Accordingly, employees of UI&U are expected not to infringe the copyrights of others. Unless permission has been obtained for the use of copyrighted material from the copyright owner, such material may only be used if permitted by the "fair use doctrine." The Copyright Act contains a list of the various purposes for which the reproduction of a particular work may be considered "fair," such as criticism, comment, news reporting, teaching, scholarship, and research. However, the distinction between "fair use" and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission.

Acknowledging the source of the copyrighted material does not substitute for obtaining permission. The 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use: "quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author's observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported." If in doubt about whether a proposed use of copyrighted material falls within the "fair use doctrine" employees of UI&U are expected to either obtain permission to use the material from the copyright owner, or otherwise obtain guidance from the provost.

III. PATENT AND REGISTERABLE INTELLECTUAL PROPERTY

A. GENERAL PROVISIONS

The rights to patentable inventions resulting from UI&U-sponsored research shall be assigned in writing to UI&U. UI&U may, at its sole discretion, waive its rights in favor of the inventor. If UI&U retains those rights, it will execute an agreement with the inventor(s) providing for royalty payments on income derived from the patent. The term "UI&U-sponsored research" includes not only research covered under an official UI&U research contract, but also any research-like activity or other creative endeavor carried out by employees in the course of their official duties or responsibilities, or any activity that makes substantial use of resources of UI&U or one of its campuses. Modification of provisions of this section may be made by UI&U to conform to the requirements of the United States Government when contracting with the United States Government or a Federal Government Agency.

B. PATENTABLE INVENTIONS

1. Disclosure

Anyone who conceives an invention resulting from a research project sponsored by UI&U shall inform the provost, who will recommend whether or not UI&U should pursue a patent application on the subject invention. UI&U is free to follow the recommendation of the provost, or to waive its rights to the invention subject to the rights of any sponsor. If UI&U waives its rights, the inventor is free to patent the invention, subject to the rights of the sponsor.

2. Assignment/Sharing of Revenues

When any revenue is obtained by UI&U from the assignment or licensing of any patent, UI&U may determine in its sole discretion to share a percentage of such revenues with the inventor(s). Any such revenue sharing shall begin only after UI&U recoups its direct costs in patenting the invention.

In case of projects sponsored in part by an outside party, a written contract shall be made between the UI&U and such outside party and shall include a statement of policy regarding patents that is substantially equivalent to this policy subject to § III. A above. In the case of a research project where all costs, including overhead, salaries of investigators, reasonable rent on the use of equipment, etc., are paid by an outside party, the outside party and UI&U may negotiate the allocation of all patent rights prior to the provision of any funding by the outside party.

C. SOFTWARE

Software is another form of intellectual property covered by this policy. Software can be copyrighted and is therefore subject to the policies in Section II, above. Some software embodies algorithms that can be the subject of a patent. Any software that may fall into that category should be treated as an invention and handled by its inventor, and UI&U as described in Section III.B that apply to patentable inventions. Software that falls into the mediated courseware category will be covered by the "Mediated Courseware" section of this policy. Software that is to be distributed with textbooks as supporting material will be covered by

the "Scholarly and Artistic Works" or the "Mediated Courseware" sections of this policy depending on which section is applicable. Software that does not fall into any of these categories, that may be commercialized, and as to which the creator made substantial use of UI&U resources, will be treated as mediated courseware under Section II.A.1.a or b, depending on which section is applicable of this policy.

D. OTHER INTELLECTUAL PROPERTY

Intellectual property may exist in the form of material that is not patentable but which by its nature can be protected. An example of this would be anything produced from a biological material harvested from a unique continually growing culture. This type of intellectual property may be subject to protection, and revenue may be generated by licensing agreements with parties interested in commercial production. This type of intellectual property is to be treated by its creator and UI&U in the same fashion as described above for patentable inventions.

IV. LEARNER CREATION OR WORK

The ownership of a learner creation or work submitted in fulfillment of academic requirements shall be with the creator(s). By enrolling in the institution, the learner gives the institution a nonexclusive royalty-free license to mark on, modify, and retain the work as may be required by the process of instruction. The institution shall not have the right to use the work in any other manner without the written consent of the creator(s).

If the learner is performing work sponsored or commissioned by UI&U, the learner's ownership is limited to the learner creation or work and does not extend to data or other scholarly information the learner may have collected or obtained during the course of a project or to other creations which may be based on the same scholarly information. Such data and other scholarly information collected will remain the property of UI&U and be kept by UI&U. If the learner's project is supported by funds or other resources from agencies external to UI&U and substantial use of UI&U resources is involved, the ownership and location of the scholarly information will be determined by the agreement between UI&U and the agency or by the published requirements of the agency. In the absence of such requirements or agreements and for projects which receive no external support but where substantial use of UI&U resources is involved, the data and other scholarly information collected as a result of the learner academic creation will remain the property of UI&U and be kept by UI&U.

Learners are responsible for obtaining and maintaining copyright permissions related to their creations.

V. USE OF UI&U NAME

Without prior written permission from UI&U, no learner or employee of UI&U shall be permitted to use or incorporate the name "Union Institute & University" (except for purposes of biographical references) or to use any other trademark or service mark of UI&U in any work created by such learner or employee.

VI. INTELLECTUAL PROPERTY COMMITTEE

At the direction of the provost, an ad hoc committee consisting of an equal number of faculty and administration may be formed from time to time to advise the provost regarding any necessary changes to the UI&U Intellectual Property Policy.

VII. DISPUTE RESOLUTION

In the event a dispute arises under this Intellectual Property Policy, the affected parties shall first attempt to resolve such dispute through mutual negotiation. The dispute representative for UI&U shall be the provost. After a period of thirty (30) days has elapsed, if the parties have been unable to resolve such dispute, the parties agree to submit to non-binding mediation using the services and procedures of the American Arbitration Association ("AAA") and the AAA's Commercial Mediation Procedures. If, following such mediation, the parties are still unable to settle the outstanding dispute, then the dispute shall be resolved through final and binding arbitration held in the City of Cincinnati, Ohio. Arbitration shall proceed in accordance with the Commercial Arbitration Rules of the AAA, unless other rules are agreed upon by the parties. The parties shall use the services of one (1) arbitrator, which shall be mutually selected by the parties, provided that if thirty (30) days elapse and the parties remain unable to agree upon the arbitrator, then either party may, in writing, request the AAA to appoint the arbitrator. All proceedings, hearing, testimony, documents, or writings connected with the arbitration shall not be disclosed by a party or its representative to persons not connected with, or interested in, the arbitration. The arbitrator may grant any relief authorized by law for any properly established claim. The award made in the arbitration shall be binding and conclusive on the parties and judgment may be, but need not be, entered in any court having jurisdiction.