



Dissemination & Implementation Program Resources for Intellectual Property

Basics of Copyright Protection

Copyright is the protection of original works of authorship fixed in any tangible medium of expression

- Once an expression is fixed in a tangible medium, it is afforded copyright protection immediately. The Berne Convention Implementation Act of 1988 (that went into effect on March 1, 1989) amended the Copyright Act of 1976 by eliminating the registration and notice requirement.
- **Exclusive rights** of copyright holder: **reproduction, creation of derivative works, distribution, performance, display**
- The **Fair Use Doctrine** is an important limitation on the exclusive rights of the copyright holder. It allows and encourages socially beneficial uses of copyrighted works such as teaching, learning, and scholarship.
- Registration with the copyright office is not required for protection, but is required to enforce a copyright
- It must be determined who holds the copyright prior to attaching notice or registering copyright; Authors are not always the holders of copyright
- Since copyright is automatic, copyright is the rule rather than the exception. The creator or author must do something in order not to have copyright protection.

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Laws and Policies Governing Ownership of Intellectual Property

- Federal copyright: www.copyright.gov
- Determining ownership
 - Author/creator absent other arrangement
 - Person you assigned it to
 - Work for hire: In most employment areas, works created by employees within the scope of their employment are assumed to be “work for hire”
 - Independent contractors – a written agreement specifying ownership is necessary
 - Refer to grant guidelines for products created through grant funded work
 - Need to distinguish between ownership of the physical material and ownership of the copyright
- University of Wisconsin policies
 - UW generally disclaims copyrights to works produced by its employees during the scope of their employment except as stated in General Administrative Policies & Procedure (GAPP) papers #27 and #10
 - UW Office of Legal Counsel, copyright FAQ's: <https://www.wisconsin.edu/general-counsel/legal-topics/copyright/>
 - UW System Policy on Ownership of **Copyrightable Instructional Materials** GAPP #27 [Click here for GAPP 27:](#)
 - Sample contract: [Click here for sample contract](#)
 - Sample work for hire: [Click here for work for hire sample](#)

Summary of **GAPP #27:**

Under GAPP 27, the employee usually owns all rights in his or her creations. For instance, a professor who creates a scholarly article in the course of research at a UW System institution would ordinarily own the copyright in it. **The institution may have an interest, however, if it contributed substantial institutional resources in the creation of the work.** “Substantial” resources could include providing the creator with paid release time from his or her job, or allowing the employee exceptional access to specialized computer resources to create the work. In practice, when an author uses institutional resources to create a protected work, it is best to agree with the institution beforehand about ownership and control of the work. GAPP 27 includes a sample agreement to allocate rights and interests in copyrighted works between the institution and the employee author.

In addition, **if a work is produced with extramural support, such as federal funding or corporate sponsorship, the sponsor may have rights in the work.** These rights need to be factored into any agreement allocating rights between the copyright owner and the institution.

Source: <https://www.wisconsin.edu/general-counsel/legal-topics/copyright/>, accessed 5/23/16.

- UW System Policy on **Computer Software Ownership** GAPP 10: [Click here for GAPP 10](#)

Summary of **GAPP 10:**

It is the policy of the UW System that ownership of software created as a consequence of individual scholarship be vested with the creator.

If the software is created under the sponsorship of a grant or contract, the ownership should be defined before the project is undertaken.

If the software development is a joint effort (i.e., faculty and graduate students) the rights of ownership should be defined before the project begins.

If the software is developed by an employee hired for that purpose, the software is owned by the University.

Each institution should inform faculty, students and staff of their ownership rights.

- Practical considerations related to ownership
 - Owner responsible for defending against infringement and actively protecting copyright
 - There are tax consequences for royalties
 - Owner responsible for controlling use (e.g. licensure)
 - Collaborative projects may benefit from common ownership of copyright

Resources:

- UW Libraries can help authors manage their copyrights: www.library.wisc.edu/help/copyright
- Brigid Daly, Associate University Legal Counsel, Office of Legal Affairs, brigid.daly@wisc.edu
- Copyright Workgroup: copyright@library.wisc.edu
- UW Office of Legal Counsel, contract FAQ's <https://www.wisconsin.edu/general-counsel/legal-topics/contracts/>
- Resources: CCH consulted with Lisa Wilson lisa.wilson@wisc.edu on their Memorandum of Understanding LISA A. WILSON, Phone (608) 263-7400, (608) 262-2668, Department Office Of Legal Affairs
- UW-ICTR D&I website: www.ictr.wisc.edu/DnI

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