

## **Resolution 2016-11. On Amending the Copyright Policy of UNC-Chapel Hill**

The Faculty Council resolves that the Copyright Policy be amended to address the open source licensing of software works to which both the Patent and Copyright policies apply and endorses the recommendations of the University Committee on Copyright in that regard.

### **Comment:**

The UNC-Chapel Hill Committee on Copyright has reviewed how the University's Copyright Policy addresses ownership of software, particularly software created by its faculty. Based on the Committee's discussion over the last several months and review of the ways in which peer institutions have addressed challenges surrounding the issue, the Committee proposes a policy amendment addressing two related issues: the interplay between the Patent Policy and Copyright Policy, and the commercialization of open-source licensing of software.

### **Proposed Policy Changes (in bold)**

#### V. Copyright Ownership

[...]

##### A. Works Created by Faculty or EPA Non-Faculty Employees.

[...]

##### 1. Traditional Works or Non-Directed Works.

[...]

##### (b) Ownership.

- (i) The creator of such a work shall own the work unless it is a Traditional or Non-Directed Work Involving Exceptional Use of University Resources, a Directed Work, a Sponsored or Externally Contracted Work requiring University ownership of copyright, or a Work for Hire (defined below.) As a condition of employment, faculty and EPA non-faculty creators of a Traditional or Non-Directed Work shall be deemed to have granted the University a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use unless such a license will impede scholarly publication or similar activities.
- (ii) (ii) Traditional Works or Non-Directed Works for which authorship cannot be attributed to one or a discrete number of authors but instead result from simultaneous/sequential contributions over time by multiple authors shall be owned by the University.

- (iii) **For a Traditional or Non-Directed Work that meets the definition of an “invention” as defined in the UNC Chapel Hill Patent and Invention policy<sup>1</sup> and whose copyright is owned by the creator under (i) above:**
- a. **If the creator intends to release the invention under an irrevocable open-source license, the creator shall promptly inform the Office of Technology and Development of this intention before distributing the invention under such a license.**
  - b. **OTD shall have 30 days from the date on which it was notified of the creator’s intention to decide whether the University shall retain rights.**
    - i. **If OTD takes no action within 30 days, it shall be deemed to have conducted the review described under Section VI (1) of the University Patent and Invention Policy and determined that the University’s rights to the invention shall be released to the creator.**
    - ii. **If OTD takes no action within 30 days, or if OTD conducts the appropriate review and notifies the creator that the University shall not retain rights, the University shall elect not to retain patent or copyright rights and shall release those rights to the creator on the condition that the creator actually make the work available under an irrevocable open-source license consistent with the purpose and mission of the University and of the type that complies with the definition of “open source” as defined by the Open Source Initiative.**

## V. Copyright Ownership

[...]

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<sup>1</sup> Invention is defined in the UNC Chapel Hill Patent and Invention Policy as “an invention or discovery of any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, including compounds, prototypes, biological materials, software, complex multimedia works and tangible research results, provided that such invention or discovery (1) is patentable or commercializable, or (2) is obligated under a sponsored research agreement, or (3) is created to support the administrative operations of the University.”

A. Works Created by Faculty or EPA Non-Faculty Employees.

[...]

4. Sponsored or Externally Contracted Works.

[...]

(b) Ownership.

- (i) Unless the agreement expressly requires copyright ownership by the University or conveyance of rights to a third party, the creator of a Sponsored or Externally Contracted Work shall own the work. As a condition of employment, faculty and EPA non-faculty creator-owners of a Sponsored or Externally Contracted work shall be deemed to have granted the University a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use.
- (ii) The University will own a Sponsored or Externally Contracted Work where the relevant agreement requires copyright ownership by the University or conveyance of rights to a third party, in which case the University will convey rights to the third party as required. In such cases the creator of the copyrighted work shall be required to report the work to the Office of Technology Development, using such forms and procedures as that Office develops. Where a proposed sponsored research agreement or research grant will require that copyrighted works be owned by the University or a third party, the Office of Research Services should inform the relevant Principal Investigator of the copyright provisions and secure his or her consent to such provisions before the agreement is signed or the grant accepted.
- (iii) **For a Sponsored or Externally Contracted work that meets the definition of an "invention" as defined in the UNC Chapel Hill Patent and Invention Policy and whose copyright is owned by the creator under (i) above:**
  - a. **if the creator intends to release the invention under an irrevocable open-source license, the creator shall promptly inform the Office of Technology and Development (OTD) of this intention before distributing the invention under such a license.**

- b. OTD shall have 30 days from the date on which it was notified of the creator’s intention to decide whether the University shall retain rights.**
  - i. If OTD takes no action within 30 days, it shall be deemed to have conducted the review described under Section VI (1) of the University Patent and Invention Policy and determined that the University’s rights to the invention shall be released to the creator.**
  - ii. If OTD takes no action within 30 days, or if OTD conducts the appropriate review and notifies the creator that the University shall not retain rights, the University shall elect not to retain patent or copyright rights and shall release those rights to the creator on the condition that the creator make the work available under an irrevocable open-source license consistent with the purpose and mission of the University and of the type that complies with the definition of “open source” as defined by the Open Source Initiative.**