

Resolution 2007-6. Encouraging use of Office of Technology Development's Resources for the Commercialization of Works

WHEREAS, the University wishes to encourage the dissemination of copyrighted works owned by the faculty;

WHEREAS, one form of dissemination, the commercialization of works, provides one model for distribution of works to the public;

WHEREAS, the Office of Technology Development (OTD) has expertise in the commercialization of certain kinds of works and wishes to assist faculty with the dissemination and commercialization of those works;

WHEREAS, OTD believes that the current Copyright Policy does not provide sufficient economic incentive to faculty authors of certain kinds of works to use OTD's services to commercialize those works;

WHEREAS, OTD believes that increasing the revenue that the University shares with such faculty will create such an incentive;

WHEREAS, the proposed increased economic incentive is consistent with the revenue sharing currently provided under the University's Patent and Copyright Procedures;

WHEREAS, use of the services of OTD will continue to be optional for faculty who own copyright in their works;

WHEREAS, OTD will not be required to commercialize any particular work;

NOW THEREFORE, the General Faculty resolves as follows:

The Copyright Policy of the University of North Carolina at Chapel Hill should be modified in the form as substantially set forth in Exhibit 1 (below) hereto in order to permit the University to increase the amount of revenue shared with creators, including faculty creators, of copyrighted works commercialized by the University's Office of Technology Development.

Exhibit 1A

Sections V through VII of the Copyright Policy of the University of North Carolina at Chapel Hill to be amended substantially in the form set forth below:

Section V. C.

~~(c) Commercialization; assignment to University.~~

~~Where a University faculty or EPA non-faculty creator of a Traditional or Non-Directed Work desires assistance from the University in commercializing the work, the creator shall report the work to the Office of Technology Development using such forms and procedures as that Office shall establish, and if in its discretion it agrees to accept the work for commercialization, the Office of Technology Development shall undertake best efforts to commercialize the work. If the University is to be involved in commercializing a Traditional or Non-Directed Work, the creator shall assign the work to the University under an Assignment Agreement including but not limited to provisions outlining the commercialization responsibilities of the Institution and a mechanism for the sharing of commercial proceeds with the creator.~~

~~(d) Allocation of Commercialization proceeds.~~

~~When any Traditional or Non-Directed Work is assigned to the University and commercialized by the University, income from such commercialization shall be apportioned according to the formula set out in the University Patent and Copyright Procedures.~~

Section VI.

~~[DELETED SECTION MOVED TO ARTICLE VII BELOW]~~

VI. Commercialization of Copyrighted Works.

A. Works Owned by Faculty or EPA Non-Faculty

(1) A University faculty member or an EPA non-faculty employee may commercialize works that he/she owns pursuant to this policy.

(2) A University faculty member or an EPA non-faculty employee that owns a work pursuant to this policy may seek assistance from the University in commercializing the work. Under such circumstance, the creator shall report the work to the Office of

Technology Development using such forms and procedures as that Office shall establish, and if in its discretion it agrees to accept the work for commercialization, the Office of Technology Development shall undertake best efforts to commercialize the work. If the Office of Technology Development undertakes to commercialize the work, the creator shall assign the work to the University under an Assignment Agreement including but not limited to provisions outlining the commercialization responsibilities of the University and a mechanism for the sharing of commercial proceeds with the creator.

(3) Unless agreed otherwise in a written agreement, when a work owned by a University faculty member or an EPA non-faculty employee work pursuant to this policy is assigned to the University and commercialized by the University, income from such commercialization shall be apportioned according to the following formula:

The revenue that the University actually receives from its commercialization of such work will be applied first to reimburse the University for incremental expenses, if any, incurred by it in licensing such work (including attorney fees). The remaining revenue will be distributed as follows:

(a) 10% will be retained by the Office of Technology Development and used to support its mission;

(b) 70% will be distributed to the author of such work (in the case of co-authors, the distribution will be divided equally among them, unless either the co-authors have reached a written agreement providing for a different distribution or the University, in its sole discretion, determines a different distribution is appropriate); and

(c) to the extent practicable and consistent with State and University budget policies, the remaining revenue shall be distributed to the author's department or unit (in the case of co-authors, the distribution will be divided equally among the departments or units of the co-authors, unless either such departments or units have reached a written agreement providing for a different distribution or the University, in its sole discretion, determines a different distribution is appropriate).

The Office of Technology Development or any successor thereto shall administer the receipt and distribution of such proceeds.

B. Work Owned by University

1. The University may in its sole discretion commercialize works that it owns pursuant to this policy.

2. Unless agreed otherwise in a written agreement, when a work owned by the University pursuant to this policy is commercialized by the University, income from such commercialization shall be apportioned according to the following formula:

The revenue that the University actually receives from its commercialization of such work will be applied first to reimburse the University for incremental expenses, if any, incurred by it in licensing such work (including attorney fees). The remaining revenue will be distributed as follows:

(a) 20% will be retained by the Office of Technology Development and used to support its mission;

(b) 40% will be distributed to the author of such work (in the case of co-authors, the distribution will be divided equally among them, unless either the co-authors have reached a written agreement providing for a different distribution or the University, in its sole discretion, determines a different distribution is appropriate); and

(c) to the extent practicable and consistent with State and University budget policies, the remaining revenue shall be distributed to the author's department or unit (in the case of co-authors, the distribution will be divided equally among the departments or units of the co-authors, unless either such departments or units have reached a written agreement providing for a different distribution or the University, in its sole discretion, determines a different distribution is appropriate).

C. Jointly Owned Works

Work Jointly Owned: When a Traditional or Non-Directed Work is jointly owned by the University and by University faculty or EPA non-faculty creator, such owners shall meet to determine the percentage ownership interest of each party. The revenue that the University actually receives from its commercialization of such work will be distributed as follows: a percentage of the revenue actually received which is equal to the percentage of the work determined by the parties to be owned by the University faculty or EPA non-faculty

creator(s) will be distributed in accordance with Section A(3) above; a percentage of the revenue actually received which is equal to the percentage of the work determined by the parties to be owned by the University will be distributed in accordance with Section B(2) above.

D. Student Works

~~(b)~~ Student Works that constitute notes of classroom and laboratory lectures and exercises shall not be used for commercial purposes by the student generating such notes.

~~VII.~~ **Works subject to both copyright and patent protection.**

Where an invention is thought to be subject to protection under both patent law and copyright law, if the University through the Office of Technology Development determines to retain title to its patent rights, the inventor/creator shall assign copyright to the University. On commercialization of such works, the inventor/creator shall be compensated in accordance with the provisions of the University of North Carolina Patent Policy and the UNC-CH Patent and Copyright Procedures. The Office of Technology Development may on its own initiative investigate whether a copyrighted work reported to it may also be subject to patent protection.