Copyright Database Rights and Associated Issues

Background

1. In the course of their duties, university staff generate numerous materials in which copyright will subsist. Copyright is a non-registrable legal protection which arises as soon as relevant creative output is generated. It allows the copyright owner to take action to prevent the unauthorised copying or use of any literary, dramatic, musical or artistic work in which there is any element of creative effort. Thus lecture notes, course materials, academic books and papers, figures, technical drawings, research data, slides, overheads, PowerPoint presentations, conference papers, posters, web pages and software and text books will all be copyright protected. The medium on which the products of creative effort are presented is immaterial to their capacity to receive copyright protection, so that electronic or hard copy versions of a document are protected equally.

2. This is an area where the law is frequently updated in response to changes in both communications technology and business practices. Any policy must be the subject of constant review, in the light of both legislative changes and the clarification of existing law in the light of judicial decisions represented in case law.

Ownership

3. The emergence of e-technologies in particular has highlighted a number of issues related to copyright. The issue of ownership is relatively straightforward. Under the Copyright Designs and Patents Act of 1988 the employer owns the copyright in materials produced by employees in the course of their employment, or as a result of duties specifically assigned to them. Thus, by the operation of law, the University owns the copyright in all of the materials described above. However, in certain instances, the operation of law is moderated by a long-standing and widely accepted academic practice in the Higher Education sector, whereby the employer waives assertion of their ownership in favour of the academic author for scholarly texts, including research papers and textbooks. Any monies accruing from the publication of such texts is also customarily retained by the academic author. This practice is a matter of policy rather than law. The emergence of e-technologies and their potential importance in the future delivery of higher education brings a need to review practices relating to copyright, not just at the University of Nottingham, but throughout the Higher Education sector.

4. Recent legal developments such as the creation of a new database right and major changes in data protection law, together with the impact of e-technology on teaching strategies in the higher education sector in general, make it necessary for the University to update its policy on the ownership and management of copyright and associated rights and that suitable guidance is made available to staff.

The impact of e-technologies

5. Some of the main issues arising from the impact of e-technologies are as follows:

- e-learning products as well as hard copy materials will often be part of a certificated course produced by and for the University,

- e-learning products are closely associated with the name, and therefore reputation of the University, whereas textbooks are more traditionally linked with the individual academic and their publisher,
- e-learning materials such as distance learning products are likely to be of significant educational importance and may have substantial commercial value, both currently and in the future,

- the e-technology embodiment of textbooks changes the nature of the text from a supportive learning material to the creation of a potentially complete learning environment,

- e-based materials require a pedagogical design that will maximise the effective use of technology,

- the respective contributions in the case of joint developments of the providers of academic content, pedagogical input and the use of technology may be difficult to differentiate,

- the technical nature of e-learning technologies and materials may give rise to product liability issues,

- the University is investing in e-materials and the production of e-based materials may receive specific financial support, for example from the University Strategy and Steering Fund.

6. For these reasons the University needs to review its policy relating to copyright issues. This does not represent a fundamental shift in the University's traditional practices, but reflects the need to ensure clarity in copyright ownership issues, which have been made more complex by the expansion of the role of e-technology in both research and teaching.


POLICY STATEMENT ON COPYRIGHT, DATABASE RIGHTS AND ASSOCIATED ISSUES

Research Publications

Copyright in Academic Articles and Conference Papers
1. Copyright in material generated by staff in the course of their employment belongs to the University. The University is committed to continuing the practice of waiving assertion of its legal ownership of copyright in research publications, including books, academic articles and conference papers or abstracts whether they are published in hard copy or electronic form.

2. The University is also keen to ensure that the widest dissemination of all research publications takes place. It therefore actively encourages university staff to retain e-distribution rights over their research papers and then to make them available electronically, such as on open access "e-print" archives. This need not challenge the current practice of assigning copyright in articles to the publisher. It is still possible to assign copyright but at the same time obtain a back licence allowing the author to publish the material electronically. This practice is already accepted by some publishers e.g. the Institute of Physics (guidance on this is available from Information Services). The University encourages staff to use this back licensing in negotiation with publishers.

Teaching Materials.

Copyright Associated with Textbooks.
3. In accordance with traditional practice, the University will also continue to waive assertion of its legal ownership of copyright in textbooks published generally whether electronically or in hard copy, although the same advice in respect of e-distribution rights as given above would apply.
4. Whilst a textbook can clearly be classed as a teaching material, in that it can be a recommended part of a student's reading and reference materials for a course, it is important to distinguish it from the category of teaching materials referred to in the rest of this section as "Course Materials". Such Course Materials are those teaching materials which form an integral and essential part of the course content itself, and are provided only to students enrolled on the course or module.

**Copyright Associated with Course Materials.**

5. Continuity of course provision to students is an essential part of the operation of all universities. As a consequence the University continues to assert its legal right to ownership of the copyright subsisting in all course materials, whether hard copy or electronically formatted. Whilst any academic who transfers to another University may generate similar materials based on their know-how at their new host institution, the materials they produced to support teaching and course provision whilst employed at the University of Nottingham would remain the property of the University. This provision would apply equally for materials produced for internal University delivery or for distance learning courses and enable the materials to continue to be used for the University's courses.

6. Where a member of staff moves to a new institution, the University will normally, in its discretion, be willing to grant rights to use existing Course Materials to the member of staff concerned and/or the host institution. Authority to grant such rights is delegated to the Head of School. Any such grants must be in writing and may be subject to terms and conditions. In cases of doubt the Head should consult the University IP Manager.

7. Without prejudice to the generality of this discretion, approval is likely to be granted if the University determines not to continue delivery of a particular course, or where the delivery of such course is part of an agreement with a sponsor and it has been agreed that such contract will transfer to the new host institution.

8. For the avoidance of doubt, the University asserts its legal right to ownership of copyright in all such Course Materials irrespective of format, including but not limited to hard copy and e-based materials such as software, CD-ROMs, web-based materials or e-learning environments which are produced for either commercial or internal academic purposes.

9. Where a member of University staff wishes to pursue the possible commercial publication of a work in any form (e.g. as a printed textbook, e-book etc.) that substantially reproduces existing Course Materials then he/she should first consult their Head of School before proceeding. In most circumstances such publication is likely to be non-problematical especially where the Course Materials have no prospect of other commercial exploitation. Permission to proceed may be granted by the Head of School acting on behalf of the University and will not be unreasonably withheld. Copyright will remain with the University and this should be acknowledged in the publication. Any royalties accruing from such publication will normally be enjoyed entirely by the author or in appropriate circumstances will be subject to the Revenue Sharing Policy outlined in Part D of this Policy.

10. Paras 3 to 8 do not, however, apply in respect of books or other teaching materials, whether electronic or hard copy, the production of which is commissioned by the University (see Part D).

**Copyright notices**

11. Web based materials and other e-materials may be valuable. Their copying can be hard to track or police. To deter such illegal copying, Copyright warning notices should be placed on every page of web sites. A standard form of words is provided in Annex A. In developing online learning materials each school should also consider other appropriate approaches to securing and protecting important materials and to deterring illicit uses. For example, consideration might be given to policies on controlling or preventing the downloading of materials using technical safeguards. Advice on such issues can be obtained from computing officers and Staff in Information Services IT Systems Division.
Quality Control of Commercial e-learning Materials.
12. It is essential that the University takes the quality control of those products which bear the University name and trademarked logo seriously. Anyone wishing to commercialise an e-based teaching and learning product, should apply for approval through a mechanism to be established. The Research Support Office will then be responsible for arranging to license the University name and logo, agreeing a commercialisation strategy and executing an appropriate revenue sharing agreement with individuals and Schools.

Third Party Rights

Use of third party materials.
13. The production of many teaching materials or research outputs, whether hard copy or e-based, may involve the use of written materials, diagrams or images generated by a third party. Where such use exceeds the very limited exemptions of the "fair dealing" exclusions allowed under law, copyright clearance must be obtained from the copyright holder of these materials. Scanning, digitisation or electronic copying of a copyright work is likely to be an infringement of copyright in almost all circumstances. In developing e-learning materials, for both internal teaching and external commercialisation, university staff must consider carefully the possible costs in having to license materials from copyright owners if those materials are crucial to the design, development and use of the product. As a rule of thumb, where any use of third party materials could potentially damage the financial interests of the copyright owner, a licence to use the material should be sought and unequivocally given before such material can be used. Similarly, if the use has potential for reputational harm, (other than by way of criticism for review purposes) then clearance must be sought. Such clearance, which must be in writing and retained on file, should extend to permission to include the text or image in materials which may be exploited commercially as well as for internal educational purposes. Obtaining copyright clearance is the responsibility of the author, but advice and assistance can be provided by Information Services. Documentary evidence of copyright clearance where required should be provided to the body overseeing quality control or commercialisation of such materials at the time when an application is made to commercialise them. Further guidance on all of these issues is available in the Information Services guide, Intellectual Property Issues and Online Learning Environments: A Guide for University Staff.

Copyright Protected Materials Generated by Third Parties for the University.
14. Where non-university employees, either as individuals, companies or other commercial organisations, are hired by the University or its representatives to generate copyright protected materials in any format, the contract under which they are engaged must ensure that the University will be the owner of the copyright in all materials generated under the contract.

15. If materials are generated jointly by University employees and employees from another academic institution, then a cross licence to use and if appropriate, sub-license, the materials must be agreed. Such contracts should be approved by the Research Support Office.

Revenue Sharing Policy

Revenue sharing policy for any copyright teaching materials the production of which is commissioned by the University.
16. Special arrangements apply in respect of teaching materials produced as a consequence a commission by or on behalf of the University, including any financial investment by the University, the authors'/creators' department(s) or any other internal fund in generation of copyright protected teaching materials. In addition, the contribution of specialists in the pedagogy of technology and the development of e-materials may also need to be taken into account. The following revenue sharing arrangements will apply where such products are commercialised by the University. This represents a variation on the University's standard revenue sharing scheme, taking into account the specific nature of such materials.
A. A first call on revenue will be made to reimburse direct or indirect development costs, external professional and other costs (e.g. legal fees) and any investment made in the project will be repaid. Once this sum has been reimbursed, the split of subsequent revenue will be:

B. Revenue up to £25,000

- 50% to the "creators" i.e. the academic author/s and any pedagogical or technical specialist/s who have made a creative contribution to the production of the materials. The split of this tranche of revenue shall be agreed by the creators, taking into account the significance of their respective contributions.

- 30% to the School(s), department(s), split between the departments in the same ratio as determined above.

- 20% to University central funds.

C. Revenue above £25,000

- 40% to the creators in the same split as determined above.

- 20% to the departments split as above, and

- 40% to the University central funds.

The creators may expect collectively to receive 40% of aggregate net revenue as outlined above, irrespective of how much revenue is generated. It is this lack of a ceiling on revenue sharing, which makes the University of Nottingham's revenue sharing scheme one of the most generous in the UK and US University sectors.

**Copyright or Database Rights Protected Materials not Commercially Exploited via the University**

17. Where the University decides not to commercialise materials covered by para 15, the copyright may be assigned to the creator(s), at their request. The creator(s) would then be able to commercialise the product at their own risk. In such circumstances this would be done as a personal activity and the University name or logo on the product would not be used, nor would they individually promote their association with the University, beyond an indication of their current academic or other position. They would need to provide their own product liability insurance if appropriate and would bear any costs associated with marketing the materials personally. In the event of successful commercialisation, the creator would be allowed to recoup all costs in taking the product to market as a first call on revenue, thereafter surplus revenue will be shared 60% to individual and 40% to the University/School.

**Other Issues**

18. Any member of University staff who wishes to appeal against any aspect of this Policy should make representations in writing to the Pro-Vice-Chancellor for Staffing, Quality and Standards in the first instance, explaining the grounds of the complaint.

19. In exceptional circumstances (e.g. for the purposes of recruitment of academic staff whose skills are scarce or in order to accommodate specific needs in specific disciplines) Heads of Schools may agree to vary aspects of this policy but only on the basis of advice taken from Human Resources before any appointment is made.
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Any breach of these conditions of use by students may lead to disciplinary action.

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Contact for further help

IS Copyright Officer, Email: copyright@nottingham.ac.uk.

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