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Policy for: All Campuses
Procedure for: All Campuses
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I. Preamble

The software policy of the University seeks: (1) to protect and promote the traditional academic freedom of the University's faculty, staff and students; (2) to balance fairly and reasonably the equitable rights of software creators, sponsors and the University; and (3) to ensure that any software in which the University has an equity interest is utilized in a manner consistent with the public interest.

The primary goals in protecting and managing software are to promote its widest possible distribution for the benefit of the public and to produce revenue for the creator of the software, his or her department and the University. The "Copyright" section of the University's Patent and Copyright policy (see the Faculty Manual) provides that faculty members who author uncommissioned works (including, by implication, software) own the copyright in them. There are, however, situations which are not addressed by the University's Patent and Copyright policy due to the complexities of software creation and protection. In particular, that policy does not address with sufficient clarity those situations where the software creator receives substantial assistance from the University by using University personnel, equipment, materials, facilities or other resources in the development of his or her software. In those situations it is necessary to determine ownership and equities on an individual basis in accordance with the guidelines and procedures set forth in this policy.

II. Definitions

A. "Computer software" means computer programs in the broadest sense, including user's manuals and other explanatory materials which accompany computer programs and computerized data bases, microcode, operating systems, language compilers, and application programs in whatever form expressed (machine or assembly language, source or object code) or embodied (such as chip architecture, ROM, disk or tape storage, program listings).

- B. "Creator" means any person who creates computer software.
- C. "Faculty" means members of the University's faculty as defined in the Faculty Manual's sections on Regulations and Policies, plus instructors, special faculty appointments and part-time faculty.
- D. "Intellectual property rights" means all federal and state law bases for protecting rights in software, including patent, copyright and trade secret protection.
- E. "Staff" means any employee of the University other than students and faculty as defined herein.
- F. "Student" means any full-time or part-time postgraduate, graduate or undergraduate student, regardless of whether the student receives financial aid from the University or from outside sources.
- G. "University" means The University of South Carolina **including all campuses**.
- H. "Substantial assistance" means support beyond routine use of a desktop computer, office, library facilities and secretarial assistance, and the payment of salary, except for those situations where funds are paid specifically to support the development of software. A rebuttable inference of "substantial assistance" arises in, but is not limited to, the following examples of non-routine activities in the development of software:
1. use of any University computational facility which cannot be used without prior written authorization;
 2. use of University facilities, equipment or other resources which are not available without charge to the public; or
 3. use of special facilities, equipment, personnel or other University resources which would cost the software creator more than \$5,000 in constant 1988 dollars if such facilities, equipment, personnel or other resources were purchased, leased or hired by the software creator in the public market.

III. Policy

- A. The policies set forth below constitute an understanding which is binding on University faculty, staff and students as a condition of their use of University assistance to encourage and assist in the development of computer software.
- B. Ownership Principles
1. Faculty, staff or students own intellectual property rights to software they create when it is created without substantial assistance from the University.

2. The University retains ownership of any intellectual property rights in software created by a staff member within the duties of his or her employment with the University.
3. If software is created as part of a sponsored project, then ownership of intellectual property rights is determined by the terms of the sponsorship agreement. In the event the agreement is silent on the issue of ownership of intellectual property rights, then ownership shall be determined in accordance with Ownership Principle 5. below.
4. If the University enters into an agreement with a department, staff or faculty regarding the creation of software, then ownership of intellectual property rights is determined by the terms of that agreement. In the event the agreement is silent on the issue of ownership of intellectual property rights, then ownership shall be determined in accordance with Ownership Principle 5. below.
5. The University shall have intellectual property rights in all software which is developed with substantial assistance from the University.

IV. Procedure

- A. The rights and equities of the parties should be determined in a prompt and timely manner, and unnecessary expenditures of resources should be avoided. To that end, University faculty, staff and students who have created software with substantial University assistance shall, prior to commercial distribution, so inform the University's **Office of Technology Transfer**, in writing, in sufficient detail to enable a thorough review and evaluation. **This should be accomplished by means of using the University's Disclosure Form OTT.**
- B. Within 30 days after receipt of this written notification, **representatives of the Office of Technology Transfer** shall meet with the software creator and the parties shall make good faith efforts to reach an agreement regarding ownership rights and equities in the software.
- C. In routine cases royalties may be allocated by agreement in keeping with the guidelines set forth in the section "G. Equity." in the copyright section of the University's Patent and Copyright policy.
- D. In non-routine cases, where the software creator and the University's **Office of Technology Transfer** are unable to reach such an agreement, the matter shall be referred to the University's Patent and Copyright Committee for review and its written recommendation to the Provost with respect to ownership and equities in the disputed software. The Committee's recommendation about ownership shall be in keeping with principles set forth in this Software policy and its recommendation about allocating royalties shall be in keeping with the guidelines in section "G. Equity." of the University's copyright policy as noted above.

V. Reason for Latest Revision

The effect of this revision is to change the responsibility for administering this policy from the University's Legal Department to the Office of Technology Transfer.