

Replaced by [F98-3](#)

## F92-3 Copyright; Intellectual Property

### Legislative History:

At its meeting of **November 9, 1992**, the Academic Senate approved the following policy recommendation presented by Kay Schwartz for the Curriculum and Research Committee.

#### **ACTION BY THE UNIVERSITY PRESIDENT:**

"Approved as University Policy" signed: J. Handel Evans, November 12, 1992.

### **POLICY RECOMMENDATION SAN JOSE STATE UNIVERSITY COPYRIGHT POLICY**

The mission of San Jose State University is to enrich the lives of its students, to transmit knowledge to its students along with the necessary skills for applying it in the service of our society, and to expand the base of knowledge through research and scholarship. In pursuing the creation and dissemination of knowledge, this university strongly encourages those who actually engage in research and creative work by recognizing privileges specific to their products. San Jose State University endorses the principle that the results of research and creative work are the property of the creator, who should have the rights of copyright and/or final disposition of the products. These rights, however, must be considered in relation to all persons, institutions, and agencies involved in the creative process.

#### University Copyright Policy

Copyright is the ownership and control of the intellectual property in original works of authorship which is subject to copyright law. Examples of works subject to copyright include:

1. Literary works, such as texts, manuscripts, poems, manuals, memoranda, tests, programmed instructional materials, data bases, syllabi, bibliographies, glossaries, and proposals.
2. Papers and data collection instruments for conference presentation.
3. Musical works, including accompanying words.
4. Dramatic works, lectures, and unpublished scripts.

5. Pantomimes and choreography (if fixed in tangible form, i.e., notation or videotape).
6. Video and audio tapes and cassettes.
7. Live video or audio broadcasts.
8. Pictorial, graphic, and sculptural works fixed in tangible form, including photographs, diagrams, or sketches.
9. Motion pictures and other audio-visual works.
10. Sound recordings.
11. Computer software, including compact disc ROM systems, interactive RAM systems.
12. Interactive video systems.

It is the policy of San Jose State University that all rights in copyright shall remain with the creator, unless:

(1) the material is prepared by specific contractual agreement in writing with the university or as a specific university assignment, regarded as "work for hire" in the meaning of Public Law 94-553.

If the copyrightable material is prepared pursuant to a specific contractual agreement between the creator and the university or its auxiliaries, the contract will specify the product expected, the terms applying to ownership of the copyright, and the distribution of royalties in advance of work begun. Under normal conditions, the university will retain ownership of works created via contractual agreement. In such cases, the university name shall be used as follows:

Copyright (year), San Jose State University. All rights reserved.

(2) the university makes the enterprise possible through extra or special support directly for that purpose.

If the copyrightable material is prepared because the university supplies extra or special support directly for that purpose, the product is considered substantially supported by the institution and there is additional resource cost to the institution. "Extra" or special institutional support includes those support costs which would not have been incurred by the institution in the absence of the development of the product. For example, concurrent use of university facilities does not, in general, generate additional out-of-pocket costs to the university. If extra or special university support is provided, the university will specify that extra or special support in writing and will normally retain copyright.

(3) the effort leading to copyrightable material is sponsored in whole or in part by a third party, but only as may be required by the third party.

If obligations to third-party sponsors are incurred as part of the activity that generates copyrightable material, agreement in advance regarding ownership of copyright is essential and must be negotiated prior to acceptance of sponsorship by the university or its auxiliaries.

Nothing in the specifications regarding contractual agreements, "work-for-hire," extra or special university support, or third-party sponsorship shall prohibit a decision by the university or its auxiliaries to award copyright solely to the creator.

An employee's obligation to teach and/or pursue scholarship or creative work, or to carry out obligations accepted in sabbatical or difference-in-pay leave proposals shall not be interpreted as a specific contractual agreement, nor as extra or special university support unless specified in advance and in writing by all parties. In addition, materials customarily created within and for teaching assignments are not subject to university claim of copyright unless all parties agree in advance of development and in writing.\*\*

## Copyright Administration

The university copyright policy shall be administered by the Associate Academic Vice President, Graduate Studies and Research (AAVP/GS&R). Inquiries pertaining to copyright and/or negotiations regarding the sharing of copyright and the right to any income resulting from copyrightable products shall be addressed to the AAVP/GS&R. As needed, the AAVP/GS&R shall convene a Copyright Advisory Committee consisting of at least one college dean, and two members of the faculty with copyright experience; advice on legal issues shall be obtained from university counsel. Agreements between the university and the creator of copyrightable materials shall be drawn by the AAVP/GS&R and approved by university counsel. All royalty income from university copyrights shall be maintained in a special SJSU account and applied to institutional support of activities leading to scholarship and creative work.

\*\* University policy S91-3 establishes that the purpose of sabbatical leaves, including difference-in pay leaves, is to benefit the University, its students and its programs through the professional development of its faculty as teachers and scholars [*italics inserted*]. In compliance with California Administrative Code, Title V (43000-43008, 43050, 43051), MOU Article 27, and University Policy S 91-3, faculty are required to make application for these leaves with pay. These applications must provide details of the applicant's plan of study, research, or travel and service together with a statement of the benefits which would accrue to the campus and students from the proposed study, research, or the travel and service. The application review criteria focus on the value of the proposed professional development activities to the university; specific outcomes or products are not required as a condition for support. Therefore, such application does not constitute a contract for the purposes of this policy, nor are approved proposals equivalent to specific contractual agreements or "work-for-hire." Furthermore, extra or special support

from the university is not present since the support to the faculty member would continue to exist, regardless of his/her assignment.