

FINANCIAL AND ADMINISTRATIVE POLICIES

COPYRIGHTABLE INSTRUCTION MATERIALS OWNERSHIP, USE AND CONTROL

I. Background

Mount Mary College is directly involved in the development of copyrightable instructional materials, because they provide substantial resources to support the creation and production of these materials. Institutional involvement is likely to expand substantially with the increased use of information technology in the creation of multimedia instructional materials and distance education course offerings.

Typically, works created by employees in the course of their employment are considered “works for hire,” and copyright ownership belongs to the employer and not the employee. In the spirit of academic tradition and of encouraging the dissemination of scholarly work by members of the Mount Mary College community, except as provided for below, Mount Mary College will not assert a property interest in materials such as theses, scholarly articles, journal articles, research bulletins, monographs, and books (“Creative Works”) created by faculty or other employees. Those Creative Works, other than as provided for below, will be deemed to be the property of the author and will not be considered “works for hire”. In those cases where substantial institutional resources are provided to support the development of instructional materials, however, the Mount Mary College may assert ownership or other property interests, which will be addressed through specific agreements with the authors and producers of the materials.¹

This policy paper identifies typical situations in which the development of copyrightable instructional materials occurs, and provides information and guidance for those situations when copyrightable instructional materials are developed with substantial support from Mount Mary College.

II. Policy

A. Copyrightable Instructional Materials

Copyrightable instructional materials are materials prepared for use in any form of teaching and include, but are not limited to, the following, whether fixed or not and whether online or in print: books, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi or tests; lectures, musical or dramatic compositions and scripts; films, filmstrips, slides, charts, transparencies and other visual materials; video and audio

recordings of presentations, programs or performances; programmed instructional materials and computer programs; computer software; and educational multimedia projects incorporating various copyrighted media formats including, but not limited to, motion media, music, test material, graphics, illustrations, photographs and digital software which are combined into an integrated presentation.

B. Developmental Conditions

Copyrightable instructional materials may be produced or developed under the following conditions:

1. No Mount Mary College or institutional support or involvement;
2. Minimal² Mount Mary College or institutional support or involvement;
3. Substantial³ Mount Mary College or institutional support or involvement;
4. As an assigned duty or pursuant to a work-for-hire agreement;
5. With support from an extramural sponsor.

C. Ownership Interests

1. It is the policy of Mount Mary College that copyrightable instructional materials developed under the conditions identified in sections II.B.1. and 2. of this policy paper belong solely to the author.⁴
2. Copyrightable instructional materials developed under the conditions identified in section II.B.3. of this policy paper are required to be the subject of a written agreement between the author and the chief administrative office of the institution, or his or her designee, that equitably determines copyright ownership rights.⁵
3. When the production of copyrightable instructional materials is the primary purpose of an employment or independent contractor relationship with Mount Mary College, as under section II.B.4. of this policy paper, Mount Mary College shall own all rights, including copyrights, in the materials produced, and a written work-for-hire agreement⁶ shall be executed. Under the work-for-hire agreement, fair payment shall be made to the author of the copyrightable instructional materials and Mount Mary College shall receive all rights, including copyrights, to the materials, together with any royalties and fees.
4. When copyrightable instructional materials are produced as a part of a duty specifically assigned by Mount Mary, Mount Mary College shall own all rights, including copyright, in the materials produced, together with any royalties and fees, unless a contrary agreement has been reached prior to the beginning of the project between the author and the president or his or her designee.
5. When copyrightable instructional materials are produced with extramural support, as under II.B.5. of this policy paper, the agreement with the extramural sponsor shall be considered in determining the copyright and ownership rights of the parties.

III. Contractual Guidelines

The conditions of production, use and final disposition of copyrightable instructional materials will vary from project to project. Where such materials are to be produced under the conditions specified in II.B.3. and 4. of this policy, however, it is necessary for the authors and the

institutions to enter into a written agreement prior to beginning the project that defines the rights and responsibilities of the author and institution, and where possible, describes the interests of any extramural sponsors or other participants in the project. Such an agreement may also be appropriate when copyrightable instructional materials are produced under the conditions specified in II.B.5. of this policy. In addition to establishing ownership interest in accordance with II. C. of this policy, all such written agreements should reflect the following principles:

A. Author and Institutional Responsibilities

1. **The president or his or her designee shall be responsible for determining** whether a project is suitable and reasonably related to the academic mission of the institution.
2. The academic department or functional equivalent shall be responsible for designating an individual (“the responsible individual”) to assume responsibility for the content and structure of the project.
3. The responsible individual will be responsible for obtaining clearances or any necessary permission for the use of previously copyrighted materials which are planned for inclusion in the project.⁷
4. The responsible individual will also be responsible for obtaining any necessary agreements, waivers and releases of right from project participants in connection with their contributions to the project.

B. Internal Use

1. “Internal use,” as used in this section, means use by Mount Mary College, within the institution, by any means including broadcast, closed circuit television, compressed video, digital software or multimedia formats.
2. Internal use and sharing of copyrightable instructional materials should be encouraged. Accordingly, agreements developed under this policy should address internal use, and may provide that any charges by Mount Mary College to other departments for internal use of copyrightable instructional materials be limited to reflect actual, direct costs incurred, such as production, promotion, handling and duplicating.

C. External Distribution

1. Distribution external to the Mount Mary College may occur either through direct rental, sale or licensing by the institution or its designee, or through commercial rental, sale or distribution by a third party publisher under an agreement for payment of royalties.
2. Release of copyrightable instructional materials for external distribution shall be negotiated between the institution and the author. Whenever possible, the results of the negotiating process should be incorporated in the pre-project agreement developed under this policy. Since it is not always possible to anticipate all future uses of the instructional materials, the agreement should also provide that additional uses may be arranged upon further negotiation.

D. Revision or Withdrawal

Where the Board of Trustees, on behalf of the Mount Mary College, owns a copyright interest in copyrightable instructional materials, the materials should receive timely and periodic review by users and producers to insure currency and relevance, consistent with the following:

1. Copyrightable instructional materials shall not be altered or revised without consultation with the author.
2. If the producing institution continues the use of copyrightable instructional materials, or authorizes the use of such materials by others, contrary to the recommendation of the author, the producing institution shall not advertise or present the materials as the work of that author, except to the extent appropriate to acknowledge the author's participation in the original production of the copyrightable materials.
3. The author shall be offered the opportunity to assume responsibility for the revision of the copyrightable instructional material. If the author declines, the assignment of responsibility will be made by the chancellor or his or her designee.
4. The author should be consulted when copyrightable instructional materials are considered for uses other than the ones for which they were produced.

IV. Remuneration Issues

A. Production

1. Release time may be granted through normal institutional channels.
2. Released time under this section would normally be granted in the stages of planning, production, presentation, evaluation, and revision, including the first and subsequent semesters of utilization.

B. Allocation of Financial Benefits of External Distribution

1. Where copyrightable instructional materials produced under the conditions specified in II.B.3. and 4. of this policy are to be distributed externally, the financial benefits of external distribution shall be shared by the sponsoring department or functional equivalent, the author and the institution.
2. Revenue generated by external distribution should be shared between the author and the institution in accordance with revenue distribution schedules, established in percentages, based on preamortization⁸ and postamortization of the project cost, as follows:
 - a. Preamortiation. A reasonable pattern of distribution prior to amortization provides an approximate return of ten percent of gross receipts to the author with ninety percent retained for distribution to the department or functional equivalent or institution for amortization of their contributions.
 - b. Postamortization. After amortization, the author's share of receipts should increase to approximately twenty-five percent of gross receipts.

3. The share of receipts assigned to the department or functional equivalent should be used for the support of teaching load adjustments necessitated by the project, or the development of new course materials or the revision or improvement of the original project.
4. Any distribution of gross receipts agreed upon in accordance with this policy paper shall continue under the terms of the agreement, regardless of the author's termination from employment with Mount Mary College.

C. Outside Resource Person

Fees for outside consultants or other participants in a project shall be negotiated between the responsible author and the consultant. Any agreement for the payment of fees shall include a waiver, by the consultant or other participant, of any ownership interest, including any copyright or other intellectual property interest, in the resulting project materials.

V. Administration and Review of Guidelines

- A. Administration of these guidelines shall be vested in the President or his/her designee.
- B. These guidelines may serve as the basis of contract between the author and Mount Mary College.⁹

¹Ownership interests acquired by Mount Mary College under this policy vest and are taken in the name of "The Board of Trustees of Mount Mary College."

²"Minimal," as used in this policy, includes the use of university laboratories or equipment, but does not include released time from regularly assigned duties.

³"Substantial," as used in this policy, includes, for example, released time from regularly assigned duties; direct investment by the institution of funds or staff, or the purchase of special equipment for the project; use of multimedia production personnel and facilities; or extraordinary use of computing resources.

⁴"Author," as used in this policy, means the authors, artists or other creators of instructional materials and may include faculty, staff or students who, as a regular part of the instructional program, become participants in the creation of copyrightable materials.

⁵A sample contract is attached to this policy as [Attachment A](#).

⁶A sample work-for-hire agreement is attached to this policy as [Attachment B](#).

⁷A sample letter requesting permission to use copyrighted materials is attached to this policy as [Attachment C](#). If authors need more detailed guidance or have questions concerning the need for obtaining permission, legal assistance is available from the Mount Mary College of General Counsel, or from campus legal counsel office.

⁸"Amortization" as used in this policy means that point at which the institution has recovered at least the costs of production of the project. Elements of costs eligible for amortization include, but are not limited to; costs of materials and service, costs of personnel time, usage costs of equipment, studios and the like, distribution costs and applicable indirect costs.

⁹See the sample contract attached to this policy as [Attachment A](#).

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ATTACHMENT A

SAMPLE COYRIGHT AGREEMENT AND ASSIGNMENT

This agreement is between the Board of Trustees on behalf of Mount Mary College- _____
Department of _____ (hereinafter- _____”) and _____,
[hereinafter “Author(s)”].

Whereas it is the policy of MMC _____ for copyright ownership in the Works produced by its
employees to be owned by the author rather than MMC except as stated in General Administrative Policy
and Procedure; and

Whereas the parties agree that an exception, [substantial university support/extramural funding] applies to
a specific Work (to be) created by the Author(s) and the MMC- _____ claims a copyright
interest in the Work;

Now, therefore, in consideration of the mutual promises contained herein, the parties agree as follows:

1. The “Work” for purposes of this agreement is described as:

2. The Author(s) agree(s) that all right, title, and interest in the Work, including subsidiary rights
and the right to maintain copyright in the name of the Board of Trustees, is, or shall be by
assignment through this agreement, exclusively vested with MMC- _____.
3. The Author(s) warrant:
 - a. That the Work does not infringe any valid copyright or other proprietary right of any other
person;
 - b. That the Author(s) have the power to convey all rights granted and assigned in the
Agreement;
 - c. That the Work contains no libelous, defamatory or other unlawful material and Author(s)
(jointly and severally) agree(s) to hold MMC- _____ harmless from any claim, suit
or proceeding based on the grounds that the Work contains such harmful matter, and

- agrees to indemnify MMC- _____ for reasonable expenses incurred in defending, settling, or otherwise responding to such claims; and
- d. That the copyright has not been assigned previously nor the Work published.
4. If the Work includes any copyrighted material not in the public domain, the Author(s) will obtain permissions for the use of such material, and provide copies of such permissions to MMC- _____ before the Work is published. The cost for obtaining the permissions shall be borne by the [Author(s) /MMC- _____] [choose one].
 5. If MMC- _____ intends to revise or publish future editions of the Work, it hereby grants the right of first refusal to the Author(s) to modify or edit the Work on behalf of MMC- _____. If Author(s) do (es) not provide an acceptable revision within a reasonable time or should Author(s) be deceased, unable or unwilling to revise the Work, MMC- _____ may have the revision or edition prepared and may deduct the authorship cost from the Author's royalties. MMC- _____ agrees that the Author(s) shall have an opportunity to read and correct the edited or modified manuscript in proof if the Author(s) so request(s) in writing within ten (10) days of the completed revisions or edition by MMC- _____. MMC- _____ will consult with Author(s) when the Work is considered for uses other than the ones for which they were produced. If MMC- _____ continues the use of the Work or authorized its use by others contrary to the recommendation of the Author(s), MMC- _____ shall not advertise or present the Work as the work of the Author.
 6. The Author(s) will not, without written consent of MMC- _____, publish any abridged or other version of the Work, any derivative work, or any Work of a similar character tending to interfere with sales of the Work covered by this Agreement. Such consent will not be unreasonably withheld.
 7. When the Work is complete and acceptable for publication, MMC- _____ shall perform, at its discretion, reasonable efforts to market the Work.
 8. A royalty statement shall be prepared by MMC- _____ as of [__date__] of each year of publication, and within _____ days thereafter MMC- _____ shall pay the appropriate royalty based on the following schedule:

Prior to recovery of MMC- _____ costs:

Author(s) 10%*

MMC- _____ 90%*

After recovery of MMC- _____ costs:

Author(s) [25] %*

Department _____ %

[School] _____ %

***NOTE:** Multiple authors will share this amount as agreed to among themselves and give written notice to MMC- _____ of their agreement.

The distribution of royalties to Author(s) shall continue under the terms of this Agreement regardless of the Author(s) termination of employment the MMC- _____.

9. Notwithstanding the above, royalty accounting and payments will be discontinued when, for two (2) successive royalty periods, earned royalties from all sources do not exceed [twenty-five dollars (\$25.00)].
10. If MMC- _____ determines that further publication of the Work is not desired it shall have the right to terminate this Agreement by sending written notification to the Author(s). Upon such termination, the Author(s) may request in writing that MMC- _____ assign the copyright to the Author(s). Approval of such request will not be unreasonably withheld.
11. This agreement and its attachments, if any, incorporated herein, constitute the entire understanding between the parties with respect to the subject matter hereof, supersedes any and all prior understandings and agreements, oral and written, relating hereto, and may be amended at any time only in writing signed by both parties.
12. The delay or failure of any party to exercise any of its rights under this Agreement for breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver any subsequent breach, either of the same provision or otherwise.
13. This Agreement shall be governed by and construed under the law of the State of Wisconsin, which shall be the forum for any lawsuits arising from or incident to the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below.

For the Board of Trustees on behalf of Mount Mary College

_____ Author(s):

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ATTACHMENT B

WORK-FOR-HIRE AGREEMENT
AGREEMENT FOR PERSONAL SERVICES

This agreement is entered into this _____ day of _____, 20____, between the Board of Trustees of Mount Mary College, on behalf of MMC-_____ (hereafter, “MMC-_____”) and _____ (hereafter, “Contractor”). For and in consideration of the mutual promises set forth below, the parties agree:

1. Contractor shall [here insert a detailed description of the work to be performed by, and the specific duties and responsibilities, of the contractor].
2. Contractor acknowledges that any and all copyrightable work product (“Work Product”) created by Contractor under this Agreement shall be deemed “work-made-for-hire”, as that phrase is defined by US Copyright Law, and shall be in the name of the Board of Trustees of Mount Mary College free and clear of any ownership and/or interest and/or title chains claimed by Contractor. In the event that any copyrightable Work Product created by Contractor hereunder is not deemed a “work-made-for-hire,” Contractor hereby assigns all of his/her interest in and to said Work Product to the Board of Trustees of Mount Mary College. This clause shall survive termination or expiration of this Agreement.
3. MMC-_____ shall pay to Contractor the total amount of \$_____ for [his/her] services, as follows: [here describe the timing of payments and other relevant payment terms].
4. Contractor agrees that all work under this Agreement shall be completed on or before _____. In the event that Contractor fails to complete the work by that date, MMC-_____ may, at its option, extend this Agreement for a fixed period of time it determines to be appropriate. In the alternative, MMC-_____ may obtain the services of another contractor to perform the work described in paragraph 1, in which case the Contractor shall provide MMC-_____ with all work produced to the date of MMC-_____’s election under this paragraph.
5. Contractor warrants that all materials furnished and used under this Agreement are his/her own original works or materials for which he/she has obtained ownership of the copyright. Contractor further warrants that the materials do not infringe on any copyright, common law right, or proprietary right of any third party.
6. MMC-_____ will acknowledge Contractor’s contribution to any copyrighted work resulting from the performance of services under this Agreement.

7. To the extent permitted by Wisconsin law, the parties agree to save, hold harmless and defend each other and their respective agents, employees, and officers against any and all liability claims and cost of whatever kind or nature, for injury to or death of any person or persons, and for loss or damage to any property or property interest or loss of personal or financial interests occurring in connection with or in any way incidental to or arising out of the actions or any activities associated with the terms of the agreement.

Contractor

Board of Trustees of Mount Mary College,
On behalf of MMC- _____, by
[name of contracting officer]

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ATTACHMENT C

SAMPLE LETTER REQUESTING PERMISSION TO USE
COPYRIGHTED MATERIALS

Dear [copyright holder]:

[The MMC- _____] requests permission to copy and use the following material:

Title:

Author/Editor:

Edition to be duplicated and year of copyright:

Material to be used: [i.e., amount, page numbers, chapters of the material]:

Period of intended use:

Method of reproduction:

Nature and purpose of use [teaching, research, etc.]:

Form of distribution:

Whether or not the material will be sold:

Number of copies:

Please advise me not later than _____, whether permission is denied, granted, or conditioned on any specific additional terms.

Thank you for your assistance.

Sincerely,

[Authorized institutional representative]