

**Memorandum of Agreement between
Portland State University (University)
and the Portland State University Chapter
of the American Association of University Professors (Association)
June 15, 2020**

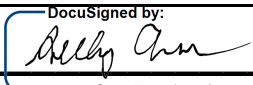
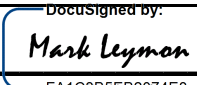
Subject: Modifications to Article 20 to include Copyright Ownership Policy

Recitals:

The current Intellectual Property policies are based on Oregon University System Administrative Rules and Internal Management Directives that were converted to PSU Standards on July 1, 2015. The parties seek new Copyright Ownership rules, and the University intends to promulgate a Copyright Ownership Policy. Article 20 of the Collective Bargaining Agreement deals with Faculty Intellectual Property Rights.

Agreement:

1. The parties agree to the Copyright Ownership Policy attached as Appendix 1.
2. Article 20 shall be revised as described in Appendix 2 of this Agreement.
3. This MOA is subject to ratification by the PSU-AAUP membership and becomes effective upon closure of the ratification window.
4. This MOA, Appendix 2, and the Copyright Ownership Policy shall become an addendum to the CBA. The CBA Appendix number shall be determined during housekeeping at the time the successor CBA is compiled.

<u>For the University</u>	<u>For the Association</u>
<small>DocuSigned by:</small>  <hr/> Shelly Chabon, Vice Provost for Academic Personnel & Leadership Development	<small>DocuSigned by:</small>  <hr/> Mark Leymon, VP Collective Bargaining
June 16, 2020 8:51 AM PDT <hr/> Date	June 16, 2020 9:04 AM PDT <hr/> Date

Appendix 1



Responsible Officer: AVP for Research
Responsible Office: Innovation & Intellectual Property
Adoption Date: May 19, 2020

COPYRIGHT OWNERSHIP POLICY

I. Policy Statement

Portland State University (University) is committed to academic freedom and strives to place copyright ownership with the Faculty authors and creators of scholarly, academic, and artistic works, except in certain circumstances.

II. Reason for Policy/Purpose

This policy promotes the University's scholarly, academic, and service missions by establishing a framework for the ownership and disposition of copyright for materials created by University employees and students. Establishing a framework for ownership and disposition of copyright materials provides clear guidance to University Faculty, Staff, and students regarding their rights in created material. By establishing Faculty and student ownership in their scholarly, academic and artistic works, the University fosters an environment of creativity and scholarship and encourages professional advancement. This policy's purpose is to protect the academic freedom enjoyed by Faculty, to establish Faculty ownership except in limited circumstances, and to establish permissions between Faculty and the University for use of copyright materials owned by each. This policy also sets forth the University's expectations for copyright ownership of works created by students and non-Faculty Staff and for the disposition of copyright to external sponsors of Faculty projects. By clarifying copyright ownership and permissions, the University protects public resources and establishes expectations for employees who contribute to the University in the course of their employment.

III. Applicability

This policy applies to all students, employees, contractors, schools, colleges, and administrative units of the University.

IV. Definitions

Commercial Use: A grant of copyright right, transfer of copyright ownership, or sale of Copyright Materials to a third party which is either contingent on monetary consideration or which allows that third party to further grant rights or sell Copyright Materials for monetary consideration.

Copyright Materials: Original works of authorship or creation to which copyright accrues and that are authored or created by Faculty or Staff.

Course Materials: Copyright Materials whose copyright is owned by a Faculty or Staff member and which are used by that Faculty or Staff member for teaching a registered course at the University.

Faculty: All academically-ranked Faculty of the University. With respect to Course Materials under this policy, Faculty also includes any employee teaching a registered course at the University.

PSU Copyright Material(s): Copyright Materials for which the copyrights are either owned by the University under Work for Hire, assigned to PSU voluntarily, or required to be assigned to the University under the exceptions to the University's waiver of Work for Hire for Faculty.

Scholarly Work: Includes, but is not limited to, Faculty or Staff authored or created textbooks, pedagogical materials, journal articles, conference presentations, white papers, monographs, plays, poems, musical compositions, visual arts and other works of artistic imagination. As guidance, Scholarly Work are often objects that fulfill the requirement of 'scholarship' under a field- and department-relevant promotion and tenure review process, that fulfill the requirement of a degree program, or that are the results of a Sponsored Project or research study.

Separate Agreement: A written agreement between the University and Faculty regarding the ownership of Copyright Materials to be created using University resources, such as the creation of Copyright Materials for a University-funded or -directed project, or the creation of Copyright Materials subject to a course release.

Sponsored Project(s): Research or service undertaken by Faculty or Staff utilizing any external funding source, such as grants, gifts, contracts, or awards.

Staff: University employees who are not academically ranked, including academic professionals.

Unit: The administrative area within the University that has provided resources specifically for the creation of Copyright Material under a Separate Agreement.

Work for Hire. As used in this policy, the term has the same meaning as in section 101 of the Copyright Act of 1976, as amended. Generally, a "work for hire" is a work prepared by an employee within the scope of his or her employment or by a third party hired by the University to perform services or undertake other work through which Copyright Materials are created.

V. Policy

1.0 Copyright Ownership

1.1 University Waiver of Work for Hire. Subject to the limitation set forth below, the University by this policy waives its rights under the Work for Hire rule for Faculty and acknowledges that Faculty author(s) or creator(s) of Copyright Materials hold the original copyright to Copyright Materials created while employed by the University. Also subject to the limitation set forth below, the University by this policy waives its rights under the Work for Hire rule for Staff for Copyright Materials that are Scholarly Work or that are created for the purposes of becoming Course Materials. These waivers are subject to the following exceptions, under which the Work for Hire rule still applies:

- 1.1.1 Copyright Materials developed under a Sponsored Project;
- 1.1.2 Copyright Materials developed under a Separate Agreement where ownership to Copyright Materials is retained by the University.

1.2 Copyright ownership under Separate Agreements. When entering into Separate Agreements, the University and Faculty/Staff member(s) may agree that either the Faculty/Staff member(s) or the University will own the copyright in Copyright Materials created under the Separate Agreement. This Separate Agreement will be made between the Faculty/Staff member(s) and the Unit. In proposing University ownership of Copyright Materials in Separate Agreements, the Unit should consider both the level of University resources to be used in the Separate Agreement and any anticipated incorporation of pre-existing Faculty or Staff-owned Copyright Materials. No Separate Agreement shall change any part of this policy.

1.3 Scholarly Work Exemption. If dissemination of a Scholarly Work requires a copyright assignment to a third party of PSU Copyright Materials which are PSU Copyright Materials under the Work for Hire rule or which would otherwise be required to be assigned to the University under the exceptions to the University's waiver of the Work for Hire rule, and to the extent that such PSU Copyright Materials are not encumbered by the terms of a Sponsored Project, Separate Agreement, or existing license to a third party, PSU will not assert its ownership in the copyright to such materials. The University will preserve the publishing rights of Faculty, Staff, and students when entering Sponsored Project agreements unless the Faculty or Staff principal investigator is willing to accept publication restrictions for the needs of individual projects. The University recommends that when entering into agreements for the publication and distribution of Copyright Materials, authors make arrangements allowing them to archive their materials in PDXScholar, the University's open access institutional repository.

1.4 Students' Ownership of Student-Created Works. Each student holds the copyright to Copyright Materials that the student authors or creates, unless the creation/authorship of such Copyright Materials was performed by the student under a Sponsored Project, under a Separate Agreement, or in a student's capacity as Staff. A student may voluntarily grant permissions to or transfer copyright to the University or to another entity. Such permission or transfer should be in a writing agreed to by the student. Faculty and Staff shall not infringe a student's Copyright Material, in their capacity as a University employee or otherwise. The University shall not require a student's assignment of Copyright Materials to the University or to a third party to fulfill any academic requirement, nor shall the University deny any academic requirement activity in response to a student agreeing to assign their copyright to a third party. The University will seek to advise and help students understand their rights under copyright law.

1.5 Digital Transfer. The uploading of Copyright Material to an online teaching platform or other transfer to digital medium operated by the University shall not change the ownership of the original Copyright Material unless explicitly agreed by the copyright owner of such Copyright Materials.

2.0 Copyright Permissions

2.1 Blanket University-to-Faculty Permissions for PSU Copyright Materials. The University by this policy grants a non-exclusive, non-commercial copyright license in PSU Copyright Material to the Faculty author(s) or creator(s) of that PSU Copyright Material, provided that the PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or are not licensed or expected to be licensed to a third party. Faculty are encouraged to further distribute such PSU Copyright Materials, when applicable, for public benefit under appropriate non-commercial open source (<http://www.opensource.org/>) or creative commons (<http://creativecommons.org/>) licenses. This grant to Faculty may terminate if the University licenses PSU Copyright Materials to a third party for Commercial Use. Such Commercial Use licenses may be first executed only with the acknowledgment of the Faculty author or creator.

2.2 Limited University-to-Staff Permissions for open source release of PSU Copyright Materials. Staff authors of PSU Copyright Material may release such materials under appropriate non-commercial open source or creative commons licenses for purposes of participation in an open source project or in connection with membership in or presentation to a professional organization, provided that: (a) the Staff author(s) obtain permission from their supervisor or department chair; (b) release of the PSU Copyright Materials is not limited by the terms of a Sponsored Project or other agreement; and (c) the PSU Copyright Materials are not licensed or expected to be licensed to a third party.

2.3 Limited, Revocable Permissions to University for Course Materials Due to Unforeseen Circumstances. All Faculty and Staff grant to the University, to the extent they have ownership in or permissions for Course Materials, a non-exclusive, non-commercial copyright license in those Course Materials for the purpose of teaching such course in the event that circumstances require that another person teach the course on short notice. Such license is effective only for the academic term immediately impacted by the unforeseen circumstance.

2.4 University Permissions for Course Materials for Archiving, Accreditation and Accommodations. Upon first using Course Materials in a registered course, all Faculty and Staff grant to the University permission to archive the materials for the purpose of accreditation, and subject to the time limitations of Section 2.3, permission to make derivatives for the purpose of accommodation and accessibility (such as may be required under the Americans with Disabilities Act).

2.5 Sharing of Course Materials. The University encourages the free flow and sharing of materials and pedagogy among Faculty and Staff. A person seeking to use Course Materials owned by another Faculty or Staff member to teach a registered course at the University must request and obtain written permission directly from the owner of the Course Materials. Permission to use the Course Materials may be revoked at any time by the Faculty or Staff author(s) or creator(s) who own the copyright, although such revocation shall not be effective until the end of the academic term if the course has started or will start within thirty (30) days.

2.6 Digital Transfer. Faculty who upload their Copyright Material to an online teaching platform, or other transfer to a digital medium, operated or contracted by the University retain ownership of their Copyright Material. Faculty shall have the right to require such Course Materials be removed from the digital medium.

3.0 Faculty disclosure. Faculty and Staff using or distributing PSU Copyright Materials under the license granted in Paragraph 2.1 or pursuant to Paragraph 2.2 above have an obligation to mark PSU Copyright Materials as “© Portland State University.” Faculty and Staff who wish to use or distribute PSU Copyright Materials for Commercial Use shall seek an appropriate license by disclosing the PSU Copyright Materials to the University’s Office of Innovation & Intellectual Property.

4.0 Independent Contractors of Works Created Under Contract. Where the University hires third-parties to perform services or undertake other work where Copyright Materials are created, it is the general practice of the University to retain the copyright ownership in those works under the Work for Hire rule. Such materials will be PSU Copyright Materials.

5.0 Collaborative and Joint Works. When individuals collaborate to author Copyright Materials, a "joint work" often results, in which all the rights holders jointly hold nonexclusive rights to use the work. For example, Copyright Materials may be authored or created by combinations of Faculty, students, and Staff working on a project and this collaboration may result in a joint work(s) where the copyright is owned jointly and the work created may be a combination PSU Copyright Materials and Faculty-owned or student-owned Copyright Materials. Prior to authoring or creating such works, Faculty, Staff, and students who collaborate with each other or with non-University third-parties (*e.g.*, volunteers, visitors, other collaborators) are encouraged to describe or determine the disposition of the resulting copyright. A sample form is provided in Links to Related Forms.

6.0 Licenses to Third Parties. The license of PSU Copyright Material from the University to third parties for Commercial Use, or for any use in exchange for license fees, including all terms and execution of such license agreements, is the sole responsibility of the Office of Innovation & Intellectual Property under the Vice President for Research.

7.0 Sponsored Projects.

7.1 When negotiating agreements with external parties for Sponsored Projects, the University shall endeavor to retain PSU ownership of copyright for any Copyright Materials created by Faculty and/or Staff under the Sponsored Project. The University may grant rights in PSU Copyright Materials created under a Sponsored Project to an external sponsor commensurate with the purpose of the agreement and the nature of the Sponsored Project, but will not grant a license for Commercial Use in a Sponsored Project agreement unless a separate license to such rights is executed through the Office of Innovation & Intellectual Property.

7.2 For Sponsored Projects or other contracts (*e.g.*, procurement contracts) under which the University is primarily performing a service or allowing use of University equipment without significant intellectual input from Faculty or Staff (*e.g.*, centers with published external user rates in the University Fees and Fines book), the University may assign ownership of Copyright Materials created under the Sponsored Project to the external sponsor provided that Faculty and Staff performing the project acknowledge in writing that for that Sponsored Project:

- 7.2.1 No students will create Copyright Materials for the Sponsored Project,
- 7.2.2 Only Copyright Materials created under the Sponsored Project will be assigned, and no previously created Copyright Materials shall be included,
- 7.2.3 University Faculty and Staff will have no right to use the assigned Copyright Materials unless otherwise permitted, and
- 7.2.4 University Faculty and Staff will have no right to publish the assigned Copyright Materials unless otherwise permitted.

In addition, the external sponsor must acknowledge in writing that:

- 7.2.5 No export-controlled information in the Copyright Materials will be assigned, and
- 7.2.6 The University is under no obligation to seek export control licenses for such information.

VI. Procedure

1. Policy Interpretation and Dispute Resolution

- 1.1 This policy and its implementation may require interpretation and review. University stakeholders should make every attempt to resolve disputes informally with the assistance of one or more of the following: the Office of Innovation & Intellectual Property (for overall policy clarification and matters regarding Commercial Use of PSU Copyright Materials), the Office of Academic Affairs (for issues involving Course Materials and Separate Agreements), and the Sponsored Projects Administration (for obligations or issues related to Sponsored Projects).
- 1.2 If informal procedures and consultation do not provide resolution of a dispute or policy issue, University stakeholders may request that the President convene a Copyright Advisory Committee to recommend a resolution to the President. The Copyright Advisory Committee will be composed of five (5) members. The committee shall be chaired by the President or President's designee, and shall have two administrative members appointed by the President or designee and two faculty members appointed by the presiding officer of the Faculty Senate. The committee members appointed will not have participated in the informal dispute resolution process in Paragraph 1.1 above. The committee shall be convened and meet to hear the dispute within fifteen (15) working days of the declaration of any stakeholder in Paragraph 1.1 that an informal resolution is not possible. The committee will generate a written report with their recommendation, including findings and rationale for their decision. The President or designee will make a decision regarding the dispute or policy issue within twenty (20) working days after receipt and review of the Copyright Advisory Committee's recommendations. If the stakeholder is not represented by a union, the President's decision will be final and binding.
- 1.3 If the stakeholder is a member of a bargaining unit and is not satisfied with the President's decision in Paragraph 1.2, a grievance may be initiated at the President's Step of the relevant contractual grievance procedure. The President's review of the decision will be a request for reconsideration of their initial decision. If, upon reconsideration, the member is still not satisfied with the decision, the bargaining unit representative can proceed to arbitration in accordance with their collective bargaining agreement.

1.4 Paragraphs 1.2 and 1.3 of this Section (Policy Interpretation and Dispute Resolution) do not apply to disputes arising under Paragraph 2.5 (Sharing of Course Materials), except in cases in which it is alleged that a University administrator has violated this Policy. Disputes among Faculty members regarding use of Copyright Materials are best resolved using informal mechanisms.

1.5 This Policy Interpretation and Dispute Resolution section does not limit any other remedies provided by law.

2. Revenue. On a quarterly basis, and after the recovery of reasonable direct expenses, the Office of Innovation & Intellectual Property shall distribute any licensing revenue received by the University for the granting of licenses to PSU Copyright Materials, including fees, milestone payments, running royalties, liquidated equity, and any other cash received, in the manner described below. It is the intent of the University that licensing revenue distributed internally be used as long as available to support ongoing innovation activities of the unit that generated the licensed PSU Copyright Material, and that such funds should not be removed from the assigned department, school, college, or project, or charged administrative overhead fees for their use.

2.1 For PSU Copyright Materials that are under continual development within the University or licensed non-exclusively primarily to end users or consumers of the materials:

2.1.1 10% to the Office of Innovation & Intellectual Property, and

2.1.2 90% to an internal account controlled by the lead Faculty or Staff on the project that created the PSU Copyright Materials.

2.2 For PSU Copyright Materials in substantially complete form that are licensed for Commercial Use to third parties who have responsibility for selling the PSU Copyright Materials to end users or consumers:

2.2.1 12.5% to the department or center in which the author(s) or creator(s) of the PSU Copyright Materials primarily developed the PSU Copyright Materials,

2.2.2 12.5% to the college in which the department or center is housed

2.2.3 25% to the Office of Innovation & Intellectual Property, and

2.2.4 50% directly as royalties to the author(s) or creator(s) of the PSU Copyright Materials.

2.2.4.1 If there are multiple authors/creators, or contributors who are not legal authors/creators but whose contribution the authors/creators would like to recognize, PSU requires the authors/creators to reach written agreement, recorded with the Office of Innovation & Intellectual Property, on how to further divide this 50%. If no agreement can be reached, the Vice President for Research will

Disposition of Copyrights in Joint Works (Sample Form 1 to Copyright Ownership Policy)

When individuals collaborate to author Copyright Materials, a "joint work" often results, in which all the rights holders jointly hold nonexclusive rights to use the work. For example, Copyright Materials may be authored or created by both Faculty and Staff working on a project and this collaboration may result in a joint work(s) where the copyright is owned jointly by both the University and the Faculty member(s) and the work created is both PSU Copyright Materials and Faculty-owned Copyright Materials. Prior to authoring or creating such works, Faculty, other University employees, and students who collaborate with each other or with non-University third-parties (*e.g.*, volunteers, visitors, other collaborators) are encouraged to describe or determine the disposition of the resulting copyright.

This form is intended to provide a mechanism for such determination or disposition. Is it not required, but encouraged that Faculty and Staff think through and record such dispositions using this form or another mechanism.

Participant Information (repeat as necessary)

Name:

Address:

Preferred e-mail:

Who at PSU & Why: Core Innovation Information

Lead(s):

Project Title:

General Innovation/Creation Goals:

What & How: Works Information

Key Innovation Artifacts we plan to create:

Funding Sources (if any):

When: How we share Innovation Artifacts & with whom we share them

Please list the intended use of the items to be created, and how they are intended to be shared and with whom. Which of the participants may use the items, and how?

Credit & Revenue

Credit/Authorship Attribution of Participants:

Revenue Management: (in the event that PSU Copyright Materials are licensed to a third party, or if any participant independently sells or licenses items created for the Project, how will available revenue be distributed among the participants?)

Other Obligations

Please list any and all additional conditions or conflicting agreements and obligations.

PSU/PSU-AAUP MOA
Copyright Ownership Policy
June 15, 2020

Internal Acknowledgement for Assignment of Copyright to a Sponsor (Sample Form 2 to Copyright Ownership Policy)

For Sponsored Projects or other contracts (*e.g.*, procurement contracts) under which the University is primarily performing a service or allowing use of University equipment without significant intellectual input from Faculty or Staff (*e.g.*, centers with published external user rates in the University Fees and Fines book), the University may assign ownership of Copyright Materials created under the Sponsored Project to the external sponsor, provided that Faculty and Staff performing the project acknowledge in writing the items outlined below.

This form is intended to provide a mechanism for such acknowledgment. Prior to agreeing to assign copyright to a Sponsor of a Sponsored Project, the principal investigator for the project should acknowledge in writing that:

- No students will create Copyright Materials for the Sponsored Project,
- Only Copyright Materials created under the Sponsored Project will be assigned, and no previously created Copyright Materials shall be included,
- University Faculty and Staff will have no right to use the assigned Copyright Materials unless otherwise permitted, and
- University Faculty and Staff will have no right to publish the assigned Copyright Materials unless otherwise permitted.

PIAF: _____

Sponsor: _____

Acknowledged by Faculty: _____

In addition, in a separate correspondence or record, the Sponsor should acknowledge in writing that:

- No export-controlled information in the Copyright Materials will be assigned, and
- The University is under no obligation to seek export control licenses for such information.

Appendix 2

**Article 20. INTELLECTUAL PROPERTY/DISTANCE EDUCATION AND
COPYRIGHT OWNERSHIP**

Faculty are becoming increasingly involved in distance learning, web-based courses, and other education and training programs that have implications concerning the use and ownership rights of intellectual property.

The University and the Association agree to follow applicable University policies that govern intellectual property, Federal Law, and State Law that govern intellectual property rights and copyright ownership of faculty. Both parties agree that governance and ownership of intellectual property rights and responsibilities do not change as a result of the medium of delivery or storage (e.g. on-line, electronic media).

The University agrees to provide as a resource the ~~Director~~ Office of Innovation and Intellectual Property to faculty members who have questions and/or concerns about the use or misuse of intellectual property rights and copyright ownership. Faculty may also contact the Association about these matters.

The University and the Association agree to facilitate and conduct intellectual property awareness and education sessions that will reinforce the rights and responsibilities of Portland State employees including faculty and administration.

COPYRIGHT OWNERSHIP

The University and the Association negotiated and reached agreement on the University Copyright Ownership Policy, which is included in the CBA as an Appendix,

The parties agree that no faculty member will be compelled to enter into a separate agreement, as defined in the policy, as a condition for continuing employment, promotion, tenure, or rehire. A faculty member's decision to not enter into a separate agreement shall not be just cause for discipline.

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Certificate Of Completion

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Certificate Pages: 2	Initials: 25
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Envelopeld Stamping: Enabled	Phil Lesch
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	phil@psuaaup.net
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Signer Events

Debra Mayo-Kelley
mayok@pdx.edu
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Signature




Signature Adoption: Pre-selected Style
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Mark Leymon
mleymon@pdx.edu
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Shelly Chabon
chabonr@pdx.edu
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Agent Delivery Events

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Intermediary Delivery Events

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Carbon Copy Events	Status	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Signing Complete	Security Checked	6/16/2020 9:04:57 AM
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Payment Events	Status	Timestamps
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