

The University Senate of Michigan Technological University

Copyright Policy Regarding Scholarly, Academic, and Artistic Works”

([Proposal 23-14](#))

Senate Policy 114.1

I. Background and Rationale

Michigan Technological University’s Intellectual Property Policies currently have no clear statement clarifying the status of works produced by its faculty and staff that fall under the scope of copyright, including scholarly, academic, and/or artistic works. This proposed policy fills the existing gap in Board of Control Policy. This policy is copied nearly *verbatim* from the University of Michigan’s Standard Practice Guide, edited as appropriate for Michigan Technological University.

<http://www.lib.umich.edu/files/services/copyright/601.28%20%281%29.pdf>

According to The Office of the Vice President for Research, Innovation, and Industry Engagement’s website, Michigan Technological University’s Operating Procedures 11.1 excludes “Books, articles, manuscripts, and works of art (except to the extent that they contain proprietary information related to inventions or computer software) are not included in these policies.” This passage recognizes the university’s traditional support of the “teacher exception” to copyright law.

Michigan Tech’s current Operating Procedures are based upon Board of Trustees Policy, cited in the VP for Research website as Chapter 18. This chapter no longer exists, but is currently Chapter 14: “Patents and Proprietary Rights.” The official BOT policy in Chapter 14 makes no reference to books, articles, works of art, curricular material, lecture notes, exhibitions, compositions, or other related work. Excluding a category of intellectual property in operating procedures does not establish policy-level rules that clarify the legal status of those materials. This policy therefore seeks to codify existing and traditional practices.

For reference:

<http://www.admin.mtu.edu/admin/boc/policy/ch14/index.htm>

In the absence of Board of Trustees Policy, United States 1976 Copyright Act and other case law provide clues, subject to interpretation, of how IP practices should operate at Michigan Tech. A formal and explicit policy is clearly needed, because narrow interpretations of current copyright law could imply that all of the following routine (albeit hypothetical) situations or practices undertaken by faculty and staff have potentially been in violation of federal copyright law:

- a. Scholars assigning copyright on academic publications over to journal or book publishers.
- b. Artists offering artworks for sale at campus events (like the Great Lakes Showcase) or private events (like in the Copper County Community Arts Center or other National/International shows).
- c. Staff or Faculty that mentor or advise community organizations such as youth hockey teams designing logos or creating playbooks for those teams, when that individual reports that community service in their annual review.
- d. Graduate student teaching assistants who develop lecture notes during their employ at Michigan Tech, then use those notes, exercises, presentation slides, or digital learning tools at another university or job.

- e. Any MTU employee putting educational resources into the public domain under Creative Commons license.

II. Policy (as modified by Board of Trustees 12-19-2014)

A. Transfer of **Scholarly Works**: The University hereby transfers its rights to copyrighted **Scholarly Works** now in existence or hereafter created to the **Faculty** or employee who authored those works—with the following conditions and exceptions.

1. Conditions.—The University prohibits the incorporation of Michigan Tech’s name, logos, seals and other symbols in the later use of **Scholarly Works** without its written consent and reserves the nonexclusive right and license to without charge:

- a. use **Scholarly Works** for educational or administrative purposes consistent with its educational mission and academic norms; and
- b. preserve, archive, and host **Scholarly Works** in its institutional repositories, such as the Digital Commons at Michigan Technological University, University Archives and Copper Country Historical Collections, or the campus computing network, where **Faculty** can control the timing and scope of access to their copyrighted works.

2. Exceptions—The University does not, under this policy, transfer its copyright in **Scholarly Works**:

- a. that are authored as required **Deliverables** under a sponsored activity agreement;
- b. when that would put the University in violation of or conflict with an applicable contract or law;
- c. that are specifically commissioned by the University or are created as part of an administrative assignment to, for, or on behalf of the University;
- d. that are software under Board of Trustees Policy 14.1; or
- e. that are or have been transferred to the University in writing (other than the Board of Trustees Policy 14.1 acknowledgement which **Faculty** sign as condition of employment).
- f. if **Faculty** created instructional material is intended to be sold to third party providers of on-line or other courses during or after **Faculty’s** time of employment at Michigan Tech. This section f is not intended to prohibit use by the creator of such **Scholarly Works** in the normal course of the creator’s current or future employment as an educator

B. Students: Students hold the copyright in works they author, unless they have authored works as **Employees** or transferred their copyright in writing to the University or other entity.

C. **Independent Contractors**: It is the general practice of the University to have **Independent Contractors** transfer to the University, in writing, the copyright in works they create for, or on

behalf of the University.

D. Collaborative and Joint Works: When people collaborate to author a copyrighted work, it often results in a “joint work” in which all the rights holders jointly hold nonexclusive rights to use the work. **Employees** and students who collaborate with each other or with non-University third-parties (e.g., volunteers, visitors, and collaborators) are encouraged to describe or determine, in writing, the disposition of copyright prior to authoring the work.

E. University-Held Works:

1. Disposition: Ordinarily, the University units most closely associated with the creation of specific University-held works may authorize uses of those works (e.g., they may authorize a third-party to copy, adapt, or distribute a University-held work). The disposition of the following University-held works, however, shall be managed by the responsible unit of the Office of the Vice President for Research: software intended to be revenue-generating; software funded under a sponsored activity agreement; and any **Deliverables** funded under a sponsored activity agreement.
2. Notice and Registration: University-held works that are registered with the U.S. Copyright Office or that include a copyright notice should identify the “Michigan Technological University” as the copyright holder.
3. Freedom to Contract: The University is free to contract with **Employees**, students, or others to license uses of or to transfer or acquire the copyright in works.

F. Policy Interpretation and Dispute Resolution: This policy and its implementation may require interpretation and review. University constituents should make every attempt to resolve disputes informally with the assistance of one or more of the following: the Office of the Ombudsman, Office of the Provost and Vice President of Academic Affairs, Vice President for Research, Chief Information Officer, Director of the Office of Innovation and Industry Engagement, or other official. If informal procedures and consultation do not provide resolution of a dispute or policy issue, University constituents may file a request for formal dispute resolution or policy interpretation with the Office of the Provost.

G. Definitions:

Deliverables means copyrighted works that must be authored and delivered in order to comply with the obligations of a sponsored activity agreement.

Employees means any people employed by Michigan Technological University in any capacity, whether they are **Faculty**, staff, administration, or students and whether they are employed full-time, part-time, or in a temporary capacity.

Faculty means full-time and part-time tenured, tenure-track, research, lecturer, clinical, and adjunct **Faculty**, as well as librarians, archivists, and curators.

Independent Contractors means non-**Employees** retained by the University to provide goods or services.

Scholarly Works means **Scholarly, Academic and Artistic** works authored by **Faculty** within the scope of their employment as part of or in connection with their teaching,

research, or scholarship. Common examples of **Scholarly Works** include: lecture notes, case examples, course materials, textbooks, works of nonfiction, novels, lyrics, musical compositions/arrangements and recordings, journal articles, scholarly papers, poems, architectural drawings, software (see exception 2.d), visual works of art, sculpture, and other artistic creations, among others, regardless of the medium in which those works are fixed or disseminated.

H. Trademark

This policy does not grant **Faculty** the right to use the name of Michigan Tech or any images representing Michigan Tech in the use of any **Scholarly Works** which are outside of their duties as **Faculty** of Michigan Tech or are not conducted on behalf of Michigan Tech.

Introduced to Senate: 05 March 2014

Wordsmith changes in red approved by Senate: 26 March 2014

Friendly amendment highlighted in blue approved by Senate: 26 March 2014

Vote on proposal postponed for two weeks

Approved by Senate: 09 April 2014

Approved by Administration with proposed amendments (in purple): 21 June 2014

Approved by BOT (with modifications): 19 December 2014