

# The University Senate of Michigan Technological University

## PROPOSAL 23-14 (revised 03-26-14) (proposed admin amendments in purple: 21 June 2014)

(Voting Units: ~~Academic~~ Full Senate)

### "Proposal to Establish Michigan Technological University's Copyright Policy Regarding Scholarly, Academic, and Artistic Works"

#### 1. Background and rationale

Michigan Technological University's Intellectual Property Policies currently have no clear statement clarifying the status of works produced by ~~it's its~~ faculty and staff ~~which 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 Control 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 BOC 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 ~~further~~ clarify the legal status of those materials. This policy therefore ~~codifies 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 Control 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. ~~S~~cholars 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.

## 2. Proposal

This policy promotes Michigan Technological University’s scholarly, academic, and service missions by establishing a framework for who holds copyright at the University. Because the University is committed to academic freedom, it strives—~~despite the legal default~~—to place copyright with the creators of scholarly, academic, and artistic works. Moreover, this policy encourages and does not limit the rights and abilities of people to make “fair uses” or other lawful uses of copyrighted works.

[Words appearing in SMALL CAPS are to be read as defined in Section H of this policy.]

**A. The Default:** Under U.S. copyright law, the University holds the copyright (as “works made for hire”) in copyrighted works authored by its EMPLOYEES who are acting within the scope of their employment. Otherwise, the University does not hold copyright in a work, unless the copyright has been transferred legally to it by written assignment or other process of law.

**B. Transfer of SCHOLARLY WORKS:** In light of the default, the University, hereby, transfers any copyright it holds in SCHOLARLY WORKS to the FACULTY who authored those works—with the following conditions and exceptions.

1. Conditions—When the University transfers copyright in SCHOLARLY WORKS to FACULTY, under this policy, it reserves the nonexclusive right to:
  - 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 Michigan Tech Archive and Copper Country Historical Collections~~ 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.
  - c. set limits for the incorporation of Michigan Tech’s name, logos, seals and other symbols in later use of SCHOLARLY 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 Control Policy 14.1.~~2-14.1.5~~;
- e. that are or have been transferred to the University in a writing. **(other than the Board of Control Bylaws 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 courses during FACULTY’s time of employment at Michigan Tech.**

**C. 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.

**D. 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, in conjunction with, or on behalf of the University.

**E. 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.

**F. 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.

**G. 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.

**H. 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 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.

## I. 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.**

## Clean Copy:

# The University Senate of Michigan Technological University

## PROPOSAL 23-14

(Voting Units: Full Senate)

# "Proposal to Establish Michigan Technological University's Copyright Policy Regarding Scholarly, Academic, and Artistic Works"

## 1. 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 Control 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 BOC 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 Control 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:

- f. Scholars assigning copyright on academic publications over to journal or book publishers.
- g. 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).
- h. 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.
- i. 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.
- j. Any MTU employee putting educational resources into the public domain under Creative Commons license.

## 2. Proposal

This policy promotes Michigan Technological University's scholarly, academic, and service missions by establishing a framework for who holds copyright at the University. Because the University is committed to academic freedom, it strives to place copyright with the creators of scholarly, academic, and artistic works. Moreover, this policy encourages and does not limit the rights and abilities of people to make "fair uses" or other lawful uses of copyrighted works.

[Words appearing in SMALL CAPS are to be read as defined in Section H of this policy.]

**A. The Default:** Under U.S. copyright law, the University holds the copyright (as "works made for hire") in copyrighted works authored by its EMPLOYEES who are acting within the scope of their employment. Otherwise, the University does not hold copyright in a work, unless the copyright has been transferred legally to it by written assignment or other process of law.

**B. Transfer of SCHOLARLY WORKS:** In light of the default, the University, hereby, transfers any copyright it holds in SCHOLARLY WORKS to the FACULTY who authored those works—with the following conditions and exceptions.

1. Conditions—When the University transfers copyright in SCHOLARLY WORKS to FACULTY, under this policy, it reserves the nonexclusive right to:
  - 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.
  - c. set limits for the incorporation of Michigan Tech's name, logos, seals and other symbols in later use of SCHOLARLY 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 Control Policy 14.1; or
- e. that are or have been transferred to the University in writing (other than the Board of Control Bylaws 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 courses during FACULTY's time of employment at Michigan Tech.

**C. 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.

**D. 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, in conjunction with, or on behalf of the University.

**E. 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.

#### **F. University-Held Works:**

- 4. 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.
- 5. 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.
- 6. 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.

**G. 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.

#### **H. 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 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.

### **I. 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**

**Senate Approved Amendments: 24 September 2014**

**Approved by BOC ([with some modifications](#)): 19 December 2014**