

Office/Contact: Office of the Provost

Source: 17 U.S.C.; SDBOR Policy 4:34; SDBOR Policy 4:42; University Policy 2:4; University Policy 3:1; University Policy 7:3; University Policy 9:2; SDSU Copyright Guidelines

Link: <https://www.copyright.gov/title17/>; <https://www.sdbor.edu/policy/documents/4-34.pdf>;
<https://www.sdstate.edu/policies-and-procedures>; [SDSU Copyright Guidelines](#)

SOUTH DAKOTA STATE UNIVERSITY
Policy and Procedure Manual

SUBJECT: Copyright Policy

NUMBER: 9:4

1. Purpose

This policy and its procedures apply to copyrighted materials to be interpreted consistent with the provisions of SDBOR Policies, including SDBOR Policy 4:34, University policies, and all applicable laws.

2. Definitions

- a. Copyright: A legal concept that assigns ownership to original works of authorship fixed in a tangible medium of expression and set forth by Title 17 of the U.S. Code.
- b. Employee: For purposes of this policy, employees include full and part-time classified staff, student employees, exempt staff members, faculty members, postdoctoral appointees, any individual that qualifies as a gratuitous employee under SDBOR Policy 4:34, or other academic professionals who develop or use copyrighted materials using University facilities or resources controlled by the University, unless there is a written agreement providing otherwise. Persons who are not otherwise employees and who come to the University as guest lecturers, or to teach colloquia, seminars or short courses are not institutional employees for the purposes of this policy.
- c. Scholarly writings: Scholarly writings include writings and other means of fixed expression through which creators publish reports of their research or scholarship to fellow academics or to the public or which they prepare to further the instruction of students. Scholarly writings may take the form of books; monographs; publications in professional, trade or popular journals or periodicals; electronic posts; poster board or like presentations; or materials developed for use in instruction, including textbooks, instructional laboratory guides, practice examinations, courseware, multimedia products, and materials prepared for telecommunication or other technologically assisted delivery of instruction. Scholarly writings are not limited to particular media or to particular practices but include such other forms of fixed expression as may be developed in the future for purposes of publishing reports of research or scholarship or for purposes of instruction.
- d. Artistic works: Artistic works include works of fiction, poems, lyrics, musical compositions and recordings, visual works of art, architectural drawings and other artistic

creations. Artistic works are not limited to particular media or to particular practices but include such other forms of fixed expression as may be developed in the future.

- e. Copyright clearance: The act or process in which an employee ensures that the proposed use of copyrighted materials is in compliance with federal law.

3. Policy

a. Creation of copyrighted materials

- i. SDBOR Policy 4:34 regulates ownership of works created by University employees. Subject to the exceptions provided in this policy, the SDBOR, through the University, holds ownership of such works when they are:
 - 1. Created or reduced to practice by employees in the course of or as a direct result of their employment duties;
 - 2. Created or reduced to practice, in whole or substantial part, by employees in the course of sponsored research or in facilities or using funds or other resources controlled by or administered under the authorization of the SDBOR, unless such facilities or resources are available without charge to the public or unless all applicable use fees were fully paid; or
 - 3. Created or reduced to practice, in whole or substantial part, by students contributing to sponsored or faculty directed research.
- ii. The SDBOR and University shall own all copyrights in works for hire, unless specifically provided in writing to the creator.

b. Exceptions to copyright ownership

- i. The SDBOR ordinarily waives title to copyrights for scholarly writings and artistic works. These waivers are subject to the following exceptions, as well as those set forth in SDBOR Policy 4:34:
 - 1. Where a work arises from research or scholarship funded by a duly approved agreement that requires public access to manuscripts accepted by a peer reviewed publication, the grant hereunder of copyright ownership to creators is contingent upon compliance with such public access requirements.
 - 2. Where a scholarly writing or artistic work has been specifically commissioned by the University, or where the scholarly writing or artistic work was undertaken in performance of a contract with a third party on behalf of the University, the SDBOR, through the University, will assert title to the intellectual property.
 - 3. University students working within the scope of their coursework own the creative output they generate unless such work is Sponsored Research or Faculty Directed Research, as defined by SDBOR Policy 4:34.

- c. The University Office of Technology Transfer and Commercialization, or successor unit, shall work with University employees regarding intellectual property developed by University employees pursuant to SDBOR Policy 4:34 and University Policy 9:2.
- d. Use of copyrighted materials
 - i. Employees and agents of the University are expected to abide by copyright law as set forth by Title 17, U.S. Code and its applicable regulations in the fulfillment of their duties for the University.
 - ii. University employees, students and other individuals are responsible for compliance with the University Policy 7:3, Digital Millennium Copyright Act.
 - iii. University employees and students are further responsible for copyright clearance, the process for which is as follows:
 - 1. Conducting a fair use analysis, which includes consideration of the purpose and character of the use, the nature of the copyrighted work, the amounts or portions of the copyrighted work used, and the effect of the use on the potential market of the copyrighted work;
 - 2. Determining that the materials and use are covered by the education exemption found in Section 110(1) of Title 17, U.S. Code;
 - 3. Determining that the materials are in the public domain or are not eligible for protection under copyright laws; or
 - 4. Obtaining written permission from the copyright owner if necessary. When permission from a copyright owner is obtained, a copy of the permission agreement shall be retained.
- e. The University Library Committee, or designee, is responsible for development and maintenance of guidelines for the use of copyrighted materials within University sanctioned activities.
- f. The University Office of General Counsel shall provide legal assistance regarding copyright matters to University employees.
- g. Individuals are encouraged to report instances of copyright infringement in good faith when the infringement amounts to a violation of the Digital Millennium Copyright Act (DMCA) per University Policy 7:3, when infringement meets the definition of employee research or academic misconduct per SDBOR Policy 4:42, or when infringement is student academic misconduct per University Policy 2:4. In all other cases of known or reasonably possible infringement, where the infringement is done by a student, good faith reporting may occur in accordance with University Policy 3:1, and where the infringement is done by an employee, good faith reporting may be made to their supervisor or SDSU Human Resources.
- h. In addition to legal sanctions, University employees who violate this policy may be subject to disciplinary action in accordance with the policies applicable to the individual's employment status at the University.

4. Procedures

- a. All University employees whose duties involve the use of University resources to research or to develop properties that may be subject to copyright protection will enter into an agreement at the time of hire, assigning to the SDBOR all right, title, and interest, whether present or expectant, in such properties developed in the course of performing their employment duties or as a direct result of activities supported by facilities or resources controlled by or administered under the authorization of the SDBOR.
- b. Students contributing to sponsored or faculty-directed research will execute such declarations, assignments, or other documents as may be necessary in the course of developing copyrighted works, to assure that title in such materials shall be held by the SDBOR or by such other parties designated by the SDBOR as may be appropriate under the circumstances.
- c. Individuals who have questions or disputes over copyright ownership shall make every attempt to resolve them informally with the assistance of one or more of the following:
 - i. Office of the Provost, for policy clarification;
 - ii. Office of Technology Transfer and Commercialization, or successor unit, for transfer issues; and
 - iii. Office of General Counsel, for legal questions or clarification.
- d. Formal resolution of copyright disputes shall follow the process set forth in SDBOR Policy 4:34. The same shall apply for appealing ownership of a work.
- e. The University Library Committee, or designee, will develop guidelines for use of copyrighted materials in accordance with applicable law and SDBOR and University policies and make these guidelines publicly available. The committee will also meet on an annual and ad hoc basis to identify areas in which guideline, policy and procedure revision may be necessary and will report these recommendations to the Office of the Provost.

5. Responsible Administrator

The University Provost, or designee, is responsible for biennial and ad hoc review of this policy and its procedures. The University President is responsible for approval of this policy.

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