

## Copyright Ownership

Functional Lead: Provost  
Division: Academic Affairs  
Responsible Office: IRAP

Reference: (a) Title 17, United States Code (Title 17, USC)  
(b) Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R., Section 2635.807.a.  
(c) DoD Instruction 3200.12 DoD Scientific and Technical Information Program  
(d) Office of Science and Technology Policy Memorandum for the Heads of Executive Departments and Agencies: Ensuring Free, Immediate, and Equitable Access to Federally Funded Research. 25 August 2022

1. Purpose. This policy outlines the statutes and regulations regarding faculty copyrights, describes those materials that are works of the government and cannot be copyrighted, and describes the ability of staff, faculty, and students to secure copyrights of materials regarding intellectual property that are not works of the government.

### 2. Background

a. As noted in Title 17, United States Code, Copyright Act of 1976, Section 102, "Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression ...[to] include ...literary works."

b. Section 105 of Title 17 limits the broad grant of protection and states, "Copyright protection under this title is not available for any work of the United States Government." Section 101 defines a "work of the United States Government" as "work prepared by an officer or employee of the United States Government as part of that person's official duties."

c. However, in Fiscal Year 2020, Title 17 was amended to allow civilian faculty of specific institutions, including Marine Corps University, to hold copyright to certain works produced as part of their official duties.

d. The production of articles and manuscripts is fully supported and encouraged by Marine Corps University (MCU). Potential authors must take all reasonable measures to avoid any circumstances that could detract from this central mission. All MCU staff, faculty, and students must adhere to the guidance in applicable policies before submitting articles or materials for copyrighted publication.

### 3. Policy

#### a. Works Owned by the Government

(1) With the exception of works addressed in section 3(c), any materials prepared as part of official duties are considered a work of the government. Materials originally produced as part

of official duties cannot simply be "re-packaged" or "re-merchandised." Title 17, Section 105 indicates such works will still be treated as works of the government.

(2) No copyright can exist for such material for purposes of either use of the author or assignment to a publisher.

(3) Neither an author nor the government may receive compensation for the right to reproduce or publish materials classified as works of the government.

(4) The following general criteria may assist when determining if works are prepared as part of official duties:

(a) Preparation of the work was within the employee's position, job, or billet description with the exception of works described in section 3(c). This includes work properly self-assigned by the employee.

(b) Preparation of the work was properly assigned by the employee's supervisor.

**b. Works Owned by the Author**

(1) Any materials prepared by a government employee outside of that person's official duties belong to the author, and the author can receive copyright protection and usually reap any associated revenues for such material.

(2) A book or article written on a subject that the author is currently teaching or researching may receive copyright protection as long as the book or article is not the product of official duties (assigned or implied, with the exception of works addressed in section 3(c)). Marine Corps University hires educators for their subject matter expertise, and they may use that expertise for their own benefit, as well as that of the government, in accordance with established guidelines and Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R., Section 2635.807.a.

**c. Scholarly Works by Civilian Faculty**

(1) As allowed by Section 105 of Title 17, civilian faculty of MCU may hold copyright to literary works intended for publication in scholarly presses and journals even if those works are produced as part of their official duties.

(2) For the purposes of this policy, MCU's "civilian faculty" includes both Title X employees serving as teaching or research faculty members and other civilian government employees of the university whose duties involve teaching, mentoring students, research, or other academic work.

(3) Works copyrighted under this provision may be subject to other requirements. Section 105 of Title 107 indicates that "Secretary of Defense may direct the covered author of a covered work to provide the Federal Government with an irrevocable, royalty-free, world-wide,

nonexclusive license to reproduce, distribute, perform, or display such covered work for purposes of the United States Government.” MCU will not initiate this option, but authors should be aware that the Secretary of Defense may choose to do so. Additionally, many types of copyrighted and uncopyrighted reports and publications created by government employees must be made publicly available in accordance with references (c) and (d).

Related Policies and Forms:

Academic Freedom and Non-attribution

Research

Use of Copyrighted Works

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