

Interpretation of Harvard Statement of Policy in Regard to Intellectual Property

A question has arisen about the proper interpretation of the copyright section of the University's Statement of Policy in Regard to Intellectual Property (the "Policy"). The question concerns Section II.B.2 of the Policy. This statement is intended to clarify interpretation of that section.

Section II.B.2 stands as one of the exceptions to the general principle, set forth in Section II.A of the Policy, that "subject to the Exceptions in subsection B below, *Authors* are entitled to own the copyright and retain any revenue derived therefrom in books, films, video cassettes, works of art, musical works and other copyrightable materials of whatever nature or kind and in whatever format developed, except that computer software and databases shall be subject to Section III ("Computer Software") of this policy." The Section II.B. 2 exception provides as follows:

In circumstances where University involvement in the creation and development of copyrighted materials is more than incidental, including, but not limited to, use of resources such as funds, facilities, equipment or other University resources, in consideration of making such resources available, ownership and rights to shares of royalties or income or both shall be fairly and equitably apportioned as between the University and the *Author(s)* or may be varied by policy duly adopted by the University or individual Faculties. This policy encourages, whenever feasible, the University and the *Author(s)* to reach agreement prior to the commencement of a project on the rights that the University and *Author(s)* will have in the resulting copyrighted materials.

Some have asked what constitutes "more than incidental" University involvement in the creation and development of a work for purposes of the foregoing. This interpretation clarifies that, for purposes of Section II.B.2, *more than incidental* involvement means *substantial* University involvement. Circumstances where there is substantial University involvement include, without limitation, the following:

- (a) substantial University financial, staff or other assistance* ;
- (b) extensive use of special or rare University holdings, such as museum collections* ;

* The references in subparagraph (a) to "substantial University financial, staff, or other assistance" and in subparagraph (b) to "special or rare University holdings, such as museum collections" mean the use of University funds, facilities, equipment, or other resources significantly in excess of the norm for educational and research purposes in the department or unit in which the creator holds his or her primary appointment. The University does not regard the provision of academic year salary, office, usual library resources, usual facilities and office staff, or personal computers as constituting "substantial University financial, staff, or other assistance" or "special or rare University . . . holdings" unless such resources were made available specifically to support the development of certain materials to be acquired by the University.

- (c) significant use of voice or image of students or staff in a product, or substantial creative contribution by staff or students^{**} to the preparation of the product; or
- (d) use of the name or insignia of the University or any of its units (other than for purposes of identification of individual faculty members) to identify or to promote the distribution of a product, or other identification or promotion that implies the approval or endorsement by the University or one of its units.

In applying Section II.B.2, the University has construed “more than incidental” involvement to mean substantial University involvement, in accordance with the foregoing, and will continue to do so.

-- Approved May 1, 2012 by Provost Alan Garber and Chief Technology Development Officer Isaac Kohlberg.

^{**} The reference in subparagraph (c) to “substantial creative contribution by staff or students” means providing original ideas or new techniques that are essential to the creation of the product or significantly improve its value. For example, devising a new way to test one of the major hypotheses in a study would normally count as such a contribution, but providing ordinary research assistance or conducting standard data analysis would not.