



From Figure 1

Copyrightable material is created by university personnel.

**Figure 1a**  
Copyright Ownership

Was the work created in the performance of a project covered by a research agreement between the University\* and an outside party?  
**See attached examples a) through f).**

Yes → Ownership to University

URI's right of ownership in employee's work occurs automatically upon creation of work.

\* This is the University, not the URI Foundation

Is work within Scope of Employment?

**\*\*** Lecture notes, articles, books, and other publications created by faculty members are not considered within scope of employment for purposes of this Policy unless there is a written agreement between the University and the faculty member that a specific publication will be considered a work within the scope of employment.

**\*\*\*** See attached examples 1. through 10.

Yes → Ownership to creator

In order to qualify as a written agreement, the agreement must be specific. That is, it must address the specific work for which it is intended. It is preferably a separate written and signed agreement covering the book or music score, for example. It can be a part of an agreement between the individual and the dean signed at the beginning of the semester, but the written agreement defined in this policy must then be a separate article of the dean's agreement addressing the specific copyrightable work.

URI's right of ownership in employee's work occurs automatically upon creation of work.

No → Was work ordered or commissioned by URI?

Yes → Ownership to creator

Is work within a to i? \*\*\*\*

Yes → Is there a written agreement giving URI the ownership? → Yes → URI owns

Is there a written agreement declaring the work a work-for-hire?

Yes → Ownership will initially vest in the creator → Is there a written transfer of ownership to URI? → Yes → URI owns

- \*\*\*\*a = a contribution to collective work
- b = a part of a motion picture
- c = a translation
- d = a supplementary work
- e = a compilation, an arrangement of pre-existing materials
- f = an instructional text, a certain type of book
- g = a test
- h = test answers
- i = an atlas

10 The above nine do not require supervision. 5/98

## Examples for Figure 1a

### **Following are examples to illustrate the dynamics of how the first question in Figure 1a is answered:**

a) Adams writes a book that is not related in any way to a research agreement. The work is not within the Scope of Employment and URI does not assign or commission Adams to write the book. The copyright of the book belongs to Adams.

b) Stephenson writes a book that is derived from research results accrued over time as she works on an NIH project under an agreement between the university and NIH. The book is a compilation of ideas expressed by Stephenson after her NIH assignment had terminated. Because the NIH grant had been terminated and because URI did not assign or commission the work, the copyright of the book is owned by Stephenson.

c) Nelson is budgeted to create software as part of a project under an agreement between the university and a private company. As a result, the software that Nelson creates is within the Scope of his Employment and is, therefore, work-for-hire for the university. Therefore, the software is not within the traditional types such as lecture notes, articles, or books excepted from the definition of work-for-hire in this policy. The copyright ownership to the software is owned by URI.

d) Milford creates a translation. The work was not created in the performance of a project covered by a research agreement between the University and an outside party. However, the work was commissioned by URI. There is no agreement declaring the work a work-for-hire nor is there a written transfer of ownership to URI. Consequently, Milford has copyright ownership.

e) Anderson is budgeted to create software as part of an NSF project under an agreement between the university and NSF. As a result, the software that Anderson creates is within the Scope of his Employment and is, therefore, work-for-hire. The software is not within the traditional types such as lecture notes, articles, or books excepted from the definition of work-for-hire in this policy. The copyright ownership to the software is owned by URI.

f) Gingras receives a gift through the URI Foundation to support his program. He writes a monograph on labor relations. There is no written agreement giving URI the ownership. Gingras owns the copyright to the monograph.

The following examples are intended to give the reader insight into the definition of "Work-for-Hire" These are merely examples for clarification; they are not to be misconstrued to limit the meaning of the term or the number of different cases.

(The following examples and guidelines are from Richard L. Stevens of Samuels, Gauthier, Stevens & Reppert; and from Robert P. Ciavola, MIT.)

1. Smith, a full-time university professor, teaches three courses and spends the remainder of her time writing a book. The book was not specifically ordered or commissioned by URI.

A full time professor is, by job description, expected to do some publishing. However, the professor is extended a great degree of freedom at a university. Even though there is a written statement by URI that the professor is expected to create scholarly work, there is no written agreement that the professor will create this specific book. Also, case law in the courts of appeal has demonstrated that it has been very traditional that the professor owns the copyright in this case cited above. Consequently, the activity of writing the book is not work-for-hire.

***Smith owns the copyright to the book.***

2. DiSprito, a full-time university professor, teaches one course and spends the remainder of his time writing a book. There is no written agreement between the professor and the university.

A full time professor is, by job description, expected to do some publishing. However, the professor is extended a great degree of freedom at a university. Even though there is a written statement by URI that the professor is expected to create scholarly work, there is no written agreement that the professor will create this specific book. Also, case law in the courts of appeal has demonstrated that it has been very traditional that the professor owns the copyright in this case cited above. Consequently, the activity of writing the book is not work-for-hire.

***DiSpirito owns the copyright to the book.***

(The university may contract with the writer that the university could use the book in its classrooms and/or labs free of charge — because nine credits worth of time would be used in writing the book.)

3. Robichaud, a full-time university professor, teaches one course and spends the remainder of her time writing a book. There is a written agreement between the professor and the university that Robichaud will write a specific book for use in a particular course and that URI will own the book. This is work-for-hire.

***URI owns the copyright to the book.***

4. Simmonds, an adjunct professor, is hired to teach one course and spends the remainder of his time writing a book. There is no written agreement other than the contract for teaching the course.

This is not work-for-hire because the work is not within the job description of teaching the one course.

***Simmonds owns the copyright to the book.***

5. Raykovac, a full-time professor, writes CAD-CAM software for use in a product development course she is teaching. There is written documentation within the department that Raykovac is assigned to teach the course. Although the software enhances the teaching function, it has not been determined that the software is really necessary. This software is, however, equivalent to lecture notes and, therefore, it is not work-for-hire.

***Raykovac owns the copyright to the software.***

6. Jones, a computer buff on the University staff, is frustrated by what he perceives to be a lack of technical support from the computer department. He develops an instructional manual

explaining the ins and outs of a complicated new word processing program that was recently installed on all office computers. Both Jones and the University understand that it is within Jones' scope of employment to prepare material that he needs to properly perform in his own department. Jones writes the manual at the office during normal working hours and with his boss's permission, but with his own computer that he brought from home. Jones distributes the manual to the staff, receiving rave reviews.

Jones was acting "within the scope of his employment" when he wrote the word processing manual; consequently, the University would be considered the statutory author of the work, absent a written agreement to the contrary between Jones and the University.

***URI owns the copyright to manual.***

7. Yamamoto, a music professor, needs to write a music score in order to teach properly an assigned course in music. There is written documentation within the department that Yamamoto is assigned to teach the course. This is not work-for-hire because Yamamoto is a professor, and the law has placed professors in a different category than, for example, Jones in Example 6.

***Yamamoto owns the copyright to the music score.***

8. Wilson, a lathe operator, spends university time creating new software that would save several machining steps. This new software has nothing to do with his assignment. This is not work-for-hire. The university may have an agreement with the operator that, if such a creation arises, then the university has the right to use the new process royalty free within the university. The university cannot, however, inhibit the lathe operator from collecting royalties through commercialization of his copyrightable property.

***Wilson owns copyright to the software.***

9. Mitchell, a professor, is hired (or assigned) primarily to conduct research in a specific discipline. Both the University and the professor recognize 'software' will be developed both to continue the research and possibly to exploit the findings of research. The University owns the software developed because it is created within the scope of employment. Publications ancillary to the research are owned by the professor. No specific written agreement is required.

***URI owns copyright to the software.***

10. Andrews, a professor, is on sabbatical leave of absence. While on sabbatical, she spends all of her time writing a book. The University of Rhode Island pays her salary while on sabbatical. The book belongs to Andrews, unless there is a specific written agreement to the contrary, which in this case there was not.

***Andrews owns copyright to the book.***

It is important to note that if an individual is a full-time employee, then the criterion is not the degree of supervision but rather the scope of employment. If the individual is a part time employee or a consultant, then the degree of supervision comes strongly into play.

To accompany UNIVERSITY MANUAL 10.43 Figure 2

(Dollar amounts are for illustration only)

