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PRACTICAL GUIDELINES ON
INTELLECTUAL PROPERTY RIGHTS & COPYRIGHT
FOR THE UTech DISTANCE LEARNING ENVIRONMENT

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1.0 INTRODUCTION

Over the past decade, many universities and other educational/training institutions across the globe have pursued the development or revision of written policies on intellectual property rights, largely due to the impact of the information explosion and virtual learning opportunities facilitated by the phenomena of new information communication technologies (ICTs). In this new era of educational accountability, the advent of the Internet in particular, has served to intensify the heightened concerns over the issues of copyright and intellectual property rights in relation to the use of ICTs. Kromrey et al (2005) commented that the increasing use of online courses raises questions about the ownership of course materials and may increase tensions between faculty members and their universities regarding rights and responsibilities associated with online courses and increasing portability.

Mclsaac & Rowe (1997) observed that educational institutions now have to make the effort to educate and develop processes and resources to address copyright and licences, fair use, duplication, and revenue generation for both print and non-print educational materials. They suggested that all related institutional policies should reflect: a) efforts to educate and increase awareness about copyright and intellectual property issues; b) ways to gain licenses and copyrights; c) resources to find licensed, originally produced materials; d) criteria for establishing ownership of materials produced by faculty, students, the institution; and e) consequences for violation of institutional policies.

In summary, educators, administrators, and institutions will need to insure that institutional policies protect and support an environment that fosters creativity, productivity, and academic freedom, especially with the proliferation of distance learning opportunities.

1.1. Context

At the University of Technology, Jamaica (UTech), the emergence of distance education is not a future possibility, but a current reality with a growth potential that is virtually unlimited. Distance Education is defined as the formal teaching and learning activities, which occur when students and instructor are separated by geographic distance or by time, often supported by communications technology such as television, videotape, computers, Internet, or mail.¹ Distance education delivery may incorporate blended learning with the combination of two or more learning environments - usually face-to-face experiences with technology-mediated experiences/engagements in response to learner needs.² The term distance education is often used interchangeably with distance learning.

The UTEch approach to distance education/learning involves a range of synchronous and asynchronous technology modes, including the use of the internet, interactive television, digital video disks (DVDs), compact disk with read-only memory (CD-ROMs), videotapes, multi-media packages, computer-based instruction, audio and video conferencing and printed media. Of special significance for UTEch is the increasing emphasis on incorporating Internet-based or online learning modes, where appropriate. The current thrust towards the adoption of an Online Learning Management System (LMS) to undergird the UTEch Distance Learning Initiative is being driven by advances in Information and Communication Technologies. (See UTEch Distance Learning Policy - Paper 2009/A/05/22A)

This UTEch strategy requires an integrated systems approach to distance education, through the collaboration of all major departments/units of the University, which provide administrative, technical and academic support for the core business of teaching and learning. The collaborative strategy focuses on the exploration and testing of the capabilities of emerging information and communication technologies to facilitate access to a wide range of

¹ Based on *Glossary of Terms for Higher Education and Distance Learning*, Indiana College Network Web Site, Retrieved March 2011 from http://www.icn.org/getting_started/glossary_of_terms.html

² B. Mullinix et al, *Balancing the Learning Equation: Exploring Effective Mixtures of Technology, Teaching and Learning*, The Technology Source, September/October 2003. <http://ts.mivu.org>

information and knowledge resources, encourage higher levels of discourse and provide a broad range of learning activities and interactions to accommodate various learning styles.

Within this context, there has been the urgent need to clarify the intrinsic concepts of intellectual property rights and copyright (IPRC), especially for the potential creators and users of electronic information. The progressive development of the University's Intellectual Property Policy (IPP) has been timely, as reflected in the comprehensive document, which was approved by the University's Academic Board in May 2010 (See Paper 2010/A/05/39B3).

The UTech IPP document was developed after careful review of the Intellectual Property Laws of Jamaica and seeks to guide the University regarding the nature of intellectual property, its ownership, management and commercial exploitation and outlines specific procedures to manage and protect the intellectual property created within and utilized by the University. This IPP document has been presented in three parts, which focus respectively on Part I - Copyright Issues, Part II -Industrial Property – Patents, Inventions, Know-How & Technology, and Part III – General Provisions.

Notwithstanding the comprehensive focus of the UTech IPP document, it is proposed that faculty, students, administrators and other stakeholders involved in implementing distance teaching-learning be provided also with very practical guidelines regarding the exercise of related intellectual property rights governing particular information communication technologies. The UTech Distance Learning – Intellectual Property Rights & Copyrights (DL-IPRC) Guidelines would seek to facilitate increased awareness of all stakeholder obligations and provide some procedural details to ensure compliance with the UTech IPP and other related policies, such as the UTech Information Management Policy (approved in December 2006 – Paper 2006/A/12/148) and the UTech Distance Learning Policy (approved in May 2009 – Paper 2009/A/05/22A)

The proposed approach is to highlight the existing official UTech policy stipulation under particular headings and provide the related guidelines for procedural interpretation, with implications for the primary responsibility unit of implementation. These practical DL- IPRC guidelines also adhere to the following institutional goals as emphasised within all current UTech strategic plans and policy documents:

- to encourage a healthy atmosphere conducive to teaching, research and development through the generation and sharing of new knowledge and knowledge products by way of research, discoveries, inventions, artistic and scholarly creations/products.
- to encourage an environment that stimulates and rewards creativity by all staff, students, other personnel, and in particular provides incentives for the creation of intellectual property, while at the same time adhering to the responsibilities of UTech as a public University operating under the laws of Jamaica.
- to provide invaluable assistance in bringing employee and where applicable, student ideas to development and fruition within a framework of mutual trust and collegiality.
- to facilitate the dissemination, exchange and use of knowledge products with other educational institutions and related agencies in compliance with the relevant local, international laws, creative commons licensing agreements or other collaborative agreements

These practical guidelines seek to address the aspect of distance learning materials to facilitate high quality learning, research and service as reflected in the primary mission statement of the University:

to stimulate positive change in Caribbean society through the provision of high quality learning and research opportunities and service to our communities.

(Extracted from website: <http://utech.edu.jm/about/overview/mission.html>)

1. 2. Purpose of Practical Guidelines for UTech Distance Learning – Intellectual Property Rights & Copyrights (DL-IPRC)

The main purpose of the practical UTech DL-IPRC guidelines is to increase awareness about the rights and obligations of the university, staff, students, other employees, and all primary stakeholders with regard to intellectual property in various distance learning environments. The practical guidelines have been collated from an intensive review of the UTech IPP and international best practices for distance learning, with due regard for the UTech and Jamaican environments.

This document seeks to be relevant to all full-time and part-time UTech faculty, staff, administrators and other personnel, including those persons working with or without monetary compensation, who are involved in any distance learning initiative under the direction and control of the University. It is also relevant to students who use the institutional distance learning facilities or conduct distance learning activities under the supervision of university personnel.

In the spirit of the document, UTech shall take reasonable steps to respect the moral rights of all stakeholders and to help to ensure that others respect the moral rights of each party. These moral rights include the right of attribution to be identified as the author of the work; the right not to have authorship falsely attributed and the right of integrity of authorship (no derogatory treatment, distortion or mutilation) in respect of the work.

UTech also recognises that staff and students may retain moral rights in copyright works owned by UTech and may, on appropriate occasions ask creators to consent to certain uses of their work, where moral rights may be affected.

2. 0. PRACTICAL GUIDELINES FOR UTECH DISTANCE LEARNING - INTELLECTUAL PROPERTY RIGHTS & COPYRIGHTS (UTech DL-IPRC)

2. 1. Definition of Significant IP Terms & Implications for Distance Learning

The UTech IPP document offers definitions of several important terms including the concepts of *Intellectual Property and Copyright*. Other key terms related to Distance Learning include *Author, Course Materials, Creator, Electronic Course, Employee, Inventor, Royalties, Software, Staff member, Student, Substantial Use, University, and Work*.

The document also makes reference to the UTech Office of Intellectual Property or the Jamaica Intellectual Property Office for obtaining further details on intellectual property and its disclosure in Jamaica.

a. Selected IP Terms For Distance Learning (See UTech IPP – Section C)

- i. *Intellectual Property (IP)* means the legal rights in and to a Work, as provided by the applicable laws (statute, regulation or judicial decision), which result from intellectual activity in the industrial, scientific, academic, literary and artistic disciplines.

Two general categories of IP:

- *Industrial Property* includes patents, trademarks, services mark, trade secrets, domain name registration, industrial designs, geographic indicators
 - *Copyright*, includes literary and artistic works, such as novels poems, plays, films and musical works, drawings, paintings, photographs and sculptures, architectural designs as well as scientific and scholarly works. Copyright also includes computer software and electronic databases, programmes codes.
- ii. *Copyright* means an original Work of authorship that has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Other IP Terms:

- iii. *Author* means a person who creates a copyrighted Work
- iv. *Course materials* means class notes, syllabi, curriculum guides, exams, transparencies, study guides, workbooks, manuals, instructional software, web pages, internet-based instructional materials and such items commonly known as “learning objects” developed by faculty members in the course of their usual scholarly, pedagogical and service activities.
- v. *Creator* means the person(s) who has/have made substantial creative contribution to a Work giving rise to intellectual property rights and shall include, but is not limited to, Authors and Inventors.
- vi. *Electronic Course* means an academic course of study delivered in whole or in part via electronic means, and fixed in any medium capable of display on a computer or electronic media screening device.
- vii. *Employee* means any person employed by the University in any capacity includes any person receiving compensation for service, or any person volunteering services for the benefit of the University
- viii. *Invention* means any new or useful process or discovery, art, method, technique, machine, device manufacture, software, composition of matter, or improvement thereof.
- ix. *Inventor* means any individual associated with the University who makes an Invention also, any “inventorship entity” comprising two or more individuals, one or more of whom is associated with the University, who jointly make an Invention.
- x. *Patent* means a grant issued by the JIPO or a foreign patent office that gives an Inventor the right to exclude others from making, using or selling an Invention within Jamaica or any other geographic territories for a period of years from the date of filing of the patent application.
- xi. *Royalties* means all compensation of whatever kind received from the sale, license, or other transfer of Intellectual Property rights by the University to a third party. This includes, but is not limited to, percentage payments, up-front fees, milestones payment, shares of stock, and any other financial or in-kind consideration.
- xii. *Software* means any computer programme or database, or part thereof, designed to accomplish a task or allow a user to produce, manage analyze or manipulate a product, such as data, text, a physical object or other Software. Software may be protected by Patent, Copyright or Trade Secret.
- xiii. *Sponsored Research or other agreement (SRA)* means an agreement entered into by the University and a government, agency, firm or other body whereby funds are provided by such government, agency, firm or other body to support, partially or fully, research or other work undertaken by the University. An SRA typically includes a description of the Work to be performed, the terms of payment, ownership of intellectual property, publication rights and other legal assurances.
- xiv. *Staff member* (see also “Employee”) means a member of the academic staff, senior academic staff and other staff, within the meanings assigned to those expressions, respectively, in the Statutes of the University.
- xv. "Student" has the meaning assigned to that expression in the Statutes for the time being of the University; provided that a Student working for pay for the University or for a third party under a Sponsored research agreement is an Employee within the meaning of this policy.

- xvi. “Substantial Use/University Assistance” means the University’s participation in or support of the creative or development activity leading to a Work include, but not limited to, University funds, facilities (including laboratories, equipment, supplies), or information (including computer programmes, computer time and computer databases), technical support staff, computer programmers, legal and business counsel, computer hardware and software, and internet access that is material, significant and beyond the resources normally provided to individual Employees and Students. Without limiting the above, the University does not regard the University’s provision of normal and customary compensation, student financial aid, library resources, office or laboratory facilities, office staff or laboratory support, telecommunications facilities, individual personal computers and ordinary and reasonable access to the University’s computer network and websites or similar University provided electronic communication tools used for non-commercial scholarly pursuits as constituting “substantial use of University resources or “substantial University assistance”.
- xvii. “University” means the University of Technology of Jamaica as established under the University of Technology of Jamaica Act.
- xviii. “University Invention” means an Invention resulting from activities related to an individual’s employment responsibilities, pursuant to a “work for hire” arrangement, or where the University provides Substantial University Assistance.
- xix. “Work” means any Invention, discovery, know-how, show-how, process, material, manuscript, original data, academic course or portion thereof, including Course Materials, learning tool or aid, or other creative or artistic Work and any expression or physical embodiment thereof, including without limitation, sound or visual recording, multimedia presentation, model, machine, prototype, design, drawing, apparatus, instrumentation, circuit, computer programme, database, biological material or specimen, chemical compound, other composition or matter, plan, record or laboratory book, whether known or developed in the future.

Important DL Terms not included in the current UTech-IPP

- xx. *Open Education Resources (OER)* are digitised learning materials that are offered freely and openly for educators, students and self-learners to use, re-use, adapt, remix and redistribute for teaching, learning, development and research³. However, the Commonwealth of Learning (COL) comments that while OERs are mainly shareable in digital formats (both online and via offline formats such as DVD or CD-ROM), they are not just synonymous with online resources, online learning or e-learning, and within the development context, OERs can also be in printable formats.
- xxi. *Open licences* are special permission to allow anyone to use a copyright without having to pay a licence fee or royalty but subject to the conditions in the licence. Some open licences assert the copyright, but allow other to access the software, for copying, developing and distributing subject to the terms of the licence. Other open licences for non-software products allow free documentation. The *Creative Commons*⁴ provides the legal and technical infrastructure which makes it possible for educational resources to be open, widely accessible, adaptable, interoperable, and discoverable.

b. Selected Information Management (IM) Terms for Distance Learning

- i. **Definition of Information** (See UTech Information Management Policy & Procedures, October 2006, Section 1.1.)
- *Information* encompasses and embraces all modes: text, data, voice and/or image whether held on a computer or not.

³ The term OER (Open Educational Resources) was first coined in Summer 2002 at the UNESCO forum on the impact of open courseware for higher education in developing countries. See <http://www.col.org/progServ/report/clippings/Pages/2006oer.aspx> and <http://www.col.org/progServ/policy/Pages/oer.aspx>

⁴ see <http://wiki.creativecommons.org/OER>

- *Information*, which is organised, generates knowledge and therefore adds value to the society.
- *Uncontrolled or unorganised information* is not a resource in the information society and is termed information pollution.

c. Practical Implications for UTech Distance Learning:

The current approach to Distance Learning at UTech involves the adaptation and conversion of materials for technology mediated delivery based on the following IP and Copyright principles, in keeping with the UTech Distance Learning Policy (See Paper 2009/A/05/22A) and the UTech Information Management Policy (see Paper 2006/A/12/148):

- Any content that is created, authored, conceived, invented, adapted, developed, or used in whole or part - for UTech distance learning courses should comply with the University IPP and the Jamaican copyright law. This content may include **books, articles, study guides, syllabi, workbooks, manuals, bibliographies, instructional packages, tests, video or audio recordings, films, slides, transparencies, charts, graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, inventions, software, and databases.**
- In the use of copyrighted material for distance learning from other authors/creators, the UTech faculty member or student should submit the written permission received from the author/creator of the relevant course materials, **before publication or distribution** by any UTech facility. If there is doubt about copyright ownership, faculty members or other users should substitute other resources where copyright permission is clear and obtainable, or substitute resources that are in the public domain, with the appropriate credits.
- Faculty members involved in content development for distance learning should **be aware of all UTech's policies** relating to content ownership and should seek clarification from the relevant offices – UTech Intellectual Property Office or Legal Counsel, before publishing or presenting material for storage, retrieval and use in the distance learning environment.
- The main guiding principle is that Information encompassing all distance learning modes: text, data, voice and/or image, generated by the University should be regarded as owned by the University rather than by organisational units or individual staff. Such information should not be regarded as accessible only to its originator or importer but as a University resource. (See UTech UTech-IM Policy, Paper 2006/A/12/148, Section 2.1.1)

2. 2. Creation of Intellectual Property for UTech Distance Learning (See UTech-IPP Section D)

- UTech students, employees – individuals or groups using UTech facilities, under supervision of UTech personnel, may create intellectual property for distance teaching and learning including copyrightable, registrable or patentable discoveries. It is desirable in all cases for the University and the creator to seek protection for these works and discoveries involving electronic media.
- Licensing the use of the intellectual property for distance learning provides an opportunity for income both to the inventor and support for further University teaching and research.
- UTech Staff and students may create material which may be the subject of intellectual property protection and which they voluntarily make available for the use of the University without expectation of further compensation.
- UTech shall retain a non-exclusive, royalty-free license to use such material made available for the use of the University, provided that significant contributions of Creator(s) are acknowledged. This license shall not include the right to exploit the work outside of the University or for profit. (See UTech IM Policy, Section 10.10.3)

2.3. Creation of Copyright for UTech Distance Learning (See UTech-IPP, Part 1 -Section 1, Clause 1.1)

In the UTech-IPP document, the following principles are provided:

- a. UTech acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, articles, pamphlets, books, and other materials that are copyrighted by the authors or their publishers and that may generate royalty income for the authors.
- b. The copyright is automatic for the creator and does not have to be registered with the national Intellectual Property Office (JIPO).
- c. When an original work is created, a copyright notice should be placed on it by the creator. This notice should include the copyright symbol ©; the date of creation; and the name of the author. A copy of the work may then be placed in an envelope, sealed, addressed to the author and registered at the local post office. On receipt of the mail, it should be left unopened and stored in a secure location. (For clarification, consult the UTech Intellectual Property Office or Legal Counsel)
- d. A copyright owner has an exclusive right to exploit his work and the authority to prevent others from using his work without permission.
- e. University faculty, staff, and student retain all rights in copyrightable materials they create, except when the following special circumstances or contractual arrangements prevail:
 - i. There exist grant or contract limitations;
 - ii. The work is commissioned by the University (work for hire);
 - iii. The creation of the work involves significant use of University personnel, funds, or facilities;
 - iv. The work is patentable and the University must assert ownership under its patent policy;
 - v. There exists an agreement in writing to the contrary between the University and the Creator of the work.

(See UTech– IPP Part 1 - Section 1.3 for further details on each circumstance listed above)

2.4 UTech Ownership of Copyright for Distance Learning

Of particular significance for Distance Learning are the following principles extracted from the UTech-IPP (Part 1 - Sections 1.3.2 and 1.3.3). The highlighted phrases appear only in this DL-IPRC document, for the purpose of emphasis.

a. **University-initiated or directed Work.**

The University must assert ownership rights in all cases in which the **work is initiated or directed by the University** (or one of its colleges, schools, departments, or other units).

- i. Normally work developed as a part of the author’s regularly compensated duties (for example, work resulting from **released-time arrangements** for faculty or **assigned tasks** for staff members) will belong to the University.
 - ii. However, “University-initiated or directed” specifically does not refer to a faculty member’s general obligation to produce scholarly works.
- b. An **Acknowledgement form** should be used to help identify employees who have been required or hired to create intellectual property, discuss the application of the Rules with them, and record that they understand how the Rules will apply.
 - c. Whenever Deans, Directors or administrators commission new Works, copyright issues **should be clarified and fixed** in **a written agreement prior to the start of the project.** (See Section 1.3.3)

- d. In the case of works created by non-employees, the copyright may vest with either the University or the Contractor, depending on the terms of the agreement negotiated with the Contractor
- e. **UTech is the owner of all copyrighted Works**, including Software, Electronic Courses, Course Materials and Modules and any other electronic media course design products **that are created for an institutional purpose in the course of the Employee's prescribed duties or as contracted by the University**. These include Works on which there have been simultaneous or sequential contributions over time by numerous Employees or Students. (See Part 1 - Section 1.3.3)
- f. Creators of intellectual property for distance learning developed using UTech resources **may not assign or license** rights in intellectual property to third parties, **without the written consent** of the University. (see UTech IM Policy 2006, Section 10.1.6)

Best Practices for Distance Learning:

- The general rule is that the creator of a work is the author of that work. However, when a work is created by an author who is employed for the purpose of creating that work, then the employer and not the employee, is considered the author.
- Where a staff member has created intellectual property for distance learning **prior to employment at UTech** or during personal projects conducted on **their own time and with their own resources**, then the staff member should disclose/declare this ownership, with supporting documentation.
- As soon as the copyrighted material **is recorded in a tangible format**, such as a manuscript or an electronic file, it automatically becomes protected. However, registration with the appropriate copyright office provides additional protections in case of infringement and is often in the best interest of the author, if infringement becomes an issue.
- Materials such as ideas, facts, and discoveries that are not fixed in a tangible form, will not qualify as copyrightable under the definition aforementioned.

2.5 Significant Use of the UTech Resources for Distance Learning (See UTech-IPP Section 1.3.3)

- a. UTech Resources include UTech **time, faculties, systems** (see UTech IM Policy 2006, Section 10.1.4)
- b. Uncompensated use of state resources in significant amounts by UTech employees **for personal purposes is prohibited**. However, the University will not construe the provision of office, library, laboratory, or computation facilities per se as constituting significant use of space of facilities, nor will it construe the payment of salary per se as constituting significant use of funds. (Refer to UTech-IPP Interpretation - Part 1 - Section C).
- c. **The Head of the author's administrative unit** (e.g., the Department Head/Chair) will determine whether the creation of a work has involved significant use of University personnel, funds, or facilities (e.g., clerical services, office supplies, or computer time). Consultation with the Director of Intellectual Property or Legal Counsel is encouraged for any needed clarification.
- d. It is **the author's responsibility to inform the Head** of his or her administrative unit - of any unit resources used in the creation of a work
- e. It is the **Administrative Head's responsibility to inform the author** of what constitutes significant use of the resources of the Unit/University and to discuss if this may entail reimbursement for use of facilities or a percentage of royalties. Normally the University will release rights when compensated.
- f. Materials developed by faculty members for UTech distance learning courses **may be used by them** in the preparation of textbooks or other works.
- g. Under the UTech-IPP, the **resulting works are the property of the faculty members**, notwithstanding the fact that University facilities may have been used in the preparation of the course materials.

- h. Written Agreements
- i. **It is desirable to reach agreement in writing** as to the rights of the University and of participants in a creative effort **before work begins** whenever there is a question as to whether ownership of the materials created will lodge with UTech or with the author(s),
 - ii. It is likely that the creation of the work will result in significant use of UTech facilities, or copyrightable works/materials are likely to result from the joint efforts of persons in academic departments and UTech service departments.
- **Best Practice: It is the strategic goal of UTech to own most of the intellectual property rights for the basic distance learning course materials.** This will require that the appropriate institutional arrangements be made with relevant stakeholders to facilitate this practice.

2.6. General Use of the University's Technological Resources for Distance Learning (See UTech IM Policy, Paper 2006/A/12/148, Section 5)

- a. No new hardware/software will be installed for UTech distance learning **without the approval of the appropriate IS/IT Manager (s)** and the **appropriate review of compatibility** with existing hardware, operating environment requirements, and relevant operator training (See Section 5.1.2)
- b. Ownership of software for distance learning must be defined in license/software contracts. (See Section 5.7.7.5)
- c. Users must comply with software licensing or purchasing terms and conditions (See Section 5.7.7.6)
- d. Special requests for non-standard functionality / software for distance learning must be reviewed and authorised by IS/IT and the Head of Department requesting the functionality before it will be actioned by IS/IT. (See Section 5.7.8.3)
- e. Only standardised or authorised hardware and software for distance learning will be supported. (See Section 5.7.8.4)
- f. The UTech Integrated Help Desk must be the central mechanism for requesting technical maintenance for distance learning. (See Section 5.7.9.3)
- g. UTech retains the exclusive rights to, and use of, its computer assets, including data. In this context, UTech is considered the legal owner of all University data. (See Chapter 10 – Intellectual Property)

2.7. Works created by UTech Students for Distance Learning (See IPP – Part 1, Section 3)

- a. Works created by students are additionally subject to the following rules:
 - i. The University makes **no claim to copyright ownership of works created by students working on their own,** i.e. not within the scope of an employment relationship with the University or with one of its employees, and not making substantial use of University resources.
 - ii. Students working on a distance learning project governed by a contract or agreement to which the University is a party shall be **bound by the terms of that contract or agreement.**
 - iii. Students who are hired to perform specific tasks that contribute to a copyrightable work will ordinarily have no rights to ownership of that work, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright of the rest of the work will ordinarily retain copyright ownership of the portion contributed by the student.

- v. Students working collaboratively with academic employees on projects that result in copyrightable work may be granted the same rights and obligations of copyright ownership as would another academic employee working collaboratively on the project.
- vi. Students and academic employees should establish these rights at the outset of their collaboration.
- vii. If none of the above relationships applies, students performing work compensated by the University are subject to the provisions governing non-academic employees.
- viii. Students may also be subject to rules and restrictions on their units, schools or of the Graduate School which are not inconsistent with the University Intellectual Property Policy. For example, students who copyright their theses or dissertations must grant the University rights to reproduce and distribute copies of their works in accordance with the policies of the University or School.
- ix. Where a student has proprietary interest in a Work, the **University shall receive a nonexclusive royalty-free licence** to:-
 - make copies or representations of the work for academic purposes within the University;
 - publish an abstract of any work that is a student thesis;
 - circulate the work as part of the University library collection;
 - make single copies of a thesis which has been deposited in the University library – at the request of the University or institutions approved by the University;
 - make the work available to the National Library of Jamaica.

Best Practices & Implications for Distance Learning

2.8. Internal Use of University-owned works for Distance Learning (See UTech IPP, Part 1, Section 4)

The following conditions govern the internal use of each UTech-owned work for distance learning by any Unit or Department within the University:

- a. Internal use to University **requires approval of the Unit/Department primarily responsible for the creation of the University-owned work**. Such approval will be **deemed implicit when the sponsoring unit agrees to storage and distribution** by the University and **if the sponsoring Unit schedules courses and assigns instructional duties** to which the University-owned instructional work is relevant.
- b. Use of any copyrighted material for UTech Distance Learning shall be **in accordance with a valid software license agreement**, ONCE the permission of the copyright owner has been obtained or where the Office of Intellectual Property has determined that the use is otherwise permissible.
 - i. The University will **not defend or be held liable** for any faculty or staff member or student against any civil or other action alleging copyright infringement **unless the use is in accordance** with the provisions of the UTech-IPP.
 - ii. In all other cases, the faculty, staff or student is **personally responsible for defense** of a civil or criminal action against him/herself. **The University's departments and component institutions shall post notices reflecting this Policy at all computer, photocopying and library or other stations which may be properly used for reproducing copyrighted materials.**
- c. Copyrighted software **may be copied** without the owners' permission **only in accordance with the Copyright Act of Jamaica, 1999.**

- i. The Copyright Act (1999) **permits making an archival backup copy**. Most software however is licensed to the user and the terms of the license agreement may give the user permission to make copies of the software in excess of archival copy permitted by the Copyright Act, 1999.
- ii. Any copying or reproduction of copyrighted software or materials on UTech's systems or the computing equipment must be **in accordance with the Copyright Act and the pertinent software/other licence agreement or permission**.
- iii. Further, faculty staff and students **may not use unauthorized copies of software** on UTech-owned computers or networks or computer housed in UTech facilities.
- iv. Where copying constitutes "**fair use**" under the Copyright Act, 1999 - **copyrighted materials may be copied or otherwise used without the copyright owner's permission**

2.9 Copyright Notice for Distance Learning (See UTech IPP – Part 1, Section 4)

As stated in the UTech IPP - copying, displaying and distributing copyrighted works for distance learning **may infringe the owner's copyright**. The UTech policy statement on **Fair Use of Copyrighted Materials** should be used as the main framework for determining whether the use of a copyrighted work is a fair use or requires permission.

- Any use of computer or duplicating facilities by students, staff or faculty for **infringing use of copyrighted works** is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by the laws of Jamaica.

2.10 Distribution of Income (See UTech IPP – Part 1, Section 4.4)

In keeping with the UTech IPP, the following guidelines for Distance Learning will be observed:

- a. With the exception of the circumstance whereby the work for distance learning was commissioned or contracted by the University, as outlined in DL-IPRC Guidelines # 2.3 (e), # 2.4 and # 2.5; if the University wishes to claim ownership of copyright in any other work for distance learning, the **University has to complete an Income/Revenue share Agreement with the staff member or student** who created the original work.
- b. The royalty income generated by this work for distance learning shall be distributed according to the following schedule:

Cumulative Net Income (J\$)	Author (J\$)	University of Technology (J\$)	Unit (e.g. Department) (J\$)
J\$1 - J\$100,000	95%	2.5%	2.5%
J\$100,001 - J\$400,000	75%	15%	10%
Above J\$400,000	70%	20%	10%

(Extracted from UTech IPP: Part 1 – Section 4. 4)

- c. The University **reserves the right to adjust these figures for inflation** from time to time.
- d. In the case of **multiple authors**, the cumulative net royalty income shall be **distributed equally** among them unless their initial disclosure specified an unequal distribution.
 - i. Royalty income allocated to authors goes to them directly as **personal income**.
 - ii. The net royalties or other net income accruing to the University from the exploitation of copyright for distance learning are **made available for teaching resources, academic research and development of distance learning programmes**.

- e. Nothing in these guidelines shall be construed **as abridging a faculty member's academic freedom** in the distance teaching and learning environment.

2.11 Faculty Involvement/Residual Rights in Films, Videotapes, Instructional Media for Distance Learning (See UTech IPP, Part 1, Section 4.5)

- a. UTech may transmit or reproduce news, general information and academic programmes for distance learning by television, radio, Internet or other means, for local or general distribution, that are prepared by the University, and in which faculty members have appeared.
- b. The negotiation of a contractual agreement between the responsible faculty member(s) and the University in matters pertaining to distance learning is handled by the Director of Intellectual Property and/or by the UTech Legal Counsel.
- c. Nothing in these guidelines shall be construed **as abridging a faculty member's academic freedom** in the distance teaching and learning environment.

2.12 Fair Use/Dealings for Distance Learning (See UTech IPP, Part 1, Section 4.5)

Copyright is infringed where a person, without the owner's consent, copies or makes available copies of a copyrighted work for distance learning. However Fair Use with work for private study, research, criticism or review is not infringement. Guidelines on fair use or other permitted acts may be obtained from the UTech Office of Intellectual Property.

For a summary of likely provisions that qualify as "fair use" or "fair dealing" see the Commonwealth of Learning Copyright Audit 2006:

www.col.org/resources/knowServices/copyright/Pages/lawEduc.aspx

2.13 Intellectual Property & Copyright Relating to Industrial Property for Distance Learning

- a. All other guidelines regarding academic research, inventions and industrial property (patents, discoveries, trademarks, services mark, trade secrets, domain name registration, industrial designs, and geographic indicators) for distance learning are covered by the UTech IPP – Part II. (For further details, please see information available from the Office of Intellectual Property)
- b. Disclosure shall be made on the appropriate Intellectual Property Disclosure Form (see Form 2 – Procedures & Forms for Intellectual Property) to the Director of Intellectual Property, Office of Intellectual Property and copies submitted to the Dean of the relevant faculty or college.

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