



UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

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September 26, 2022

SUBJECT: Copyrights and Royalties

Instruction 5536

(OGC)

ABSTRACT

This Instruction assigns responsibilities and prescribes policies and procedures of the Uniformed Services University of the Health Sciences (USU) concerning copyrights in, and acceptance of royalties from, literary work of USU employees. This instruction clarifies that USU employees who author literary work in their official federal capacity cannot personally profit from any associated royalty revenues. However, USU employees who author works in their private capacity, on their own time and under an approved Outside Activity Request (OAR), can personally profit from any attributable royalty revenues except for sales of those privately-produced authored materials made to a Federal institution, USU or otherwise. Sales to a Federal institution must instead be coordinated on a royalty-free basis (or reimbursed to the Federal institution if inappropriately collected) to ensure the USU employee is not improperly enriched from that transaction.

A. Reissuance and Purpose. This Instruction reissues USU Instruction 5536 (*Reference (a)*). The purpose of this Instruction is to set forth policies concerning copyrights in, and acceptance of royalties from, publications of USU employees.

B. References. See *Enclosure 1*.

C. Applicability. This Instruction is applicable to all USU employees, both military and civilian.

D. Policy.

1. Copyrights.

a. USU employees who author work (e.g. books, articles, and other publications) solo or with other Federal employees (who are not *covered authors* as defined in *Enclosure 2*) as a part of their official duties, may notify publishers that copyright protection is not available because of their status as Federal employees (United States Code, Title 17, Section 105) (*Reference (b)*). Writing is considered to be part of an employee's official duties when, among other factors, the subject of the writing deals in significant part with any matter to which the employee is presently assigned or to which the employee had been assigned during the previous one-year period. (5 CFR 2635.807(a)(2)(i)(E)(1)) (*Reference (d)*).

b. USU employees who author work entirely outside of their official government duties, even though the subject matter involves the professional field of the author, may possess copyrights in these publications.

1) Employees must ensure that no part of the work, including research, was performed during the course of the fulfilling their USU duties or employment.

2) Employees must ensure that there is no appearance of using their official positions for personal benefit, or of using proprietary information obtained through their USU position or USU affiliation.

2. Financial Terms and Royalties.

a. USU employees who have authored work suitable for use in USU courses are encouraged to use them as teaching materials. USU employees who have authored the work as an outside activity may not direct a USU government purchase cardholder or contracting officer to purchase such books or publications.

b. USU employees who have authored work as a part of the employees' USU duties, must turn in to Financial Management (FMG) any payments they receive from such publications. FMG will, in turn, deposit these payments in the United States Treasury.

c. Since USU employees cannot accept royalties for writing done on official time, the employee may not assign or divert such royalties to Foundations or other entities. (5 CFR 2635.807(a)(2)(iv)) (*Reference (d)*).

d. USU employees who have prepared work for publications on their own time and have not used any resources or information that may have been obtained from their employment at USU or any other Federal Institution, may retain royalties from these publications for any sales, **except** for royalties received as a result of sales to any Federal Institution, including USU, or USU students. If possible, arrangements should be made for these sales to be royalty free. If royalties are received as result of sales to any Federal Institution, including USU, or to USU students, they must be turned over to FMG.

E. Responsibilities.

1. USU employees.

a. Will notify publishers who have accepted their work for publication that: The United States Government work is not available for copyright protection when prepared only by one or more Federal employees as a part of the employees' official duties; while covered authored of covered institutions may assert copyright, USU is not a covered institution. (*See Enclosure 3*).

b. May obtain copyrights on works accepted for publication which have been completed outside of their normal duties at USU or other Federal Institutions, and where no materials or resources have been obtained from USU or any other Federal Institution. Notes: request for

Approval of Outside Activity (USU Form 1004) must be submitted for approval of outside publication/compensation.

c. Must turn in to FMG any royalties received from publications that have been completed as a part of their duties at USU or other Federal Institutions.

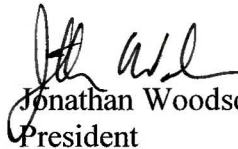
d. Must turn in any royalties received from publications which are sold to any Federal Institutions, including USU, or USU students.

e. May retain any royalties which are received from publications that were completed without using Federal materials, resources, or man hours, except for royalties received as a result of sales to Federal Institutions, including USU, or USU students.

2. Director of FMG is responsible for turning in to the United States Treasury any royalties received from any USU employee for publications using USU resources, or publications sold to USU or any other Federal Institution.

3. Office of the General Counsel (OGC). Is responsible for providing advice and assistance to USU employees and their department chairs and supervisors, concerning copyrights and royalties.

F. Effective Date. This Instruction is effective immediately.


Jonathan Woodson, MD, MSS, FACS
President

Enclosures:

1. References
2. Definitions
3. Suggested Notification to Publisher
4. USU Form 1004

REFERENCES

- (a) USU Instruction 5536, "Copyrights and Royalties" dated 7 August 2017 (canceled).
- (b) United States Code, Section 105 of Title 17, Subject matter of copyright: United States Government works
- (c) Code of Federal Regulations, Section 2635.807(a)(2)(i)(E)(1) of Title 5, Standards of Ethical Conduct for Employees of the Executive Branch, "Teaching, speaking and writing"
- (d) Code of Federal Regulations, Section 2635.807(a)(2)(iv) of Title 5, Standards of Ethical Conduct for Employees of the Executive Branch, "Teaching, speaking and writing" (Acceptance includes constructive receipt which includes compensation: (A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or (B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child or dependent relative)

DEFINITIONS

1. Covered author – a civilian member of the faculty of a covered institution, as defined in 17 USC § 105.
2. Covered institution – institutions listed in 17 USC §105 (National Defense University, United States Military Academy, Army War College, United States Army Command and General Staff College, United States Naval Academy, Naval War College, Naval Post Graduate School, Marine Corps University, United States Air Force Academy, Air University, Defense Language Institute, and the United States Coast Guard Academy)

SUGGESTED NOTIFICATION TO PUBLISHER

Dear

This letter is to inform you that the article entitled

Fits the description in U.S copyright law (Title 17 U .S.C 105) of work of the United States Government. It was written as a part of my (our) official duties as Government employee(s). The article is freely available to you for publication without a copyright notice, and there are no restrictions on its use, now or subsequently.

I (we) trust that this letter is sufficient notice that I (we) retain no rights in the article.

Sincerely yours,



MEMORANDUM FOR USUHS ETHICS OFFICIAL/OFFICE OF GENERAL COUNSEL

REQUEST FOR APPROVAL OF OUTSIDE ACTIVITY: CIVILIANS AND MILITARY OFFICERS (EXCEPT MEDICAL STUDENTS)

Grade/Rank and Name:

Phone:

Department and Position:

Name and address of business or organization for which the outside activity will be performed:

Nature of the outside activity: (Indicate the type of activity, e.g., teaching or consulting, and give a full description of the specific duties to be performed.)

Dates and location of outside activity: From: To:

Location: (Omit personal address)

Estimated hours per week (if applicable, include scheduled days of the week) and per month devoted to the outside activity:

Will the outside activity be performed entirely outside of usual working hours? Yes ☐ No ☐ If "No", indicate estimated time absent from work:

Do your official duties relate in any way to the outside activity? Yes ☐ No ☐ If "Yes", please describe in detail:

If providing consulting or professional services, will these services lead to seeking a grant or contract from the Federal Government? Yes ☐ No ☐ If "Yes", please describe in detail:

Indicate any compensation you will receive for the outside activity (check all that apply):

Fee	Honorarium	Per Diem	Royalty	Expenses	No compensation	OR	Other
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>

If "Other", please describe, in detail:

Will compensation be derived from a government grant or contract? Yes ☐ No ☐ If "Yes", please describe in detail:

Indicate if there are attachments included in support of the above information. Attachment: Yes ☐ No ☐

SPECIAL INSTRUCTIONS:

All attachments must be dated and signed.

Self-Employment: Indicate self-employment, the type of service (as medical, legal, etc.), whether alone or with partners, giving their names, and, if providing professional services to a large number of clients or patients, estimate the total number rather than listing them separately.

Federal Grants or Contracts: Full details must be provided on any aspect of professional and consultative services that involve, directly or indirectly, the preparation of grant applications, contract proposals, program reports, and other material designated to become the subject of dealings with the Federal Government.

SIGNATURE OF REQUESTER:

This request is made with full knowledge of applicable USUHS policies regarding outside activities. By signing this request, I confirm that all the information I have provided is true and accurate to the best of my knowledge.

I understand that I may be required to recuse myself from any official USU duty at USU where the entity with which I am seeking to conduct an outside activity has an interest, financial or otherwise, that could be affected by my action or inaction, in order to prevent the appearance of a lack of impartiality and/or a conflict of interest.

Name, Signature and Date of Requester

RECOMMENDATIONS:

Department Chair/Head

Approve ☐ Disapprove ☐

Name, Signature and Date of Dept Chair/Head

Brigade Commander (Officers)

Approve ☐ Disapprove ☐

Name, Signature and Date of Brigade Commander

APPROVAL/DISAPPROVAL (PRIOR LEGAL REVIEW REQUIRED)

Dean/President

Approve ☐ Disapprove ☐

Name, Signature and Date of Dean/President