



**Minnesota State Colleges and Universities**  
**Board Policies**  
**Chapter 3 – Educational Policies**

### **3.26 Intellectual Property**

**Part 1. Policy Statement.** The Board of Trustees endeavors to develop and maintain a post-secondary educational system marked by academic excellence. Research and development of original works and inventions that require intellectual property protection are a vital part of the academic community. The Board recognizes and acknowledges that system colleges and universities may create or commission the creation of such works on its behalf and incorporates in Board policy the traditional commitment to faculty and student ownership in scholarly work.

**Part 2. Applicability.** This policy applies to colleges, universities, the system office and their respective employees, student employees and students.

**Part 3. Definitions.** For the purposes of this Policy, the following words and terms shall have the meanings given them:

**Subpart A. Agreement.** Agreement when used in this policy means a signed written contract between or among a corporation, business, individual(s) and a college, university or the System, but does not mean a sponsorship agreement or a collective bargaining agreement between the Board and an exclusive bargaining representative.

**Subpart B. Collective Bargaining Agreement.** A collective bargaining agreement means a negotiated contract between the Board and a specific bargaining unit.

**Subpart C. College or University.** College or university, except where specifically defined otherwise, means a system college or university.

**Subpart D. College, University or System Office Resources.** College, university or system office resources means services and all tangible resources including buildings, equipment, facilities, computers, software, personnel, research assistance, and funding.

**Subpart E. Course Outline.** The course outline is the document approved by the college or university curriculum committee and shall include the course title, course description, prerequisites, total credits, lecture/lab breakdown, and student learning outcomes. (As referenced in Board Policy 3.22 Course Syllabi)

**Subpart F. Course Syllabus.** The course syllabus is a document that contains the elements of the corresponding course outline, standards for evaluation of student learning, and additional information that reflects the creative work of the faculty member. (As referenced in Board Policy 3.22 Course Syllabi)

**Subpart G. Creator/Inventor.** A creator is an individual or group of individuals who invent, author, discover, or are otherwise responsible for the creation of intellectual property. And inventor refers to the creator of an invention that may be patentable.

**Subpart H. Employee.** An employee is any person employed by the State of Minnesota as defined by Public Employees Labor Relations Act [PELRA].

**Subpart I. Faculty.** The term “Faculty” refers to full-time and part-time employees performing work in bargaining units 209 and 210 and other employees who teach or conduct research with a level of responsibility and self direction equivalent to that traditionally exercised and enjoyed by instructional unit employees when engaged in similar activities, e.g., the preparation of research articles for peer review journals by Administrative and Service Faculty (ASF) members or graduate students.

**Subpart J. Intellectual Property.** Intellectual property is any work of authorship, invention, discovery, or other original creation that may be protected by copyright, patent, trademark, or other category of law.

**Subpart K. Intellectual Property Rights.** Intellectual Property Rights means all the protections afforded the owner or owners of an original work under law, including all rights associated with patent, copyright, and trademark registration.

**Subpart L. Jointly Created Work.** A jointly created work is one where two or more creators contribute to the work and intend that it result in a unified, single work.

**Subpart M. Minnesota State Colleges and Universities System.** The public higher education system established at Minnesota Statutes Chapter 136F. The System includes the Board of Trustees, the system office, the state colleges and universities, and any part or combination thereof.

**Subpart N. System Office.** System office means the central administrative office under the direction and supervision of the chancellor and which is part of the Minnesota State Colleges and Universities System.

**Subpart O. Sponsor.** A sponsor is a person, private sector company, organization, or governmental entity, other than the System, that provides funding, equipment, or other support for a college, university, or the system office to carry out a specified project in research, training, or public service.

**Subpart P. Sponsorship Agreement.** A sponsorship agreement is a written agreement between the sponsor and a college, university, and/or the system office and may include other parties including the creator of the work.

**Subpart Q. Student.** A student is an individual who was or is enrolled in a class or program at any system college or university at the time the intellectual property was created.

**Subpart R. Student Employee.** A student employee is a student who is paid by any system college, university, or the system office for services performed. Graduate assistants and work-study students are student-employees. For graduate students who teach, see Faculty definition in Subpart I.

**Subpart S. Substantial Use of Resources.** Substantial use exists when resources are provided beyond the normal professional, technology, and technical support supplied by the college, university, and/or system office to an individual or individuals for development of a project or program.

**Subpart T. System.** See Minnesota State Colleges and Universities System definition in Part 3. Definitions, Subpart N of this policy.

**Subpart U. Works Made for Hire.** Works made for hire means all work done by an employee within the scope of his or her employment or specially commissioned work.

#### **Part 4. Ownership of Intellectual Property Rights.**

**Subpart A. Basic Ownership Rights of the Various Types of Creative Works.** The ownership rights to a creation shall be determined generally by the provisions in Subpart A below, but ownership may be modified by an agreement, sponsorship agreement, or other condition described in Subpart B or Subpart C below.

1. **Institutional Works.** Intellectual property rights in institutional works belong to the college or university. Institutional works are works made for hire in the course and scope of employment by employees or by any person with the use of college or university resources, unless the resources were available to the public without charge or the creator had paid the requisite fee to utilize the resources. A course outline is an institutional work. A college, university or the system office may enter into a written agreement with a non-faculty employee granting the employee ownership of a work that the parties agree is of a scholarly nature as described in Subpart A.2. For the purposes of this policy, scholarly works are not considered institutional works.
2. **Scholarly Works.** Intellectual property rights in scholarly works belong to the faculty member or student who created the work, unless an agreement, sponsorship agreement, or other condition described in Subpart B or C below provides otherwise. Scholarly works are creations that reflect research, creativity, and/or academic effort. Scholarly works include course syllabi, instructional materials (such as textbooks and course materials), distance learning works, journal articles, research bulletins, lectures, monographs, plays, poems, literary works, works of art (whether pictorial, graphic, sculptural, or other artistic creation), computer software/programs, electronic works, sound recordings, musical compositions, and similar creations.
3. **Personal Works.** Intellectual property rights in personal works belong to the creator of the work. A personal work is a work created by an employee or student outside his or her scope of employment and without the use of college or university resources other than resources

that are available to the public or resources for which the creator has paid the requisite fee to utilize.

4. **Student Works.** a) Intellectual property rights in student works belong to the student who created the work. b) A creative work by a student to meet course requirements using college or university resources for which the student has paid tuition and fees to access courses/programs or using resources available to the public, is the property of the student. c) A work created by a student employee during the course and scope of employment is an institutional work and intellectual property rights to such creation belong to the college or university unless an agreement, sponsorship agreement, or other condition described in Subpart B or C below provides otherwise.

**Subpart B. Modification of Basic Ownership Rights.** The general provisions for ownership of intellectual property rights set forth in Subpart A may be modified by the entering into a signed written agreement as provided in this subpart, following collaborative discussion among the affected parties, or through the substantial use of resources.

1. **Sponsorship Agreement.** The ownership of intellectual property rights in a work created under a sponsorship agreement shall be determined by the terms of the sponsorship agreement. If the sponsorship agreement is silent on the issue of ownership of intellectual property rights, ownership will be determined under applicable law.
2. **Collaborative Agreement.** A college, university or the system may participate in projects with persons, corporations, and businesses to meet identified student, citizen, community and industry needs. Ownership rights pursuant to any collaboration shall be addressed pursuant to this policy.
3. **Specially Commissioned Work Agreements.** Intellectual property rights to a work specially ordered or commissioned by the college or university from a faculty member or other employee, and identified by the college or university, as a specially commissioned work at the time the work was commissioned, is a work made for hire and shall belong to the college or university. The college or university, and the employee shall enter into a written agreement for creation of the specially commissioned work.
4. **Substantial Use of Resources.** In the event a college, university or the system office provides substantial resources to a faculty member for creation of a work that is not an institutional work created under a sponsorship agreement, individual agreement, or special commission, the college university and/or the system office and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made. Use of resources is considered substantial when the additional support received is beyond the normal support level made available by a college, university and/or the system office to the individual in his or her position.

**Subpart C. Other ownership factors.**

1. **Collective Bargaining Agreement.** In the event the provisions of this Policy and the provisions of any effective collective bargaining agreement conflict, the collective bargaining agreement shall take precedence.
2. **Jointly Created Works.** Ownership of jointly created works shall be determined by separately assessing which of the above categories applies to each creator, respectively. Jointly created works involving the contributions of students and/or student employees must be assessed considering this and other relevant categories of ownership rights as set forth above.
3. **Sabbatical Works.** Intellectual property created during a sabbatical is defined as a scholarly work. Typical sabbatical plans do not require the use of substantial college/university resources as defined in Part 2. Subpart S. of this policy. If the work created as part of an approved sabbatical plan requires resources beyond those normal for a sabbatical, the parties may enter into one of the applicable arrangements as set forth in Part 4. Subparts B. and C. of this policy.
4. **System, College or University Name.** Intellectual property rights associated with the System's identity, the identities of its colleges and universities, logos, and other indices of identity belong to the respective entity. Such rights may be licensed pursuant to reasonable terms and conditions approved by the Chancellor, presidents or their designees, respectively. System employees may identify themselves with such title of their position as is usual and customary in the academic community; but any user of the System's or a college's or university's name, logo, or indicia of identity shall take reasonable steps to avoid any confusing, misleading, or false impression of particular sponsorship or endorsement by the System, its colleges or universities. When necessary, specific disclaimers shall be included.
5. **Works Owned Jointly by Colleges, Universities and the System.** Colleges, universities and system ownership interests in jointly owned intellectual property shall be determined by the relative contributions made by each contributor - unless otherwise provided in a written agreement. The ownership interests may be expressed in percentages of ownership or an unbundling of the rights associated with the work, whatever the parties agree to. This paragraph applies only to allocation of ownership interests among a college, university or the System. The ownership of any other joint owner shall be determined in accordance with applicable policy, collective bargaining agreement, or personnel plan provisions, or as negotiated among the parties.
6. **Equitable Distributions.** In any instance in which the System and/or its colleges or universities execute an agreement with an individual, corporation, business or other entity for economic gain using intellectual property in which the colleges, universities, or the System has an ownership interest, the colleges, universities or the System shall receive an equitable distribution. The proceeds of the equitable distribution shall be shared among the creators of the work as determined by agreement in accordance with this policy.

## **Part 5. Coordination Function.**

**Subpart A. Appointment of coordinator.** The president or Chancellor, or his/her designee at each college, university, or system office shall appoint an employee to be the local Intellectual Property Coordinator. The coordinator has responsibility to administer provisions of this policy to include dissemination of the college or university's procedures regarding implementation of **Board Policy 3.26** Intellectual Property and **Board Policy 3.27** Copyrights and any related procedures.

**Subpart B. Record-keeping.** Each college and university shall establish a record-keeping system to monitor the development and use of its intellectual property. Any questions relating to the applicability of this policy should be directed to the Intellectual Property Coordinator.

**Subpart C. Conflicts of interest and ethics.** System employees are responsible for adhering to all legal and ethical requirements in accordance with State law, Board Policy and system procedure.

## **Part 6. Preservation of Intellectual Property Rights.**

**Subpart A. Protection of Rights.** A college, university or the system office shall undertake such efforts, as it deems necessary to preserve its rights in original works when it is a sole or joint owner of the intellectual property rights. A college, university or the system office may apply for a patent, trademark registration, copyright registration, or other protection available by law on any new work in which the college, university or the system office maintains intellectual property rights.

**Subpart B. Payment of Costs.** A college, university or the system office may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which the college, university or the system office owns or jointly owns the intellectual property rights. If a college, university or the system office has intellectual property rights in a jointly owned work, the college, university or the system office may enter into an agreement with joint owners relating to the payment of such costs.

## **Part 7. Commercialization of Intellectual Property.**

**Subpart A. Right of Commercialization.** The college, university or the system office that owns or has shared intellectual property rights to a work may commercialize the work using its own resources or may enter into agreements with others to commercialize the work as authorized by law. Upon request of a creator who retains intellectual property rights in a work, the college, university or the system office shall advise the creator of progress in commercializing the work.

**Subpart B. Sharing of Proceeds.** An employee who creates a work and retains an intellectual property interest in such work in which the college, university or system office maintains intellectual property rights is entitled to share in royalties, licenses, and any other payments from commercialization of the work in accordance with applicable collective bargaining agreements, individual agreements, and applicable laws. All expenses incurred by the college or university in protecting and promoting the work, including costs incurred in seeking patent or copyright

protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the college, university or the system office before the creator is entitled to share in the proceeds.

If a college, university or the system office decides not to pursue patent or copyright protection in a jointly owned work and the creator/inventor decides to pursue such protection, all expenses incurred by the creator/inventor in protecting and promoting the work including costs incurred in seeking patent or copyright protection and reasonable costs of marketing the work, shall be deducted and reimbursed to the creator/inventor before the college, university or the system office is entitled to share in the proceeds.

Net proceeds generated from the commercialization of works owned jointly by colleges, universities or the system office (not creators/inventors) will be distributed in accord with the terms of a written agreement, or absent an agreement, in amounts equal to the relative contributions made by the colleges, universities or the system office.

**Subpart C. Intellectual Property Account.** Each college, university, and the system office shall deposit all net proceeds from commercialization of intellectual property in its own general intellectual property account. The President/Chancellor (or designee) may use the account to reimburse expenses related to creating or preserving the intellectual property rights of the college, university, or system office or for any other purpose authorized by law and Board policy, including the development of intellectual property.

**Subpart D. Trademarks.** Income earned from the licensing of college, university or System trademarks and logos is not subject to the requirements of Subpart C for distribution of funds.

## **Part 8. Assignment of Rights.**

**Subpart A. College, University or System Office Assignment.** A college, university or the system office may assign all or a portion of its rights in a work to the creator, corporation, business or to any other person in accordance with the law and when in the best interests of the college, university or the System. As a condition of the assignment, the college, university or the system office, may preserve rights, such as a royalty-free, perpetual, irrevocable, non-exclusive license to use and copy the work in accordance with the preservation and the right to share in any proceeds from commercialization of the work.

**Subpart B. Creator Assignment.** Any person may agree to assign some or all of his or her intellectual property rights to the college, university or System. The creator may preserve any rights available to the creator as part of the assignment.

**Subpart C. Assignment in Writing.** Any assignment of intellectual property rights shall be in writing and signed by the assignor and assignee.

**Part 9. Dispute Resolution Process.** The system office may develop procedures to resolve disputes relating to this policy.

**Part 10. Notification of Policy.** The Intellectual Property Coordinator at each college, university, and the system office shall provide a copy of this Intellectual Property Policy and any other forms developed to implement this Policy to persons upon request. The college, university, or system office shall arrange

training on a periodic basis for faculty, staff and/or other persons who are covered by this Intellectual Property Policy.

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*Date of Adoption:* 06/19/02,

*Date of Implementation:* 01/01/03,

*Date and Subject of Revision:*

*11/16/11 - Effective 1/1/12, the Board of Trustees amends all board policies to change the term "Office of the Chancellor" to "system office," and to make necessary related grammatical changes.*

*06/16/10 - Amended Part 3, Subpart G to include Inventors. Added Subpart I, Faculty, Subpart T, System and Subpart U, Works Made for Hire. Delete Subpart N, Professional Staff. Amended Part 4, Subpart A1 to allow a written agreement with a non-faculty member. Amended Subpart A3 to delete Encoded Works. Amended Subpart B to allow modification of Basic Ownership Rights through a written agreement. Deleted Subpart B3, Equity Distributions, and Subpart 6, Certain Encoded Works. Amended Subpart B4 to define substantial resources. Added Subpart 5, Works Owned Jointly by Colleges, Universities, and the System, and Subpart 6, Equitable Distributions. Amended Part 7, Subpart B to include language regarding patents or copyright protections that are not pursued, and distributions of net proceeds generated from the commercialization. Other minor amendments throughout the entire policy.*