



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

3.26 Intellectual Property

Part 1. Policy Statement. The Minnesota State Colleges and Universities 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 of Trustees recognizes and acknowledges that MnSCU institutions may create or commission the creation of such works on its behalf and adopts as its policy the traditional commitment to faculty and student ownership in scholarly work.

Part 2. Applicability. This policy applies to agreements between colleges, universities, the Office of the Chancellor 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 contract between an individual or individuals and a college or university but does not mean a sponsorship agreement or a collective bargaining agreement between the Minnesota State Colleges and Universities Board of Trustees and an exclusive bargaining representative.

Subpart B. Collective Bargaining Agreement. A collective bargaining agreement means a negotiated contract between the Minnesota State Colleges and Universities Board of Trustees and a specific bargaining unit.

Subpart C. College or University. College or university, except where specifically defined otherwise, means a MnSCU college, university, Office of the Chancellor or system.

Subpart D. College, University or Office of the Chancellor Resources. College, university or Office of the Chancellor resources means 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 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 which reflects the creative work of the faculty member. (As referenced in Policy 3.22 Course Syllabi)

Subpart G. Creator. A creator is an individual or group of individuals who invent, author, discover, or are otherwise responsible for the creation of intellectual property.

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. 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 J. 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 K. Jointly Created Work. A jointly created work is one where two or more authors contribute to the work and intend that it result in a unified, single work.

Subpart L. MnSCU or MnSCU System. MnSCU System, MnSCU, or System is the public higher education system established at Minnesota Statutes Chapter 136F. For purposes of this policy, MnSCU includes the Board of Trustees, the Office of the Chancellor, the state colleges and universities, and any part or combination thereof.

Subpart M. Office of the Chancellor. Office of the Chancellor means the central administrative office under the direction and supervision of the chancellor.

Subpart N. Professional Staff. Professional staff includes but is not limited to administrative staff (such as deans, directors, and vice-presidents) and technical staff, non-faculty researchers, teaching assistants and others not covered by a collective bargaining agreement.

Subpart O. Sponsor. A sponsor is a person, organization, or governmental entity, other than MnSCU, that provides funding, equipment, or other support for a college, or university, or Office of the Chancellor 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 Office of the Chancellor 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 MnSCU 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 MnSCU college, university, or Office of the Chancellor for services performed. Graduate assistants and work-study students are student-employees.

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 Office of the Chancellor and extended to an individual or individuals for development of a project or program.

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 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. Scholarly works and encoded works are not included within the definition of institutional works.
- 2. Scholarly Works.** Intellectual property rights in scholarly works belong to the faculty member, student or professional staff 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. Encoded Works.** Intellectual property rights in encoded 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. Intellectual property rights in encoded works created by a professional staff member belong to the college or university unless an agreement, sponsorship agreement, or other condition described in Subpart B or C below provides otherwise. Encoded works are creations that are software and other technologies for the electronic capture, storage, retrieval, transformation, display, or transmission of information.
- 4. 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.
- 5. 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 shall be modified by the following provisions if any of these provisions is applicable to the situation.

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. **Collaborations/Partnerships.** MnSCU and/or its colleges, universities may participate in projects with persons/organizations to meet identified student, citizen, community and industry needs. Ownership rights pursuant to any collaboration or partnership shall be addressed pursuant to this policy.
3. **Equity Distributions.** In any instance in which MnSCU and/or its colleges or universities execute an agreement with an individual, corporation or other entity for economic gain using intellectual property owned by the colleges or university, the colleges or university is entitled to receive an equity distribution. The proceeds of the equity distribution shall be shared among the creators of the work as determined by this policy.
4. **Special Commissions.** Intellectual property rights to a work specially ordered or commissioned by the college or university from a faculty member, professional staff, or other employee, and identified by the college or university, as a specially commissioned work at the time the work was commissioned, 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.
5. **Use of Substantial College or University Resources.** In the event a college or university provides substantial resources to a faculty member or professional staff member for creation of a work and the work was not an institutional work created under a sponsorship agreement, individual agreement, or special commission, the college, or university, and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made. Substantial circumstances exist when resources provided are beyond the normal support services extended to individuals for development of work products.
6. **Certain Encoded Works.** In the event a college or university hires a professional staff person to develop software or other encoded works, the encoded works created by such person shall be considered institutional works for which the college or university maintains ownership of the intellectual property rights.

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 work and 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 arising from MnSCU's identity, the identities of its colleges and universities, logo, 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. MnSCU employees may identify themselves with such title of their position as is usual and customary in the academic community; but any user of MnSCU's or its colleges' and universities' name, logo, or indicia of identity shall take reasonable steps to avoid any confusing, misleading, or false impression of particular sponsorship or endorsement by MnSCU, its colleges, or universities. When necessary, specific disclaimers shall be included.

Part 5. Coordination Function.

Subpart A. Appointment of Coordinator. The president or Chancellor, or his/her designee at each college, university, or Office of the Chancellor shall appoint an employee to be the 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 Policy 3.26 Intellectual Property and Policy 3.27 Reproduction and Use of Copyrighted Materials 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. MnSCU employees are responsible for adhering to all legal and ethical requirements in accordance with State law.

Part 6. Preservation of Intellectual Property Rights.

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

Subpart B. Payment of Costs. The college or university may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which the college or university exclusively owns intellectual property rights. If the college or university has intellectual property rights in a jointly owned work, the college or university 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 or university 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 or university 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 or university or Office of the Chancellor 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 or university before the creator is entitled to share in the proceeds.

Subpart C. Intellectual Property Account. Each college, university, or Office of the Chancellor 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 college, university, or Office of the Chancellor intellectual property rights or for any other purpose authorized by law and MnSCU policy including the development of intellectual property.

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

Part 8. Assignment of Rights.

Subpart A. College or University Assignment. If it is in the best interest of the college or university, the college or university may assign all or a portion of its rights in a work to the creator or to any other person in accordance with law. As a condition of the assignment, the college or university, may preserve rights, such as a royalty-free, irrevocable 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.

Part 9. Dispute Resolution Process. The Office of the Chancellor 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 Office of the Chancellor 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 Office of the Chancellor shall arrange training on a periodic basis for faculty, staff and/or other persons who are covered by this Intellectual Property Policy.

Date of Implementation: 01/01/03

Date of Adoption: 06/19/02

Date and Subject of Revision: