

sanctions ensue, such as dismissal, then the dismissal policies will apply. If a faculty member decides to challenge a decision, the grievance procedures could be used. (See Chapter III, Section C on Dismissal for Cause; Chapter IV, Section B on Sexual Harassment; Chapter V, Section A on Scientific Misconduct; and Chapter VIII on Grievance Procedures.)

## **E. INTELLECTUAL PROPERTY AND COPYRIGHT**

### **Overview**

Colleges and universities, by their nature, encourage faculty to research, invent, and create throughout the faculty member's career. Institutions provide facilities and can be instrumental in securing funding for these endeavors.

Conflicts can develop over whether intellectual property should be exploited to the benefit of the creator, the institution, or a combination of both. In the business world, employee creations will usually be considered property of the employer.

Academic institutions, to foster creativity among their faculty, often have policies to protect the ownership rights of faculty.

### **Sample Policies**

#### **Definition**

Policies should clearly define what intellectual property is and how it is classified. Intellectual property is often a very broad classification extending to inventions, written works, software, and any other creations of the faculty member.

Some policies may distinguish between patentable intellectual property and copyrightable intellectual property.

**Policy Option 1:** Intellectual property shall consist of: inventions, creative works, patentable subject matter, copyrightable materials,

know-how, electronic or paper documents, software, multimedia or audiovisual material, and photographs.

**Policy Option 2:** Patentable intellectual property includes all inventions, discoveries, know-how, and discoveries or other material that is patentable under US law (whether or not produced in the US), as well as software that is excluded from “copyrightable material.”

**Policy Option 3:** Copyrightable intellectual property includes all creative works, electronic or paper documents, software, multimedia or audiovisual materials, and photographs, and any other materials that may be copyrightable under US law (whether or not produced in the US). Copyrightable material shall include educational or research software, but shall not include software other than educational or research software.

## **Ownership Rights**

Colleges and universities have traditionally allowed faculty members to retain the copyright to their published works.

Policies may, however, give the institution ownership rights where externally sponsored research is concerned or where university sponsored facilities or funding are substantially used.

Institutions also have policies in place allowing them to use material developed for courses or curriculum. This aspect gains increased significance in light of distance education.

**Policy Option 1:** Except in limited situations, the creator of patentable intellectual property shall retain their rights, and the university shall not assert ownership rights. The university will assert ownership rights to patentable intellectual property developed under the following circumstances:

1. Development was funded by an externally sponsored research program or by any agreement which allocates rights to the university.
2. Development required use of university resources or more than minimal use of university personnel.
3. The creator was assigned, directed, or specifically funded by the university to develop the material.

4. Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under US law.

**Policy Option 2:** Except in limited situations, the creator of copyrightable intellectual property shall retain their rights, and the university shall not assert ownership rights. However, creators will be expected to grant nonexclusive, royalty-free, perpetual licenses to the university for copyrightable material that is developed for university courses or curriculum, so that the university's continued use of such material for educational purposes would be jeopardized. The university will assert ownership rights to copyrightable intellectual property developed under the following circumstances:

1. Development was funded by an externally sponsored research program or by any agreement which allocates rights to the university.
2. A faculty member was assigned, directed, or specifically funded by the university to develop the material, and the university has negotiated an understanding or formal contract with the creator.
3. Material was developed by administrators or other non-faculty employees in the course of employment duties and constitutes work for hire under US law.
4. The material was developed with extraordinary or substantially more use of university resources than would normally be provided for the creator's employment duties. This might occur as disproportionate use of staff time, networks, equipment, or direct funding.

**Policy Option 3:** All university faculty, in accordance with the university's policy and basic objectives of promoting creative and scholarly activities, are free to develop, create, and publish copyrightable works. Copyrightable works produced by university faculty are the property of the creator of that work. All rights afforded copyright owners reside with the creator unless the creator has assigned or licensed any of the enumerated rights contained in the Copyright Revision Act of 1976. Decisions relative to registering of these works with the Copyright Office are left to the individual creator.

## **Resolution of Disputes**

Conflicts can arise between the faculty member and the institution over ownership rights, commissions, or royalty payments.

Copyright and intellectual property policies often contain clauses to address these conflicts. Disputes are often presented to a special committee that then makes recommendations to the president.

**Policy Option 1:** Any disputes arising under this policy, between the university and any faculty member to whom this policy applies, shall be referred to the faculty subcommittee on intellectual property and copyright. The faculty subcommittee on intellectual property and copyright shall report its findings and recommendations to the president or the president's designee.

**Policy Option 2:** The university shall have a standing copyright committee to consider and investigate disputes among faculty and shall recommend appropriate solutions to the president. The committee's responsibilities shall include, but not be limited to, disputes concerning:

1. Ownership of university-commissioned works.
2. Terms of commissions.
3. Distribution of royalties for university-produced works.
4. Distribution of royalties for works that may have required specific and unusual university expenses.