Intellectual Property Policy
St. Ambrose University

Preamble

PURPOSE

In describing the Mission of St. Ambrose University, the faculty handbook states: “The University endeavors to develop an intellectual community in which scholarship, creativity, reflection and leadership are fostered.” St. Ambrose is also described as a place where research and public service are encouraged.

In the course of pursuing our mission, intellectual property is created. We submit the following definition for intellectual property:

“Intellectual property refers to intangible creations resulting from creative use of the intellect. It is a sort of ‘mental real estate’ that has definable boundaries capable of being protected by means that are dependent on the type of property involved . . . While ideas per se are not intellectual property and not protected from use by others, once reduced to practice or tangibly expressed, they become intellectual property, protected by patents, copyrights, trademarks, and trade secrets laws.” (Iowa State University Intellectual Property Handbook, p. 4)

The purpose of this document is to clearly articulate for faculty, staff, students, and other interested parties, the relevant University policies, and clarify the rights, privileges, responsibilities, and options of these parties when intellectual property is created.

This document addresses ownership issues for a variety of intellectual property, including textbooks, articles, manuscripts, computer software, data files, tangible research products, and educational materials in various media forms. Issues of copyright, patent, and trademark are specifically addressed.

In general, this policy applies to inventions, creations, innovations, discoveries or improvements developed with University resources, other than artistic works as well as scholarship reflecting research and/or creativity. These excluded materials, traditionally seen as evidence of professional accomplishment, may include scholarly publications, research bulletins, journal manuscripts and articles, monographs, books, plays, poems, works of art and software such as electronic textbooks designed primarily to provide information to the user.

APPLICABILITY

The policy applies to faculty, staff, students, and others who use SAU facilities, equipment, or other resources. The policy applies to all who receive salary, wages, stipends, or other support (excluding financial aid to undergraduate students). Ordinarily the University will waive any of its rights to the intellectual property of student creators outside of formal University employment. Such waivers require written approval of the Vice President for Academic and Student Affairs and the Vice President for Finance and will ordinarily be processed within four weeks of a written request from the student.
COPYRIGHT

Background

A copyright is a right of intellectual property, whereby authors obtain, for a limited time, certain exclusive rights to their works. In the United States, copyright is governed exclusively by federal law, and derives from the “copyright clause” of the Constitution (Art. 1, sec. 8, cl. 8), which provides Congress with the power “to promote science and the useful arts by securing for limited times to authors . . . the exclusive right to their . . . writings.” Current federal law regards several classes of works as being susceptible of copyright protection: (1) literary works (including computer programs); (2) musical works, including lyrics; (3) dramatic works, including accompanying music, (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works. 17 U.S.C. sec102(a).

To be protected by copyright, work of authorship must be “original” to the author and must be fixed in any tangible medium of expression, that is, in a form perceptible with the senses or with the aid of a machine or device (such as a computer). 17 U.S.C. sec 102(a). Copyright doesn’t extend to ideas per se, to factual information that is conveyed in a copyrighted work, nor to “useful articles” (such as machines) and it doesn’t extend to any preexisting material incorporated into the author’s work that is not original to the author. 17 U.S.C. sec. 102(b), 103; Feist Publications, Inc. v. Rural Telephone Service Company, Inc., 499 U.S. 340 (1991); Mazer v. Stein, 347 U.S. 201 (1954).

The standard for originality is very low. “Original” in this context means only that the work has its origin in the author. There is no requirement that the work be different from everything that has come before: it need only embody a minimum level of creativity and owe its origin to the author claiming copyright. To use an extreme example, if two poets, each working in total isolation and unaware of one another’s work, were to compose identical poems, both of the poems would meet the originality requirement for purposes of the copyright statute. Feist Publications, Inc. v. Rural Telephone Service Company, Inc., supra.

In the United States, copyright law gives the author:

1. The reproductive right: the right to reproduce the work in copies
2. The adaptive right: the right to produce derivative works based on the copyrighted work
3. The distribution right: the right to distribute copies of the work
4. The performance right: the right to perform the copyrighted work publicly
5. The display right: the right to display the copyrighted work publicly
6. The attribution right (sometimes called the paternity right): the right of the author to claim authorship of the work and to prevent the use of his or her name as the author of a work he or she did not create
7. The integrity right: the right of an author to prevent the use of his or her name as the author of a distorted version of the work, to prevent intentional distortion of the work, and to prevent destruction of the work. (17 U.S.C. 106, 106A)

Not all of these rights apply to all types of works. For example, the display right applies to literary, musical, dramatic and choreographic works, pantomimes, and motion pictures and other audiovisual works. It does not apply to sound recordings and to architectural works. The attribution right and the integrity right apply only to works of visual art.
Intellectual Property Policy (cont.)

Also, not all rights have the same duration. In the U.S., rights 1-5 normally have duration of the author’s life plus 70 years, while rights 6-7 endure only for the life of the author. These rights are not unbounded, and in the U.S., sections 107 through 120 of the copyright law catalog a series of restrictions on the rights.

Often issues arise as to the ownership of copyright in academic settings. The following policy draws from the policies of major universities that govern ownership of copyright.

General Statement of Policy

The United States Copyright Act generally provides that copyright arises at the moment a work of authorship is “created” (in other words, from the moment the work is “fixed in any tangible medium of expression.”) Ownership of copyright generally vests in the creator of the work. 17 U.S.C. sec 201(a). If this were all that was said about ownership, then there would be no need for this policy, because each faculty member or staff person would own the copyrightable works created by him or her. However, the Copyright Act makes an important exception to the general rule of ownership by the creator. In the case of “works for hire,” the employer of the person who creates the work becomes the owner of Copyright. 17 U.S.C. sec 201(b).

According to Section 101 of the Copyright Act, a “work for hire” is:

1. A work prepared by an employee within the scope of his or her employment, or

2. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

In the case where a regular full-time or part-time faculty member adapts materials already offered in a face-to-face class to an online class, or where the faculty member develops a new course to be offered online, St. Ambrose University will not assert ownership to any materials unless otherwise covered elsewhere in this policy.

However, online courses differ from face-to-face courses in that the online “shell” contains a basic set of instructional materials that serve to establish the framework of the course. Through the signing of a contract during the course development process, St. Ambrose University will retain sole ownership rights, including copyright, of these basic materials. These materials include, but are not limited to, such things as the course syllabus, description, objectives, assignment descriptions, bibliography, outline, and such evaluation methods as grading rubrics, and departmentally developed assessment materials.
The regular full-time or part-time faculty member retains all rights to course content materials and individualized multimedia components. These include, but are not limited to, introductory materials, instructional materials, online assignments, interactive components, discussion questions, group projects, live web chats, podcasts, and other downloadable class content.

While the regular full-time or part-time faculty member retains intellectual property rights and copyright to the course materials and multimedia components, St. Ambrose University reserves the right to use the basic course materials beyond the involvement of the original developer for a period of up to five (5) years. The University also reserves the right to maintain continuity beyond the original creation of the online course by creating derivative works to keep the content current and relevant. In the instance where an online course is developed by an approved adjunct or visiting faculty member, St. Ambrose University reserves the right to use all course materials beyond the involvement of the original developer for a period of up to five (5) years.

However, the University strongly encourages the production of scholarly work by members of the St. Ambrose University community, including copyrightable works. In recognition of this principle, the University therefore waives and hereby assigns to the creator all claims of ownership of copyright in works by faculty, staff or others participating in St. Ambrose University programs (including visiting faculty, whether in traditional or nontraditional forms,) except in the following cases: (1) works resulting from a substantial use of University resources (section C.1); and (2) works created pursuant to a written agreement between the University and the creator which provides (in the case of specially commissioned works listed in section 101 of the Copyright Act) that the work is to be regarded as a “work for hire” (section C.2) or (in the case of works not qualifying as “works for hire”), that the creator wishes to assign an ownership interest to the University and the University wishes to accept such ownership. All other literary or textual works, artistic works and other items of copyrightable work not falling within these two categories that are created by faculty or other employees are deemed to be the property of the author/developer, who is entitled to determine how the works are to be disseminated and to keep any income those works produce. [Computer software, which can be subject to patent rights, will be dealt with on a case-by-case basis with the developer, the Vice President for Academic and Student Affairs, and the Vice President for Finance.]

Categories of Activities in which the University Claims Some Ownership

1. **Substantial Use**

“Substantial use” is the use of resources other than those “ordinarily available” to most faculty and staff members. Ordinarily available resources include office space and personal office equipment, office computer workstations, library and other general use information resources, and the means of network access to such resources. Incidental involvement of students receiving funding from the University is also excluded from the definition of “substantial use.” Where the University makes unusual commitments of resources to a project, the University may be entitled to shared-ownership of any works created. The Vice President for Academic and Student Affairs and the Vice President for Finance, will determine whether such commitments exist in a particular case, estimate, in cooperation with the faculty member and the Dean of the College in which the faculty member’s primary appointment is held (or direct supervisor for staff members), the amount of University resources involved to determine the extent of ownership the University wants to claim and whether the University ought therefore not to disclaim ownership of such works. This group will make this determination before the work is created and at the
beginning of the project. It is the faculty or staff member’s responsibility to inform this group if they foresee instances in which a copyrightable product will be developed with substantial use of University resources prior to the development of the product. Further policy statements may identify recurring situations in which “substantial use” of the University facilities will be deemed to have been made.

2. Explicit Agreement

There may be situations in which the University has an ownership interest in a work based on an explicit agreement. Example include, but are not limited to, visual art works and distance learning courses created at the University’s request, in which the creator is to be paid by the University an amount in excess of his or her salary. Similarly, if the University commissions the creation of a standardized test for use in evaluating student aptitude under an explicit agreement, the University will be owner of the copyright therein. In such cases the parties’ agreement must be set forth in a written instrument signed by both of them. If the work is of a type which qualifies as a work for hire under the “special commissioned” provision of section of the Copyright Act, the agreement should specifically state that the work is “for hire.” In other cases, the agreement should state that all or some share of the copyright is assigned to the University. In every such case the division of ownership and the distribution of income derived from the work will be negotiated by the parties and explicitly set forth in the written agreement.

PATENT

Background

As used in this agreement, the term “patent” shall be understood to mean that bundle of rights that protects inventions or discoveries which constitute any new and useful processes, machines, manufactures, or compositions of matter, or any new and useful improvement thereof, new and ornamental designs for any useful articles and plant patents for the asexual reproduction of a distinct variety of plant, including cultivated sprouts, mutants, hybrids, and new found seedlings, other than a tuber propagated plant or plant found in an uncultivated state.

Ownership of Inventions and Supportive Technology

1. Inventions resulting from research or other work conducted by University employees wholly on their own time and without use of University funds or facilities shall be considered the property of the inventor and may be patented and/or commercialized by the individual at the individual’s expense. It is recognized that when the invention is within the specific subject area of the inventor’s current and ongoing University research activities, disputes may develop concerning whether the work was conducted by University employees wholly on their own time and without use of University funds or facilities. In order to reduce the possibility of such disputes, it shall be the responsibility of the employee to provide her/his departmental chair notice that s/he is engaging in research activities independently within the subject area of her/his current University research, and describe in such notice the focus of these independent research activities, with a copy to the Vice President of Academic Affairs and the Chair of the Intellectual Property Committee. In questionable cases, it shall be the responsibility of the inventor to demonstrate that the above criteria are present.
Intellectual Property Policy (cont.)

2. Inventions resulting from research or other work conducted by University employees wholly on their own time, but involving some but not significant use of the University funds or facilities, shall be considered the property of the individual and may be patented and/or commercialized by the individual at the individual’s expense. The University will not construe the payment of salary from unrestricted funds or the provision of office, computing, or library facilities as constituting significant use of University funds or facilities.

3. Inventions resulting from research or other work conducted by University employees in whole or in part on University time or with significant use of University funds or facilities shall be considered the property of the University. As a consequence of their employment, employees assign to the University all rights and title to such inventions. At the request of the University, employees shall sign a written document evidencing this assignment and shall make known and available to the University all supportive technology related to the same. Supportive technology is intended to include any non-patentable invention, which would assist the University in supporting the rights and title to such an invention. If there are no restrictions by any outside sponsor of the research, the University may release its proprietary interest to the inventor.

4. Inventions arising from research financed by the U.S. Government are generally controlled by University patent policy, although they may be controlled by the terms of the applicable grant or contract. Under the Bayh-Dole Act, the University is obligated to report to the appropriate government agency all such inventions or discoveries.

5. Inventions resulting from research or other work sponsored by nongovernmental entities are controlled by the terms of the research agreement, if applicable, and if not, by University patent policies.

6. Where mutually agreeable between inventors and the University, the University will accept by assignment, bequest, or other appropriate instrument, title to inventions falling in sections 1 and 2 above.

7. Any use of the University’s name in connection with the commercialization of an invention by an individual shall be approved in advance by the University.

**Division of Income**

1. All income derived from inventions falling within Article B, section 1 and 2 above shall belong to the inventor.

2. All income derived from inventions falling within Article B, section 3 shall be distributed in accordance with the following rules:

The University will first deduct any direct expenses incurred by it in connection with the initial patenting and commercialization of the invention. Any such expenses
incurred by the inventor with the prior approval of the Chair of the Intellectual Property Committee will also be deducted and paid to the inventor.

a. The University will then pay and distribute the income remaining after payment of direct expenses in the following manner (if more than one inventor, the inventors will split their share equally unless previously agreed to by the inventors):

<table>
<thead>
<tr>
<th>Income Range</th>
<th>Distribution</th>
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<tbody>
<tr>
<td>$0 to $50,000</td>
<td>One hundred percent (100%) to the inventor</td>
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<tr>
<td>$50,000.01 to $500,000</td>
<td>(i) Fifty percent (50%) thereof to the inventor</td>
</tr>
<tr>
<td></td>
<td>(ii) Fifty percent (50%) thereof to the University</td>
</tr>
<tr>
<td>$500,000 and above</td>
<td>(iii) One-third thereof to the inventor</td>
</tr>
<tr>
<td></td>
<td>(iv) One-third to the University</td>
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<tr>
<td></td>
<td>(v) One-third to the University endowment</td>
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3. Income from inventions falling within Article B, section 4, where the government claims no patent rights or waives such rights, shall be distributed in accordance with Article C, section 2 above, unless the waiver or other agreement between the University and the government provides for a different distribution.

4. In the case of inventions falling within Article B, Section 5, any royalties received by the University shall be distributed in accordance with Article C, Section 2 above, unless the contract between the University and the sponsor provides for a different distribution.

5. Income from inventions falling within Article B, Section 6, shall be distributed in accordance with the agreement between the inventor and the University.

6. Income from copyrights falling under Item II, Article B, Sections 1 and 2 shall be distributed in accordance with Article C, Section 2 above.

ADMINISTRATION

Disclosure

Persons to whom this policy apply have a responsibility to report all creations of intellectual property covered by this policy (copyright, patent, trademark) on disclosure forms available at the Office of the President or on the CIDT Intellectual Property website page. The failure to perform this responsibility does not extinguish the rights of the University.
Assignment of Rights

Assignment to the University of applicable intellectual property shall take place upon creation as a consequence of employment.

The University shall be entitled to forward descriptions of intellectual property, to which the University has rights, to internal and external evaluators for review and shall have all the rights granted to an owner of intellectual property.

General Administration

The Intellectual Property Committee advises the President on all matters described in this policy. The policy is administered by the Executive Director of Information Resources, who serves as chair of the Committee, and who transmits to the Committee for review any disclosure made by employed members of the University.

University Intellectual Property Committee

The Committee advises the President on intellectual property matters generally, including the interpretation of this policy, and, as needed, on the disposition of rights in intellectual property matters. The Committee is also responsible for periodically updating the procedures for implementing this intellectual property policy and proposing revisions and/or amendments to it.

The Intellectual Property Committee shall consist of seven members, as follows:

- One full-time faculty member from the College of Health and Human Services, appointed by the College Dean
- One full-time faculty member from the College of Business, appointed by the College Dean
- One full-time faculty member from the College of Arts & Sciences, appointed by the College Dean
- The Vice President for Academic and Student Affairs (or his/her representative)
- The Vice President for Finance (or his/her representative)
- The Vice President for Advancement (or his/her representative)
- The Dean for Graduate and Adult Education.

Disputes

Any appeal of the recommendations of the Intellectual Property Committee should be made to the President. The President may appoint an appeal review panel to recommend action. The review panel would consist of three members: a representative of the originator(s), a person
designated by the Vice President for Finance, and a third person selected by the Vice President for Academic and Student Affairs. The final decision then resides with the President.

**Waivers**

The University may grant a waiver of any provision of this policy on a case-by-case basis. All waivers must be in writing and signed by the President.

**Termination or Revision**

This policy may be changed or discontinued at any time by action of the President and Cabinet. Such changes or discontinuance shall not affect rights accrued prior to the date of such action.

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