



AFT Higher Education

A Division of the American Federation of Teachers

Intellectual Property Issues for Higher Education Unions: A Primer

BY DAVID STROM

In-house Counsel
American Federation of Teachers



A Union of Professionals

AFT Higher Education

A Division of the American Federation of Teachers

SANDRA FELDMAN, President

EDWARD J. McELROY, Secretary-Treasurer

NAT LaCOUR, Executive Vice President

Higher Education Program and Policy Council:

Chair: **William E. Scheuerman**, AFT Vice President, United University Professions, State University of New York

Vice Chair: **Norman Swenson**, AFT Vice President, Cook County College Teachers Union

Barbara Bowen, AFT Vice President, Professional Staff Congress, City University of New York

Maureen Dinnen, AFT Vice President, Florida Education Association United

Jason Blank, Rhode Island College Chapter/AFT

David Boetcher, Madison Area Technical College Adjunct Local

Ora James Bouey, United University Professions, SUNY Stony Brook

William Cutler, Temple Association of University Professionals

Daniel Georgianna, University of Massachusetts Faculty Federation

Martin Hittelman, California Federation of Teachers Community College Council

Donna Hurtado, Albuquerque Technical-Vocational Institute Faculty Federation

Susan Kaufman, University Professionals of Illinois

John McDonald, Henry Ford Community College Federation of Teachers

Derryn Moten, Alabama State University Faculty-Staff Alliance

Alyssa Picard, Graduate Employee Organization, University of Michigan

Mark Richard, United Faculty of Miami-Dade Community College

Karen Schermerhorn, Faculty Federation of the Community College of Philadelphia

Edward Schones, United Technical College Educators

Sandra Schroeder, Washington Federation of Teachers

Raymond Spoto, The Association of University of Wisconsin Professionals

Louis Stollar, United College Employees of the Fashion Institute of Technology

Nicholas Yovnelo, Council of New Jersey State College Locals

The American Federation of Teachers

December 2002

Copyright © AFT 2002. Permission is hereby granted to reproduce and distribute copies of this work for nonprofit educational purposes, provided that copies are distributed at or below cost, and that the author, source, and copyright notice are included on each copy.

Acknowledgements

The idea for this report originated in conversations with both Larry Gold, the director of the AFT higher education department, and Perry Robinson, the former deputy director in the department. They have responded to numerous inquiries concerning faculty ownership of intellectual property during the last 10 years, and it was their assessments and insights in this area that provided the impetus for the report. This report greatly benefited from extensive discussions with Jason Blank, an associate professor at Rhode Island College and a member of AFT's higher education program and policy council, who provided multiple insights into how these issues affect the everyday lives of higher education faculty and staff. I wish to thank Bette Ann Hubbard in the AFT higher education department for her substantive contributions throughout the report. Lastly, I want to thank all the members of AFT's higher education program and policy council, which is chaired by William E. Scheurman, president of the United University Professions (State University of New York). The council's continuing advice and feedback were essential to making sure the report emphasizes the issues that are most pertinent to higher education leaders.

David J. Strom, AFT Legal Department Director

Contents

Introduction	i
Part I	
Intellectual Property Issues on Campus: Context and Key Issues	1
Copyright Law.....	2
Work for Hire.....	3
Sovereign Immunity	4
Control.....	6
Fair Use	7
Conclusion: The Union Steps In	10
Part II	
Checklist for Collective Bargaining Negotiations	12
Selected Contractual Provisions on Intellectual Property Issues Pertaining to Distance Education	14
License Between Publisher and Author	17
Excerpts from Collective Bargaining Agreements.....	20
Two-Year College Policies	
AFT College Guild, Los Angeles Community College District, Calif.	20
Henry Ford Community College Federation of Teachers, Mich.	24
Shoreline College Federation of Teachers/WFT/AFT, Wash.....	25
Cabrillo College Federation of Teachers, Calif.	26
Portland Community College Faculty Federation, Ore.....	27
Middlesex County College Federation, N.J.	28
Faculty Federation of the Community College of Philadelphia, Pa.....	30
Cuesta College Federation of Teachers, Calif.	31
University and Four-Year College Collective Bargaining Agreements	
University of Massachusetts/Dartmouth Faculty Federation, Mass.	34
Association of Pennsylvania State College and University Faculties, Pa.....	45
United Faculty of Florida/Graduate Assistants United, Fla.....	48
Robert Morris College Federation of Teachers, Pa.	49
University Teachers' Union/Montana University System, Mont.	49

Introduction

This is a synopsis of intellectual property issues for higher education unions. American academics -- faculty, professional staff, researchers and graduate student research assistants -- have always been leaders in the creation of intellectual property. In many instances, that work product is protected by U.S. copyright and patent legislation. Until recently, higher education faculty and staff have been relatively free to produce research and to write articles, books and textbooks without the institution claiming ownership or seeking to profit from the intellectual work of its employees. Faculty and staff also have been able, within reasonable bounds, to reproduce, quote and make "fair use" of the work of others in their classes and academic publications.

Issues concerning the ownership and control of intellectual property on campus, however, have become much more complicated and pressing as college administrations step up their efforts to profit from the research, scholarship, and teaching of the faculty and staff. As a result, higher education unions must start to pay very close attention to legislation, court decisions and campus policies concerning intellectual property -- and to protect their members' interests through collective bargaining. This is especially true at senior colleges and universities, but, with the growth of distance education at community colleges -- and the profits that can be derived from it -- faculty and staff unions at two-year colleges now also need to consider these issues carefully.

The publication has two parts. The first part is a brief discussion of major issues that affect the intellectual property rights of higher education faculty and staff. The second part focuses on collective bargaining, and includes: (1) a checklist of issues higher education unions should consider as they bargain intellectual property issues; (2) pointers on handling specific matters such as distance education; (3) a sample license between publisher and author; and (4) excerpts from collective bargaining agreements that should give higher education faculty and unions ideas about various ways to address intellectual property issues in contracts.

Part I

Intellectual Property Issues on Campus: Context and Key Issues

Intellectual property law seeks to balance the competing interests of the creator's ownership and control over his or her works with the public's rights to access and use of such works. On the one hand, creators have the right to profit, protect and generally control use of their own creative endeavors. On the other, the law places limits on the period of that ownership, and in the case of copyright, expressly permits certain "fair use" of this material without the need for permission from or payment to the creator. Ultimately, the law provides profit incentives and ownership protections to those who are responsible for creating intellectual property while at the same time ensuring that their control is not held so closely that it restricts all access or prohibits the development of new works that may be inspired by these protected materials.

Congress passed the first Copyright Act in 1790 and has revised it a number of times since then, most notably in 1976. **Until recently, higher education faculty and staff were relatively free to produce research and write articles, books and textbooks without the institution claiming ownership or seeking to profit from their intellectual work.** They have also been able, within reasonable bounds, to reproduce, quote and make "fair use" of the work of others in their classes and academic publications. But things are changing for three reasons.

First, the **academic work of faculty has become much more valuable** commercially. In the area of research, for example, passage of the Bayh-Dole Act in 1980 enabled institutions of higher education to own the intellectual property generated by their faculty and staff under federal government research grants. As a result, institutions and some faculty members have been able to reap enormous profits from state-supported research and inventions of commercial value. In the 1990s, corporations greatly increased their own sponsored research at higher education institutions. These arrangements often have been mutually profitable to the parties. However, the proliferation of profit-oriented research also raises serious questions about free exchange of academic research and may negatively affect the degree to which universities are willing to undertake research without such sponsorship. Now, with the advent of electronic education that can be "delivered" profitably to large new markets, **teaching and coursework, as well as research, developed by two and four-year college faculty also have acquired new commercial value.**

The second reason institutions are more aggressive in seeking revenue from intellectual property is the decline in support for public higher education institutions at the state level. According to a report in the January 2002 *Postsecondary Education Opportunity*, over the last 25 years, the tax effort made by states to fund higher education has declined in every state, by an average of 27.4 percent when controlled by state personal income. State funds that were previously assigned to higher education have been diverted to other programmatic, budget and political priorities.

The third reason colleges are pushing harder to own the intellectual work of faculty and staff is based in federal legislation and court decisions. Since the passage of the 1976 Copyright Act, and some (but not all) court decisions arising out of it, the rights of employers to claim ownership of work prepared by their employees substantially increased under the theory that these are "works for hire." This is reinforced by another legal factor-- a series of Supreme Court rulings on the 11th Amendment (state sovereign immunity) that severely restricted the jurisdiction of federal intellectual property law over states and, therefore, state-supported institutions. These last factors require some elaboration.

Key Issues in Copyright Law

In general, copyright law gives authors exclusive control of their "writings" or "works of authorship" for a fixed period of time. It provides protection to the creator of intellectual property from those who have access to the copyrighted work and who create a similar work, create a derivative work, make a copy (reproduce), electronically distribute or publish copies, publicly perform a work or publicly display a work. Both access and similarity to the original work must be present for any legal action to be taken on copyright infringement. In order for an individual to claim copyright infringement by another's work that is similar or a direct copy, he or she must have proof that the individual had access to the copyrighted material.

Federal copyright law protects a broad array of "works" created by higher education professors in carrying out their professional duties. For example, copyright protection is extended to literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; and sound recordings. A work is protected by the Copyright Act at the time it is stored in almost any "tangible medium of expression," including being encoded onto a computer disk. Copyright protection does *not* extend to ideas or concepts that are not preserved in a tangible form. For example, a math theorem would not be copyrightable, but an article about it by the creator would be.

A great deal of academic work is in the form of published articles in periodicals, annuals and anthologies. When faculty write articles that have been published in journals, newspapers or other periodicals, they may make separate registration for their work. Under the current copyright statute, the copyright in a separate contribution to a published collective work is distinct from the copyright in the collective work as a whole. As in the case with all published works, the contributed work may appear with its own notice of copyright.

Generally, the author is *not* required to register with the Copyright Office to obtain copyright protection, although there are certain benefits to registration. These benefits relate to

establishing with finality when a work is actually created, the right to file suit and the right to certain damages in litigation. Additionally, copyright holders do not risk losing their copyrights if they fail to include a copyright notice on their published works. Nonetheless, such notice is advisable to help deter improper use of those works.

It is important to distinguish copyright notice from registration. A creator may place a copyright notice on his or her work *without* registering it. The notice has three basic elements: (1) the copyright symbol (©); (2) the name of the owner; and (3) the date of first publication or public distribution (e.g., © American Federation of Teachers, 2002). It is not necessary for a work to be formally published in a journal or other scholarly publication to utilize a copyright notice. Many higher education faculty and staff may want to consider adding a fourth element to the copyright notice, which addresses the conditions under which others may use the work in question. For example, they may want to grant permission to distribute the work for nonprofit educational purposes provided that the copies are distributed at or below cost and the author, source and copyright notice are included on each copy.

Complete copyright information is located on the U.S. Copyright Office Web site (www.loc.gov/copyright), which includes information on licensing, how to register a work and how to record a document. Applications and guidelines for acquiring a copyright for literary works, visual arts, performing arts, sound recordings, serials and periodicals also are available on the site.

Information about applying for patents and trademarks can be found at the U.S. Patent and Trademark Office Web site (www.uspto.gov). The site has information about what can be patented, who may apply for a patent, and defines trademarks and service marks. Applications for patents and trademarks are available on the Web site. However, the completion of a patent application in particular is often complicated, and the advice of legal counsel will likely be necessary.

Work for Hire

In its simplest form, the work for hire doctrine says that an employer owns the work of its employees if the work was prepared in the course of the employee's job. Traditionally, higher education institutions and the courts recognized a "teacher's exemption" to that rule under which ownership rested with the creator rather than with the institution. The Copyright Act of 1976, however, defined ownership of copyrightable works in a way that reinforced the right of an employer to assert ownership of the intellectual property of its employees. Section 201(b) of the Copyright Act provides that:

The employer or other person for whom the work was prepared is considered the author for [copyright] purposes ... *unless the parties have expressly agreed otherwise in a written instrument signed by them.*

The act further provides that a "work made for hire" is:

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

The general premise behind the work for hire doctrine is that an employer who provides office space, pay, benefits and often research tools is entitled to ownership rights in the works of its employees that are produced in the normal course of business. These works are often the direct result of the employer's instruction to an employee and the employee's corresponding execution of his or her duties. Generally, the courts have held that an employee's work falls within the scope of his or her employment when:

- It was the kind of work he or she is employed to perform;
- It was created substantially within authorized work hours and space;
- The purpose of the work, at least in part, was to serve the employer.

Under this definition, it would appear at first glance that the bulk of the work of higher education faculty should belong to the employer because the work is at least in part the product of the employment relationship. In fact, since passage of the 1976 act, the employer's hand has been significantly strengthened in the debate as to who owns the work in question. Now, in the digital age, the concept of individual, as opposed to institutional, ownership is even more complicated because creators often require a great deal of technical support and equipment, which is frequently owned by the institution.

There remain some bright spots, however. One has been the reluctance of some courts to abandon the concept of a teacher's exemption (see *Williams v. Weissner*, 78 Cal Rpt.542 (1969) (ownership by professor, not the university in his class notes); *Weinstein v. University of Illinois*, 811F.2d 1091(7th Cir. 1987) (ownership by faculty authors, not the university, in scholarly article) and *Hays v. Sony Corp.* (1988) (ownership by teacher, not high school, in instructional manual). Another is that most institutions continue to recognize a sphere of academic and creative work to which they do not assert ownership. Institutional policies on intellectual property are being promulgated, some of them more protective of individual ownership than others. In many cases, institutions and individuals are signing contracts dividing ownership between the creator(s) and the institution.

By and large, however, higher education unions are in the best position to protect the intellectual property rights of higher education faculty -- either through collective bargaining contracts or through extra-contractual negotiation over institutional policies. The union may clarify ownership rights in a legally enforceable agreement with the administration. The Copyright Act expressly contemplates and recognizes the validity of such agreements. Section 201(b) states that an express written agreement is sufficient to defeat the general ownership principles of the employer set forth under the work for hire doctrine. A collective bargaining agreement or memorandum of understanding between the union and administration clearly falls within that definition of a written agreement.

Sovereign Immunity

Under the application of the 1976 Copyright Law, one could presume that when a state, or a state agency, such as many institutions of higher education, or officer or employee of the state acting in an official capacity, infringe a copyright or other federal intellectual property right, that the

state should be held accountable for that infringement the same as a person or entity would be. This is no longer the case. In recent years, U.S. Supreme Court decisions have held that state agencies are immune to suits for money damages for violating federal intellectual property law under the doctrine of "sovereign immunity." The 11th Amendment to the U.S. Constitution, adopted in 1795, speaks to state sovereign immunity. It provides: The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

A series of Supreme Court rulings in 1999 that were based on the 11th Amendment dramatically altered the enforceability of federal law with regard to states. On June 28, 1999, the United States Supreme Court issued a pair of rulings in *College Savings Bank v. Florida Prepaid Postsecondary Education Board*, 119 S.Ct. 2219 and 119 S.Ct. 2199 (1999), finding that states were protected by the 11th Amendment and the doctrine of "sovereign immunity" from lawsuits seeking money damages under both the Trademark and Patent Acts. The court held that when Congress passes legislation pursuant to Article I of the United States Constitution, the section of the Constitution that authorizes Congress to enact the copyright laws and other economic legislation, it does not have the authority to abrogate a state's immunity from suit. The court reasoned that while the Constitution makes no special reference to the doctrine of "sovereign immunity," at the time the Constitution was passed the states retained such protection against legislation enacted by Congress through the common law and its implicit incorporation into the 11th Amendment.

In a decision that was issued on the same day as the *Florida Prepaid* cases, *Alden v. Maine*, 527 U.S. 706, 119 S.Ct. 2240 (1999), the court found that the states' 11th Amendment immunity also applied to federal claims brought in *state* court. Thus, the doctrine of sovereign immunity was expanded by the *Alden* decision to apply to all federal rights of action for monetary damages brought pursuant to Article I legislation, not just claims brought in federal court. In *Alden*, the court held that the state of Maine was immune from suit for failure to pay overtime under the Fair Labor Standards Act.

Clearly, the pure application of these Supreme Court cases has the potential of granting public college and university administrators an overwhelming advantage in disputes over ownership of intellectual property. These decisions alter the balance of power between Congress and the states by limiting the application of many federal statutes to the states. Of course, one of the consequences of such limitations is to narrow the rights of faculty and staff members who work as state employees. In this effort by the Supreme Court to shift the balance of power between the federal and state governments, public employees have been caught in the middle.

Despite the breadth of these Supreme Court rulings, there are still options available to higher education faculty unions to protect the faculty's intellectual property rights.

- **Public colleges and universities still may be sued for injunctive relief.** The Supreme Court's 11th Amendment decisions only bar federal suits for *money damages* against state entities. Federal law may still be relied upon in appropriate circumstances to seek

injunctive relief against state officials.¹ Therefore, it might be possible to get a court order against a university that would stop the institution from misappropriating a professor's work in violation of the Copyright Act even if money damages are not available.

- **Individual officials in public universities and colleges may still be subject to suit in certain situations.** In circumstances where a university official clearly acts outside the scope of his or her duties and violates federal law, the 11th Amendment immunity will not be available. For example, if a public administrator violated a professor's rights under copyright law without the approval of his superiors, then a damages claim could be made against that individual.
- **Claims under state law may still be made against public university officials.** The immunity provided to states by the 11th Amendment does *not* impact claims that individuals may have against the state under *state law*. For example, if a professor has a contract with the college or university that sets forth his or her ownership rights of certain materials, then if the state violates that contract, an action for breach of contract can be brought.
- **Collective bargaining agreement language enforcing intellectual property rights is still enforceable against public universities and colleges.** Even where collective bargaining agreement language is directly based on concepts embedded in federal copyright law, such provisions will still be enforceable against public higher education institutions. Because collective bargaining in the public sector is a creature of state not federal law, it is outside the reach of the Court's 11th Amendment decisions. Indeed, the avenue of collective bargaining is almost certainly the most readily available and meaningful way for AFT higher education members to protect their intellectual property rights, particularly after the *Florida Prepaid* decision.

In the long run, the seriousness of the impact from the Supreme Court's sovereign immunity rulings will depend on (1) The ability of faculty unions and other faculty organizations to negotiate contracts or to develop policies that will protect the intellectual property rights of faculty, staff, researchers and graduate students, and (2) the degree to which public universities and colleges as "arms of the state" actually seek to use the shield of state sovereign immunity to infringe copyright and patent rights.

Control

It should be noted that intellectual property issues revolve around more than *ownership*; there are also questions of *control*. Ownership of intellectual property may be a necessary, but not sufficient, condition to protect educators' rights to maintain productive working conditions and students' rights to high-quality instruction. For instance, an institution may concede that ownership is in the hands of the creator, but then either purchase ownership from the creator or obtain certain rights to use the material. In the end, it is up to the creator of the intellectual

¹ See *Edelman v. Jordan*, 415 U.S. 651 (1974); and *Ex parte Young*, 209 U.S. 123 (1908)

property, or the union representing the creator, to ensure that the material is used in a way that upholds professional standards and properly recognizes the creator's contributions. Considerations might include ensuring that an online course is not offered year after year without any updating or quality control, or that the online course would not be used to supplant same-time, same-place instruction at the institution.

A licensing arrangement is the legal mechanism a creator can use to exercise control over his or her works when they are used by third parties. Under a licensing arrangement, the creator asserts his or her property right in the material but offers someone else (the employer, for example) the right to use the material under specified circumstances. These may include the period of time during which the material can be used, attribution, compensation, exclusivity and control of the work (which can include the medium under which the work can be used or any other conditions).

There is no prescribed form that is required by law for a license. More important, there are few boundaries that limit the types of conditions that may be set by the license. Nonetheless, the license should be clear as to the time frame and the limitations on the permitted use. For example, the license could be for a fixed or indefinite period of time. Similarly, the license could require certain distribution standards so that the copyright owner could be assured that his or her content and quality standards are maintained. Residuals are a form of license used in the performing arts industry whereby a payment is made to a performer for each repeat showing or playing of his or her performance. In the arena of distance education, the concept of a residual would be one way to protect the professor whose classroom lectures are taped and then rebroadcast after the professor has stopped teaching the course. Of course, in this situation the faculty member would also want to ensure that the online course material remains current and of a high quality. An example of a licensing agreement appears on page 17.

Fair Use

The "fair use doctrine" is an exception to the general rule in copyright law that the author or owner of a work has control over the use and dissemination of the work in question. Generally, fair use occurs in the context of criticism, comment, news reporting or research as well as some personal use materials. Fair use is involved whenever a faculty member reproduces a page or two of another author's text for his or her class, or includes brief attributed quotes from other creators' material in his or her own articles and books. There are no hard and fast rules as to what constitutes fair use in a given situation. However, the Copyright Act does provide a four-part test, which is applied on a case-by-case basis.

1. **The purpose and character of your use of a work.** Is the new work merely a copy of the original? If it is simply a copy of the original work, it is not as likely to be considered fair use. Does the new work offer something above and beyond the original? Is your use of the copy of a commercial nature or is it for nonprofit educational purposes? Lesser scrutiny will be used for nonprofit works.

2. **The nature of the copyrighted work.** Is the copyrighted work a published or unpublished work? Generally, factual works are given less protection and unpublished works are given more protection.
3. **The amount and substantiality of the portion used in relation to the copyrighted work as a whole.** The more you use, the less likely it will be considered fair use. Does the amount you use exceed a reasonable expectation? Is the portion used likely to adversely affect the author's economic gain? (If you use the essence of a work, it is less likely that your use will be considered fair.)
4. **The effect of use upon the potential market for the copyrighted work.** The more the new work differs from the original, the less likely it will be considered an infringement. Does the new work contain anything original? (If it does, it is more likely that the use of the copyrighted material will be considered fair use.)

The complexity in the application of the fair use doctrine in the education arena resulted in a set of guidelines negotiated by representatives of the Ad Hoc Committee of Educational Institutions and Organizations on Copyright Law Revision, the Authors League of America, Inc., and the Association of American Publishers, Inc. The guidelines, "Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions with Respect to Books and Periodicals," were negotiated at the time the Copyright Act of 1976 was pending before Congress. Although these guidelines do not have the force of law, they do represent the position of the majority of the parties in this field and, therefore, are a practical benchmark. This agreement is divided into two components: (1) exemptions for single copies for educators, and (2) exemption for multiple copies for classroom use.

Single copying for educators

The classroom fair use guidelines allow a *single* copy to be made for research or teaching of:

- A chapter of a book;
- One article from a periodical or newspaper;
- A short story, short essay or short poem; or
- A chart, graph, diagram or other picture from a book, periodical or newspaper.

Multiple copies for classroom use

The guidelines permit *multiple* copies to be made by an educator for classroom use where:

- The copying originates with and is inspired by a teacher.
- Due to time constraints, it would be unreasonable for the teacher to seek permission to use the document in question.
- The copying is for one course.
- No more than nine instances of such copying occur for one course during one class term.

Copying cannot:

- Substitute for the purchase of books or periodicals;
- Be repeated with respect to the same item by the same teacher from term to term; or
- Be charged to the student beyond the actual cost of photocopying.

Restrictions on classroom use

The following limitations apply to classroom distribution under the fair use doctrine:

- No one can engage in copying that effectively replaces or substitutes an anthology, compilation or collective work.
- There can be no copying of workbooks, exercises, standardized tests, test booklets, answer sheets or similar materials.
- There should be no more than one short poem, article, story, essay or two excerpts copied from the *same* author, nor more than three excerpts from the *same collective work* or *periodical work* during one class term.

There are special rules for the fair use of music and multimedia materials, which can be found on the Web site of the United States Copyright Office (www.copyright.gov/circs/).

The digital age complicates issues of fair use just as it complicates issues of ownership. Creators may have more reasons to challenge fair use because of the enhanced ability to distribute material more widely using electronic means. In the most basic sense, academic work has a much higher commercial value than ever before, and creators may be more reluctant to see their work reproduced elsewhere. Also, we live in an age when it is possible for an academic to use someone else's quote in a class and then discover, in an instant, that the student copied it, expanded on it, criticized or bowdlerized it and sent the resulting piece to thousands and thousands of people all over the country. The Internet has made access to information and research easier and thereby enhanced access and the dissemination of knowledge. At the same time, its enhanced ability to transmit and share information opens up the possibility of intellectual property infractions on a wider scale. Further AFT reports will be forthcoming as Congress attempts to grapple with these issues.

The Union Steps In

One thing should be clear by now: Creators cannot rely solely on the law or the courts to enforce protection of their intellectual property rights from copyright, patent or trademark infringement by state universities and colleges. We have also seen that in the digital age, where there may be many contributors to a piece of intellectual property and substantial institutional support, questions of exclusive versus joint ownership are becoming more complex.

Given all the complexities, how, in fact, are the rules being set in real life, campus by campus? In three ways:

- Through written institutional policies concerning ownership and control of intellectual property. Some are better than others. Increasingly, institutions are asserting wider ownership rights.
- Through individual contracts between creators and the institution. Depending on the sophistication of the individual in the area of intellectual property, these agreements can be helpful (or hurtful) to individual creators. As a general rule, these individual contracts can circumvent the union and even harm the employee's interests and, therefore, should be avoided.
- Through collective bargaining agreements negotiated by higher education unions.

There is no one template for collective bargaining that addresses the treatment of intellectual property issues. What works well one place may not work well in another. In the last three sections of this report, we offer information that we hope will be useful to any higher education union trying to tackle intellectual property issues:

- A checklist covering a range of issues to consider when bargaining for contracts or constructing a memorandum of understanding.
- An examination of intellectual property contractual provisions related to distance education.
- A selection of the intellectual property provisions of a variety of two-year and four-year college and university contracts that represent a broad range in addressing intellectual property issues.

In addition to collective bargaining, unions and other organizations that represent and support higher education employees at the national, state and local levels should be engaged in advocacy to circumvent the Supreme Court's sovereign immunity decisions that restrict intellectual property protections, particularly vis à vis state agencies. At the national level, advocates must seek changes in current law that would explicitly allow state and local public employees to have the same rights as their private sector counterparts to labor, civil rights and property protections under federal law. At the state level, the union should advocate for changes in state law that would waive the ability of state agencies to challenge the implementation of federal laws.

The intellectual creations of academic workers in higher education identify who they are and communicate their knowledge to others. Ownership of intellectual property should be the right of all academic employees and is key to controlling the quality and duplication of their work. Therefore, academic employees must be vigilant in protecting intellectual property rights; they must stay on top of new developments and engage the administration in solidarity with other colleagues. Without union protection, the intellectual property of faculty and staff can be expropriated and used in ways that threaten their livelihood and productive working conditions, diminish the quality of education for students and constrain the expansion of knowledge that lies at the core of higher education's mission.

Part II

Checklist for Collective Bargaining Negotiations

Ownership Issues

- Define the range of works owned exclusively by the individual, particularly traditional academic works. For example:
 - Literary works
 - Musical works, including any accompanying words
 - Dramatic works, including any accompanying words
 - Pantomimes and choreographic works
 - Pictorial, graphic, and sculptural works
 - Motion pictures and other audiovisual works
 - Sound recordings
 - Architectural works

- Bargain for ownership of as much of members' creative works as possible. However, within the realm of the evolving digital world where new questions of copyright ownership arise, recognize that faculty members will not necessarily own everything. Digital works may involve other creators and include substantial institutional support, which then complicate exclusive versus joint ownership.

- Define the works that are owned jointly by the faculty member and the institution, and consider developing a formula for profit sharing in such cases.

- Define ownership of intellectual property created while a bargaining member is on sabbatical or engaged in individual research projects, sponsored or commissioned works.

- Include faculty protection for inventions and copyrightable works (other than exempted scholarly works). Faculty may want to preserve or enhance the value of inventions or works by filing a patent application or obtaining a copyright registration. Complete copyright

and guidelines can be found on the U.S. Copyright Office Web site (www.loc.gov/copyright). Information about applying for patents and applying for trademarks can be located on the U.S. Patent and Trademark Office Web site (www.uspto.gov).

Workload and Institutional Support

- Bargain for the support needed to create such works. Support should include not only financial assistance, but also release time, assignment of support staff and use of university facilities.
- Negotiate compensation and workload credit in distance-education courses. For example, the course may be taught as part of a regular load or may be contracted as voluntary overload. Additional workload credit or overload pay may be granted for the preparation of materials and periodic updating of course materials at regular intervals.
- Include a maximum class size in clauses for distance-education courses. It could be comparable to or below traditional classroom size.
- Protect job security. There should be no reduction in the number of employees and/or sections available to faculty on campus as a direct result of the university's participation in a distance-learning program.
- Bargain for adequate training and technical support for distance-education courses for faculty. Cost of training and in-service rate for training time should be supported by the university.

Control and Use of Creative Works

- Ensure that material is used in a way that upholds professional standards. For example, to protect the scholarly and professional standing of faculty, the university should not reschedule a distance-learning course or release a telecourse for outside use without first obtaining the faculty member's consent to re-telecast or release the course, nor without faculty compensation to review and edit the recorded series for purposes of maintaining and improving instructional and production quality.

Policy Committees

- Create a process that can promptly and efficiently resolve any new questions about ownership that might arise.
- Joint Committees on Technology. Administrations should recognize that union input on numerous faculty issues raised by distance education is essential if their institutions are to successfully utilize the benefits of modern technology and continue providing a quality education to students.

Selected Contractual Provisions on Intellectual Property Issues Pertaining to Distance Education

Compensation and Workload Credit

1) Distance Learning: For the purposes of this contract, distance-learning courses refer to the use of interactive television for educational programming delivered to several geographic locations that provides for immediate interaction between faculty and student.

- a) A faculty member teaching a course utilizing distance learning technology may select from the following options:
 - i) The course may be taught as part of regular load.
 - ii) The course may be contracted as voluntary overload.
- b) Sessions will be taped for the purpose of student review or system failure. The tape will be available on a non-circulating basis for appropriate student uses for two weeks after the class session. At the discretion of the faculty member, the tape may then be destroyed or may be kept by the faculty member.
- c) The maximum class sizes for courses offered as distance learning shall be the same as those in the Master Course Table. The course maximum equals the total of all students enrolled at all sites. The procedure for accepting students over the maximum class size shall be the same as that provided in Section 4.19 of the contract. (*Elgin Community College Federation of Teachers, Illinois*)

2) Class sizes for audio-tutorial and telecourses shall be the same as for comparable traditional classroom courses, e.g., if a traditional SOC 101 class has a maximum of 38 students, the SOC 101 telecourse shall also have a maximum class size of 38 students. (*South Suburban Faculty Association, Cook County College Teachers Union, Illinois*)

3) Additional workload credit or overload pay may also be granted for: a) the preparation of distance learning course material and by the periodic updating of the distance course material at regular intervals not to exceed three years; and c) training in the special skills and methods necessary for successful instruction in the distance learning environment. (*Clackamas Community College, Oregon*)

4) The Federation shall be advised of changes in the telecourse delivery system adopted by the District, which result in workload increases. Such increases will be subject to negotiations between the Federation and the District. (*Coast Federation of Educators, California*)

Job Security

1) For the life of this contract, there will be no reduction in the number of employees and/or sections available to faculty on campus as a direct result of the college's participation in a distance learning program. (*United College Employees of Fashion Institute of Technology, New York*)

2) Under no circumstances will audio or videotapes or computer programs be used to reduce the number of teaching positions existing at the college in May 1998, exclusive of any one-semester only contracts. (*Middlesex County College Adjunct Federation, New Jersey*)

3) To protect the scholarly and professional standing of the TV teacher, TV College shall not reschedule a recorded telecourse, or release a recorded telecourse for outside use, without obtaining the faculty member's consent to said re-telecast or release of his course, nor without compensating him to review and edit the recorded series for the purpose of maintaining and improving instructional and production quality.

- a) Initial review. A faculty member consenting to reuse of his recorded telecourse shall be given a full summer term assignment at his prevailing salary rate for initial review of his series. This review shall include whatever editing and taped remakes of specific lessons are deemed advisable by the faculty member and economically feasible by the Dean of TV College.
- b) Further review. Prior to any subsequent reuse by TV College, the faculty member shall be given one-half of a summer term assignment at his prevailing salary rate for further editing and review.
- c) Release for outside use. Since it is now a practice for American colleges to exchange recorded instructional materials, the Dean of TV College may request a faculty member to permit release of his recorded telecourse to bona fide college level institutions beyond the jurisdiction of the City Colleges of Chicago, such release to be effective for a period of not to exceed three (3) academic years. Further should any recorded telecourse find ten uses by outside institutions, within a three-year period, the faculty member involved will be given an additional one-half summer assignment for continued review and editing. (*Cook County College Teachers Union, Illinois*)

Training and Quality Issues Raised by Distance Education

1) The college and the Association acknowledge the importance of providing adequate technical support and training for distance education courses, thus maintaining the highest possible quality of instruction. (*Westmoreland County Community College, Pennsylvania*)

2) For preparation prior to studio presentation, the faculty members shall be assigned a full summer term at his prevailing salary rate for initial course preparation. (*Cook County College Teachers Union, Illinois.*)

3) Those who participate in the distance learning program shall be appropriately trained with the cost of such training borne by the District. Teachers shall be compensated at the in-service rate for their training time. (*Canastota Teachers' Association, New York, a K-12 AFT Local*)

Joint Committees on Technology

Clearly, there is need for significant union voice to address the numerous faculty issues raised by distance education. These issues range from traditional concerns about job security and workload to questions about the impact of distance learning on the quality of higher education. Enlightened administrations should recognize that union input on these subjects is essential if they are to successfully utilize the benefits of modern technology and continue providing a quality education to students.

- The charge of the telecourse committee is to promote development of new telecourses, to monitor the academic quality of telecourses, and to make recommendations to [insert the name of the appropriate union and administration personnel]. (*South Suburban Faculty Association, Cook County College Teachers Union, Illinois*)
- Three weeks after the beginning of each Fall term, the college president shall convene a college-wide committee to make recommendations for the adequate development and utilization of instructional technology, in-service training sessions required and to make recommendations as to the application of such technology to the learning process. (*Allegheny Community College Federation of Teachers, Pa.*)

Long Form License Between Publisher and Author

Agreement made this ____ day of ____, 2002, between _____,
hereinafter called the Author, and _____, hereinafter called the Publisher.

Whereas the Author has written a work [*or a novel*] entitled _____, and has delivered the manuscript thereof to the Publisher.

It is hereby agreed as follows:

1. **Author to Correct Proof Sheets.** The Author shall promptly revise and correct all proof sheets submitted to him by the Publisher.
2. **Publisher to Print, Publish and Advertise.** The Publisher shall as soon as practicable at his own expense proceed to print and publish the said book, in one or more volumes, and in such style, as to paper, type, binding, and embellishments, and at such price, as in his judgment may be advisable, and shall advertise and push the sale of the said book to the best of his ability, and shall at all times keep the market fully supplied therewith.
3. **Royalties.** The Publisher shall pay to the Author a royalty of ____ per cent of the retail price at which the said book shall be sold on each and every copy sold, excluding copies for review or supplied to the Author, who shall receive _____ copies gratis.
4. **Accounts.** The Publisher shall render to the Author a statement of the number of copies printed, and as often as every six months shall render a statement of the number sold and at the same time pay the said royalties for the same, such accounting to be for the six months ending on the first days of _____ and _____ in each year.
5. **Exclusive Right of Publication.** During the continuance of this agreement the Author shall not publish or authorize to be published any copy or abridgment of the said work (but the Author shall be at liberty to dramatize the same and exercise or assign the performing rights therein).
6. **Copyright and License.** The Publisher shall cause the said book to be duly copyrighted in the name of the Author, in whom the copyright shall remain vested. The Author hereby grants to the Publisher the exclusive license to print, publish, and sell copies of the said work during the continuance of such copyright or any renewals thereof, subject to the terms of this agreement.
7. **Author to Defend Copyright and Indemnify Against Libel.** The Author shall defend the said copyright against all adverse claims, and indemnify the Publisher against all claims for libel.

8. **Publisher Not to Assign.** This agreement and the said license shall not be assignable by the Publisher by any assignment either voluntary or involuntary (except in the event of a change in the constitution of his firm to the partners of the new firm).

9. **Right of Author to Terminate Agreement.** The Author may terminate this agreement and the said license if the Publisher shall be adjudicated bankrupt [*or* shall become insolvent], or shall make default in the payment of royalties for _____ months after the respective dates hereby appointed for the payment of the same, or shall otherwise fail to perform substantially the agreements on his part. Upon any such termination of this agreement all copies of the said book in stock (and the plates of the same) shall at the Author's option be taken over by him at a fair valuation; and, if he shall fail to exercise such option within one month after notice requiring him to do so, the said copies may be sold by the Publisher, provided that the Author shall receive his royalties upon all copies so sold.

[*Signatures*]

**Short Form – Not for Profit Distribution
License Between Author and Higher Education Institution**

Author, _____, hereby grants to _____ college or university the right to reproduce in English the work entitled _____. The institution may print such work in paper [*or* electronic form] for a period not to exceed _____. The conditions for exercise of this license by the institution are that: 1) the author, source and copyright notice are included in each copy; and 2) copies are distributed at or below cost.

Excerpts from Collective Bargaining Agreements

**THE LOS ANGELES COMMUNITY COLLEGE DISTRICT
AMERICAN FEDERATION OF TEACHERS COLLEGE GUILD
JULY 1, 1999 THROUGH JUNE 30, 2002**

ARTICLE 41, INTELLECTUAL PROPERTY

A. Purpose. The District and the AFT have a mutual interest in establishing an environment that fosters and encourages the creativity of individual faculty members. In accordance with that mutual goal, the purpose of this Article is to identify the owners of the copyrights to certain works that may be created by faculty members, and to identify the uses that may be made of those works by faculty members and the District.

B. Definitions. As used in this Article:

1. "Works" means any material that is eligible for copyright protection including (but not limited to) books, articles, dramatic and musical compositions, poetry, instructional materials (e.g., syllabi, lectures, student exercises, multimedia programs, and tests), fictional and non-fictional narratives, analyses (e.g., scientific, logical, opinion or criticism), works of art and design, photographs, films, video and audio recordings, computer software, architectural and engineering drawings, and choreography.

2. "License" means permission to use a work. A "non-exclusive license" is one that gives permission to use a work while that same work may also be used by the party who gave the permission and by others to whom permission is also given.

C. Works covered

1. *Types of works whose ownership and use are covered by this Article.* This Article identifies the copyright ownership of works created by faculty members in connection with the courses they teach, or other duties they perform as faculty members, while they are employed by the District and in connection with their employment; and it addresses the use of those works by faculty members and the District.

2. *Types of works not covered by this Article, and consequences of not being covered.* This Article does not cover all works created by faculty members, even if those works are in some sense related to their duties. For example, it does not cover works created primarily for purposes that are separate from a faculty member's teaching or other duties as a faculty member, *such as*: novels, even if written by faculty members who teach literature; business books, even if written by faculty members who teach business; art works, even if created by faculty members who teach art; or music, even if composed by faculty members who teach music.

Also, this Article does not cover works created by faculty members for their own personal use that are not intended to be distributed to others, even if created in connection with their duties, such as a faculty member's personal lecture notes.

The copyrights to works that are not covered by this Article shall not be owned by the District under paragraph D.2.a. below, and the District is not authorized to use such works under paragraph E.1.b. below.

D. Copyright ownership

1. *Ownership by faculty members.* The copyrights to works created by faculty members will be owned by them, even if those works are created in connection with courses they teach, or other duties they perform as faculty members, while they are employed by the District and in

connection with their employment, *unless* the work is created under the circumstances described in paragraph D.2.a. below.

2. *Ownership by District.* The District will own the copyright to works under the following circumstances:

a. *Circumstances relating to substantial support by the District.* The District will own the copyright to any work created with substantial support from the District. As used in this Article, "substantial support" means financial support over and above the cost of the faculty member's normal compensation, office space, office computer, local telephone use, minimal office supplies and copy services. Substantial support would include extra compensation or the provision of reassigned time to create a work, the cost of providing secretarial, technical, legal or creative services specifically for the creation of a work, as well as the cost or value of the use of expensive District equipment or facilities (such as professional film or recording studios). Grant funds obtained by faculty members for the creation of works shall be considered substantial support provided by the District only if the District is involved in the fiscal administration of the grant.

b. *Circumstances relating to the nature of the work.* The District will also own the copyright to any work, such as a course outline, administrative policy, or information brochure, that is formally reviewed by the District and becomes part of its curriculum, policies, or administrative or promotional literature.

3. *Faculty member's Option to Acquire Copyright.* If the District is to be the owner of the copyright to a work because it provided substantial support for its creation, the faculty member who created the work shall have an option to acquire the work's copyright by paying the District an amount of money that shall be agreed upon in writing by the faculty member and the District at the time the District provides (or agrees to provide) that support. To exercise this option, the faculty member shall pay the District the agreed-upon amount; and the District shall immediately assign the work's copyright to the faculty member.

4. *Process for documenting District ownership and faculty member's option.*

a. If the District is to be the owner of the copyright to a work, the faculty member and the District should sign an agreement that contains the following clauses:

"Faculty member and District agree that the work identified below shall be a work made for hire whose copyright shall be owned by the District. If the work is not a 'work made for hire' as a matter of copyright law, then faculty member hereby assigns his or her copyright in the work to the District.

"The work to which this agreement pertains is one that will be created by faculty member with substantial support from the District, or is a work that will be formally reviewed by the District and will become part of its curriculum, policies, or administrative or promotional literature. The work is titled or described as follows: _____"

b. If such an agreement has not been signed, the absence of a signed agreement means the faculty member is the copyright owner rather than the District, *unless* the District proves in arbitration (as provided in paragraph H below) that it did provide substantial support for the work or that the work became part of its curriculum, policies, or administrative or promotional literature.

c. If the District is to be the owner of the copyright to a work because it contributed substantial support, the agreement signed by the faculty member and District also should contain the following clause:

"To exercise his or her option to acquire the copyright to the work identified above, the faculty member shall pay the District the sum of \$_____."

d. The amount to be paid by the faculty member to exercise his or her option to acquire a work's copyright may be adjusted from time to time, if for example the amount of the District's support increases (or decreases), *but only if* the faculty member and District both sign a new clause containing the agreed-upon adjusted amount.

E. Permitted uses

1. *Use of work when copyright is owned by faculty member*

a. *Uses by faculty member.* The District acknowledges that faculty members may use works whose copyrights they own in any and all ways they may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to faculty members, subject only to the District's non-exclusive license to use those works (set forth in paragraph E.1.b. below), without any further authorization from the District.

b. *Uses by District and College.* The District shall have a non-exclusive license to use works whose copyrights are owned by faculty members in the following ways: (1) to reproduce such works (for example, by photocopying them, by duplicating computer disks on which they have been saved, or by installing them on computer networks); (2) to distribute such works (for example, to students in classes); (3) to perform such works (for example, in classroom teaching, by webcasting, or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

The District and its Colleges may do these things themselves, but neither the District nor its Colleges may authorize others to do them, unless the District first obtains the written consent of the faculty member who owns the work's copyright.

2. *Use of work when copyright is owned by District*

a. *Uses by District.* Faculty members acknowledge that the District may use works whose copyrights the District owns in any and all ways it may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to the District, subject only to the non-exclusive license of the faculty member who created the work to use it (in the manner set forth in paragraph E.2.b. below), without any further authorization from the faculty members who created those works.

b. *Uses by faculty member.* Faculty members shall have a non-exclusive license to use works they created, whose copyrights are owned by the District, in the following ways: (1) to reproduce such works (for example, by photocopying them, by duplicating computer disks on which they have been saved, or by installing them on computer networks); (2) to distribute such works (for example, to students in classes); (3) to perform such works (for example, in classroom teaching, by webcasting, or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions).

Faculty members may do these things themselves, but may not authorize them to be done by others, unless they first obtain the written consent of the District.

3. *Use of names of faculty members, District and Colleges*

a. *District's and College's use of faculty member's name.* The District agrees that when it uses a work created by a faculty member (regardless of who owns the work's copyright), the District will identify the faculty member who created the work, for as long as the work continues to be used by the District.

If for any reason the District does not wish to identify the faculty member, the District

may ask the faculty member for authorization not to do so; and the faculty member has the option but not the obligation to release the District from this obligation.

If for any reason the faculty member does not wish his or her name to be used in this manner, the faculty member has the right to require the District not to identify him or her; and in such a case, the District agrees not to do so, or to stop doing so as soon as reasonably possible.

If the District fails to identify a faculty member under circumstances when it should have, or identifies a faculty member under circumstances when it should not have, the faculty member shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation, and will not automatically be entitled in all cases to a remedy that requires the District to recall and destroy all existing copies of works that fail to include or omit the faculty member's identification.

b. *Faculty member's use of name of District or College.* Faculty members agree that when they use works they have created (regardless of who owns the works' copyrights), those works will identify their creators' relationships with the District or College, for as long as they continue to be employed by the District. (For example, if a faculty member creates an online course that identifies the faculty member as its author, the faculty member's name shall be followed by the name of the College at which the faculty member teaches.) If for any reason a faculty member does not wish to identify his or her relationship with the District or College, the faculty member may ask the District for authorization not to do so; and the District has the option but not the obligation to release the faculty member from this obligation.

If for any reason the District does not wish its name or the College's name to be used in this manner, the District has the right to require the faculty member not to identify his or her relationship with the District; and in such a case, the faculty member agrees not to do so, or to stop doing so as soon as reasonably possible.

If the faculty member fails to identify the District or College under circumstances when he or she should have, or identifies the District or College under circumstances when he or she should not have, the District shall be entitled only to a reasonable remedy that takes into account the seriousness of the violation, and will not automatically be entitled in all cases to a remedy that requires the faculty member to recall and destroy all existing copies of works that fail to include or omit the District's or College's identification.

F. Responsibilities

1. *Registration of copyright.* It shall be the responsibility of the party who owns the copyright to each work to register that copyright with the United States Copyright Office.

2. *Acquiring and paying for necessary rights from third parties.* If the creation or use of a work requires rights to be acquired from third parties, such rights shall be acquired and paid for by the party (i.e., the faculty member or the District) who owns the copyright to that work. Faculty members acknowledge that in some cases, the cost of acquiring necessary rights from third parties, if paid by the District, may itself constitute "substantial support" from the District, so the District would become the owner of the copyright to such works simply because it paid to acquire those rights.

3. *Determining and documenting copyright ownership when two or more faculty members create and own the copyright to a work.* If a work whose copyright would be owned by a faculty member (rather than by the District) is created by two or more faculty members, it is the responsibility of those faculty members to determine the manner in which they share ownership of the copyright to that work, and it is their responsibility to prepare (or have

prepared at their own expense) a written agreement between them documenting their determination. No grievance against the District may be asserted by faculty members arising out of any consequences of their failure to make or document an agreement concerning the manner in which they share ownership of the copyright to such a work..

G. Authorization of individual agreements the terms of which differ from those described above. Faculty members and the District may, if they wish, enter into individual agreements with one another concerning copyright ownership and usage rights to specific works, the terms of which differ from those set forth above. The terms of any such individual agreement will supercede the terms of this Article, once such an agreement is signed by the faculty member and an authorized representative of the District. Any such agreement will be provided to the AFT.

H. Dispute resolution. Disputes between faculty members and the District concerning this Article shall be resolved pursuant to the grievance procedures contained in Article 28, except that an arbitrator who is expert in copyright law shall be chosen by the parties, or, if the parties are unable to agree on an arbitrator, chosen in accordance with the commercial arbitration rules of the American Arbitration Association.

**HENRY FORD COMMUNITY COLLEGE
DEARBORN, MICHIGAN
1999-2002**

XIII. INTELLECTUAL PROPERTY

A. A course offered by the College and the materials developed to meet the requirements for College approval of a course (course description, goals, objectives, syllabus) are considered the property of the College.

It is understood that an individual teacher's lesson plans and materials generated in support of those lesson plans (such as, but not limited to, a teacher's notes, handouts, audio-visual and computerized presentations, and tests) are the property of the teacher. Teachers are encouraged to share such materials in a collegial fashion, but are not obligated to do so.

B. Any materials developed to teach, support, and/or deliver Distance Education instruction by a teacher shall remain the property of the teacher, provided the teacher does not receive, in the development of the materials, substantive assistance from College technical support personnel in the course of their employment at the College. If such assistance is provided by College technical support personnel in the course of their employment at the College, the teacher and the College, or their designees, shall negotiate a mutually satisfactory agreement addressing ownership of such materials and any proceeds which may derive therefrom.

C. Any product of a physical, intellectual, and/or artistic nature, which may be produced in the course of a teacher's employment at the College, and any proceeds deriving therefrom, shall remain the property of the teacher, unless the product is produced at the direction of the College and the College dedicates funding to underwrite the development of the product. In such event,

the teacher and the College, or their designees, shall negotiate a mutually satisfactory agreement addressing the ownership of the product and proceeds therefrom.

It is understood that any materials produced in coursework undertaken by a teacher, works of a scholarly nature produced by a teacher, and materials generated by a teacher in support of the teacher's lesson plans are the property of the teacher, regardless of the degree of support provided by the College.

**AGREEMENT BY AND BETWEEN THE BOARD OF TRUSTEES OF COMMUNITY
COLLEGE DISTRICT NUMBER VII AND THE
SHORELINE COMMUNITY COLLEGE FEDERATION OF TEACHERS LOCAL
NUMBER 1950, WFT/AFT/AFL-CIO
SEATTLE, WASHINGTON**

This Agreement is by and between the Board of Trustees of Community College District Number Seven, hereinafter called the "Employer," and the Shoreline Community College Federation of Teachers, Local #1950, hereinafter called the "Federation." The term "Employer" used hereinafter shall mean the Board of Trustees or its lawfully delegated representative(s).

**ARTICLE XXIV: DURATION
SECTION A**

This agreement shall remain in full force and effect from July 1, 2000 through June 30, 2003.

9. Copyrights, Patents and Telecourses

- a. The ownership of any materials, processes or inventions developed solely by an academic employee's individual effort and expense shall vest in the academic employee and be copyrighted or patented, if at all, in the academic employee's name.
- b. The ownership of materials, processes or inventions produced solely for the College and at College expense shall vest in the College and be copyrighted or patented, if at all, in its name.
- c. In those instances where materials, processes or inventions are produced by an academic employee with College support by way of use of significant personnel, time, facilities, or other College resources, the ownership of the materials, processes or inventions shall vest in (and be copyrighted or patented by, if at all) the person designated by written agreement between the parties entered into prior to the production. In the event there is no such written agreement entered into, the ownership shall be apportioned between the parties utilizing the binding arbitration procedures.

**CABRILLO COLLEGE FEDERATION OF TEACHERS
APTOS, CALIFORNIA**

**ARTICLE 9, PROFESSIONAL GROWTH AND DEVELOPMENT
INTELLECTUAL PROPERTY RIGHTS
SIDE LETTER OF AGREEMENT 2001-02.2**

Cabrillo Community College District recognizes the need to adopt and maintain an Intellectual Property Rights policy that encourages faculty and staff to engage in the production of scholarly works, creative publications, and technology-based materials. Inherent in these policies are the following general assumptions:

That the rights of faculty, staff, and the District need to be fairly balanced through mutual agreement.

That the following definitions regarding copyright, royalties, and utilization of all materials will be consistent with the promotion of academic freedom and “fair use” guidelines.

The District is not interested in entering into agreements for the express purpose of achieving a financial gain. The District is interested in receiving fair compensation for use of public resources employed in creation of such works.

Copyright Ownership

The right to claim copyright shall be determined in the following manner:

1. A faculty or staff member may claim the right to copyright any material created outside of the faculty or staff member’s employment with the District. If this creation involves use of District equipment or supplies, the faculty or staff member shall retain the right to copyright the material, but shall reimburse the District for the cost of production.
2. The District may claim the right to copyright material if the District specifically commissioned it, or the work is identified as an institutional effort. Otherwise, the right to copyright the material will belong to the faculty or staff member responsible for its creation.
3. The District and the faculty or staff member may agree to share the right to copyright materials if the work is created by the faculty or staff member and the District contributes services, staff, or financial resources necessary for completion. This will be accomplished through a separate contract at the time the project is initiated. Faculty and staff should consult with their respective bargaining agent before entering into the contract.

Copyright Registration

Responsibility for official registration of copyright will lie with the owner of the copyright. In those cases where there is shared ownership, the District will be responsible for filing for both parties for registration of copyright.

Royalties and Distribution Rights

The ownership of copyright determines royalty distribution rights.

1. When faculty or staff members have full copyright ownership, they retain full royalty distribution rights.
2. When the District has full copyright ownership, it retains full royalty distribution rights.

3. If the District and the faculty or staff member share copyright ownership, royalty distribution rights will be as follows:

All royalties or profits will be distributed to reimburse the copyright owners for documented expenses related to the creation and production of the materials. Any remaining royalties or profits will be distributed according to the terms of a separate contract.

District Use of Copyrighted Materials

If the District wishes to videotape, broadcast or televise any classroom, laboratory, or other instructional activity, it will first obtain the written permission of the faculty or staff member. Before the District enters into any agreement for commercial redistribution of an instructional activity performed by the faculty or staff member as part of their employment with the District, the District will first obtain written permission of the faculty or staff member. The District will retain all profits from such commercial redistribution.

**PORTLAND COMMUNITY COLLEGE
PORTLAND, OREGON
FACULTY & E/TS AGREEMENT
TENTATIVE AGREEMENT APRIL 2, 2001**

ARTICLE Y -- INTELLECTUAL PROPERTY

Y.1 Materials or processes produced solely for the College and at College expense shall be owned by the College. The employee shall own materials or processes developed solely by an employee's individual effort and expense.

Y.2 In the absence of an agreement otherwise, instructional materials or processes produced by a faculty member or E/TS with College support, by way of use of significant personnel time, facilities or other College resources, will be owned by:

- the faculty member, if the instructor is a part-time employee,
- the College, if the instructor or E/TS is a full-time employee.

Y.3 Unless there is a written agreement otherwise, traditional works of scholarly activity that are created primarily on a faculty or staff member's own time with only limited use of College resources (i.e., occasional use of an instructor's personal computer) are the unrestricted property of the faculty member or E/TS who created them and are the employee's property. Such works include, but are not limited to: journal articles; textbooks; reviews; works of art including paintings, sculpture and musical compositions; computer software; as well as course materials such as workbooks, presentations and laboratory manuals.

Y.4 When a Faculty member or E/TS enters into an agreement with the College specifically for development of books, articles or other materials (including electronically mediated) for use by either students or staff, he or she may transfer ownership of these materials to the College in the agreement to develop the materials. In the event of a transfer of ownership:

Y4.1 The materials will become the property of the College and any copyright or patent of such materials will be by the College; however, the staff member will be credited for the development of the material.

Y4.2 In the event such materials are used commercially, the employee shall retain 50% equity in the material following recovery by the College of its expenses in developing and marketing the project.

Y4.3 The Faculty member or E/TS will have the right of first refusal to teach any class that is primarily based on these materials offered at the College for one year after completion of the development of the materials

Y4.4 The Faculty member or E/TS will have the right to use these materials for a class at another educational organization whenever he or she is the instructor of record for that class provided that College equipment or resources are not used in delivering the course.

Y.5 The foregoing provisions apply to both copyrights and patents.

**MIDDLESEX COUNTY COLLEGE FEDERATION / 2000—2004
EDISON, NEW JERSEY**

ARTICLE X MISCELLANEOUS

Anything else in this contract to the contrary notwithstanding the contents of this Article X shall apply and shall supersede any provision inconsistent herewith.

A. On-line Distance Education

(1) In the first semester that a bargaining unit member teaches an on-line course, he/she shall receive a contact hour load reduction equivalent to the number of contact hours of said on-line course.*

(2) Issues regarding the assignment of on-line courses are covered by the language of Article III F.

(3) With respect to all materials developed by a bargaining unit member for the purpose of on-line instruction, the bargaining unit member shall retain all copyright privileges recognized by federal law. No part of such materials may be used, altered or modified without express written consent of the creator of such materials except in situations where section (5) below applies.

(4) In the event the College desires to run an on-line course with materials created by a bargaining unit member as in sections (3) and (6), the College shall first offer said course to the originator of the material. If refused, with the approval of the originator, the materials may be given to another faculty member to teach the course.

(5 a) When the College contracts a bargaining unit member to develop on-line educational material for marketing and sale outside of the College, the Union and College will negotiate the property rights compensation and royalties of all such material on a case-by-case basis. bargaining unit member, consistent with applicable law. The College shall retain the right to use and supplement, but not modify, such material. The bargaining unit member shall receive

compensation consistent with either a load reduction or payment for contact hours according to Article III C (2), in either case, equivalent to the number of contact hours of the on-line course.

(5 b) When the College contracts a bargaining unit member to develop material for use in on-line courses at the College, the materials shall become and remain the property of the Bargaining unit member, consistent with applicable law. The College shall retain the right to use and supplement, but not modify, such material. The bargaining unit member shall receive compensation consistent with either a load reduction or payment for contact hours according to Article III C (2), in either case, equivalent to the number of contact hours of the on-line course.

The College will place no restrictions on the bargaining unit member's right to market, sell or use the materials outside of the College either during or after the bargaining unit member's employment at the College.

For the purposes of this section, the term "develop" shall mean the creation of a complete on-line course. The term "develop" shall exclude implementing or supplementing pre-existing on-line courses available through sources either internal or external to the College.

(6) In the event that the College seeks to use educational resources developed for on-line instruction by a bargaining unit member and said bargaining unit member agrees to allow the use of such resources by another individual for instruction at the College, the originator of such material shall be paid a one-time royalty of \$3,500 for the use of the material. Thereafter, the College shall be entitled to use and supplement but not modify the material.

(7) The first page of all on-line transmissions shall include a copyright notice consistent with the ownership rights established in this Article.

(8) On-line courses offered for credit or credit equivalent through the New Jersey Virtual Community College Consortium shall be subject to the appropriate definitions, conditions, and limitations as described in Article IX and this Article.

(9) Except where the specific provisions in this Article apply, on-line courses offered for credit or credit equivalent by the College shall be subject to the appropriate definitions, conditions, and limitations with respect to contact hour overloads as defined in Article IX E.

(10) On-line classes offered for credit or credit equivalent by the College shall be subject to the appropriate definitions, conditions and limitations with respect to workload as described in Article IX.

(11) Any bargaining unit member teaching on-line distance education courses shall be entitled to student overload compensation calculated pursuant to Article IX F, paragraph 1, should the student load in any on-line course exceed 15. To the extent that the student load exceeds 20, the bargaining unit member shall receive double the overload payment as calculated in Article IX F, for each student over 20. In determining the student roster load for on-line distance education courses, the 10th day and mid-term rosters will be averaged. In this instance, "roster" shall be defined as the total number of students enrolled in the course as of the 10th day and mid-term, as appropriate.

(12) The student overload for an on-line course section(s) will be computed independently, as per paragraph 11 above. The overload, if any, for the remainder of the bargaining unit member's schedule will be calculated per the standard procedure as described in Article IX F.

*Faculty who taught an on-line course prior to January 2001 will receive release time in accordance with paragraph 1 above in the next semester in which they teach an on-line course they have never taught on-line previously.

**FACULTY FEDERATION OF THE COMMUNITY COLLEGE OF PHILADELPHIA
1997-2001
PHILADELPHIA, PENNSYLVANIA
ARTICLE XV
ACADEMIC FREEDOM AND INTELLECTUAL PROPERTY RIGHTS**

B. Intellectual Property Rights

(1) **Materials Developed on Own Time.** Instructional materials developed by faculty members on their own time without use of College materials or facilities are the property of faculty members. No restrictions on their usage will be set by the College with the understanding that faculty members will profit on sales at the College only in cases where the instructional materials are departmentally approved.

(2) **Materials Developed on an Extended or Released Time Basis, but not as a Part of Staff Member's Regular Assignment.** The faculty developer may copyright any materials which are developed as part of an Extended or Released Time project. If the material is marketed commercially or is under contract with a commercial publisher or manufacturer, it is understood: that the faculty developer shall reimburse Community College of Philadelphia for that portion of the compensation s/he has received for Extended Time or Released Time given to facilitate the production of the materials plus any other costs, e.g., staff and supply expenses incurred in their production; and that any faculty member, department or program connected with Community College of Philadelphia may, in perpetuity, make internal free use (or at publisher cost where internal copying is not feasible) of such materials in the instruction of students officially enrolled in the College.

In order to protect against the use of obsolete material, the Faculty developer shall have the right to review and/or update material of which the College has internal free use. The College shall agree to use the updated material.

Step 4 of grievances filed under this section (2) shall be processed as described in Article XXII with the following exception: a commercial arbitrator expert in copyright law and practice shall be chosen by the parties, in a manner consistent with the normal practice of the American Arbitration Association, unless the parties agree that a labor arbitrator is more appropriate.

(3) **Materials Developed as a Primary or Sole Purpose of Employment.** When the College's employee is hired or assigned specifically to develop instructional or course

materials, then the rights to such materials belong exclusively to the College, including the right to copyright and/or sell the materials for profit.

The College shall have the right to come to agreements with Employees concerning the rights belonging exclusively to it under the terms of this section (3). If any such agreements are proposed, the Federation shall have the right to review them before they are concluded.

The Federation shall file no grievance with respect to this section (3). Faculty members, however, shall have the right to file such grievances. Step 4 of grievances filed under this section (3) shall be processed as described in Article XXII with the following exception: a commercial arbitrator expert in copyright law and practice shall be chosen by the parties, in a manner consistent with the normal practice of the American Arbitration Association, unless the parties agree that a labor arbitrator is more appropriate.

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE
SAN LUIS OBISPO COUNTY
COMMUNITY COLLEGE DISTRICT
AND THE
CUESTA COLLEGE FEDERATION OF TEACHERS
SAN LUIS OBISPO, CALIFORNIA
AFT LOCAL #4909
1999-2002**

**APPENDIX E
INTELLECTUAL PROPERTY**

Purpose

A. The purpose of this Appendix is to provide incentives for faculty members and the District to create intellectual property which benefits the students and the community and to establish the respective ownership rights of the District and faculty members to the intellectual property which has been created. The terms of this Appendix do not apply to curriculum or service area Works or Inventions that are produced as a part of a faculty member's regular job responsibilities or that are developed for distance education courses as provided in ARTICLE V, WORK HOURS, WORK YEAR, AND WORKLOAD, paragraph 5.9.5.2.

Definitions

B. The following definitions shall apply to this Appendix:

1. "Intellectual Property" includes Works and Inventions.
2. A "Work" is any material which is eligible for copyright protection, including (but not limited to) books, articles, dramatic or musical compositions, poetry, instructional materials (e.g., syllabi, lectures, student exercises, multimedia programs, tests, etc.), fictional or non-fictional narratives, analyses, (e.g., scientific, logical, opinion or criticism), works of art or design, photographs or films, video or audio recordings, computer software, architectural and

engineering drawings, and choreography which relates, at the time of its conception, to any aspect of a faculty member's employment with the District. A Work may be recorded in any enduring medium (e.g., print, electromagnetic, optical, photosensitive film, digital media, etc.), or may exist in any tangible form (e.g., a sculpture, painting, structure or building).

3. An "Invention" is any creation, improvement, development, idea, discovery, process, method or product, whether patentable or unpatentable, which relates, at the time of conception or reduction to practice of the invention to any aspect of a faculty member's employment with the District including (but not limited to) a device, process, design, model, strain or variety of any organism, or composition of matter.

4. A "District-commissioned Work" is an original work or invention (i.e., a "Work for hire") prepared by a faculty member at the request of the District. The presumption is that the District owns the copyright or patent and that the faculty member is compensated for the Work at the faculty member's current salary rate applied to the "Temporary (Part-Time) Laboratory/Hourly" Salary Schedule, Appendix B-2.

5. A "Copyright" is the ownership and control of the intellectual property in "original works of authorship," which is subject to copyright law. Copyright subsists in original works of authorship which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Original works include but are not limited to:

- Literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases and bibliographies;
- Musical works including any accompanying words;
- Musical works including any accompanying music;
- Pantomimes and choreographic works (if fixed, as in notation or videotape);
- Pictorial, graphic, and sculptural works, including photographs, diagrams, sketches, and integrated circuit masks;
- Motion pictures and other audiovisual works such as videotapes;
- and, Sound recordings.

6. "Ownership" is all legal rights, title and interest in a Work or Invention and includes royalties or other any other form of compensation derived from the Work or Invention.

Ownership Rights of Faculty Members

C. Ownership of copyrights or patents for a work or invention developed by a faculty member outside his or her regular teaching or service employment or other employment activities when the work or invention is not a District-commissioned work and the faculty member has not utilized or relied upon any District facility, equipment or support services shall belong exclusively to the faculty member whether the work or invention is related to his or her employment or not.

D. Ownership of copyrights or patents for a work or invention developed by a faculty member during his or her regular teaching or service employment or other employment activities, when the work or invention is not a District-commissioned work and the faculty member has not utilized or relied upon any District facility, equipment or support services shall belong exclusively to the faculty member.

E. Ownership of copyrights or patents for a work or invention developed by a faculty member either during employment-related activities or outside his or her regular teaching or service employment or other employment activities, when the work or invention is not a District-commissioned work and the faculty member has utilized or relied upon District facilities,

equipment or support services, shall belong to the faculty member subject to the following conditions:

1. The cost of District facilities, equipment, or support services shall be assessed against the work or invention. The degree of utilization or reliance on District facilities, equipment or support services shall be the major consideration. The schedule of costs to be assessed is attached to this Appendix as # 1.
 2. The District retains the right to recover developmental and related costs associated with the creation of the work or invention. The appropriate Vice President, the faculty member who developed the material, and a representative of the Exclusive Representative shall meet to review the schedule of costs, the application to the work or invention, and the method and timing of recovery. At the written request of the faculty member, a representative of the Exclusive Representative will not be involved.
 3. Following the review, the Vice President (or designee) shall prepare a contract that sets forth the costs to be recovered and the method and timing of recovery. The contract shall not be inconsistent with the terms of the Agreement. If the Exclusive Representative was not involved in the paragraph E.2 meeting, a copy of the contract shall be provided to the Exclusive Representative. At the request of the faculty member, portions of the contract may be redacted in order to shield any proprietary information where release of the information could compromise the exclusivity of the work or invention or the faculty member's ownership rights.
- F. Upon the death of a faculty member, ownership (as set forth in paragraphs C through of this Appendix) shall be transferred to the faculty member's heirs or estate.

Ownership and Related Rights of the District

- G. If the District compensates a faculty member for the express purpose of creating a district-commissioned Work, ownership of copyrights or patents shall reside in the District.
- H. Ownership of copyrights or patents for a District-commissioned Work shall reside in the District unless there is a written agreement regarding ownership between all parties concerned and signed by them prior to the initiation of the project.
- I. In all circumstances arising out of the operation of paragraphs D, E, G, and H, the District shall retain the non-exclusive, non-transferable, royalty-free license to use the Work or Invention:

Faculty Member Obligations

- J. Each faculty member shall promptly disclose to the District, in writing, any Work or Invention authored, conceived and/or reduced to practice by the faculty member consistent with the terms of this Appendix (excluding any Work or Invention covered by paragraph of this Appendix).
- K. A faculty member must obtain prior approval for the utilization of a faculty developed Work or Invention as a part of the faculty member's instruction or service activities through the appropriate department or curriculum process when purchase of the Work or Invention by students is required.
- L. Ownership of works, including copyrights, copyright registrations and copyrightable subject matter, and of inventions shall be assigned to the District by the faculty member consistent with the provisions of paragraphs G and H of this Appendix.
- M. The faculty member shall remain obligated at all times, upon request, to do all lawful acts, including, but not limited to, the execution of papers under penalty of perjury and the giving of testimony that, in the District's opinion, may be necessary or desirable in order to obtain, establish, maintain, or enforce the District's rights, including, but not limited to, obtaining, sustaining, reissuing, extending and enforcing United States and foreign proprietary rights,

including letter and design patents and copyrights, and for perfecting, affirming, maintaining and recording the District's ownership and title, and otherwise to cooperate in other related proceedings and matters. The Exclusive Representative shall be informed of any District request made to a faculty member pursuant to the terms of this paragraph.

N. Any dispute regarding the interpretation and/or application of the provisions of this Appendix, including the contract set forth in paragraph E.3, shall be subject to Article XIII of the Agreement. If arbitration is demanded, the administering agency shall be requested to provide a list of arbitrators who have experience with intellectual property disputes.

THE UNIVERSITY OF MASSACHUSETTS INTELLECTUAL PROPERTY POLICY DARTMOUTH / Exp. 2001

The prompt and open dissemination of the results of research and creative work among scholars and, eventually, to the public at large is essential to the University's mission of education and research. The commercial development and distribution of the results of research and creative work to benefit the inventor or creator and the economy is part of the University's mission of public service. This Policy is intended to facilitate the commercial development of intellectual property arising at the University and to provide an incentive to University inventors or creators to participate in such development while acknowledging the University's primary goal of the discovery and dissemination of knowledge.

I. Definitions

As used in this Policy, the following words shall have the following meanings:

- A. **Confidential Information**--Information that is received by a Covered Individual from a third party under an express or implied obligation of confidence.
- B. **Covered Individuals**--All staff, faculty members, students, adjunct professors in residence, and any other individuals associated with the University.
- C. **Copyrightable Work**--A creative work that is protectable under the copyright laws of the United States or other countries. Copyright protection is available for most literary, musical, dramatic, and other types of creative works, including, for example, computer software, teaching materials, multimedia works, proposals, and research reports.
- D. **CVIP**--The University Office of Commercial Ventures and Intellectual Property, which has primary responsibility for administering the development and commercialization of Intellectual Property through licensing or other arrangements.
- E. **Director**--The Executive Director of the CVIP.
- F. **Evaluation Committee or Committee**--One of several University committees, each with a particular area of technical expertise, that advises the CVIP and Vice Chancellor for Research in evaluating Inventions, Tangible Research Materials, and Copyrightable Works.
- G. **Exempted Scholarly Work**--A Scholarly Work that falls within certain categories of Copyrightable Works for which academic institutions have historically waived any ownership interest in favor of the author. The University currently recognizes the following categories of Exempted Scholarly Works: textbooks, class notes, classroom presentation and instruction, research articles, research monographs, student theses and dissertations, paintings, drawings,

sculpture, musical compositions and performances, dramatic works and performances, poetry, and popular fiction and nonfiction or other works of artistic expression. As modern types of works become clearly established as Scholarly Works, so that individual consideration is no longer deemed necessary, the President may expand this list of Exempted Scholarly Works beyond these historically established categories. As described below, under most circumstances Exempted Scholarly Works need not be disclosed to the University and the University automatically waives any ownership interest in such works.

H. **Intellectual Property--Inventions, Copyrightable Works, and Tangible Research Materials.**

I. **Invention--**A discovery or development that may be protectable under the patent laws of the United States, the United States Plant Variety Protection Act, or equivalent laws in other countries

J. **Outside Research--**An individual who performs or directs research for an organization other than the University.

K. **President--**The President of the University or his or her designee.

L. **Public Disclosure or Publicly Disclosed--**Any written or oral disclosure of an Invention or Copyrightable Work to any person not under a contractual or fiduciary obligation of confidentiality to the University.

M. **Scholarly Work--**A Copyrightable Work that has the primary goal of disseminating academic or scholarly knowledge, or is a work of artistic expression. As described below, whether a Copyrightable Work is a Scholarly Work will be determined by the Director and Vice Chancellor for Research on a case-by-case basis (except that Exempted Scholarly Works are automatically considered Scholarly Works), and under most circumstances the University waives all ownership interests in Scholarly Works.

N. **Tangible Research Materials or Materials--**Tangible biological, chemical, and physical materials or equipment. Examples include cell lines, antibodies, DNA or RNA, chemical samples, plasmids, and prototypes.

O. **Vice Chancellor for Research--**The Vice Chancellor for Research at each campus, or where no such person exists, the Provost (or their designees).

II. Scope

A. **Persons Subject to the Policy**

All Covered Individuals are subject to this Policy.

B. **Types of Intellectual Property Covered by the Policy**

This Policy addresses the three categories of Intellectual Property (Inventions, Copyrightable Works, and Tangible Research Materials) as well as Confidential Information. The President shall have authority to designate additional types of Intellectual Property under this Policy.

III. Policy

A. **Participation Agreement**

The University has adopted a Participation Agreement, attached as Exhibit A, that confirms acceptance of this Policy by Covered Individuals and assigns to the University all rights in any Intellectual Property in which the University asserts ownership (as described below).

1. **Students--**Students must sign the Participation Agreement prior to employment by the University in any research-related position. Such employment would include, for example, an arrangement whereby a student is funded as a research assistant under a government research grant or an industry-sponsored research agreement with the

University. Students may also be required to sign the Participation Agreement under other appropriate circumstances, as determined by the Vice Chancellor for Research.

2. Individuals Other Than Students--All Covered Individuals other than students must sign the Participation Agreement. The University will confirm that a valid Participation Agreement is on file before a Covered Individual receives any University-administered funds under a sponsored research grant or agreement.

B. Ownership of Intellectual Property

Any Covered Individual who invents, creates, or discovers any Intellectual Property will own all rights to such Intellectual Property except as follows:

1. Use of University Resources--The University will own any Intellectual Property (other than Exempted Scholarly Works) that is made, discovered, or created by any Covered Individual who makes significant use of University resources (including University-administered funds or University-funded time, facilities, or equipment) in connection with the development of such Intellectual Property. If the Individual uses only library facilities and occasional use of office equipment to create the Intellectual Property, such use will not ordinarily be considered "significant use" of University resources.

If a Covered Individual makes, creates or discovers Intellectual Property (other than Exempted Scholarly Works) that is the same as, directly related to, or substantially similar to a research project in which that faculty member is engaged at the University, then "significant use" of University resources will be presumed. As described below, the Covered Individual may rebut this presumption of University ownership through submission of documentary evidence which clearly establishes that the Intellectual Property was developed without significant use of University resources.

2. University-Commissioned Works--The University will own any Intellectual Property (including Exempted Scholarly Works) that is made, discovered, or created by a Covered Individual who is specifically hired or commissioned by the University for that purpose, unless otherwise provided by written agreement between such individual and the University.

3. Intellectual Property Subject to Contractual Obligations--Ownership of any Intellectual Property (including Exempted Scholarly Works) that is made, discovered, or created in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement or other legal obligation affecting ownership, will be governed by the terms of such grant or agreement, as approved by the University, although the University will ordinarily claim ownership.

4. Student Works

a. **Generally**--As with other Covered Individuals, students shall own any Intellectual Property that they make, discover, or create in the course of research (e.g., thesis or dissertation research) unless (i) the student received financial support from the University in the form of wages, salary, stipend, or grant funds for the research, (ii) the student made significant use of University resources (including University-administered funds or University-funded time, facilities, or equipment) in connection with the research, or (iii) the research was funded by a sponsor pursuant to a grant or sponsored research agreement or is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation that restricts ownership of Intellectual Property.

b. **Theses and Dissertations**--All student theses and dissertations are considered Exempted Scholarly Works; therefore, the student will own copyright to the Scholarly Work (unless Sections III.B.2. or III.B.3. apply), subject to a royalty-free license to the University to reproduce and publish the Scholarly Work. As described below, students are allowed to publish their theses and dissertations unless they have agreed in writing to restrictions that preclude or delay publication.

Under certain circumstances, as described in Section III.C.3. below, the University will relinquish its rights in Intellectual Property to the inventor or creator of that Intellectual Property at his or her request.

C. **Administrative Procedures--Inventions and Copyrightable Works**

A primary goal of the University is the discovery and free dissemination of knowledge for the benefit of the public. The University recognizes, however, that in certain instances the public will only benefit from knowledge that is protected under the patent or copyright laws, which provide an incentive for economic development of that knowledge. The University therefore requests that all Covered Individuals disclose Inventions and Copyrightable Works (other than Exempted Scholarly Works) promptly, in order to allow the University an opportunity to evaluate their commercial potential, and to preserve or enhance their value by filing a patent application or obtaining a copyright registration. The University has established the following procedures in order to accomplish the dual objectives of disseminating knowledge and maximizing the economic value of that knowledge.

1. **Disclosure to the University**--Disclosure forms should be submitted to the CVIP or the Vice Chancellor for Research. The Vice Chancellor for Research and the CVIP will exchange copies of all disclosure forms that each receives. The Vice Chancellor for Research will also make available to the campus Office of Grants and Contracts appropriate information to permit required disclosures to research sponsors (e.g., federal agencies). The CVIP will make available appropriate disclosure forms. The treatment of different categories of Intellectual Property is set forth below.

a. **Intellectual Property Developed with University Resources**--All Covered Individuals are encouraged to disclose promptly all Inventions and Copyrightable Works (except Exempted Scholarly Works) that (i) are developed with significant use of University resources or (ii) are the same as, directly related to, or substantially similar to a research project in which that faculty member is engaged at the University (see Section III.B.1. above). Although the disclosure of such Inventions and Copyrightable Works is generally voluntary, if the Covered Individual intends to commercialize such Intellectual Property, disclosure is required reasonably before the Covered Individual takes any action to commercialize such Intellectual Property. Examples of commercial actions include, without limitation, seeking patent or copyright protection, commencing discussions with potential investors or licensees, or transferring the Intellectual Property to a third party. If a Copyrightable Work is an Exempted Scholarly Work, no disclosure is required under any circumstances. In other cases in which a Covered Individual desires treatment of a Copyrightable Work as a Scholarly Work, the Covered Individual should submit to the CVIP or Vice Chancellor for Research, in addition to the disclosure form, a request for treatment of the work as a Scholarly Work and a brief explanation of why the work should be a Scholarly Work. In the case of an Invention or Copyrightable Work that the Covered Individual claims is not subject to University ownership because the Intellectual Property was developed without significant use of University resources, the Covered Individual should submit to the CVIP or Vice Chancellor for Research, in addition to

- b. the disclosure form, a request for confirmation of individual ownership together with documentary evidence which clearly establishes that fact.
 - c. **University-Commissioned Works**--In the case of Inventions and Copyrightable Works (including Exempted Scholarly Works) that a Covered Individual is specifically hired or commissioned by the University to develop (see Section III.B.2. above), disclosure of the Intellectual Property is required unless otherwise provided by written agreement between such individual and the University.
 - d. **Intellectual Property Subject to Contractual Obligations (e.g., Sponsored Research Agreements)**--In the case of Inventions and Copyrightable Works (including Exempted Scholarly Works) developed in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement or other legal obligation requiring disclosure, the disclosure of such Intellectual Property will be governed by the terms of such grant or agreement, as approved by the University, if such terms differ from this Policy.
2. **Evaluation and Disposition of Disclosures**--The Director and the Vice Chancellor for Research will review, evaluate, and make a disposition of all disclosure forms, and will promptly notify the Covered Individual of their disposition. The evaluation and disposition of a disclosure will be completed as soon as possible, but for Inventions (and computer software) ordinarily no later than ninety (90) days, and for Copyrightable Works (other than software) ordinarily no later than thirty (30) days after the CVIP or the Vice Chancellor for Research receives a complete and accurate disclosure form and any other information that the CVIP or the Vice Chancellor for Research requests in order to make an informed evaluation of an Invention or Copyrightable Work. Disclosure forms will be evaluated for one or more of the following dispositions, subject to the appeals process described in Section III.C.4. below:
- a. **Scholarly Work**--In the case of a Copyrightable Work that is claimed as a Scholarly Work (but is not an Exempted Scholarly Work), the Director and the Vice Chancellor for Research will decide whether that work is in fact a Scholarly Work.
 - b. **No Use of University Resources**--In the case of an Invention or Copyrightable Work that the Covered Individual claims is not subject to University ownership because the Intellectual Property was developed without significant use of University resources, the Director and the Vice Chancellor for Research will decide whether there was in fact significant use of University resources.
 - c. **Evaluation of Commercial Potential: The Evaluation Committees**--In the case of Intellectual Property that the Covered Individual discloses for possible commercialization by the University, the Director and the Vice Chancellor for Research will determine its commercial potential. To assist in this determination, the Director and the Vice Chancellor for Research may consult with patent or copyright counsel and outside experts in particular fields. In addition to these resources, the Director and the Vice Chancellor for Research may seek the advice of various Evaluation Committees with expertise in various fields of research, which Committees the President shall have authority to establish at his or her discretion. Each Committee will be composed of faculty members with relevant expertise, appointed by the Chancellors in consultation with the Director and the Vice Chancellors for Research; a representative from the CVIP other than the Director; and a Committee Chair, selected by vote of the whole Committee. The Director may invite to any Committee meeting one or more individuals from outside the University with relevant industry experience to advise the Committee.

In the case of Inventions or Copyrightable Works (including Exempted Scholarly Works) that arise in the course of research funded by a sponsor under a grant or research agreement, or which are subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation affecting evaluation of disclosures, the evaluation process will be governed by the terms of such grant or agreement, as approved by the University, if such terms differ from this Policy. In the unlikely event that the Director and the Vice Chancellor for Research disagree on the disposition of a disclosed Invention or Copyrightable Work, a final decision shall be made by the President.

3. **Request for Relinquishment of Rights**--Under certain circumstances, as described below, the University may relinquish its ownership rights in an Invention or Copyrightable Work to the inventor or creator of the Intellectual Property at his or her request.

a. **Intellectual Property Developed With University Resources**--The University automatically waives its rights in Exempted Scholarly Works. In all other cases, the University will ordinarily waive its ownership rights in favor of the inventor or creator of an Invention or Copyrightable Work if the Covered Individual has made complete and accurate disclosure of such Intellectual Property in accordance with this Policy and the Director and Vice Chancellor for Research have determined that the Intellectual Property comes under one or more of the following categories (as described in detail above): Copyrightable Work that is a Scholarly Work Intellectual Property developed without significant use of University resources Intellectual Property that the University has decided not to commercialize

b. **University-Commissioned Works**--The University will not ordinarily waive its ownership rights in any Intellectual Property (including Exempted Scholarly Works) that is developed by a Covered Individual who is specifically hired or commissioned by the University for that purpose, unless otherwise provided by written agreement between such individual and the University.

c. **Intellectual Property Subject to Contractual Obligations**--In the case of Intellectual Property (including Exempted Scholarly Works) that is developed in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation affecting ownership, the relinquishment of any University rights in the Intellectual Property will be governed by the terms of the relevant grant or agreement, as approved by the University, if such terms differ from this Policy. A Covered Individual may need a separate waiver or assignment of rights from the other party in order to acquire complete rights to the Intellectual Property. If certain Intellectual Property is available for relinquishment by the University (as set forth above), the inventor or creator of the Intellectual Property may request in writing that the Director grant a release or assignment of rights. The Director in consultation with the Vice Chancellor for Research will promptly respond to this request. The University will retain a royalty-free, non-exclusive license to use any such Inventions or Copyrightable Works for academic research and teaching.

4. **Appeals**--If a Covered Individual disagrees with a decision of the Director and the Vice Chancellor for Research under Section III.C.2., such individual may ask for reconsideration by the appropriate Evaluation Committee. The Committee shall review the matter and make its recommendation to the Director and the Vice Chancellor for Research who shall reconsider the matter. That decision may be appealed to the President, who shall review the

written records and make a decision which shall be final.

D. Administrative Procedures--Tangible Research Materials

While potential commercial value should not inhibit the free exchange of University-owned Tangible Research Materials for research purposes, the University nonetheless recognizes that such Materials may have significant commercial value. In addition, Tangible Research Materials received by Covered Individuals may be subject to contractual restrictions that severely limit the use and transfer of such Materials, to the detriment of University researchers. The University has therefore established the following procedures to allow the free exchange of Tangible Research Materials, while at the same time respecting the ownership rights of the University, protecting the rights of its researchers, and limiting the liability of the University and its researchers.

1. Transfer to Outside Researcher for Basic Research--If a Covered Individual desires to transfer Materials to an Outside Researcher for use in internal basic research, and not for the development or sale of commercial products, the Covered Individual must use the appropriate University form of Materials Transfer Agreement ("MTA"), which will be provided by the CVIP together with instructions for the use of each form. The various forms of MTA will establish rights and responsibilities regarding the Materials among the University and the Outside Researcher and his or her employer and will minimize future confusion and controversy regarding the use and transfer of the Materials and ownership of Inventions or Materials based on the supplied Materials. Faculty members (but not other Covered Individuals) are authorized to sign MTAs on behalf of the University provided that (i) the University-form MTA is not altered or revised in any manner and (ii) a signed original of the MTA is sent to the CVIP when the Materials are sent to the Outside Researcher. Alternatively, CVIP representatives are authorized to approve and sign MTAs, even with revisions.

If Materials are developed by a Covered Individual in the course of sponsored research, or are otherwise subject to contractual restrictions (e.g., a materials transfer agreement or confidential disclosure agreement), the transfer of such Materials to an Outside Researcher will be governed by the terms of the relevant agreement, if such terms differ from this Policy.

These procedures also apply to students who leave the University and desire to bring with them Materials that they developed or discovered in the course of their work at the University.

2. Transfer for Commercial Use--Materials may not be transferred to any Outside Researcher for any use other than internal basic research unless the Outside Researcher has obtained a license from the University through the CVIP under the procedures set forth in this Policy. Materials with commercial uses should be disclosed to the CVIP or Vice Chancellor for Research in the same manner as Inventions and will be treated in the same manner as Inventions.

3. Receiving Materials from Outside Researchers--If a Covered Individual receives Materials from an Outside Researcher at another organization (non-profit or commercial), the other organization or researcher may impose serious use and transfer restrictions on the Materials and may claim an ownership interest in Inventions, Copyrightable Works, or Materials that arise in the course of research performed with such Materials. For this reason, only CVIP representatives are authorized to approve and sign agreements governing receipt of Materials from other organizations. Covered Individuals are encouraged to consult with the CVIP regarding the restrictions applicable to a particular Material from an Outside Researcher before planning to use that Material in their

research. Covered Individuals should be aware that, in some instances, these restrictions may be so onerous that the CVIP will ordinarily not approve the agreement. The CVIP will make available a University-form MTA for receipt of Materials, although the organization supplying the Materials will usually require use of its own MTA.

If Materials are received by a Covered Individual in the course of sponsored research, the transfer of such Materials will be governed by the terms of the applicable sponsored research agreement, if such terms differ from this Policy.

If any MTA restrictions would apply to research performed by students, the affected students must agree to such restrictions in writing.

E. Administrative Procedures--Confidential Treatment of Information

While the academic tradition of free dissemination of knowledge for the public benefit is recognized by the University to be of paramount importance, it may be necessary or desirable, under some circumstances, to restrict disclosure of Confidential Information received from a sponsor company or to delay Public Disclosure of an Invention. The University has developed the following procedures to balance these competing interests. The University will ordinarily not agree to maintain University-generated research results as trade secrets.

1. Guidelines Regarding Public Disclosure of Inventions--Internal disclosure of an Invention to the CVIP or Vice Chancellor for Research will not interfere with the ability to patent the Invention. However, Public Disclosure of an Invention prior to filing for a patent application (even **one day** before) will preclude the availability of patent protection in most countries. This rule applies to any non-confidential written or oral disclosure that describes the Invention (e.g., at a scientific meeting, in a journal, or even in an informal discussion with colleagues).

Accordingly, the University strongly encourages Covered Individuals to disclose Inventions to the CVIP as soon as possible, and to delay Public Disclosure of the Invention until the evaluation process is completed and a patent application is filed. The CVIP and Vice Chancellor for Research will attempt to minimize delays in publication, but a delay of up to ninety days is often necessary for evaluation. The CVIP and Vice Chancellor for Research will make every effort to expedite the evaluation process when a Covered Individual indicates that there is a compelling need for rapid publication. During this interim period, an Invention may be safely disclosed outside of the University under the protection of a Confidential Disclosure Agreement ("CDA"), because disclosures made under an appropriate CDA are not considered Public Disclosures. The University therefore recommends that all Covered Individuals use the University-form CDA whenever they disclose information relating to an Invention while the Invention is under evaluation by the University, and the University strongly recommends use of the University-form CDA and consultation with the CVIP if a Covered Individual wishes to disclose an Invention to an Outside Researcher associated with a company or other for-profit organization, or directly to such an organization. The CVIP will make available appropriate forms of CDA. Faculty members have authority to sign the University-form CDA on behalf of the University when they will disclose information (but will not receive information), provided they send a fully signed original of the CDA to the CVIP as soon as possible. Alternatively, CVIP representatives are authorized to approve and sign CDAs on behalf of the University.

Covered Individuals should be aware that Public Disclosure of an Invention prior to completion of the evaluation process and filing of a patent application will adversely affect the commercial value of the Invention and therefore may decrease the likelihood.

that the University will proceed with commercialization of that Invention. In the case of an Invention or Copyrightable Work that arises in the course of sponsored research or a grant, or which is subject to a materials transfer agreement (MTA), confidential disclosure agreement, or other contractual restriction affecting Public Disclosure, any restrictions on Public Disclosure will be governed by the terms of the grant or agreement with the other party, as approved by the University. If such restrictions would prevent or delay the publication of a student thesis or dissertation, then he or she must agree to such restrictions in writing

2. Receiving Confidential Information from Outside Researchers--If a Covered Individual receives Confidential Information from an Outside Researcher or organization (non-profit or commercial) in relation to research performed by the Covered Individual at the University, the other organization or researcher may impose serious non-disclosure and non-use obligations on the Confidential Information and may claim an ownership interest in Inventions, Copyrightable Works, or Materials that arise in the course of research performed with such Confidential Information. For this reason, only CVIP representatives are authorized to approve and sign CDAs from other researchers or organizations on behalf of the University. The CVIP will make available a University-form CDA for receipt of Confidential Information, although the organization disclosing the Confidential Information will usually require use of its own form of CDA. When Confidential Information is received by a Covered Individual in the course of sponsored research, the treatment of such Confidential Information will be governed by the terms of the applicable sponsored research agreement, if such terms differ from this Policy.

If any CDA restrictions would apply to research performed by students, the affected students must agree to such restrictions in writing.

F. Administrative Procedures--Sponsored Research with Commercial Organizations

The Vice Chancellor for Research in consultation with the CVIP shall have responsibility for negotiating, executing, and administering funded research agreements between the University and commercial organizations, in accordance with the University policies on sponsored research. The Vice Chancellor for Research may delegate all or some of these responsibilities to the CVIP. CVIP approval is required for any terms of such agreements that affect rights to Intellectual Property (e.g., option rights, license rights, or assignment of ownership). If any restrictions in a funded research agreement (such as publication delays) would apply to research performed by students, the affected students must agree to such restrictions in writing.

G. Commercialization of University-Owned Intellectual Property

The CVIP in consultation with the Vice Chancellor for Research shall have responsibility for commercial development and administration of all University-owned Intellectual Property. This commercial development will ordinarily occur through licensing of Inventions, Copyrightable Works, or Materials to a company. If the CVIP is successful in its commercialization efforts, the inventor or creator will share in the economic rewards, as will the department and campus.

- 1. Distribution of Non-Equity Revenue Derived from Commercialization**--Royalty income and other non-equity revenue derived from the licensing of University-owned Intellectual Property will be distributed at the end of each accounting period as follows:
 - a. The University will be reimbursed for any out-of-pocket expenses incurred in obtaining and maintaining patent or copyright protection for a specific item of Intellectual Property, and in evaluating and marketing such Intellectual Property.

- b. The remaining net income will be distributed as follows:
- Fifteen percent (15%) to the CVIP to fund patents, CVIP operations, and research grants
 - Thirty percent (30%) to the inventor or creator
 - Fifteen percent (15%) to the department or program of the inventor or creator
 - Forty percent (40%) to the campus of the inventor or creator

In the case of multiple inventors or creators of commercialized Intellectual Property, their shares will be distributed as they unanimously agree or, in the absence of agreement, in equal portions. If multiple departments or programs are involved, their shares will be distributed in the same manner as the distributions to the inventors or creators within such departments or programs.

c. **Acceptance of Equity**--The University may accept an equity interest in a corporation, provided that before the CVIP agrees to accept equity, it must receive the approval of the Vice Chancellor for Research, the Vice President for Economic Development, and the University Treasurer. If the University receives equity in connection with the commercialization of Intellectual Property, such equity will be held on behalf of the University by the University of Massachusetts Foundation, Inc., and will be treated as follows:

- i. Fifteen percent (15%) of the total equity will be held for the account of the CVIP until liquidation.
- ii. Forty-five percent (45%) of the total equity will be held for the account of the department or program of the inventor or creator, or such other account as may be designated by the Chancellor of the campus, until liquidation.
- iii. Forty percent (40%) will be held for the account of the campus until liquidation.

This Policy does not provide for distribution of equity to the inventor or creator of the Intellectual Property because the University will not receive or hold equity on behalf of individuals. The inventor or creator, however, may receive equity directly from a commercial organization, subject to any restrictions contained in the University's Policy on Conflict of Interest Relating to Intellectual Property and Commercial Ventures.

H. Enforcement

The Director, the Vice Chancellor for Research, or the President may refer any matter to the appropriate University official for disciplinary or other appropriate action.

I. Appeals; Interpretation of Policy; Exceptions

The Director shall administer this Policy in regular consultation with the Vice Chancellors for Research and the President. The President, upon recommendation of the Vice President for Economic Development and in consultation with the General Counsel, may grant exceptions to the Policy in appropriate cases. The President shall have authority to overrule any decision of a Vice Chancellor or the Director.

Exhibit A to Intellectual Property Policy UNIVERSITY OF MASSACHUSETTS AT DARTMOUTH

Participation Agreement

In consideration of the benefits that I receive as a result of my access to University-administered funds and University-funded time, facilities, and equipment, I agree as follows:

1. **Acknowledgment.** I acknowledge that I have read and understood the Intellectual Property Policy (the "Policy") of the University of Massachusetts (the "University"), a copy of which is attached to this Agreement, and I agree to abide by the terms of such Policy, as amended. I understand that capitalized terms used in this Agreement are defined terms that, if not defined in this Agreement, are defined in the Policy.

2. **Disclosure.** In accordance with Section III.C.1. of the Policy, I agree to make the following disclosures to the University Office of Commercial Ventures and Intellectual Property ("CVIP") or the Provost:

a. I am encouraged to disclose any Inventions, Copyrightable Works (except Exempted Scholarly Works), and commercially valuable Tangible Research Materials that (i) I develop with significant use of University resources or (ii) are the same as, directly related to, or substantially similar to a research project in which I am engaged at the University; however, if I intend to commercialize such Intellectual Property, disclosure is required reasonably before I take any action to commercialize such Intellectual Property. Examples of commercial actions include, without limitation, seeking patent or copyright protection, commencing discussions with potential investors or licensees, or transferring the Intellectual Property to a third party.

b. I am required to disclose any Inventions, Copyrightable Works (including Exempted Scholarly Works), and Tangible Research Materials that the University has specifically hired or commissioned me to develop, except as otherwise provided in a written agreement between me and the University; and

c. I am required to disclose any Inventions, Copyrightable Works (including Exempted Scholarly Works), and Tangible Research Materials that I develop in the course of research funded by a sponsor pursuant to a grant or research agreement that requires such disclosure, or which is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation requiring such disclosure.

I agree to make such disclosures promptly and in reasonable detail on the appropriate University Disclosure Form. In the case of Inventions that I intend to commercialize, I understand that I should make such disclosure reasonably prior to public disclosure of the Invention in order to provide the University with an opportunity to file a patent application.

3. **Assignment of Rights.** I hereby assign, transfer, and convey to the University all of my right, title, and interest in any Inventions, Copyrightable Works, and Tangible Research Materials for which the University asserts ownership under Section III.B. of the Policy. I understand that the University does not assert ownership of Exempted Scholarly Works unless such works are specifically commissioned by the University or are subject to a contractual obligation that requires assignment. I further understand the University will ordinarily waive its rights in other Copyrightable Works that the University determines are Scholarly Works. At the request of the University, I agree to execute and deliver promptly a specific assignment to the University of my right, title, and interest to such Intellectual Property, including without limitation any proprietary rights arising from patent applications or copyright registration in the United States and foreign countries. I further agree to supply the University with all information and to execute all documents necessary to obtain and maintain patents, copyrights, or other forms of legal protection for such Intellectual Property. I hereby appoint the University as my attorney to execute and deliver such documents on my behalf in the event that I should fail or refuse to fulfill my obligations under this Section within a reasonable period of time.

4. **Income-Sharing; Relinquishment.** I understand that, in accordance with Section III.G.1. of the Policy, I will receive a portion of all royalty income and other non-equity revenue derived from the licensing of Intellectual Property that I assign to the University. I further understand

that, in accordance with Section III.C.3. of the Policy, if the University decides not to commercialize such Intellectual Property, I will have an opportunity to regain title so that I may pursue commercialization of the Intellectual Property.

5. **Administrative Procedures.** I understand and agree to abide by the administrative procedures for the transfer of Tangible Research Materials and Confidential Information, as set forth in the Policy.

6. **Certification by Principal Investigators.** I agree to ensure that each person who is subject to the Policy who participates in research at the University under my supervision as Principal Investigator (excluding clerical and non-technical workers) has signed and delivered a copy of this Agreement in accordance with the Policy. I further agree to ensure that all students under my supervision as Principal Investigator have agreed in writing to any contractual restrictions (such as publication restrictions) that are applicable to their research.

ASSOCIATION OF PENNSYLVANIA STATE COLLEGE AND UNIVERSITY FACULTIES / 2000

ARTICLE 39 INTELLECTUAL PROPERTY

A. Intent

The intent of this Article is to establish the procedures for determining the rights and ownership of Intellectual Property produced at or for the STATE SYSTEM/UNIVERSITIES by FACULTY MEMBERS.

B. Policy

1. As an incentive to encourage scholarly growth, the STATE SYSTEM/UNIVERSITIES shall not claim any ownership or share of the proceeds in Intellectual Property created without substantial use of STATE SYSTEM/UNIVERSITIES resources/support/facilities.
2. In keeping with academic tradition, the STATE SYSTEM/UNIVERSITIES will not claim any ownership, interest, or share of the proceeds in the following types of Intellectual Property which are used or created for instructional purposes or as a result of scholarly activities: (a) publications, (b) textbooks, (c) educational courseware, (d) lectures, (e) recordings [video or audio], (f) original works of art, (g) fiction, including popular fiction, novels, poems, dramatic works, (h) motion pictures and other similar audio-visual works, (i), musical compositions, or (j) computer software.
3. The STATE SYSTEM/UNIVERSITIES will not claim ownership, interest, or share of the proceeds in Intellectual Property created while on sabbatical leave unless there was substantial use of STATE SYSTEM/UNIVERSITIES' resources/support/facilities as defined herein.
4. All Intellectual Property developed in conjunction with organizations in partnership with the STATE SYSTEM/UNIVERSITIES' resources/support/facilities shall be governed by the provisions of this Article.
5. This Article also applies to any Intellectual Property in which the STATE SYSTEM/UNIVERSITIES has an interest under the terms of grants or other agreements.

6. The provisions of this Article are subject to any applicable laws, regulations or provisions of grants or contracts, which affect the rights of Intellectual Property, made in connection with the activity.

7. All Intellectual Property developed by FACULTY MEMBERS with support from a sponsor outside the STATE SYSTEM/UNIVERSITIES shall be governed by the provisions regarding ownership in the sponsorship agreement, grant or contract. In the absence of such terms, the ownership of such Intellectual Property shall be determined by this Article.

8. Intellectual Property that is the subject of a specific agreement between the STATE SYSTEM/UNIVERSITIES and the creator(s) thereof shall be owned as provided in such agreement.

9. Ownership and creative control of works made for hire will be governed by an agreement to be made prior to commencement of work between the STATE SYSTEM/UNIVERSITIES and the creator. The creator is one who receives payment from the STATE SYSTEM/UNIVERSITIES for the particular work.

C. Definitions

For the purpose of this Agreement, the following definitions shall apply:

1. Intellectual Property--includes any invention, whether patentable or not, materials, data, software, information, works, whether copyrightable or not, subject matter, any trademarks, trade secrets, creations, publications, compositions, discoveries, inventions, improvements, developments and all other results of work performed by FACULTY MEMBER(S)/CREATOR(S) during the course of his/her employment with the STATE SYSTEM/UNIVERSITIES, as well as all intellectual property therein, including patents, trademarks and copyright registrations and trade protections.

2. Creator--any FACULTY MEMBER creating an item of Intellectual Property.

3. Net Income--the total income generated by the licensing, sale, distribution, or other commercialization of Intellectual Property, less the direct and indirect expenses incurred by the STATE SYSTEM/UNIVERSITIES for:

a. Substantial use of STATE SYSTEM/UNIVERSITIES' resources/support/facilities. (See Section C.4. below.)

b. The sale or licensing of Intellectual Property.

c. The production, development, maintenance, and distribution of Intellectual Property.

d. Litigation and other steps to obtain, maintain, enforce, or defend the patent/copyright/trademark/trade secret/license rights of Intellectual Property.

4. Resources/Support/Facilities

a. Use of STATE SYSTEM/UNIVERSITIES' resources/support/facilities will be considered substantial if the use of such resources/support/facilities is important to the creation of Intellectual Property and STATE SYSTEM/UNIVERSITIES aid exceeds a cumulative total of \$40,000 per project, for any combination of the items listed below over a three-year period. Examples of such support items include but are not limited to the following:

(1) Alternate assignment, and/or special assignment for a specific project or task.

(2) Use of STATE SYSTEM/UNIVERSITIES' funds designated for a specific project or task.

(3) Use of STATE SYSTEM/UNIVERSITIES-owned, administered, leased equipment, facilities, materials or technological information.

(4) Support provided by other public or private organizations, when it is arranged, administered, or controlled by the STATE SYSTEM/UNIVERSITIES.

- (5) Assistance of one or more STATE SYSTEM/UNIVERSITIES' employees or students, or others who are assigned to a project or task.
 - (6) Cash investments or cash purchases.
- b. Examples of such support do not include the following:
- (1) Mere incidental use of STATE SYSTEM/UNIVERSITIES' resources/support/facilities.
 - (2) Normal academic use of facilities commonly available to FACULTY MEMBERS, staff, or the public, such as libraries, offices, office equipment, or Internet services.
 - (3) Use of university sabbatical leave, unless Section B. 3 is applicable.

D. Procedures

1. In the event that the STATE SYSTEM/UNIVERSITIES provides substantial support under Section C.4. above, the STATE SYSTEM/UNIVERSITIES and FACULTY MEMBER(S) involved shall enter into an agreement, which shall set out ownership rights in any product developed. Such document shall provide at a minimum that the FACULTY MEMBER(S) involved shall receive no less than sixty percent (60%) of the net income until the agreed substantial support of the project is repaid to the STATE SYSTEM/UNIVERSITIES and no less than seventy percent (70%) of the net income thereafter. The parties agree that a model of the agreement referenced in this subsection will be agreed upon by the parties at State Meet and Discuss. This model shall include definitions of net income and direct and indirect costs to be used in calculating project support.
2. Should the STATE SYSTEM/UNIVERSITIES wish to evaluate its ownership interests, the FACULTY MEMBER(S) and APSCUF shall work cooperatively with the STATE SYSTEM/UNIVERSITIES and with anyone to whom the STATE SYSTEM/UNIVERSITIES may refer the Intellectual Property in question for evaluation.
3. The STATE SYSTEM/UNIVERSITIES, the FACULTY MEMBER and APSCUF shall not commit any act which would tend to defeat the STATE SYSTEM/UNIVERSITIES' or FACULTY MEMBERS' interest in Intellectual Property and shall take any necessary steps to protect such interest.
4. The STATE SYSTEM/UNIVERSITIES and FACULTY MEMBERS shall promptly execute all contracts, assignments, waivers, or other legal documents necessary to delineate and effect the transfer of rights in Intellectual Property under this Article, and to obtain and enforce Intellectual Property rights.
5. Should the STATE SYSTEM/UNIVERSITIES decide to abandon or not to pursue its ownership rights, it shall assign the rights to the creator(s).
6. Except where limited by other sections of this Article, the Creator of any Intellectual Property may, with the written permission of the STATE SYSTEM/UNIVERSITIES, choose to place Intellectual Property in the public domain. In such cases, both the Creator and the STATE SYSTEM/UNIVERSITIES waive all ownership rights to said Intellectual Property. Creators wishing to place Intellectual Property in the public domain are responsible for ascertaining that the right to public dedication of that Intellectual Property is not limited by any sponsorship agreement, grant, contract, term of employment, or specific agreement between the Creator and the STATE SYSTEM/UNIVERSITIES as described herein.
7. The STATE SYSTEM/UNIVERSITIES and FACULTY MEMBERS are prohibited from signing any agreement with outside persons which may abrogate or otherwise affect the STATE SYSTEM/UNIVERSITIES' or FACULTY MEMBERS' rights and interests in this Article or which otherwise conflict with this Article.

E. Dispute Resolutions

1. Any dispute regarding the interpretation and application of the provisions of this Article shall be subject to the grievance and arbitration provisions of Article 5 of this Agreement.
2. Upon submission of a time request for arbitration by either party, the Office of the Chancellor or APSCUF shall submit the dispute to the American Arbitration Association for the appointment of an arbitrator pursuant to the provisions of Article 5, Section D. of this Agreement, with the exception that the arbitrators suggested by the American Arbitration Association shall be required to have had experience with and be knowledgeable about issues involving the resolution of Intellectual Property disputes.

**UNITED FACULTY OF FLORIDA
GRADUATE ASSISTANTS UNITED
TALLAHASSEE, FLORIDA
COLLECTIVE BARGAINING AGREEMENT 2001-2003**

**ARTICLE 9
COPYRIGHTS AND PATENTS**

9.1 Disclosure. An employee shall disclose all patentable inventions and technological developments which the employee may develop or discover while an employee of the University. With respect to discoveries or inventions made during the course of approved outside employment, the employee may delay such disclosure for no more than one hundred and eighty (180) days, when necessary to protect the outside employer's interests, until the decision has been made whether to seek a patent.

9.2 Waiver of Rights. While an employee may, in accordance with Article 7, Outside Activity/Conflict of interest, engage in outside employment pursuant to a consulting agreement, the Office of Academic Affairs and the Office of Research and Graduate Programs must approve any requirement by the outside employer that the employee waive the employee's/university's rights to any patentable invention or discoveries which arise during the course of such outside employment. An employee who proposes to engage in outside employment shall furnish a copy of the University's patents policy to the outside employer prior to or at the time the consulting agreement is executed.

9.3 Federal Sponsorship. If the employee's activities involve inventions or discoveries conceived under Federal sponsorship or supported by University funds or resources, then the Office of Academic Affairs and the Office of Research and Graduate Programs shall not grant permission to waive patent rights.

9.4 Reporting Procedures. The employee shall report to the President or designee the nature of the discovery or new invention, together with an outline of the project and the conditions under which it was done. If the University wishes to assert its interest in the patent, the President or designee shall inform the employee within a maximum of one hundred and thirty-five (135) days. It is understood that every effort shall be made at appropriate administrative levels to expedite the decision-making process to minimize the time involved. The division of proceeds between the University and the employee generated by the licensing of patent rights or trade secrets shall be negotiated and reflected in a written contract between the University and the employee. All such

agreements shall comport with and satisfy any preexisting commitments to outside sponsoring agencies, but the employee shall not commit any act which would tend to defeat the University's interest in the matter, and the University shall take any necessary steps to protect such interest.

**ROBERT MORRIS TEACHERS' FEDERATION AT ROBERT MORRIS COLLEGE
PITTSBURGH, PENNSYLVANIA
1999-2003**

**ARTICLE XVI
COPYRIGHTS AND PATENTS**

When an employee receives compensation and/or reduced workload for the development of instructional materials and/or devices to be used by the College, the College shall have the exclusive right to reproduce and sell such materials and/or devices, and the copyright and/or patent thereto shall issue in the name of the College. After recovery of developmental and other associated costs of the College, the employee shall be entitled to fifteen percent (15%) of the net proceeds of his efforts and accomplishments.

When an employee does not receive compensation and/or reduced workload for the development of instructional materials and/or devices, the employee is entitled to exclusive rights to copyrights, patents, and royalties.

The rights of the College and the employee to claim any interest in any copyrights and/or patents are limited to those stated in this article.

**COLLECTIVE BARGAINING AGREEMENT
BETWEEN THE
UNIVERSITY TEACHERS' UNION
THE UNIVERSITY OF MONTANA
AND THE
MONTANA UNIVERSITY SYSTEM
1999-2003**

14.000 COPYRIGHT AND PATENT POLICIES

14.100 Copyright Policy

1. Works which are produced by a faculty member in connection with an approved and sponsored research project are treated in accordance with the agreement negotiated with the sponsor. In the absence of such agreement or to the extent such agreements do not fully

address ownership of works produced, such works shall be treated in accordance with Sections 2 and 3 of this article.

2. When a faculty member is:

- a. assigned work or responsibilities for the specific purpose of developing visual aids, manuals, public relations material, or printed or recorded copyrightable works, or
- b. assigned work or responsibilities, or uses University facilities, equipment, and/or assigned time, for the purpose of developing computer programs, electronically deliverable courses, or other electronic/digital copyrightable works, then, the works produced pursuant thereto and all royalties therefrom shall be the property of the University. Such assignment shall be indicated either on the individual employment contract or in a separate document countersigned by the employee. Should the University and the employee agree to a division of royalties such division must be included in the contract or in a separate document countersigned by the employee. If the University does not wish to copyright the work, the faculty member may obtain a written release from the President and may then copyright the work in his/her own name. Upon written request for release by the author, the University will respond within thirty (30) days.

3. When a faculty member develops copyrightable works other than those defined in paragraphs 1 or 2 above, he/she shall have sole right or ownership and disposition of such works. When such works are produced, developed, or authored through the use or with the aid of University facilities, personnel, or other resources, the University must be reimbursed for the fair market value of the use of any such facilities, personnel, or resources, except those considered part of the normal academic environment including library facilities. Manuscripts or works of art designed for publication in media where no remuneration is given the author(s) are exempt from this reimbursement requirement. This section applies to materials developed by members of the bargaining unit for "distance" and "distributed" learning and other electronically deliverable course materials. Further, except to the extent otherwise limited by applicable Board of Regents copyright policies and this section above, the member of the bargaining unit who develops such materials as the sole creator shall retain full editorial control over and intellectual property rights to the content and shall be the sole judge as to whether or not course materials over which he/she has such control and rights shall be offered electronically. In no case should it be understood or construed that individual faculty members have intellectual property rights to individual courses or to the curriculum as a whole, but only to the content.

4. If a faculty member develops a copyrightable work as governed in paragraph 3 (above), but the faculty member decides to assign the copyright to the University, and the University accepts the assignment, the royalties and other income from the copyright will be distributed in the same manner as from patents, as described in 14.250 2 (a) and 14.260.

14.200 Patent Policy

All employees in the bargaining unit shall adhere to the following procedures with respect to patentable inventions or discoveries. The purpose of these procedures is to define the relationships among the inventor, the University, and outside sponsors of research.

14.210 Ownership of Inventions and Discoveries

All patentable inventions made by employees in the bargaining unit in connection with their assigned duties and/or by the use of the University's facilities shall be considered the property of the University under the following circumstances:

1. Wholly the property of the University if the person or persons responsible for the

invention was employed by the University specifically for that purpose. His/her contract of employment shall so indicate.

2. To the extent specified in the contract of employment or a separate agreement between the University and employee relating to a specific work assignment.
3. To the extent recommended by the University Patent Officer and approved by the President if research or endeavors directly resulting in the discovery or development of the invention or marketable product involved use of University time, materials, property, or facilities. For the purposes of this paragraph, University time, materials, property, or facilities includes time, material, property, or facilities paid for from funds administered by the University.
4. Under all other circumstances individual employees are free to secure, under the patent laws of the United States, the exclusive right to their inventions.

14.220 Limitations

1. This policy shall not include copyrights.
2. Provision of normal academic environment, including library facilities, does not constitute grounds for equity by the University in a discovery or invention.

14.230 Inventors' Rights and Duties

Employees in the bargaining unit retain the right and responsibility for recognizing in their work inventions that may reasonably be marketable; and in every case, complete freedom of publication in both time and scope shall be maintained, unless agreements with outside sponsors provide otherwise as indicated below. Investigators will participate in work under such outside agreements only after they have informed themselves of such provisions and have accepted these provisions. Any employee to whom the conditions are set forth in Section 14.210, 1, 2, and 3 above applies, who either alone or in association with others makes an invention shall promptly disclose in writing to the University Patent Officer in a format acceptable to the University such invention, and as to any such invention shall, upon request, promptly execute all contracts, agreements, waivers, or other legal documents necessary to invest the University or, if applicable, the federal government, other outside sponsors, or the University's assignees and any and all rights to the invention, including complete assignment or any patent applications for the invention.

With the exception of those inventions developed under agreements with outside sponsors, the Patent Officer shall inform the inventor(s) in writing whether the University plans to secure the patent or release the discovery to the inventor(s). In the case of the release of the discovery, or in the case of failure by the Patent Officer to communicate in writing within sixty (60) days, the inventor(s) is free to secure the patent, pay all fees, and receive all benefits therefrom. If a dispute arises concerning the origin of an invention or patentable discovery or any aspect of patent policy, the dispute shall be presented to the System Invention Committee for final disposition.

14.240 Submission of Patentable Inventions or Discoveries to Patent Officers

Invention outside the University: If an invention is made and/or developed without University support of a significant degree, all rights remain with the inventor. Such inventions may be voluntarily submitted for consideration by the University, but the inventor is under no obligation to do so. Provision of a salary or desk to an inventor by the University does not, in itself, constitute significant support. However, any invention by an employee related to an area in which he/she participates in research under University auspices must be reported to the University so

that the question of whether the University has provided significant support can be decided by the University Patent Officer. This decision may be appealed to the System Invention Committee.

Invention with University Support: If an invention is made and/or developed with University support of a significant degree in the time, money, materials, or facilities, the inventor must submit a full disclosure of the invention to the University Patent Officer. Additionally, a copy of any manuscript submitted for publication shall simultaneously be submitted to the University Patent Officer if the author considers that it may contain marketable inventions. The University Patent Officer may advise, but not require, deferral of publication in order to protect the patent rights of the University and the inventor.

14.250 Prosecution of Patents

1. **Time Limits:** In the event that the University deems that a patent should be prosecuted, the prosecution shall be carried out diligently and without expense of any kind to the inventor. The parties to this agreement recognize the need to file the patent application and develop the patent as fast as possible. The time limits expressed herein represent the maximum time allowed, but every effort should be made to complete the process faster than the time limits specified. The inventor must assign to the University any interest in the patent equivalent to the property interest which the Patent Officer determines to belong to the University or which is required by Section 14.210, 1 and 2. The preliminary patent search must be started within sixty (60) days from the date the matter is presented to the University or the University forfeits all rights to the invention. If no patent application is filed within a total elapsed time of eight (8) months following disclosure, all patent rights revert to the inventor(s).

2. **Options Available to the University:** The inventor has an obligation to offer the University the opportunity to develop the invention for commercial use if the invention was made with University support as defined in Section 14.210, 1, 2, or 3. The President, following recommendation by the University Patent Officer may:

- a. Elect to acquire title to the invention by assignment and in this case will undertake (unless inappropriate) the timely filing of patent application, patent prosecution, development, and marketing of the invention and shall bear all related costs. If the University desires to accept such an assignment the inventor shall be obligated to make such an assignment. The inventor shall, in this instance, receive on an annual basis fifty percent (50%) of all net income, defined as gross royalties or other payments, including any recovery of damages obtained by the University, but less external costs incurred by the University in obtaining and protecting the patent rights and less any direct costs of development; or
- b. Cause the invention to be assigned to some patent management organization, such as Research Corporation or the University's Foundation. The domestic patent rights, foreign patent rights, or both, may be assigned to a patent management organization. The inventor shall receive on an annual basis fifty percent (50%) of all net royalties and other income received by the University from said patent management organization; or
- c. Decline to accept any rights to the invention by assignment or otherwise, in which case all rights revert to the inventor.

3. **Invention Developed Under Agreement With Outside Sponsor:** If the invention was made or developed under an agreement with an outside sponsor, the rights with respect to the invention shall be governed by provisions of that agreement. If not provided otherwise by the sponsoring agreement, the inventor's share of royalty or other income received from an outside sponsor shall

be limited to the share he/she would have received had the University supported the research entirely. If the sponsor determines that invention rights are left with the University, the University may elect to pursue one (1) of the three (3) options listed in Section 14.250,2.

14.260 Distribution of University Related Invention and Copyright Related Income

In order to provide invention and copyright incentive and capability to University personnel, the University's share of invention and copyright income will be distributed as follows. Of the University's retained share of net royalty or other income for any given invention, defined as gross receipts, less external expenditures for that invention and less the inventor's personal share, two-thirds (2/3) for the first \$30,000 per year, one-half (1/2) of the next \$30,000 per year, and one-third (1/3) of the remainder will be designated through the University's budget or financial office to support the work of the inventor while employed by the University and/or to promote discoveries at the University. The rest will be distributed to a designated fund and will be used to support patent development and expand research at the University. Such distribution to support the inventor's work, derived from any given invention, will terminate after eight (8) years from the first sale of products embodying that invention, and any earned monies after this date will go to a designated fund.

14.270 Development of Inventions

If the inventor becomes dissatisfied with the development of the invention as carried out by the University, or with the University's delay in reaching a decision, an appeal may be made to the System Invention Committee, in which the inventor may urge that specific changes in the proposed course of action be undertaken by the University or if the unit has been assigned rights to the invention, may ask that the invention rights be reassigned to a patent management organization such as Research Corporation or all rights be reserved to the inventor.

If after a period of three (3) years from the acquisition of the issued patent by the University the invention has not been marketed, all rights revert to the inventor, unless an agreement with any outside sponsor precludes such reversion.

14.280 Definitions

University Patent Officer: The University Patent Officer shall be the person designated by the President to serve in that capacity.

System Invention Committee: The System Invention Committee will be selected by the Commissioner of Higher Education in accordance with procedures for appointments of inter-unit committees.



A Union of Professionals

AFT Higher Education
555 New Jersey Avenue, NW
Washington, DC 20001

ASK FOR ITEM NO. 36-0699
SINGLE COPIES \$3.00

