

ACADEMIC AFFAIRS POLICY LETTER

October 1, 2004

04:12

INTELLECTUAL PROPERTY RIGHTS AND ELECTRONIC DISTANCE LEARNING MATERIALS

I. Introduction

Ferris State University is dedicated to teaching, scholarly activity, and the extension of knowledge and services to the public, particularly the citizens of Michigan. The University community recognizes its responsibility to produce and disseminate knowledge. Inherent within this responsibility is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other Intellectual Property, some of which may have potential commercial value. These activities contribute to the professional development of the individuals involved, enhance the reputation of the University in which they work, provide additional educational opportunities for students, and promote the public welfare.

II. Applicability of this Policy

A. **Property Covered.** This Policy addresses the creation, use and ownership of intellectual property including but not limited to the following ("Intellectual Property"):

1. Copyrights (as defined in Title 17 of the United States Code, referred to herein as "Copyright Law"). This includes but is not limited to scholarly works, creative/artistic works, copyrightable software and courseware, and other developing areas including but not limited to multimedia works, and various forms of electronic communications including media used for distance learning.
2. Patent rights (as defined in Title 35 of the United States Code, referred to herein as "Patent Law"). This includes and covers any new form of patentable Intellectual Property that may arise during the time this Policy is in effect.
3. Other. This Policy will also include and cover any new forms of Intellectual Property that may be added to the above categories during the time this Policy is in effect.

This Policy further addresses the development and use of all type of materials used in distance learning by the University, as is more fully set forth below.

B. **Purpose.** The purpose of this Policy is to (i) protect the rights of both the faculty member and the University and to encourage the creation, offering, and use of quality distance learning programs; and (ii) to inform all employees and students of Ferris State University of their rights and responsibilities whenever the results of their scholarly activity or creative endeavors are patentable, copyrightable, or otherwise commercially marketable.

C. **Exclusions.** In the event of a conflict between the provisions of this Policy and those of any duly authorized and executed agreement between the University and a creator (or a

person who assists in the creation of Intellectual Property), or between the University and an external funding agency, the terms of the duly authorized and executed agreement will prevail.

D. **Persons Covered.** This Policy applies to all full-time and part-time University faculty, staff, administrators, and adjunct faculty; or anyone acting in the capacity of a faculty member, professional and graduate and undergraduate students, working with or without monetary compensation on any project under the direction and control of the University; and anyone using University facilities or conducting activities under the supervision of University personnel at any location. Notwithstanding the foregoing, this Policy does not cover full-time Board-appointed faculty members that are otherwise covered under the terms and conditions of the Collective Bargaining Agreement.

Contracts and subcontracts shall include language determining the ownership of Intellectual Property that is developed by those working under the terms of the contract or subcontract. This is also true for those hired as independent contractors.

E. **Intellectual Property Covered by the Policy.** The Policy covers all Intellectual Property, including anything that is patentable, copyrightable, or otherwise marketable and/or may be protected. This includes, but is not limited to, the following: inventions, books, articles, study guides, syllabi, workbooks or manuals, bibliographies, instructional materials, tests, video or audio recordings, films, slides, transparencies, charts, other graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, computer software, and web courseware or distance learning materials, which are covered in greater detail below.

III. Interpretation of this Policy

The responsibility for the interpretation and implementation of the provisions contained in this Policy is delegated to the Vice President for Academic Affairs (VPAA) or his/her designee for all of FSU (including FSU-GR), such responsibility to be exercised in consultation with the General Counsel's office as needed. Appeals of the decision made by the VPAA or his/her designee are to be made to the University's Intellectual Property Rights Committee, which shall advise the President, who will make the final decision for the University.

IV. Intellectual Property Rights Committee

The Intellectual Property Rights Committee is hereby established as a new FSU committee, whose membership shall consist of five persons appointed by the President, one of which shall be a member of the faculty.

V. General Principles of Copyright Law

A. Copyright Law applies to any original work of authorship, which has been fixed in any tangible medium, including but not limited to computer media, from which the original work can be perceived, reproduced, or otherwise communicated. A copyright owner has the exclusive right to reproduce his or her work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.

B. Literary works; musical works; dramatic works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; and sound recordings are all examples of materials that are copyright protected. Copyright protection does not extend to any "ideas, procedures, systems, methods of operation, concepts, principles, or discoveries" as defined in Copyright Law.

C. Copyright is automatically conferred at the time the work becomes expressed in a tangible medium of expression. Neither registration nor the copyright notice, ©[owner's name] [year of publication], is required, but this notice and either state or federal registration may confer additional rights, defenses, statutory damages and a right to recover attorney's fees in any litigation that may take place involving the copyright, and registration is required before a suit for infringement can be filed.

D. The purpose of copyright, as set out in the U.S. Constitution, is to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." Copyrights last for the life of the author plus 70 years. For employers, copyright protection of a work extends for 95 years from year of first publication or 120 years after creation. When the copyright expires, the work belongs to the public domain. The copyright owner may put it in the public domain at any time by expressly saying so.

E. The copyright may be held by a single author or by all those who contributed to the creation of a collective work. If a work is created by an employee within the scope of his or her employment on the employer's time or using the employer's resources, Copyright Law specifies that the employer owns the copyright in the work, absent an agreement to the contrary. This is known as the "work for hire" doctrine.

F. There has historically been an "academic exception" to the "work for hire" doctrine. The academic tradition has been that faculty own the copyright on course materials and books that they produce. The University's implementation of this exception is set forth under the ownership rights section of this Policy.

VI. Ownership Rights

A. Ownership retained solely by creator.

1. Intellectual Property developed on the employee's own initiative, outside his/her scope of University responsibilities, and without use of substantial University resources (as defined in this Policy) is owned by the creator. If the Intellectual Property bears a reasonable relationship to his/her employment responsibilities, then it is the employee's obligation to show that the Intellectual Property was developed according to these criteria.

2. Faculty shall have personal ownership of books, journal articles, other written reports of scholarly activity, creative works of fiction, textbooks, tests, course-related materials, slides, transparencies, bibliographies, music, and art work and any other material that would fall within the "academic exception" to the "work for hire doctrine" and which were created without substantial University support. Intellectual Property created by faculty while on sabbatical or "paid leave" shall be deemed created with substantial University support, unless otherwise determined during the application and approval process for the sabbatical or "paid leave."

3. Ferris State University should be appropriately acknowledged in all instances.

4. Ownership of multimedia materials, video and audio recordings, films, and other works that are created with substantial University support and resources is addressed elsewhere in this Policy.

5. Ownership of multimedia materials, video and audio recordings, films, and other works that are created with substantial University support and resources is addressed elsewhere in this Policy.

6. The University shall enter in a course development agreement with the faculty or staff at issue prior to the creation of any courseware or product offered to be developed by the University, said agreement incorporating a list of the material that the faculty member or staff shall remain the owner of the intellectual property rights in the same.

B. Ownership rests with the University.

1. Intellectual Property rights are owned by the University and the net proceeds shall be shared with the creator(s) even when the property is considered a "work for hire," except as otherwise specified by a duly authorized and executed contract and/or this policy.

2. Intellectual Property rights are owned by the University when the property is offered to the University in the form of a gift or under terms of the agreement, AND the University agrees to accept the property. The distribution of any income accruing from the property will be determined according to the terms of the acceptance agreement.

3. Intellectual Property rights for inventions, whether patented or not patented, other patentable products and software will be owned by the University. Income derived from these types of Intellectual Property shall be shared between the University and the creator as set forth later in this Policy.

4. Intellectual Property, which is not described elsewhere in this Policy and is developed with substantial University support, will be owned by the University. Income derived from the Intellectual Property will be shared as set forth later in this Policy. Substantial University support includes, but is not limited to, use of University facilities (other than one's own office and standard office equipment and software); University-owned equipment (including multimedia equipment, video taping equipment, software or other equipment beyond that routinely supplied to all faculty, except as provided through grants or by other means); other staff salaries and effort; and computing and graphic services.

C. Ownership determined by third party agreements.

1. Whenever there is a possibility that an externally funded project will result in Intellectual Property, the ownership of that property will be determined prior to the University accepting the award. If the funding agency is a federal or state agency, then the standard practices of that agency will determine ownership rights. The University's ownership rights vis a vis all other sponsors will be determined by written agreement. The other provisions of this Policy will determine the employee's ownership or income rights vis a vis the University.

D. Student ownership issues. When students, not paid for their work, develop Intellectual Property the University will not claim ownership rights for the Intellectual Property, unless one of the following conditions is met:

1. There is a signed agreement between the student and the University, which provides the University with exclusive or shared Intellectual Property rights; or
2. The student used University resources beyond those normally provided to students in their program; or
3. The student's work was part of a larger work for which the University owns all or part of the Intellectual Property rights, and the student was clearly informed before he/she began the work that he/she would not own any of the Intellectual Property rights in the project.

E. Materials developed by faculty and teaching assistants in conjunction with their teaching and scholarly and scholarly activity responsibilities.

1. The University disclaims ownership of:
 - a) Lecture notes, course outlines, hand-outs, class exercises, class tests, etc. developed by faculty and teaching assistants for use in their own teaching activities or on their own initiative, even if the materials have commercial value for use in other classes and at other universities.
 - b) Scholarly activity data or written reports of scholarly activity that are developed on one's own initiative because one is pursuing one's scholarly activity work, provided the scholarly activity is not covered under other sections of this Policy. However, where the University may own all or part of the Intellectual Property rights for inventions, software, or other patentable products, the author and the University must consult and have written agreement from the VPAA's office before publication of the written reports so that the rights of both the author and the University may be protected.
 - c) The University agrees to execute and deliver at the request of the creating faculty member or staff to perform any reasonable acts to vest all rights, title, and interest in the materials described in (5)(a)(i) and (5)(a)(ii) above in the faculty or staff person and/or provide such persons with evidence to support any of the foregoing in the event such evidence is deemed necessary by the faculty or staff member.

2. Except to the extent provided under (5)(a) above, the University shall have ownership of:

- a) All of its courses.
- b) Course syllabi that are submitted to departmental offices by faculty for every course.
- c) Course outlines, class tests, proficiency exams, etc., that are developed in response to a specific assignment beyond that of preparing to teach one's own classes. For example, course-related materials that were developed specifically to benefit teaching activities of more than the individual who developed the materials, such as a multi-section course or as part of a series of lectures for use in some courses. When it is initially made clear to the faculty member that these materials are for use by anyone who is responsible for the course, then the University owns the materials.

d) Instructional materials developed at the request of the University Center for Extended Learning or any academic unit when the individual is paid or receives release time for the development, then it is a "work for hire."

3. Ownership of the Intellectual Property rights is not to be confused with the University's right of access to materials. The University reserves the right to review all materials used in the teaching of a course or in the conduct of or resulting from scholarly activity at the University. These materials must be made available upon request and at no cost to the University when the University needs access to these materials in fulfilling its institutional responsibilities. When the University requires access to the materials, it will, to the best of its ability, do nothing that will impair the commercial value of the materials to the employees.

F. Decision regarding ownership issues. When there are questions of ownership, the initial decision about ownership shall be made by the Vice President of Academic Affairs (VPAA) or his/her designee. Any appeal of a decision made by the VPAA or his/her designee shall be made to the University's Intellectual Property Rights Committee, which shall advise the President, who shall make the final decision for the University.

VII. Transferring Ownership Rights

A. Copyrightable property. If the University determines that it does not wish to retain the ownership of copyrightable materials, it may elect to place the materials in the public domain, assign the ownership rights to an outside party, or offer the rights to the creator, unless a third party agreement prevents such an assignment. Any transfer of ownership must be in writing, and signed by the Vice President for Administration and Finance or the President.

1. If the copyright is assigned to the creator, the University may require that the University be allowed to use the copyrighted materials without charge; provided such use is only on the University's campus or satellite campus. A satellite campus is defined as any campus where the University is delivering a course for credit or non-credit.

2. If the copyright is assigned to an outside party, the University may enter into an agreement, which sells the copyright, licenses the copyright, or gives the copyright to the third party. It may require that the University be allowed to use the copyrighted materials without charge. f

3. If the transfer of the copyright to a third party results in revenue for the University, the principles of this Policy or a written agreement between the University and the Employee will determine if and how those revenues will be shared with the creator.

B. Patentable property. If the University determines within six months from the date the invention is reduced to practice and notice of the same is provided to the University that it does not wish to patent, license, or otherwise market an invention, the University will offer the Intellectual Property rights to the creator, unless a third party agreement prohibits such an offer.

A mutually agreeable written agreement will determine the terms of the ownership transfer. For the University, the agreement must be signed by the Vice President for Administration and Finance or the President.

VIII. Responsibilities of Inventors and Authors

A. Disclosure responsibilities.

1. If there will be no royalties or other income resulting from the Intellectual Property and if it is absolutely unambiguous that, under the terms of this Policy, the ownership will be retained by the creator, there is no obligation to report to the University the development of Intellectual Property.

2. Prior to filing any patent or copyright applications and prior to signing any agreements that will produce royalties or other income in regards to Intellectual Property, the creator must notify the VPAA's office even if the creator believes they have sole rights to the Intellectual Property. No agreements should be signed until the VPAA's office provides written confirmation that the University does not own the property.

B. Ownership rests with the University.

1. For potentially patentable products, as soon as the inventor recognizes that there is a possibility of a patentable product or discovery and before disclosing it to any party outside the University, the creator must notify the VPAA's office about the product.

2. For Intellectual Property not subject to patent law; if there is any possibility that the University will own the Intellectual Property rights, the creator is encouraged to discuss the idea with the VPAA's office when the creator first recognizes that the Intellectual Property will be developed.

3. If funding was provided by an external agency that requires notification when Intellectual Property is developed, the Principal Investigator is responsible for notifying the agency and the VPAA's office. The project director is responsible for assisting the VPAA's office by providing the necessary information and completing any required forms.

C. Ownership determined by third party agreement. The VPAA's office, in consultation with the General Counsel's office should be consulted for assistance in determining the appropriate disclosure procedures for Intellectual Property developed pursuant to a grant or contract with an external entity.

IX. Other Responsibilities

A. When the University owns the Intellectual Property rights, each creator is expected to work cooperatively with the University and with anyone to whom the University designates the right to evaluate or commercialize the Intellectual Property.

B. When the University does not have an ownership interest in the Intellectual Property, the name of the University shall not be used in connection with the property without prior written permission from the VPAA's office, (such permission shall not be unreasonably withheld) except as specified below:

1. Copyrightable materials may indicate that the author is an employee of the University; and

2. If the University has provided substantial support in connection with producing the work, the creator shall acknowledge in writing the support of Ferris State University in producing the work.

X. Control of the Intellectual Property Owned by the University

Appropriate University personnel are responsible for decisions regarding the patenting, copyrighting, licensing, loaning, selling, or otherwise controlling the marketing and disposition of Intellectual Property that is owned in whole or part by the University. When the creator is entitled to a share of the earnings, the VPAA or his/her designee will consult with the creator prior to finalizing any decisions. The creator has the right to appeal to University's Committee on Intellectual Property Rights and no actions will be taken while a decision is being appealed.

A. Copyrightable property.

1. The University will determine, in consultation with the creator, whether to file an application with the U.S. Copyright Office. If a copyright is pursued, the author is expected to cooperate in filing the necessary paperwork. All costs will be paid by the University or as otherwise agreed in writing.

2. The University will develop and approve agreements about the assignment of copyright and the publishing and/or marketing of the work. The creator may not enter into any agreements to publish or otherwise market the Intellectual Property, but he/she is encouraged to advise the University on the best outlets for the copyrightable material.

3. As owner of the copyright, the University may allow or direct others to create derivatives of the material, including course material developed as a "work for hire" for the University Center for Extended Learning or other academic units. Notwithstanding the terms and conditions contained in this paragraph, if the creating faculty member or staff has used his or her best efforts to comply with the applicable material terms and conditions of this Policy and/or Course Development Agreement, such faculty or staff member shall have the option to elect to create any and all derivatives of the materials at issue.

B. Patentable property.

1. The University will determine whether to pursue a domestic and/or foreign patent, and if so, through what means. The University will also make decisions relating to the licensing and marketing of patentable products.

2. The inventor will advise the University on the best course of action.

3. If the University wishes to file for a patent or for an evaluation for a patent, the inventor will cooperate by completing all of the necessary paperwork. All costs will be paid by the University or as otherwise agreed in writing by the inventor and the University.

XI. Sharing of Royalties or Other Income

A. Ownership retained by creator (materials other than Distance Learning Materials). Neither the University nor any of its employees should benefit financially from the

sale of materials that are developed solely for sale to Ferris State University students (e.g., course packs).

B. Distribution of Royalties for Intellectual Property Owned by the University.

1. An agreement or contract between the University and the creator(s) will specify whether the material is patented or copyrighted, what constitutes the University's direct expenses in creating the material, who the creator(s) are that receive distribution of royalties, and what percentage of the distribution each contributor will receive and any related issues.

2. The determination of direct expenses will include, but is not limited to, the costs associated with investigating and/or obtaining the patent, filing the copyright, use of University resources, or other extraordinary resources, such as outside consultants or resources not available from the University. The University will recover its direct expenses incurred on patenting, copyrighting, and licensing of the materials from its sales or licensing proceeds before distributing the net proceeds remaining in accordance with the following royalty schedule, except where Sec. 10-1112 applies or unless otherwise agreed to by contract.

3. Sales and Licensing Proceeds shall include any revenues generated in connection with the sales, licenses, and use of patentable or copyrightable materials including any amounts recovered by the University, its licensees, or sublicensees in connection with any infringement claims based on the materials, but excluding tuition.

| Net Sales or Licensing Proceeds | Creator | College or Equivalent Unit | Academic Affairs or Division | General Fund |
|--|---------|----------------------------|------------------------------|--------------|
| The first \$5,000 | 100% | | | |
| The portion between \$5,001 - \$50,000 | 60% | 20% | 20% | |
| The portion between \$50,001 - \$100,000 | 40% | 30% | 20% | 10% |
| The portion over \$100,000 | 25% | 15% | 15% | 45% |

XII. Electronic Distance Learning Materials

A. Definitions.

1. Electronic Distance Learning is defined as a course in which instruction occurs by live or recorded television, by cable or direct signal, by telephone lines, fiber optic lines, and/or exists on videotapes, film, and laser disk in direct or interactive format.

2. Electronic Distance Learning Materials are instructional materials or courseware that require the creation of copyright-protected work in a medium provided by the University. Electronic Distance Learning Materials shall include all instructional materials produced, stored and/or reproduced in any form including in any form of computer storage or in digital format, such as on CD-ROM, digital video disc, and server hard drives for access on computers, computer work stations, and through the Internet/Extranet.

B. Copyright Ownership and Royalty Rights for Distance Learning Instructional Materials.

3. Copyright.

a) The copyright of all Distance Learning Instructional Materials shall vest in the University except as otherwise provided in this Sec. 10-1112, or as otherwise provided in a written agreement between the University and the faculty member, so long as the University asserts rights/ownership in the materials.

b) If the University does not assert rights of ownership in the materials within six (6) months from creation and notice to the University, the ownership of such materials shall vest in the creating faculty member or staff. The University agrees to execute and deliver at the request of the creating faculty member or staff to perform any reasonable act to vest all rights, title, and interest in the materials at issue in the faculty or staff person and/or provide such persons with evidence to support any of the foregoing in the event such evidence is deemed necessary by the faculty or staff member, except to the extent such ownership issues are addressed in separate written agreement between the parties.

c) The University shall bear all costs in protecting the materials.

d) All such materials will be marked with a "© Ferris State University" indicator in a manner appropriate to the medium and the faculty member shall receive full credit on the materials as the named author or principal developer of all copies of the materials. The faculty member, however, shall have the right to remove his or her name from any copies of the materials upon written notice of the same to the University. For materials recorded on fixed media, such as videotapes or CD-ROMs, the developer will place a warning at the beginning of each recording or affixed as a label on the medium that Ferris State University owns the copyright and that it is against federal copyright law to duplicate the recording.

4. Related Issues.

a) Copyright Ownership. Faculty members own the copyrights in scholarly works created by the faculty members and any and all additional materials that would fall within the "academic exception", including, but not limited to, those materials specifically listed on any Appendix attached to any applicable Course Development Agreement. Therefore, faculty members will normally hold copyright in electronically published materials they create solely on their own initiative. Copyright in works created under contract, with substantial support from the University, and/or as works for hire reside with the University. As a result of the University's ownership of the approved distance learning course, it shall have the exclusive right to reproduce, sell, market, lease, license, commercially exploit, publish, and distribute the approved distance learning course; provided nothing contained in this sentence shall prohibit or bar the faculty member from retaining or making copies, royalty free, of the works for use in connection with his or her University teaching, scholarship and research, creating compilations or other composite works and as a part or use in

the faculty member's personal or professional portfolio or for job, tenure, or graduate school interviews or consulting profession, upon receiving the prior written consent of the University, such consent shall not be unreasonably withheld. The obligations, representations, warranties, confirmations and acknowledgements of the parties set forth herein shall continue, survive and shall remain in full force and effect after termination or expiration of this Policy or the termination of the faculty member's employment relationship with the University, if applicable, and shall be binding upon and inure to the benefit of the parties and their administrators, heirs, successors and assigns.

b) Course Development. Faculty may receive release time or other compensation as determined by the appropriate Dean(s) for duties performed in the best interests of the University's distance education instructional program, including the development of electronically published course materials. Courseware created by faculty receiving course release or receiving other compensation is the property of the University.

c) Revision Rights. Faculty members that have used their best efforts to comply with the material applicable terms of this Policy and/or Course Development Agreement shall have the right to elect to update, edit and otherwise revise electronically developed course materials that become out of date, or, in certain circumstances may by agreement with the University, place a time limit upon the use of electronically developed course materials that are particularly time sensitive, regardless of who owns copyright in the electronically developed course materials. Such rights and limitations may be negotiated by the faculty and the University in advance of the creation of the electronically developed course materials and should be reduced to writing. Absent a written agreement, each faculty member will have the right and moral obligation to revise work on an annual basis in order to maintain academic standards. If a faculty member chooses to revise the work and the revision is made in a satisfactory manner, the faculty member retains the right to full royalties and fees as set forth herein. If the University believes a revision is necessary and no timely revision is made, or the revisions made do not maintain academic standards, the University may refuse to market the product, employ another faculty member or person to update the work, and charge the cost of doing so against any royalties or fees paid to the original author.

d) Royalties. In accordance with University policy, faculty members shall receive all royalties that may accrue from the commercialization of electronically published course materials they create on their own initiative, unless they are commercialized through the joint effort of the faculty member and the University, then royalties shall be shared pursuant to written agreement. The University retains all royalties that may accrue from the commercialization of electronically published course materials created by faculty members pursuant to contract or as a work for hire, including electronically published course materials created as a condition of employment, except as otherwise provided in this Policy. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting.

Other circumstances may require review on a case-by-case basis. Absent a written agreement to the contrary, specific division of royalties is addressed in subsection (xi) below. In instances of joint ownership between faculty members

where the University also retains rights to royalties, the faculty members shall mutually agree in writing as to the division of royalties. Absent a written agreement of division of royalties, the faculty members shall divide their share pro rata based on the number of persons who have contributed to the materials at issue.

e) **Contributed Materials.** Liabilities may be incurred with respect to the inclusion of materials in electronically published course materials other than materials created by the author of the electronically developed course materials and inclusion of voices or images of persons in the electronically developed course materials, including audience members and guest lecturers. It is the policy of the University that all faculty and staff comply with the law, including copyright and privacy laws; therefore, it is the responsibility of the creator of electronically published course materials (normally the faculty member) to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others. The faculty and staff shall be deemed to have complied with the obligations contained in this paragraph if he or she has used his or her best efforts upon reasonable due diligence to comply with the same. Nothing contained in this paragraph, Policy, and/or Course Development Agreement shall prohibit or bar any faculty or staff from requesting defense and indemnification under the Legal Representation and Indemnification Policy provided in the Business Policy Letter 99:10.

f) **Use of University's Name.** Faculty and staff members must observe the same requirements that apply in other contexts with respect to the use of the University's name as set forth in the then current applicable University policies.

g) **Protecting the Work.** The University will determine whether to register the copyright and will be responsible for enforcement of University-owned works they own. Faculty and staff members will make such decisions and take such steps to protect works they own. Any one of the authors of a joint work may register and enforce the copyright in the names of all owners, with accounting upon giving prior written notice of same to the other joint owners.

h) **Retention of Nonexclusive License.** Except in Category I, as set forth in subsection (xii) below, the University shall retain an exclusive educational license to reproduce and use the electronically developed course materials in teaching University classes on or off campus. Compensation to the faculty member for use of the course shall be as specified below in subsection (xii).

i) **Administration.** The VPAA shall be responsible for the administration of this Policy and applying the Policy equitably throughout the University. The faculty member should meet with his/her Department Head and Dean to determine which category the electronically published materials will be assigned and the ownership, institutional resource commitment, and the royalties. A copy of the agreement will be forwarded to the VPAA's office for their review and assurance that the Policy is being applied in an equitable manner. The VPAA shall inform the Dean and Department Head of any inequitable applications of the Policy and it shall be the responsibility of the VPAA or his/her designee, Dean, and Department Head to resolve the issue with the faculty member. If the

faculty member and the Dean and Department Head cannot resolve the issue, the VPAA or his/her designee will resolve the issue. Appeals of the decision made by the VPAA or his/her designee are made to the University's Intellectual Property Rights Committee, which shall advise the President, who makes the final decision for the University.

j) Ownership Rights and Compensation Relative to Category.

(1) *Category I - Totally Faculty or Staff Generated.* The work resulting from an individual's efforts on his own personal time without any direct support from or through the University and without the use of any University resources [beyond those normally provided by the University]. The individual owns the property and may receive compensation for the work and retains distribution rights. Notwithstanding the foregoing, the individual may negotiate with the University for the use of the materials within the University and for the sale of the property outside the University.

(2) *Category II - University Assigns Duty to Faculty or Staff Member to Develop a Work* An employee is contracted to develop a specific product. The University provides all resources for the work. The work was carried out totally as a part of the faculty or staff member's assigned time or for additional compensation. The University owns all Intellectual Property in the final products other than the material incorporated into the final products that fall within the "Academic Exception" and those materials specifically listed on any Appendix to any applicable separate written agreement, and has an exclusive educational and commercial ownership and license authority. The faculty or staff member is not entitled to payment of royalty except to the extent the proceeds are generated by the University as a result of sale or license of the Products to a third party and except to the extent otherwise provided under this Policy and/or as agreed in a separate written agreement.

(3) *Category III.* The faculty member is using a work that he/she created as part of teaching at the University using, in whole or in part, University resources. The University owns all Intellectual Property except as otherwise agreed in writing or as set forth in this Sec. 10-1112. There will be no extra compensation beyond normal teaching compensation for use of the work on its campuses or satellite campuses as defined in Sec. 10-1107(1)(a) and except as otherwise agreed in writing.

k) Sale of Courses and Royalties.

(1) After consultation with the faculty member and Dean, the University may sell courses in a variety of media.

(2) FSU office or offices identified by the VPAA will consult with the faculty member and Dean to sell a selected course prior to the start of class.

(3) FSU office or offices identified by the VPAA will be responsible for producing the copies in appropriate format as well as for any special editing required and packaging for shipment.

(4) The faculty member will be afforded the opportunity to review segments of the course prior to its sale and for the duration of the use and distribution by the University as long as employed by University. The faculty member may request editing or re-recording from the University.

(5) Net proceeds received from the sale of courses (e.g., royalty or fee payments to the University or any amount recovered by the University in connection with any claim of infringement based on the courses) will be distributed with the faculty member(s) receiving 40%, the Division 20%, the faculty member's College and Department 20%, and the General Fund 20%.

(6) FSU office or offices identified by the VPAA, in conjunction with the Vice President for Administration and Finance, may also market and sell noncredit programs for which it holds licensing and distribution agreements. Royalties for the use of such a program will be paid to individuals, both internal and external to the University, according to the licensing and distribution agreement executed for the specific program.

1) Compensation for Use of Course/Materials.

(1) If an entirely previously recorded course is offered for credit in subsequent semesters, the faculty member who created and/or taught the course may be given first right to administer/teach and revise the rebroadcast of the course, provided that he or she has used his or her best efforts to comply with the applicable material terms of this Policy and/or any applicable written agreement.

(2) If the faculty member who created and/or taught the course is unable or declines to administer/teach the course, the sponsoring department may recruit another faculty member or instructor with appropriate expertise to administer the course, but the faculty member who created and/or taught the course shall be paid a fee of one-tenth (1/10th) of overload pay, so long as they are employed at the University for the first three (3) years after development of the material. The faculty member will be responsible for consulting with and providing support to other faculty members/instructors using the course materials.

(3) If an entirely previously-recorded course is offered in additional sections, the sponsoring department may recruit other faculty members or instructors with appropriate expertise to administer/teach the additional sections, but the faculty member who created and/or taught the course shall be paid a fee of one-tenth (1/10th) of overload pay. The faculty member will be responsible for consulting with and providing support to other faculty members/instructors using the course materials.

m) Licensing Agreements and Releases.

(1) Whenever the University produces a video program, those who appear in the program (i.e., the talent) may be required to sign a release permitting the recording and use of an "image of their person and sound of their voice". The VPAA or his/her designee will be responsible for obtaining signed releases during the production of technology-based programs provided the faculty and/or staff have used his or her best efforts upon reasonable due diligence to provide the VPAA or his or her designee with the necessary information needed to obtain such releases, the University shall hold the faculty or staff member harmless from any and all claims, costs and expenses arising in connection with the same.

(2) VPAA or his/her designee and/or faculty member is responsible for obtaining all releases for Intellectual Property used in the production of technology-based programs and executing licensing agreements with those holding the copyrights for such Intellectual Property.

(3) Students are informed by notices in scheduling books that by enrolling in a video-based course, they waive their rights to any Intellectual Property.

(4) Vice President for Administration and Finance will be responsible for developing and executing license agreements for programs produced by the University. At a minimum, each agreement will include stipulations that:

(a) the licensee will not duplicate the recording, unless expressly provided in the license;

(b) the license is provided for a specified period of time, usually one year;

(c) the licensee will not retransmit the program, unless expressly provided in the license; and

(d) the licensee will not edit or resell the program.

XIII. Reporting and Payment

The University shall provide the faculty member and the President of the Association with annual statements related to any applicable patentable or copyrightable materials (the "Materials") indicating the quantity of the Materials sold, licensed or distributed and the amount due the member in accordance with this Policy and/or the applicable Course Development Agreement, and shall simultaneously pay to the faculty or staff member the amount shown due the faculty or staff member in such statement. The University shall keep accurate books of account and records at its principal place of business covering all transactions related to the Materials, and the faculty or staff member or his/her agents shall have the right, no more than once annually, at reasonable hours of the day, to audit the University's books of account and records on ten (10) days prior notice. Should an audit by the faculty or staff member or his/her agents establish a deficiency of

between the amounts found to be due and the amount actually paid or reported by the University, the University shall pay the member's amount of the deficiency, plus interest at a rate of one-half percent (0.5%) per month from the date such amount became due until the date of payment. The University shall remit payment in such amount within 30 days of the faculty or staff member's delivery to the University of written notice of the same. The University shall keep all such Materials, books of account and records available for at least four (4) years after the date its rights granted herein to the Materials are hereby terminated and/or from the date the faculty or staff member's employment with the University is terminated.

Cross Reference:

Board Policy, Subpart 10-9, *Intellectual Property Rights and Electronic Distance Learning Materials*