



Board Policy 3.26 Intellectual Property

Part 1. Policy Statement

The Board of Trustees endeavors to develop and maintain a post-secondary educational system marked by academic excellence. Research and development of original works and inventions that require intellectual property protection are a vital part of the academic community. The board recognizes and acknowledges that colleges, universities, and the system office may create or commission the creation of such works on its behalf and incorporates in board policy the traditional commitment to faculty and student ownership in scholarly work.

Part 2. Applicability

This policy applies to colleges, universities, the system office and their respective employees, student employees, and students.

Part 3. Definitions

For the purposes of this policy only, the following definitions apply.

Agreement

A signed written contract between or among a corporation, business, individual(s), and a college, university, or the system office, but does not include sponsorship agreements and collective bargaining agreements between the board and exclusive bargaining representatives.

Collective bargaining agreement

A negotiated contract between the board and a specific bargaining unit.

College or university

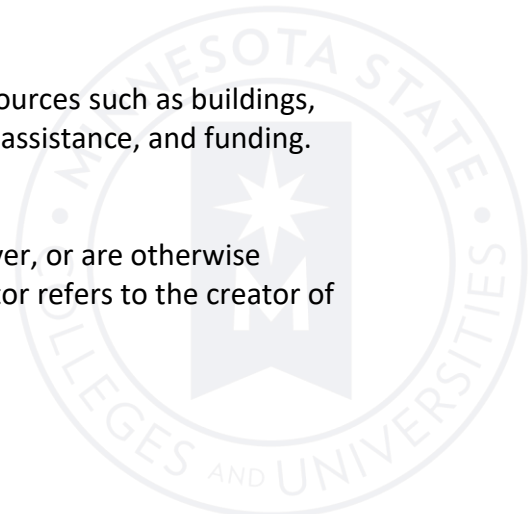
A Minnesota State college or university.

College, university or system office resources

College, university, or system office services and all tangible resources such as buildings, equipment, facilities, computers, software, personnel, research assistance, and funding.

Creator/Inventor

The individual or group of individuals who invent, author, discover, or are otherwise responsible for the creation of intellectual property. And inventor refers to the creator of an invention that may be patentable.



Employee

Any person employed by the State of Minnesota as defined by the Public Employees Labor Relations Act [PELRA].

Faculty

Full-time and part-time employees performing work in bargaining units 209 and 210 and other employees who teach or conduct research with a level of responsibility and self direction equivalent to that traditionally exercised and enjoyed by instructional unit employees when engaged in similar activities, e.g., the preparation of research articles for peer review journals by Administrative and Service Faculty (ASF) members or graduate students.

Intellectual property

Any work of authorship, invention, discovery, or other original creation that may be protected by copyright, patent, trademark, or other category of law.

Intellectual property Rights

All the protections afforded the owner or owners of an original work under law, including all rights associated with patent, copyright, and trademark registration.

Jointly created work

A work prepared by two or more individuals who intend their separate contributions be merged into a single work.

Minnesota State

The public higher education system established at Minnesota Statutes Chapter 136F. Minnesota State includes the Board of Trustees, office of the chancellor, system office, colleges and universities, and any part or combination thereof.

System office

The central administrative office under the direction and supervision of the chancellor which is part of Minnesota State.

Sponsor

A person, company, organization, or governmental entity, other than Minnesota State, that provides funding, equipment, or other support for a college, university, or the system office to carry out a specified project in research, training, or public service.

Sponsorship agreement

A written agreement between the sponsor and a college, university, and/or the system office that may include other parties such as the creator of the work.

Student

An individual enrolled in a class or program at a Minnesota State college or university at the time the intellectual property was created.

Student Employee

A student who is paid by any college, university, or the system office for services performed. Graduate assistants and work-study students are student-employees. For graduate students who teach, see Faculty definition.

Substantial Use of Resources

Substantial use exists when resources are provided beyond the normal professional, technology, and technical support supplied by the college, university, and/or system office to an individual or individuals for development of a project or program.

System

See Minnesota State definition.

Types of Works**Institutional work**

A work made for hire in the course and scope of employment by an employee or by any person with the use of college or university resources, unless the resources were available to the public without charge or the creator had paid the requisite fee to utilize the resources.

Personal work

A work created by an employee outside their scope of employment and without the use of college or university resources other than resources that are available to the public or resources for which the creator has paid the requisite fee to utilize.

Scholarly work

A creation that reflects research, creativity, and/or academic effort. Scholarly works include course syllabi, instructional materials (such as textbooks and course materials), distance learning works, journal articles, research bulletins, lectures, monographs, plays, poems, literary works, works of art (whether pictorial, graphic, sculptural, or other artistic creation), computer software/programs, electronic works, sound recordings, musical compositions, and similar creations.

Student work

A work created by a person in their capacity as a student.

Works made for hire

Works produced by employees within the scope of their employment or specially commissioned works.

Part 4. Ownership of Intellectual Property Rights

Subpart A. Basic ownership rights of the various types of creative works

The ownership rights to a creation must be determined generally by the provisions in Subpart A, but ownership may be modified by an agreement, sponsorship agreement, or other condition described in Part 4, Subpart B or C.

1. **Institutional works.** Intellectual property rights in institutional works belong to the college or university. A course outline is an institutional work. A college, university or the system office may enter into a written agreement with a non-faculty employee granting the employee ownership of a work that the parties agree is of a scholarly nature as described in Subpart A.2. For the purposes of this policy, scholarly works are not considered institutional works.
2. **Scholarly works.** Intellectual property rights in scholarly works belong to the faculty member or student who created the work, unless an agreement, sponsorship agreement, or other condition described in Subpart B or C provides otherwise.
3. **Personal works.** Intellectual property rights in personal works belong to the creator of the work.
4. **Student works.** Intellectual property rights in a student work belong to the student who created the work. A work created by a student to meet course requirements using college or university resources for which the student has paid tuition and fees to access courses/programs or using resources available to the public, is the property of the student. A work created by a student employee during the course and scope of employment is an institutional work and the intellectual property rights belong to the college or university unless an agreement, sponsorship agreement, internship agreement, or other condition described in Subpart B or C provides otherwise.

Subpart B. Modification of basic ownership rights

The general provisions for ownership of intellectual property rights set forth in Subpart A may be modified by entering into a signed written agreement as provided in this subpart, following collaborative discussion among the affected parties, or through the substantial use of resources.

1. **Sponsorship agreement.** The ownership of intellectual property rights in a work created under a sponsorship agreement is determined by the terms of the sponsorship agreement. If the sponsorship agreement is silent on ownership of intellectual property rights, ownership will be determined under applicable law.
2. **Collaborative agreement.** A college, university or the system may participate in projects with persons, corporations, and businesses to meet identified student, citizen,

community and industry needs. Ownership rights pursuant to any collaboration must be addressed pursuant to this policy.

3. **Specially commissioned work agreements.** Intellectual property rights to a work specially ordered or commissioned by a college or university from a faculty member or other employee, and identified as a specially commissioned work at the time the work was commissioned, is a work made for hire and belongs to the college or university. The college or university, and the employee shall enter into a written agreement for creation of the specially commissioned work.
4. **Student Internship agreement.** The ownership of intellectual property rights in a work created during a student internship is determined by the terms of the internship agreement. If the agreement is silent on ownership of intellectual property rights, ownership is determined under applicable law.
5. **Open Educational Resource (OER) agreements.** When colleges, universities, and the system office use OER agreements, authors will retain ownership of the copyright to their works, but agree to share the works through an Open or Creative Commons license.
6. **Substantial Use of Resources.** In the event a college, university or the system office provides substantial resources to a faculty member for creation of a work that is not an institutional work created under a sponsorship agreement, individual agreement, or special commission, the college university and/or the system office and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made. Use of resources is considered substantial when the additional support received is beyond the normal support level made available by a college, university and/or the system office to the individual in their position.

Subpart C. Other ownership factors

1. **Collective bargaining agreement.** In the event the provisions of this policy and the provisions of any effective collective bargaining agreement conflict, the collective bargaining agreement must take precedence.
2. **Jointly created works.** Ownership of jointly created works is determined by separately assessing which of the above categories applies to each creator, respectively. Jointly created works involving the contributions of students and/or student employees must be assessed considering all relevant categories of ownership rights as set forth above.
3. **Sabbatical works.** Intellectual property created during a sabbatical is defined as a scholarly work. Typical sabbatical plans do not require the use of substantial college/university resources as defined in Part 2 of this policy. If the work created as part of an approved sabbatical plan requires resources beyond those normal for a

sabbatical, the parties may enter into one of the applicable arrangements set forth in Part 4, Subparts B or C.

4. **Minnesota State college or university name.** Intellectual property rights associated with Minnesota State's identity, the identities of its colleges and universities, logos, and other indices of identity belong to the respective entity. Such rights may be licensed pursuant to reasonable terms and conditions approved by the chancellor, presidents or their designees, respectively. Minnesota State's employees may identify themselves with such title of their position as is usual and customary in the academic community; but any user of the Minnesota State's or a college's or university's name, logo, or indicia of identity shall take reasonable steps to avoid any confusing, misleading, or false impression of particular sponsorship or endorsement by the System, its colleges or universities. When necessary, specific disclaimers must be included.
5. **Works owned jointly by colleges, universities and the system.** Colleges, universities and system ownership interests in jointly owned intellectual property must be determined by the relative contributions made by each contributor - unless otherwise provided in a written agreement. The ownership interests may be expressed in percentages of ownership or an unbundling of the rights associated with the work, whatever the parties agree to. This paragraph applies only to allocation of ownership interests among a college, university or Minnesota State. The ownership of any other joint owner must be determined in accordance with applicable policy, collective bargaining agreement, or personnel plan provisions, or as negotiated among the parties.
6. **Equitable distributions.** In any instance in which Minnesota State and/or its colleges or universities execute an agreement with an individual, corporation, business, or other entity for economic gain using intellectual property in which the colleges, universities, or the Minnesota State has an ownership interest, the colleges, universities or the system must receive an equitable distribution. The proceeds of the equitable distribution must be shared among the creators of the work as determined by agreement in accordance with this policy.

Part 5. Management of Intellectual Property

Subpart A. Record-keeping

Each college and university shall maintain a record-keeping system to manage the development and use of its intellectual property.

Subpart B. Contracts involving intellectual property

College, university, and system office contracts involving intellectual property must be reviewed by the Office of General Counsel or Attorney General's Office before signing, unless the contract is one of the Minnesota State approved contract templates.

Part 6. Preservation of Intellectual Property Rights

Subpart A. Protection of rights

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

Subpart B. Payment of costs

A college, university, or the system office may pay some or all costs required for obtaining a patent, trademark, copyright, or other classification on original works for which the college, university or the system office owns or jointly owns the intellectual property rights. If a college, university or the system office has intellectual property rights in a jointly owned work, the college, university, or the system office may enter into an agreement with joint owners relating to the payment of such costs.

Part 7. Commercialization of Intellectual Property

Subpart A. Right of Commercialization

The college, university, or the system office that owns or has shared intellectual property rights to a work may commercialize the work using its own resources or may enter into agreements with others to commercialize the work as authorized by law. Upon request of a creator who retains intellectual property rights in a work, the college, university, or the system office shall advise the creator of progress in commercializing the work.

Subpart B. Sharing of proceeds

An employee who creates a work and retains an intellectual property interest in such work in which the college, university, or system office maintains intellectual property rights is entitled to share in royalties, licenses, and any other payments from commercialization of the work in accordance with applicable collective bargaining agreements, individual agreements, and applicable laws. All expenses incurred by the college, university, or the system office in protecting and promoting the work, including costs incurred in seeking patent or copyright protection and reasonable costs of marketing the work, must be deducted and reimbursed to the college, university, or the system office before the creator is entitled to share in the proceeds.

If a college, university, or the system office decides not to pursue patent or copyright protection in a jointly owned work and the creator/inventor decides to pursue such protection, all expenses incurred by the creator/inventor in protecting and promoting the work including costs incurred in seeking patent or copyright protection and reasonable costs of marketing the work, must be deducted and reimbursed to the creator/inventor before the college, university, or the system office is entitled to share in the proceeds.

Net proceeds generated from the commercialization of works owned jointly by colleges, universities, or the system office (not creators/inventors) will be distributed in accord with the terms of a written agreement, or absent an agreement, in amounts equal to the relative contributions made by the colleges, universities, or the system office.

Subpart C. Intellectual property account

Each college, university, and the system office shall deposit all net proceeds from commercialization of intellectual property in its own general intellectual property account. The president/chancellor (or designee) may use the account to reimburse expenses related to creating or preserving the intellectual property rights of the college, university, or system office or for any other purpose authorized by law and board policy, including the development of intellectual property.

Subpart D. Trademarks

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

Part 8. Assignment of Rights

Subpart A. College, university or system office assignment

A college, university, or the system office may assign all or a portion of its rights in a work to the creator, corporation, business, or to any other person in accordance with the law and when in the best interests of the college, university, or the System. As a condition of the assignment, the college, university, or the system office, may preserve rights, such as a royalty-free, perpetual, irrevocable, non-exclusive license to use and copy the work in accordance with the preservation and the right to share in any proceeds from commercialization of the work.

Subpart B. Creator assignment

Any person may agree to assign some or all of their intellectual property rights to the college, university, or system. The creator may preserve any rights available to the creator as part of the assignment.

Subpart C. Assignment in writing

Any assignment of intellectual property rights must be in writing and signed by the assignor and assignee.

Part 9. Dispute Resolution Process

The system office may develop procedures to resolve disputes relating to this policy.

Date of Adoption: 06/19/02
Date of Implementation: 01/01/03
Date of Last Review: 04/22/20

Date and Subject of Amendments:

04/22/20 – Reorganized the types of works in the Part 2 Definition section, added student internship agreements and open educational resource agreements in Part 4, Subpart B, 4 & 5; deleted the intellectual property coordinator language in Parts 5 and 10; added language on system legal counsel’s review of contracts involving intellectual property in Part 5, Subpart B; changed Part 5 into the management of intellectual property, and made general technical edits throughout the policy.

Additional HISTORY.