

**MINNESOTA STATE COLLEGES AND UNIVERSITIES  
BOARD OF TRUSTEES**

**Agenda Item Summary Sheet**

**Committee:** Academic and Student Affairs

**Date of Meeting:** May 18, 2010

**Agenda Item:** Proposed Amendment to Board Policy 3.26, Intellectual Property (Second Reading)

Proposed  
Policy Change

Approvals  
Required by  
Policy

Other  
Approvals

Monitoring

Information

**Cite policy requirement, or explain why item is on the Board agenda:**

Amendments to Board Policy require approval of the Board.

**Scheduled Presenter(s):**

Linda L. Baer, Senior Vice Chancellor for Academic and Student Affairs

Gary Hunter, System Director for Intellectual Property

**Outline of Key Points/Policy Issues:**

Board Policy 3.26 Intellectual Property addresses the ownership of intellectual property within the system and the current amendment seeks to clarify the policy.

1. Adding the definition of "Faculty" in order to identify the employees who are entitled to own their scholarly works.
2. Deleting the term "Professional Staff" throughout the policy to reflect the "work made for hire" language in federal copyright law.

**Background Information:**

The review of Board Policy 3.26 Intellectual Property was undertaken as part of the normal policy review process. The proposed amendment was developed from input by a policy review committee comprised of representatives from technical and community colleges, universities, labor unions, and the Office of the Chancellor along with input from other constituents within the system.

*Second Reading*

**BOARD OF TRUSTEES  
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

**BOARD ACTION**

Proposed Amendment to Policy 3.26 Intellectual Property

The Office of the Chancellor is submitting a proposed amendment to Policy 3.26 Intellectual Property.

**BACKGROUND**

A policy review committee was convened in September and met in October, November and December of 2009. A fourth meeting was added in January of 2010 to allow further opportunity for constituent groups to provide input on the proposed amendment. Various stakeholders throughout the System have been consulted with during the past six months.

**CONSULTATION**

Consultation has occurred as follows:

- Reviewed by the Academic and Student Affairs Policy Council- 1/21/2010 and 3/19/2010.
- Reviewed at Minnesota State College Faculty (MSCF) meet and confer- 2/25/2010.
- Mailed out for review and comment – 3/25/2010.
- Reviewed at Inter Faculty Organization (IFO) meet and confer – 3/26/2010.
- Reviewed at Leadership Council- 4/6/2010.
- Reviewed and comment at Minnesota State University Association of Administrative and Service Faculty (MSUAASF) meet and confer- 4/9/2010.
- Reviewed at IFO meet and confer- 4/26/2010.
- Reviewed at Leadership Council – 5/4/2010
- Reviewed at MSCF meet and confer- 5/6/2010.

**RECOMMENDED COMMITTEE ACTION**

The Academic and Student Affairs Policy Committee recommends that the Board of Trustees adopt the following motion:

**RECOMMENDED MOTION**

The Board of Trustees approves the proposed amendment to Policy 3.26 Intellectual Property.

**BOARD OF TRUSTEES  
MINNESOTA STATE COLLEGES AND UNIVERSITIES**

*Second Reading*

<b>BOARD POLICY</b>		<b>3.26</b>
Chapter	3	Educational Policies
Section	26	Intellectual Property

1    **3.26 Intellectual Property**

2    **Part 1. Policy Statement.** The Board of Trustees endeavors to develop and maintain a post-  
3 secondary educational system marked by academic excellence. Research and development of  
4 original works and inventions that require intellectual property protection are a vital part of the  
5 academic community. The Board recognizes and acknowledges that system colleges and  
6 universities may create or commission the creation of such works on its behalf and incorporates  
7 in Board policy the traditional commitment to faculty and student ownership in scholarly work.

8    **Part 2. Applicability.** This policy applies to colleges, universities, the Office of the Chancellor  
9 and their respective employees, student employees and students.

10 **Part 3. Definitions.** For the purposes of this policy, the following words and terms shall have the  
11 meanings given them:

12       **Subpart A. Agreement.** Agreement when used in this policy means a signed written  
13 contract between or among a corporation, business, individual(s) and a college,  
14 university or the System, but does not mean a sponsorship agreement or a collective  
15 bargaining agreement between the Board and an exclusive bargaining representative.

16       **Subpart B. Collective Bargaining Agreement.** A collective bargaining agreement  
17 means a negotiated contract between the Board and a specific bargaining unit.

18       **Subpart C. College or University.** College or university, except where specifically  
19 defined otherwise, means a system college or university.

20       **Subpart D. College, University or Office of the Chancellor Resources.** College,  
21 university or Office of the Chancellor resources means services and all tangible resources  
22 including buildings, equipment, facilities, computers, software, personnel, research  
23 assistance, and funding.

24       **Subpart E. Course Outline.** The course outline is the document approved by the college  
25 or university curriculum committee and shall include the course title, course description,  
26 prerequisites, total credits, lecture/lab breakdown, and student learning outcomes. (As  
27 referenced in **Board Policy 3.22** Course Syllabi.)

1       **Subpart F. Course Syllabus.** The course syllabus is a document that contains the  
2 elements of the corresponding course outline, standards for evaluation of student learning  
3 and additional information that reflects the creative work of the faculty member. (As  
4 referenced in **Board Policy 3.22 Course Syllabi.**)

5       **Subpart G. Creator/Inventor.** A creator is an individual or group of individuals who  
6 invent, author, discover, or are otherwise responsible for the creation of intellectual  
7 property. An inventor refers to the creator of an invention that may be patentable.

8       **Subpart H. Employee.** An employee is any person employed by the State of Minnesota  
9 as defined by Public Employees Labor Relations Act [PELRA].

10       **Subpart I. Faculty.** The term “Faculty” refers to full-time and part-time employees  
11 performing work in bargaining units 209 and 210 and employees who create works in  
12 their capacity as instructors when teaching courses to students for credits at system  
13 colleges and universities.

14       **Subpart J. Intellectual Property.** Intellectual property is any work of authorship,  
15 invention, discovery, or other original creation that may be protected by copyright,  
16 patent, trademark, or other category of law.

17       **Subpart K. Intellectual Property Rights.** Intellectual Property Rights means all the  
18 protections afforded the owner or owners of an original work under law, including all  
19 rights associated with patent, copyright, and trademark registration.

20       **Subpart L. Jointly Created Work.** A jointly created work is one where two or more  
21 creators contribute to the work and intend that it result in a unified, single work.

22       **Subpart M. Minnesota State Colleges and Universities System.** The public higher  
23 education system established at **Minnesota Statutes Chapter 136F**. The System  
24 includes the Board of Trustees, the Office of the Chancellor, the state colleges and  
25 universities, and any part or combination thereof.

26       **Subpart N. Office of the Chancellor.** Office of the Chancellor means the central  
27 administrative office under the direction and supervision of the chancellor and which is  
28 part of the Minnesota State Colleges and Universities System.

29       **Subpart O. Sponsor.** A sponsor is a person, private sector company, organization, or  
30 governmental entity, other than the System, that provides funding, equipment, or other  
31 support for a college, university, or the Office of the Chancellor to carry out a specified  
32 project in research, training, or public service.

33       **Subpart P. Sponsorship Agreement.** A sponsorship agreement is a written agreement  
34 between the sponsor and a college, university, and/or the Office of the Chancellor and  
35 may include other parties including the creator of the work.

1       **Subpart Q. Student.** A student is an individual who was or is enrolled in a class or  
2       program at any system college or university at the time the intellectual property was  
3       created.

4       **Subpart R. Student Employee.** A student employee is a student who is paid by any  
5       system college, university, or the Office of the Chancellor for services performed.  
6       Graduate assistants and work-study students are student-employees. For graduate  
7       students who teach, see Faculty definition in Subpart I.

8       **Subpart S. Substantial Use of Resources.** Substantial use exists when resources are  
9       provided beyond the normal professional, technology, and technical support supplied by  
10      the college, university, and/or Office of the Chancellor to an individual or individuals for  
11      development of a project or program.

12      **Subpart T. System.** See Minnesota State Colleges and Universities System definition in  
13      Part 3. Definitions, Subpart N of this policy.

14      **Subpart U. Works Made for Hire.** Works made for hire means all work done by an  
15      employee within the scope of his or her employment or specially commissioned work.

#### 16   **Part 4. Ownership of Intellectual Property Rights.**

17      **Subpart A. Basic Ownership Rights of the Various Types of Creative Works.** The  
18      ownership rights to a creation shall be determined generally by the provisions in Subpart  
19      A below, but ownership may be modified by an agreement, sponsorship agreement, or  
20      other condition described in Subpart B or Subpart C below.

21           1. **Institutional Works.** Intellectual property rights in institutional works belong  
22           to the college or university. Institutional works are works made for hire in the  
23           course and scope of employment by employees or by any person with the use of  
24           college or university resources, unless the resources were available to the public  
25           without charge or the creator had paid the requisite fee to utilize the resources.  
26           A course outline is an institutional work. A college, university or the Office of  
27           the Chancellor may enter into a written agreement with a non-faculty employee  
28           granting the employee ownership of a work that the parties agree is of a  
29           scholarly nature as described in Subpart A.2. For the purposes of this policy,  
30           scholarly works are not considered institutional works.

31           2. **Scholarly Works.** Intellectual property rights in scholarly works belong to the  
32           faculty member or student who created the work, unless an agreement,  
33           sponsorship agreement, or other condition described in Subpart B or C below  
34           provides otherwise. Scholarly works are creations that reflect research,  
35           creativity, and/or academic effort. Scholarly works include course syllabi,  
36           instructional materials (such as textbooks and course materials), distance  
37           learning works, journal articles, research bulletins, lectures, monographs, plays,  
38           poems, literary works, works of art (whether pictorial, graphic, sculptural, or

1 other artistic creation), computer software/programs, electronic works, sound  
2 recordings, musical compositions, and similar creations.

- 3 3. **Personal Works.** Intellectual property rights in personal works belong to the  
4 creator of the work. A personal work is a work created by an employee or  
5 student outside his or her scope of employment and without the use of college  
6 or university resources other than resources that are available to the public or  
7 resources for which the creator has paid the requisite fee to utilize.
- 8 4. **Student Works.** a) Intellectual property rights in student works belong to the  
9 student who created the work. b) A creative work by a student to meet course  
10 requirements using college or university resources for which the student has  
11 paid tuition and fees to access courses/programs or using resources available to  
12 the public, is the property of the student. c) A work created by a student  
13 employee during the course and scope of employment is an institutional work  
14 and intellectual property rights to such creation belong to the college or  
15 university unless an agreement, sponsorship agreement, or other condition  
16 described in Subpart B or C below provides otherwise.

17 **Subpart B. Modification of Basic Ownership Rights.** The general provisions for  
18 ownership of intellectual property rights set forth in Subpart A may be modified by the  
19 entering into a signed written agreement as provided in this subpart, following  
20 collaborative discussion among the affected parties, or through the substantial use of  
21 resources.

- 22 1. **Sponsorship Agreement.** The ownership of intellectual property rights in a  
23 work created under a sponsorship agreement shall be determined by the terms  
24 of the sponsorship agreement. If the sponsorship agreement is silent on the  
25 issue of ownership of intellectual property rights, ownership will be determined  
26 under applicable law.
- 27 2. **Collaborative Agreement.** A college, university or the System may participate  
28 in projects with persons, corporations, and businesses to meet identified  
29 student, citizen, community and industry needs. Ownership rights pursuant to  
30 any collaboration shall be addressed pursuant to this policy.
- 31 3. **Specially Commissioned Work Agreements.** Intellectual property rights to a  
32 work specially ordered or commissioned by the college or university from a  
33 faculty member or other employee, and identified by the college or university,  
34 as a specially commissioned work at the time the work was commissioned, is a  
35 work made for hire and shall belong to the college or university. The college or  
36 university, and the employee shall enter into a written agreement for creation of  
37 the specially commissioned work.
- 38 4. **Substantial Use of Resources.** In the event a college, university or the Office  
39 of the Chancellor provides substantial resources to a faculty member for  
40 creation of a work that is not an institutional work created under a sponsorship

1 agreement, individual agreement, or special commission, the college university  
2 and/or the Office of the Chancellor and the creator shall own the intellectual  
3 property rights jointly in proportion to the respective contributions made. Use  
4 of resources is considered substantial when the additional support received is  
5 beyond the normal support level made available by a college, university and/or  
6 the Office of the Chancellor to the individual in his or her position.

7 **Subpart C. Other ownership factors.**

- 8 1. **Collective Bargaining Agreement.** In the event the provisions of this Policy  
9 and the provisions of any effective collective bargaining agreement conflict, the  
10 collective bargaining agreement shall take precedence.
- 11 2. **Jointly Created Works.** Ownership of jointly created works shall be  
12 determined by separately assessing which of the above categories applies to  
13 each creator, respectively. Jointly created works involving the contributions of  
14 students and/or student employees must be assessed considering this and other  
15 relevant categories of ownership rights as set forth above.
- 16 3. **Sabbatical Works.** Intellectual property created during a sabbatical is defined  
17 as a scholarly work. Typical sabbatical plans do not require the use of  
18 substantial college/university resources as defined in Part 2. Subpart S. of this  
19 policy. If the work created as part of an approved sabbatical plan requires  
20 resources beyond those normal for a sabbatical, the parties may enter into one  
21 of the applicable arrangements as set forth in Part 4. Subparts B. and C. of this  
22 policy.
- 23 4. **System, College or University Name.** Intellectual property rights associated  
24 with the System's identity, the identities of its colleges and universities, logos,  
25 and other indices of identity belong to the respective entity. Such rights may be  
26 licensed pursuant to reasonable terms and conditions approved by the  
27 Chancellor, presidents or their designees, respectively. System employees may  
28 identify themselves with such title of their position as is usual and customary in  
29 the academic community; but any user of the System's or a college's or  
30 university's name, logo, or indicia of identity shall take reasonable steps to  
31 avoid any confusing, misleading, or false impression of particular sponsorship  
32 or endorsement by the System, its colleges or universities. When necessary,  
33 specific disclaimers shall be included.
- 34 5. **Works Owned Jointly by Colleges, Universities and the System.** Colleges,  
35 universities and system ownership interests in jointly owned intellectual  
36 property shall be determined by the relative contributions made by each  
37 contributor - unless otherwise provided in a written agreement. The ownership  
38 interests may be expressed in percentages of ownership or an unbundling of the  
39 rights associated with the work, whatever the parties agree to. This paragraph  
40 applies only to allocation of ownership interests among a college, university or

1 the System. The ownership of any other joint owner shall be determined in  
2 accordance with applicable policy, collective bargaining agreement, or  
3 personnel plan provisions, or as negotiated among the parties.

- 4 6. **Equitable Distributions.** In any instance in which the System and/or its  
5 colleges or universities execute an agreement with an individual, corporation,  
6 business or other entity for economic gain using intellectual property in which  
7 the colleges, universities, or the System has an ownership interest, the  
8 colleges, universities or the System shall receive an equitable distribution. The  
9 proceeds of the equitable distribution shall be shared among the creators of the  
10 work as determined by agreement in accordance with this policy.

## 11 **Part 5. Coordination Function.**

12 **Subpart A. Appointment of coordinator.** The president or Chancellor, or his/her  
13 designee at each college, university, or Office of the Chancellor shall appoint an  
14 employee to be the local Intellectual Property Coordinator. The coordinator has  
15 responsibility to administer provisions of this policy to include dissemination of the  
16 college or university's procedures regarding implementation of **Board Policy 3.26**  
17 Intellectual Property and **Board Policy 3.27** Copyrights and any related procedures.

18 **Subpart B. Record-keeping.** Each college and university shall establish a record-  
19 keeping system to monitor the development and use of its intellectual property. Any  
20 questions relating to the applicability of this policy should be directed to the Intellectual  
21 Property Coordinator.

22 **Subpart C. Conflicts of interest and ethics.** System employees are responsible for  
23 adhering to all legal and ethical requirements in accordance with State law, Board Policy  
24 and system procedure.

## 25 **Part 6. Preservation of Intellectual Property Rights.**

26 **Subpart A. Protection of Rights.** A college, university or the Office of the Chancellor  
27 shall undertake such efforts, as it deems necessary to preserve its rights in original works  
28 when it is a sole or joint owner of the intellectual property rights. A college, university or  
29 the Office of the Chancellor may apply for a patent, trademark registration, copyright  
30 registration, or other protection available by law on any new work in which the college,  
31 university or the Office of the Chancellor maintains intellectual property rights.

32 **Subpart B. Payment of Costs.** A college, university or the Office of the Chancellor may  
33 pay some or all costs required for obtaining a patent, trademark, copyright, or other  
34 classification on original works for which the college, university or the Office of the  
35 Chancellor owns or jointly owns the intellectual property rights. If a college, university or  
36 the Office of the Chancellor has intellectual property rights in a jointly owned work, the  
37 college, university or the Office of the Chancellor may enter into an agreement with joint  
38 owners relating to the payment of such costs.



1 **Part 7. Commercialization of Intellectual Property.**

2 **Subpart A. Right of Commercialization.** The college, university or the Office of the  
3 Chancellor that owns or has shared intellectual property rights to a work may  
4 commercialize the work using its own resources or may enter into agreements with others  
5 to commercialize the work as authorized by law. Upon request of a creator who retains  
6 intellectual property rights in a work, the college, university or the Office of the  
7 Chancellor shall advise the creator of progress in commercializing the work.

8 **Subpart B. Sharing of Proceeds.** An employee who creates a work and retains an  
9 intellectual property interest in such work in which the college, university or Office of the  
10 Chancellor maintains intellectual property rights is entitled to share in royalties, licenses,  
11 and any other payments from commercialization of the work in accordance with  
12 applicable collective bargaining agreements, individual agreements, and applicable laws.  
13 All expenses incurred by the college or university in protecting and promoting the work,  
14 including costs incurred in seeking patent or copyright protection and reasonable costs of  
15 marketing the work, shall be deducted and reimbursed to the college, university or the  
16 Office of the Chancellor before the creator is entitled to share in the proceeds.

17 If a college, university or the Office of the Chancellor decides not to pursue patent or  
18 copyright protection in a jointly owned work and the creator/inventor decides to pursue  
19 such protection, all expenses incurred by the creator/inventor in protecting and promoting  
20 the work including costs incurred in seeking patent or copyright protection and  
21 reasonable costs of marketing the work, shall be deducted and reimbursed to the  
22 creator/inventor before the college, university or the Office of the Chancellor is entitled  
23 to share in the proceeds.

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

29 **Subpart C. Intellectual Property Account.** Each college, university, and the Office of  
30 the Chancellor shall deposit all net proceeds from commercialization of intellectual  
31 property in its own general intellectual property account. The President/Chancellor (or  
32 designee) may use the account to reimburse expenses related to creating or preserving the  
33 intellectual property rights of the college, university, or Office of the Chancellor or for  
34 any other purpose authorized by law and Board policy, including the development of  
35 intellectual property.

36 **Subpart D. Trademarks.** Income earned from the licensing of college, university or  
37 System trademarks and logos is not subject to the requirements of Subpart C for  
38 distribution of funds.

1 **Part 8. Assignment of Rights.**

2 **Subpart A. College, University or Office of the Chancellor Assignment.** A college,  
3 university or the Office of the Chancellor may assign all or a portion of its rights in a  
4 work to the creator, corporation, business or to any other person in accordance with the  
5 law and when in the best interests of the college, university or the System. As a condition  
6 of the assignment, the college, university or the Office of the Chancellor, may preserve  
7 rights, such as a royalty-free, perpetual, irrevocable, non-exclusive license to use and  
8 copy the work in accordance with the preservation and the right to share in any proceeds  
9 from commercialization of the work.

10 **Subpart B. Creator Assignment.** Any person may agree to assign some or all of his or  
11 her intellectual property rights to the college, university or System. The creator may  
12 preserve any rights available to the creator as part of the assignment.

13 **Subpart C. Assignment in Writing.** Any assignment of intellectual property rights shall  
14 be in writing and signed by the assignor and assignee.

15 **Part 9. Dispute Resolution Process.** The Office of the Chancellor may develop procedures to  
16 resolve disputes relating to this policy.

17 **Part 10. Notification of Policy.** The Intellectual Property Coordinator at each college,  
18 university, and the Office of the Chancellor shall provide a copy of this Intellectual Property  
19 Policy and any other forms developed to implement this Policy to persons upon request. The  
20 college, university, or Office of the Chancellor shall arrange training on a periodic basis for  
21 faculty, staff and/or other persons who are covered by this Intellectual Property Policy.

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Related Documents: Policy 3.22 Course Syllabi  
Procedure 3.26.1 Patent Inquiry Process  
Policy 3.27 Copyrights  
Procedure 3.27.1 Copyright Clearance  
Minnesota State Statute 136F  
Minnesota State Statute 16B.483

*Date of Implementation: 1/01/03*

*Date of Adoption: 6/19/02*

*Date and Subject of Revision:*

**POLICY CONTENT FORMAT**

*Single underlining represents proposed new language*

*Strikeouts represent existing language proposed to be eliminated.*