

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

Agenda Item Summary Sheet

Committee: Academic and Student Affairs

Date of Meeting: June 15, 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

BOARD POLICY		3.26
Chapter	3	Educational Policies
Section	26	Intellectual Property

3.26 Intellectual Property

Part 1. Policy Statement. ~~The Minnesota State Colleges and Universities~~ 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 of Trustees recognizes and acknowledges that system colleges and universities ~~MnSCU institutions~~ may create or commission the creation of such works on its behalf and ~~incorporates in~~ adopts as ~~Board's~~ policy the traditional commitment to faculty and student ownership in scholarly work.

Part 2. Applicability. This policy applies to ~~agreements between~~ colleges, universities, the Office of the Chancellor and their respective employees, student employees and students.

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

Subpart A. Agreement. Agreement when used in this policy means a signed written contract between or among a corporation, business, an individual(s) or individuals and a college, ~~or university~~ or the System, but does not mean a sponsorship agreement or a collective bargaining agreement between the ~~Minnesota State Colleges and Universities Board of Trustees~~ and an exclusive bargaining representative.

Subpart B. Collective Bargaining Agreement. A collective bargaining agreement means a negotiated contract between the ~~Minnesota State Colleges and Universities Board of Trustees~~ and a specific bargaining unit.

Subpart C. College or University. College or university, except where specifically defined otherwise, means a MnSCU system college or university, ~~Office of the Chancellor or system.~~

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

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

5 **Subpart F. Course Syllabus.** The course syllabus is a document that contains the
6 elements of the corresponding course outline, standards for evaluation of student
7 learning; and additional information ~~which that~~ reflects the creative work of the faculty
8 member. (As referenced in Board Policy 3.22 Course Syllabi.)

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

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

14 **Subpart I. Faculty.** The term “Faculty” refers to full-time and part-time employees
15 performing work in bargaining units 209 and 210 and other employees who teach or
16 conduct research with a level of responsibility and self direction equivalent to that
17 traditionally exercised and enjoyed by instructional unit employees when engaged in
18 similar activities, e.g., the preparation of research articles for peer review journals by
19 Administrative and Service Faculty (ASF) members or graduate students.

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

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

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

28 **Subpart M. ~~MnSCU or MnSCU~~ Minnesota State Colleges and Universities System.**
29 ~~MnSCU System, MnSCU, or System is~~ The public higher education system established
30 at [Minnesota Statutes Chapter 136F](#). For purposes of this policy, MnSCU-The System
31 includes the Board of Trustees, the Office of the Chancellor, the state colleges and
32 universities, and any part or combination thereof.

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

36 **Subpart N. Professional Staff.** ~~Professional staff includes but is not limited to~~
37 ~~administrative staff (such as deans, directors, and vice-presidents) and technical staff,~~

1 ~~non-faculty researchers, teaching assistants and others not covered by a collective~~
2 ~~bargaining agreement.~~

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

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

10 **Subpart Q. Student.** A student is an individual who was or is enrolled in a class or
11 program at any ~~MnSCU~~ system college or university at the time the intellectual property
12 was created.

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

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

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

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

25 **Part 4. Ownership of Intellectual Property Rights.**

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

- 30 1. **Institutional Works.** Intellectual property rights in institutional works belong
31 to the college or university. Institutional works are works made for hire in the
32 course and scope of employment by employees or by any person with the use of
33 college or university resources, unless the resources were available to the public
34 without charge or the creator had paid the requisite fee to utilize the resources.
35 A course outline is an institutional work. A college, university or the Office of
36 the Chancellor may enter into a written agreement with a non-faculty employee
37 granting the employee ownership of a work that the parties agree is of a

1 scholarly nature as described in Subpart A.2. For the purposes of this policy,
2 S~~scholarly works and encoded works~~ are not considered included within the
3 ~~definition~~ of institutional works.

4 2. **Scholarly Works.** Intellectual property rights in scholarly works belong to the
5 faculty member, ~~or student or professional staff~~ who created the work, unless an
6 agreement, sponsorship agreement, or other condition described in Subpart B or
7 C below provides otherwise. Scholarly works are creations that reflect research,
8 creativity, and/or academic effort. Scholarly works include course syllabi,
9 instructional materials (such as textbooks and course materials), distance
10 learning works, journal articles, research bulletins, lectures, monographs, plays,
11 poems, literary works, works of art (whether pictorial, graphic, sculptural, or
12 other artistic creation), computer software/programs, electronic works, sound
13 recordings, musical compositions, and similar creations.

14 3. ~~**Encoded Works.** Intellectual property rights in encoded works belong to the~~
15 ~~faculty member or student who created the work, unless an agreement,~~
16 ~~sponsorship agreement, or other condition described in Subpart B or C below~~
17 ~~provides otherwise. Intellectual property rights in encoded works created by a~~
18 ~~professional staff member belong to the college or university unless an~~
19 ~~agreement, sponsorship agreement, or other condition described in Subpart B or~~
20 ~~C below provides otherwise.~~ **Personal Works.** Intellectual property rights in
21 personal works belong to the creator of the work. A personal work is a work
22 created by an employee or student outside his or her scope of employment and
23 without the use of college or university resources other than resources that are
24 available to the public or resources for which the creator has paid the requisite
25 fee to utilize.

26 4. **Student Works.** a) Intellectual property rights in student works belong to the
27 student who created the work. b) A creative work by a student to meet course
28 requirements using college or university resources for which the student has
29 paid tuition and fees to access courses/programs or using resources available to
30 the public, is the property of the student. c) A work created by a student
31 employee during the course and scope of employment is an institutional work
32 and intellectual property rights to such creation belong to the college or
33 university unless an agreement, sponsorship agreement, or other condition
34 described in Subpart B or C below provides otherwise.

35 **Subpart B. Modification of Basic Ownership Rights.** The general provisions for
36 ownership of intellectual property rights set forth in Subpart A ~~may shall~~ be modified by
37 the entering into a signed written agreement as provided in this subpart, following
38 collaborative discussion among the affected parties, or through the substantial use of
39 ~~resources following provisions if any of these provisions is applicable to the situation.~~

40 1. **Sponsorship Agreement.** The ownership of intellectual property rights in a
41 work created under a sponsorship agreement shall be determined by the terms

1 of the sponsorship agreement. If the sponsorship agreement is silent on the
2 issue of ownership of intellectual property rights, ownership will be determined
3 under applicable law.

4 **2. Collaborative Agreements/Partnerships.** A college, university or the
5 System MnSCU and/or its colleges, universities may participate in projects with
6 persons, corporations, organizations and businesses to meet identified student,
7 citizen, community and industry needs. Ownership rights pursuant to any
8 collaboration ~~or partnership~~ shall be addressed pursuant to this policy.

9 ~~3. **Equity Distributions.** In any instance in which MnSCU and/or its colleges or~~
10 ~~universities execute an agreement with an individual, corporation or other entity~~
11 ~~for economic gain using intellectual property owned by the colleges or~~
12 ~~university, the colleges or university is entitled to receive an equity distribution.~~
13 ~~The proceeds of the equity distribution shall be shared among the creators of~~
14 ~~the work as determined by this policy.~~

15 **4.3. Specially Commissioned Work Agreements.** Intellectual property rights to a
16 work specially ordered or commissioned by the college or university from a
17 faculty member, ~~professional staff,~~ or other employee, and identified by the
18 college or university, as a specially commissioned work at the time the work
19 was commissioned, is a work made for hire and shall belong to the college or
20 university. The college or university, and the employee shall enter into a written
21 agreement for creation of the specially commissioned work.

22 **5.4. Substantial Use of Substantial Resources.** In the event a college, ~~or~~ university
23 or the Office of the Chancellor provides substantial resources to a faculty
24 member ~~or professional staff member~~ for creation of a work that is and the
25 ~~work was~~ not an institutional work created under a sponsorship agreement,
26 individual agreement, or special commission, the college, ~~or~~ university, and/or
27 the Office of the Chancellor and the creator shall own the intellectual property
28 rights jointly in proportion to the respective contributions made. ~~Substantial~~
29 ~~circumstances exist when resources provided are beyond the normal support~~
30 ~~services extended individuals for development of work products.~~ Use of
31 resources is considered substantial when the additional support received is
32 beyond the normal support level made available by a college, university and/or
33 the Office of the Chancellor to the individual in his or her position.

34 ~~6. **Certain Encoded Works.** In the event a college or university hires a~~
35 ~~professional staff person to develop software or other encoded works, in the~~
36 ~~works, the encoded works created by such person shall be considered~~
37 ~~institutional works for which the college or university maintains ownership of~~
38 ~~the intellectual property rights.~~

39 **Subpart C. Other ownership factors.**

- 1 1. **Collective Bargaining Agreement.** In the event the provisions of this Policy
2 and the provisions of any effective collective bargaining agreement conflict, the
3 collective bargaining agreement shall take precedence.

- 4 2. **Jointly Created Works.** Ownership of jointly created works shall be
5 determined by separately assessing which of the above categories applies to
6 each creator, respectively. Jointly created works involving the ~~work and~~
7 contributions of students and/or student employees must be assessed
8 considering this and other relevant categories of ownership rights as set forth
9 above.

- 10 3. **Sabbatical Works.** Intellectual property created during a sabbatical is defined
11 as a scholarly work. Typical sabbatical plans do not require the use of
12 substantial college/university resources as defined in Part 2. Subpart S. of this
13 policy. If the work created as part of an approved sabbatical plan requires
14 resources beyond those normal for a sabbatical, the parties may enter into one
15 of the applicable arrangements as set forth in Part 4. Subparts B. and C. of this
16 policy.

- 17 4. **System, College or University Name.** Intellectual property rights arising
18 ~~from~~ associated with the ~~MnSCU~~System's identity, the identities of its colleges
19 and universities, logos, and other indices of identity belong to the respective
20 entity. Such rights may be licensed pursuant to reasonable terms and conditions
21 approved by the Chancellor, presidents or their designees, respectively. System
22 MnSCU employees may identify themselves with such title of their position as
23 is usual and customary in the academic community; but any user of ~~MnSCU~~the
24 System's or its a college's' ~~and/or~~ university's' name, logo, or indicia of
25 identity shall take reasonable steps to avoid any confusing, misleading, or false
26 impression of particular sponsorship or endorsement by ~~the System~~MnSCU, its
27 colleges, or universities. When necessary, specific disclaimers shall be
28 included.

- 29 5. **Works Owned Jointly by Colleges, Universities and the System.** Colleges,
30 universities and system ownership interests in jointly owned intellectual
31 property shall be determined by the relative contributions made by each
32 contributor - unless otherwise provided in a written agreement. The ownership
33 interests may be expressed in percentages of ownership or an unbundling of the
34 rights associated with the work, whatever the parties agree to. This paragraph
35 applies only to allocation of ownership interests among a college, university or
36 the System. The ownership of any other joint owner shall be determined in
37 accordance with applicable policy, collective bargaining agreement, or
38 personnel plan provisions, or as negotiated among the parties.

- 39 6. **Equitable Distributions.** In any instance in which the System and/or its
40 colleges or universities execute an agreement with an individual, corporation,
41 business or other entity for economic gain using intellectual property in which

1 the colleges, universities, or the System has an ownership interest, the
2 colleges, universities or the System shall receive an equitable distribution. The
3 proceeds of the equitable distribution shall be shared among the creators of the
4 work as determined by agreement in accordance with this policy.

5 **Part 5. Coordination Function.**

6 **Subpart A. Appointment of cCoordinator.** The president or Chancellor, or his/her
7 designee at each college, university, or Office of the Chancellor shall appoint an
8 employee to be the local Intellectual Property Coordinator. The coordinator has
9 responsibility to administer provisions of this policy to include dissemination of the
10 college or university's procedures regarding implementation of **Board Policy 3.26**
11 Intellectual Property and **Board Policy 3.27 Copyrights** ~~Reproduction and Use of~~
12 ~~Copyrighted Materials~~ and any related procedures.

13 **Subpart B. Record-~~K~~keeping.** Each college and university shall establish a record-
14 keeping system to monitor the development and use of its intellectual property. Any
15 questions relating to the applicability of this policy should be directed to the Intellectual
16 Property Coordinator.

17 **Subpart C. Conflicts of ~~I~~nterest and ~~E~~thics.** ~~MnSCU~~ System employees are
18 responsible for adhering to all legal and ethical requirements in accordance with State
19 law, Board Policy and system procedure.

20 **Part 6. Preservation of Intellectual Property Rights.**

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

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

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

37 **Subpart A. Right of Commercialization.** The college, ~~or~~ university or the Office of the
38 Chancellor that owns or has shared intellectual property rights to a work may
39 commercialize the work using its own resources or may enter into agreements with others

1 to commercialize the work as authorized by law. Upon request of a creator who retains
2 intellectual property rights in a work, the college, ~~or~~ university or the Office of the
3 Chancellor shall advise the creator of progress in commercializing the work.

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

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

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

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

32 **Subpart D. Trademarks.** Income earned from the licensing of college, ~~and~~ university or
33 System trademarks and logos is not subject to the requirements of Subpart C: for
34 distribution of funds.

35 **Part 8. Assignment of Rights.**

36 **Subpart A. College, ~~or~~ University or Office of the Chancellor Assignment.** ~~If it is in~~
37 ~~the best interest of the college or university, the~~ A college, ~~or~~ university or the Office of
38 the Chancellor may assign all or a portion of its rights in a work to the creator,
39 corporation, business or to any other person in accordance with the law and when in the
40 best interests of the college, university or the System. As a condition of the assignment,

1 the college, ~~or~~ university or the Office of the -Chancellor, may preserve rights, such as a
2 royalty-free, perpetual, irrevocable, non-exclusive license to use and copy the work in
3 accordance with the preservation and the right to share in any proceeds from
4 commercialization of the work.

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

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

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

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

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.