

APPENDIX I

INTELLECTUAL PROPERTY POLICY

GLOSSARY

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Appendix I

Intellectual Property Policy Glossary

Washington State Community College encourages scholarly and creative activity and is committed to providing an environment in support of its mission. Administrators, faculty, professional and support staffs serve the educational and public purposes to which the College is dedicated. Accordingly, there exists a clear obligation to conduct the business of the College in a manner consistent with these purposes. All decision making must therefore be conditioned by the desire to preserve the public trust and interests of the institution.

The intellectual property policy has the intent of identifying and protecting the rights of the College, its faculty, staff, and students. The procedures contained herein are designed to guide members of the College community in identifying rights and obligations, avoiding or identifying and remedying conflicts of interest, and addressing concerns and disagreements.-See the glossary (page xx) for definitions of key terms used in this policy.

Applicability

This policy shall apply to all administrators, full and part-time faculty and staff of Washington State Community College and shall be binding upon any heirs and assigns of College personnel. The individual is responsible for complying with the provisions of the policy.

Ownership of Intellectual Property Rights in Works Created by Faculty or Other Academic Employees

The intellectual property policy of the College is that intellectual property rights created within the scope of the faculty's or other academic employee's employment and/or under a contractual obligation with the College, or with substantial use of the College's resources, facilities, equipment, personnel, or services (including release time) shall be, at the very least, subject to the College holding a nonexclusive, royalty- free license under all intellectual property rights for the College's instructional purposes. The College may commercialize the work as agreed with the creator.

The laws of the State of Ohio and applicable federal law govern the ownership of intellectual property rights. The policy of the College addresses the ownership, licensing and commercialization of various intellectual property rights in different categories of works, as follows:

The copyrights in all copyrightable works created as a Work for Hire under 17 U.S.C. 101 belong to the College by application of federal law. However, it is the policy of the College to assign or license those copyright rights in accordance with an agreement with the creator(s) regarding commercialization of any such copyrightable works, but to retain an exclusive, royalty- free license to distribute the copyrightable work for a period of one year from the first date the property is used, and to retain a nonexclusive, royalty-free license to use the copyrightable work for the College's educational purposes. The College may ask that any

distribution of any copyrightable works created as a Work for Hire be identified as having been produced under the auspices of the College for educational attribution purposes.

When the College develops a special contract for development of intellectual property as a Commissioned Work, a written contract will spell out what the College expects from the developer, what resources the College will provide to the developer, and specific agreements as to the ownership and use of the intellectual property. Any special contract shall include at least that the College retain a nonexclusive, royalty-free license to use the commissioned work for the College's educational purposes. The College may ask that any distribution of any Commissioned Works be identified as having been produced under the auspices of the College for educational attribution purposes. Intellectual property rights created outside the scope of employment (Independent Works), and without the substantial use of College materials, resources, supplies, facilities, equipment or financial support (including release time) are the property of the creator unless otherwise assigned by the creator. All Intellectual property rights in Independent Works reside with the creator unless assigned in writing by the creator.

In the event the College wishes to adopt a course or materials that was an Independent Work developed by a faculty member or other academic employee outside the normal scope of their employment, a contract should be developed to cover such terms as whether the copyright to be assigned or licensed, the conditions of use, the length of use, and any terms relating to distribution, royalties, etc. However, it is the policy of the College to invoke the doctrines of Implied License and Fair Use in protecting the College and current faculty and academic employees from charges of copyright infringement of any copyrights in such Independent Works.

Potential Conflicts of Interest

A potential conflict of interest arises when an administrative, faculty or staff member has the opportunity to influence College business, academic, or other decisions in such a way that leads to personal gain. Conflict of interest also exists when a person benefits financially from his or her employment at the College beyond compensation and benefits provided by the College. A conflict of interest exists when outside activities result in an amount of time or compensation large enough to suggest interference with primary obligations and duties at the College, or possible bias in the employee's judgment.

Any Washington State Community College employee must avoid any conflict or appearance of conflict of interest or conflict of commitment. Disclosures should be made in writing to the head of the division or department in which the member is employed. If there is any doubt, the executive committee can be consulted for a determination.

The following activities require prior approval or disclosure under this policy:

- Direct or indirect leasing, renting, trading, or selling real or personal property to the College
- Possession of substantial interest or participation in the profits of any organization that deals or seeks to deal with the College

- Appointments as officer, director or serving in any management capacity in an external commercial, industrial, business or financial organization of profit-making enterprise which deals or seeks to deal with the College
- Assuming executive or managerial positions with outside organizations that might seriously divert attention from College duties, or create other conflicts of loyalty
- Potential for diverting College assets from the primary mission of the College including the time and talents of its faculty and staff.

Permissible Activities

The following activities do not require prior approval or disclosure under this policy.

- Acceptance of royalties for patents established without College assistance or resources
- Services to external educational, professional, cultural, civic, or other organizations which enhance the value of the individual to the College which do not adversely affect their primary commitment to the College
- Consulting activities that can be shown not to interfere or compete with College responsibilities or College business.

Policy to Protect Against Violation of Intellectual Property Rights and Other Rights of Third Parties

The purpose of this section is to protect against the infringement of the intellectual property rights of others, and to maintain the operability of College facilities that may be affected by those rights, while preserving and maintaining the College's educational mission.

Washington State Community College's Network Administrator may not remove any information from individual computer accounts unless it is determined that:

The presence of the information in the account involves illegality (e.g. copyrighted material, software used in violation of a license agreement).

The information in some way endangers computing, networking resources, or the information of other users (e.g., computer worm, virus or other destructive program).

The information is inappropriate, because it is unrelated to or is inconsistent with the mission of the College, or is otherwise not in compliance with federal, state or local laws or College policy.

Ownership of Intellectual Property Rights in Works Created by Students

The ownership of intellectual property rights in works created by students are subject to the following rules:

- A. The College makes no claim to copyright ownership of copyrights in Independent works created by students working on their own, i.e. not within the scope of an employment relationship with the College or with one of its employees, and not making use of College resources. However, it is the policy of the College to invoke the doctrines of Implied

- License and Fair Use in protecting the College and current faculty and academic employees from charges of copyright infringement of any copyrights in such Independent Works.
- B. Students working on a project governed by a contract or agreement to which the College is a party shall be bound by the terms of that contract or agreement. The College makes no claim to Commissioned works arising from such a contract, but the Intellectual property rights in such Commissioned works shall be subject to a nonexclusive, royalty-free license to use the Commissioned work(s) for the College's educational purposes.
- C. Students who are hired to perform specific tasks that contribute to a copyrightable work will ordinarily have no rights to ownership of that work as it is considered to be a Work for Hire, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright of the rest of the work will ordinarily retain copyright ownership of the portion contributed by the student.
- D. Students working collaboratively with faculty or academic employees on projects that result in copyrightable work may be granted the same rights and obligations of copyright ownership as would another faculty member or academic employees working collaboratively on the project. The College, the student(s) and the faculty member(s) or academic employee(s) should establish these rights at the outset of their collaboration.
- E. Students may also be subject to rules and restrictions of their department or division which are not inconsistent with the College Policy. For example, students who copyright their scholarly work done at the College must grant the College rights to reproduce and distribute copies of their works in accordance with the policies of the College.

Conflict Resolution

Conflicts involving the interpretation and administration of this policy should be directed to the director of human resources, who will gather the facts of the issue at hand and render a finding based on established policies and procedures. If the conflict is not resolved at this point, an appeal may be made to an *ad hoc* committee consisting of two faculty appointed by the faculty senate, one professional staff appointed by the professional staff senate, and two administrators appointed by the president. The decision of the ad hoc committee may be appealed to the president, whose decision shall be binding and final. Persons who participated in the initial decision will not participate in the review stages except to provide information when requested.

GLOSSARY

Copyrightable works refers to "original works of authorship fixed in a tangible medium of expression" which qualify for protection under copyright laws, whether or not registered thereunder. Categories of works of authorship should be viewed quite broadly and include literary, dramatic, musical, artistic, audiovisual, and computer programs as well as other intellectual works. Some examples of copyrightable works property include:

- Written materials - literary, dramatic, and musical materials or works, published or unpublished;

- Courseware - lectures, printed materials, images and other items used in the delivery of a course, regardless of the physical medium of expression;
- Visual and/or recorded materials - sound, visual, audio-visual, and television films or tapes, video tapes, motion pictures or other recordings or transcriptions, published or unpublished; and
- Computer related materials - computer programs, procedures and other documents involved in the operation and maintenance of a data processing system, including program listings, compiler tapes, a library of sub-routines, user and programmer manuals, specifications, and databases.

Independent Work refers to a unique work product or service created outside the normal scope of employment without the substantial use of College resources, materials or personnel. Such works shall be the exclusive property of the creator, except as he or she may voluntarily choose to transfer any of the intellectual property rights pertaining thereto in whole or in part.

Intellectual property refers to patentable materials, copyrighted materials, trademarks, software, and trade secrets, whether or not formal protection is sought. Intellectual property does not include materials created for ordinary teaching use in the classroom. Upon written agreement between the College and the instructor, such materials may be considered intellectual property when recorded for subsequent instructional use, regardless of medium.

Patentable Works refers to any product or service which appears to qualify for protection under the patent laws, whether or not patentable, such as inventions or discoveries which constitute any new and usual process, machine, manufacture or composition of matter, or improvement thereof.

Scope of employment refers to duties and activities covered by the employment contract and job description or otherwise assigned or contracted by the College.

Substantial use of resources means use of College resources that goes above and beyond those that are customarily and currently provided to College employees. The department or division shall determine “substantial use”.

Commissioned Work refers to any product or service that is created within the normal scope of employment or under contractual arrangements with the College. A Commissioned Work may include or embody patentable inventions, trade secrets and/or copyrightable works.

Work for Hire refers to a copyrightable work as defined by 17 U.S.C. 101 that includes works that are created by an employee within the scope of his employment with an employer. The employer owns the copyright in a Work for Hire.

Fair Use refers to the legal immunity from copyright infringement enjoyed by those who copy copyrighted works for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. See 17 U.S.C. 107.

Implied License refers to the legal immunity from infringement of intellectual property rights where the given facts of a situation imply that the owner of the Intellectual property rights intended that a party be free to act under the owner's intellectual property rights, such as by practicing an invention or making or distributing a copyrighted work.

Revisions Log:

- 11/2/05 Reformatting: Changed page numbering system from numerical in sequence from chapter to chapter to numbering in sequence by chapter, e.g. pages in Chapter 1 are now 1-1, 1-2, 1-3, etc.; page in Appendix I are I-1, I-2, I-3, I-4, etc. In the event that a future change adds or deletes a page, not all chapters will need to be repaginated.
- 11/2/05 Addition of Revisions Log at appendix end.
- 11/2/05 Addition of Table of Contents at beginning of appendix.