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APS 1014 - Intellectual Property That is Educational Materials

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Policy Profile

Policy Title:	Intellectual Property That is Educational Materials
APS Number:	1014
Effective:	July 1, 2013
Approved by:	President Bruce D. Benson
Responsible University Officer:	Vice President for Academic Affairs
Responsible Office:	Office of the Vice President for Academic Affairs
Policy Contact:	Office of the Vice President for Academic Affairs, 303-860-5623
Supersedes:	APS Intellectual Property That is Educational Materials - June 1, 2006
Last Reviewed/Updated:	July 1, 2013
Applies to:	All campuses

Policy Snapshot

Brief Description: This policy clarifies the rights, responsibilities and rewards for the University and its employees in the development and commercialization of educational materials.

I. Introduction

Creating and disseminating knowledge are fundamental missions for the University of Colorado. The creative environment of the University fosters the development of intellectual property. This policy statement clarifies the rights, responsibilities and rewards for the University and its employees in the development and commercialization of educational materials. The University of Colorado in this policy, as elsewhere, reaffirms its commitment to the principles of academic freedom. The University of Colorado also reaffirms its commitment to encouraging and rewarding authors, creators, researchers and inventors who are developing intellectual property.[1] The University supports the creative works of authors, who will under most circumstances retain broad rights in support of their creative endeavors. This policy does not change the traditional relationship between the University and employees who, independent from using substantial University resources, retain broad rights of ownership of scholarly and artistic works. This policy functions in accord with other University of Colorado policies and federal and state statutes and regulations.[2]

II. Policy Statement

1. General Policy

1.a. General Rights of Ownership

While current copyright law generally allocates ownership rights to the University as an employer, the University of Colorado assigns any ownership it has in Educational Materials to the person or people who create such Materials (?author(s)?)[3]. As provided in Regent Policy 5-k, Educational Materials include but are not limited to, textbooks, electronic media, syllabi, tests, assignments, monographs, papers, models, musical compositions, works of art and unpublished manuscripts . Exceptions to this assignment of ownership are:

1. those cases in which the production of such materials is a part of sponsored programs;
2. those cases in which the materials are created under the specifically assigned duties of employees other than faculty;
3. those cases in which substantial University resources were used in creating educational materials; and
4. those cases which are specifically commissioned by University contract, or done as part of an explicitly designated assignment made in writing, other than normal faculty scholarly pursuits.

In cases where it is not clear whether or not these exemptions apply, authors are strongly encouraged to pursue a negotiated written agreement as stipulated in Section 3(c) of this policy.

1.b. Substantial Use of Resources

"Substantial use of resources" means use of university resources that goes above and beyond those that are customarily and currently provided to University employees.[4]

University resources include such things as equipment, staff support, supplemental pay, and offloading from regular duties. Decisions about whether use of these resources is "substantial" or "customary and current" shall be determined by responsible campus administrators, as specified in Section II.2.B . The University of Colorado does not assign to the author(s) its interests in intellectual property created by University employees making substantial use of University resources.

1.c. Who is Covered by This Policy

This policy is applicable to all units of the University including its colleges, schools, departments, centers, institutes, and hospitals, and to all University employees including faculty, instructors, and staff. Employees receiving salaries or other remuneration from the University, including part-time employees, student employees, University employees on sabbatical who receive remuneration from the University, and employees on a leave of absence who are using substantial University resources are bound by this policy. The Vice President for Academic Affairs is the University officer who is authorized to approve exemptions to individuals bound by this policy.

Students are covered under this policy under the following circumstances. A student who is not employed by the University or has not used substantial University resources to develop educational materials, will own the materials she or he creates, unless the student's work is part of a larger work over which the University has rights and intends to exercise them. Students who are employed by the University will be bound by this Administrative Policy, except that students who hold awards such as scholarships or fellowships through the University on which a funding body has placed restrictions as to intellectual property will be bound by the terms of the award.

1.d. Rights to Educational Materials

1.d.1. **Rights of the person or people who create Educational Materials**. Except as provided under Section 1.a above, educational materials created for classroom and learning programs, including electronic media, such as syllabi, assignments, and tests, shall be the property of the author.

1.d.2. **Rights of the University of Colorado**. While the author(s) shall own the rights to all educational materials developed pursuant to Section 1.d.1 herein, the University of Colorado shall be permitted to use such educational materials for administrative purposes, such as satisfying requests of accreditation agencies for faculty-authored syllabi, assessments and course descriptions. Such usage shall extend beyond employment with the University.

Additionally, in the event that a faculty member assigned to teach a course becomes unavailable to teach that course, the University of Colorado shall be permitted to use Educational Materials related to such course for the duration of the semester in which the course was scheduled and until all final grades in the course have been assigned.

1.d.3. **Copyright of Professional Journals and Books**. Consistent with the terms of this policy, the University assigns any interest and ownership claims on publication of research

and/or other scholarly materials and activities that typically occur in professional/academic journals, books, and other professional resources. Nothing in this policy shall be construed to restrict or constrain these actions.

2. Process

2.a. Duty to Disclose and Reporting Requirements. Any person formally affiliated with the University shall be obligated to report in a timely manner any efforts to create educational materials that might fall within exceptions to this policy enumerated in Section II.1.a. Such reporting shall be to the author?s direct supervisor.

2.b. Designation of responsible authority. The campus Chancellor shall designate one or more individuals at the campus level who shall be responsible for undertaking an initial assessment of any matters relating to educational materials, including making a determination as to whether substantial University resources have been used, and whether a negotiated agreement is necessary. Such designee shall seek out appropriate assistance and expertise as may be necessary from the Office of University Counsel, Technology Transfer, Finance, and the author?s academic department and School or College, and shall be responsible for developing any such written agreement. The Chancellor shall further designate a central campus repository for all educational material matters, including written agreements and the disposition of any educational material matters.

2.c. Negotiated Written Agreements

Negotiated written agreements are required under the following circumstances:

Substantial Use of University Resources

It is the responsibility of the author to seek clarification of whether the resources being used in the development of educational materials constitutes "substantial uses of University resources." If so, the author should negotiate a written agreement with the University, by and through the person designated in Section II.2.b.

"Substantial use of University resources" in and of itself does not require that ownership rights be automatically shifted to the University. However, depending on the terms of the negotiated contract, "substantial use of University resources" may result in an obligation to share revenues, reimburse the University, or confer a license. Ownership rights specified in this policy may be altered by mutual agreement.

Multiple Parties: If more than one party is responsible for creating specific educational materials, a negotiated written agreement signed by all author(s) and the University shall be required. That agreement shall usually specify (1) the rights of each party to use, distribute, and sell the materials; and (2) the division of revenues between the parties. Parties may include but are not limited to individuals, research teams, external funding agencies, the University, etc.

2.c.1. A negotiated written agreement should usually specify:

1. the rights of the author(s) and the University to use, distribute, and sell the materials;
2. the division of revenues between the University and the author(s);
3. the rights of the University to use and to modify the materials during and after the period of formal association with the University; and
4. the rights of the author(s), the University, and/or external funding parties to be acknowledged or to withhold acknowledgement in the distribution or modification of the materials by the University.

2.c.2. **Modifications to Agreements.** Any negotiated written agreement made in connection with the creation of educational materials may be modified at any time upon the unanimous agreement of all signatories. Such modifications will normally be necessary when changes occur in any of the following:

1. participation of the author(s) in a continuing project;
2. the University's contribution of substantial resources; or
3. when a dispute is resolved by the Educational Materials Intellectual Property Board through adjudication.

2.c.3. **Educational Materials Intellectual Property Board**

The University shall establish a system-wide Educational Materials Intellectual Property Board composed of faculty, administrators, staff, and students, to hear and recommend resolution of disputes related to educational materials intellectual property to the Vice President for Academic Affairs, with final recourse to the University President. The Faculty Assembly from each campus shall appoint a faculty member to represent its campus on the Board. The Board also interprets and oversees the implementation of the policies stated in this document and may advise the Vice President for Academic Affairs about exemptions under this policy.

3. Review of Policy

The University System Faculty Council and System Administration shall jointly review the operation of this policy every three years after its adoption and shall report its effectiveness and any suggested changes to the policy to the Board of Regents.

III. History

- Initial policy approved January 16, 2003
- Revised June 1, 2006
- Revised July 1, 2013

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1. Throughout this APS, the person or people who create intellectual property, including authors, creators, researchers, and inventors, shall collectively be referred to as ?authors.?
2. Any term defined in Regent Policy 5-k shall have the same meaning in this APS as it has in Regent Policy 5-k.
3. A separate policy applies to ownership of discoveries and patents, and nothing in this APS shall affect ownership of such intellectual property. See Administrative Policy Statement (APS), "Intellectual Property Policy on Discoveries and Patents for their Protection and Commercialization."

4. As set forth in the APS, "Intellectual Property Policy on Discoveries and Patents for their Protection and Commercialization:" ?[O]ffices, office equipment, library access, desktop and laptop computers, photocopy equipment, telephone, and fax machines, which are customarily provided would be excluded from determination of substantial use of University resources.?

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