

College Operating Procedures (COP)



Procedure Title: Copyright, Intellectual Property
Procedure Number: 03-1403
Originating Department: Provost/Vice President of Academic Affairs

Specific Authority:
Board Policy n/a
Florida Statute n/a
Florida Administrative Code n/a

Procedure Actions: Adopted: 06/01/10; 02/15/11

Purpose Statement: The Intellectual Property Policy exists to encourage research and innovation, clarify ownership of intellectual property rights, create opportunities for public use of College innovations, and provide for the equitable distribution of monetary and other benefits derived from intellectual property.

Guidelines:

This policy applies to all faculty, staff, students, and any other persons employed by the College; to all persons receiving funding administered by the College or receiving other compensation from the College; and to all College-enrolled students.

Procedures:

The general policy of the College is that all rights in **copyright** shall remain with the creator unless the work is an Institutional Work, a Commissioned Work, or a Sponsored Work. The College owns all rights, intellectual and financial, in such Works.

The College does not claim ownership of Personal Works. Ownership of **copyrights** to works produced by enrolled students without the use of College funds (other than Student Financial Aid), that are produced outside any College employment and are not Sponsored or Commissioned Works, shall reside with the student creator(s).

The College may, in its sole discretion, upon request and to the extent consistent with its legal rights and obligations, convey **copyright** to the creator(s) of such Works (see Request for Waiver of SCC Fair Use/Intellectual Property Policy Form).

This provision does not alter a College employee's responsibilities under the institutions' conflict-of-interest policy.

Subject to the exceptions identified in Section 1 below, the College shall be the sole owner of all intellectual property created through the use of College resources or facilities, supported directly or indirectly by funds administered by the College, developed within the scope of employment by employees, agreed in writing to be a specially commissioned work, or assigned in writing to the College.

Section 1: EXCEPTIONS TO COLLEGE OWNERSHIP

The College shall have no ownership rights in the following intellectual property, which shall be owned by its creator:

- i) Regular academic work products, provided that the regular academic work product was not assigned in writing to the College or specifically ordered or commissioned and designated in writing by the creator and College as a specially commissioned work.
- ii) Intellectual property created by a student solely for the purpose of satisfying course requirements, unless the student assigns ownership rights in the intellectual property to the College in writing or assignment of such ownership rights to the College is made a condition for participation in a course. Provided, **however, that if the intellectual property referred to in (i) or (ii) is a derivative of or otherwise uses pre-existing College-owned intellectual property, this provision shall not prevent the College from asserting its pre-existing rights.**

For intellectual property created in the course of or pursuant to sponsored research, external sales, industrial affiliates programs, or other contractual arrangements with external (non- College) parties, ownership will be determined in accordance with the terms of the College's agreement with the external party and applicable law.

Use of Teaching Materials: In order to facilitate joint work on teaching materials and support collaborative teaching, and notwithstanding the ownership rights otherwise granted by this policy, individuals who contribute teaching materials used in jointly developed and taught College courses thereby grant a nonexclusive, nontransferable license to the College to permit other contributors to the course to continue using those jointly produced teaching materials in College courses.

The College shall have the right to use its Institutional Works, its Commissioned Works, and its Sponsored Works and the College's rights include the right to reproduce, distribute, perform, display, transmit, archive, and prepare these works in pursuit of its mission. Should an Author/Creator request the use of Extraordinary College Resources in the creation and/or development of a Copyrightable Product, such requests may result in the creation of an Institutional Work; then the Author/Creator shall negotiate an agreement for the use of such resources. Such an agreement will culminate in a Letter of Agreement that will specify the appropriate reimbursement. However, College Personnel are cautioned to consult in advance with his/her Dean of the respective academic office or similarly situated administrative official regarding whether any College Resources to be utilized in the creation and/or development of a copyrightable scholarly product are to be considered Extraordinary College Resources.

A Letter of Agreement may contain, as appropriate, the following information:

1. A description of the planned product (e.g., "article about [subject] to be submitted for journal publication");
2. A list of the College resources to be involved in product creation and the value of such resources;
3. An explanation of whether College Resources to be used are Extraordinary College Resources or Ordinary College Resources;
4. A timeline that projects completion of the Product;
5. A statement of who will own **copyright** rights to the Scholarly Product;
6. An explanation of how any conflict of interest and/or conflict of commitment that this activity might cause between the Author/Creator and the College will be managed; and
7. The date on which the College's rights terminate for each Work that it owns. The College retains the right to use its Works until such termination date regardless of whether or not the Author/Creator remains in the employ of the College, except that such right shall not prejudice the professional standing of the Author/Creator.

Both the Author/Creator of the Product and his/her Dean or similarly situated administrative official should sign the Letter of Agreement to indicate their accord with its terms. College Personnel are encouraged to consult with the Vice President, Academic Affairs regarding issues of, market potential, contracting with publishers, and other issues pertinent to the creation and dissemination of Copyrightable Intellectual Property.

Section 2: DEFINITION OF TERMS

Creator - The individual or group of individuals who invented, authored, or were otherwise responsible for the intellectual creation of the intellectual property, as defined in the applicable intellectual property statutes.

Intellectual Property - Means any invention, discovery, improvement, copyrightable work, integrated circuit work, trademark, trade secret, and licensable know-how and related rights. Intellectual property includes, but is not limited to, individual or multimedia works of art or music, records of confidential information generated or maintained by the College, data, texts, instructional materials, tests, bibliographies, research findings, organisms, cells, viruses, DNA sequences, other biological materials, probes, crystallographic coordinates, plant lines, and chemical compounds. Intellectual property may exist in a written or electronic form, may be raw or derived, and may be in the form of text, multimedia, computer programs, spreadsheets, formatted fields in records or forms within files, databases, graphics, digital images, video and audio recordings, live video or audio broadcasts, performances, two or three-dimensional works of art, musical compositions, executions of processes, film, film strips, slides, charts, transparencies, other visual/aural aids or CD-ROMS.

Regular Academic Work Product - Any copyrightable work product which is an artistic creation or which constitutes, or is intended to disseminate the results of, academic research or scholarly study. Regular academic work product includes, but is not limited to, books, class notes, essays, course materials designed for the web, distance education and other technology-

oriented educational materials, articles, poems, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, or other works of artistic imagination. Software specifically needed to support a regular academic work product or which is designed to disseminate the results of academic research and scholarly study is also considered a regular academic work product.

Employee - a person employed or otherwise compensated by the College, including faculty members, staff members, and students.

College Resources – College resources are those funds and other material resources that are administered by the College.

Ordinary College Resources – Ordinary College Resources are those College resources that are utilized in the normal course of College academic, research, service, and extension endeavors.

Extraordinary College Resources – College resources such as the use of institutional equipment, supplies, data, facilities, and employee time, are deemed to be extraordinary College resources when those College resources that are utilized go beyond the normal course of College academic, research, service, and extension endeavors.

Work(s) – The term "Work" refers to any tangible result of the effort of any College Personnel. It is, for purposes of this document, synonymous with the terms, "**Scholarly Product**", "**Product**", or "**Intellectual Property**".

Institutional Works – A Copyrightable Intellectual Property may be deemed to be an Institutional Work if a Work is created at the instigation of the College, under the specific direction of the College, for the College's use, by a person acting within the scope of his or her employment or subject to a written agreement. Such a Work is synonymous with traditional term "Works made for hire".

Commissioned Works - Commissioned Works are created by College personnel who are working under contract with an external entity to produce a specified copyrightable Product(s) for that entity.

Sponsored Works - When the College enters with a third party into an agreement, contract, or grant to perform research or other tasks, Copyrightable Intellectual Property may be created as an incidental by-product of the primary task. Such Property is defined as a Sponsored Work.

Personal Works - Personal Works are Copyrightable Intellectual Properties that are neither Institutional Works, nor Commissioned Works, nor Sponsored Works.

Section 3: RESPONSIBILITIES OF EMPLOYEES AND OTHER COVERED INDIVIDUALS

Employees, all persons receiving funding administered by the College or receiving other compensation from the College, and all enrolled students have a responsibility to:

1. Adhere to the principles embodied in this policy;
2. Sign, when so requested by the College, the College's Intellectual Property Policy Acknowledgment;
3. Create, retain, and use intellectual property according to the applicable local, state, federal, and international laws and College policies;
4. Disclose promptly in writing intellectual property owned by the College pursuant to this policy or created pursuant to sponsored research or other contractual arrangements with external parties, and assign title to such intellectual property to the College or its designee to enable the College to satisfy the terms of any applicable funding or contractual arrangement; and
5. Cooperate with the College in securing and protecting the College's intellectual property, including cooperation in obtaining patent, copyright, or other suitable protection for such intellectual property and in legal actions taken in response to infringement.

Section 4: COMPLIANCE

Failure to comply with the provisions of this policy is a violation and may result in discipline of an employee in accordance with applicable College policies and procedures.

APPLICATION FOR WAIVER OF SCC FAIR USE/INTELLECTUAL PROPERTY POLICY

Please complete form and return, with signatures, to the Office of **Research and Assessment**.

Name: _____
Department: _____
Telephone No: _____
Email: _____

I have read the document "**OWNERSHIP OF COPYRIGHTABLE INTELLECTUAL PROPERTY**" and agree with the Florida SouthWestern State College guidelines on Intellectual Property contained therein.

Applicant's Signature:

_____ Date: _____

I am requesting specific arrangements that differ from these policies in the following manner:
(please attach separate sheet if required)