

Misericordia University Institutional Policy on the Ownership of Intellectual Property^[1]

INTRODUCTION

Preamble

Misericordia University and its faculty, administration, staff, and students, collectively referred to herein as the "university community", believe that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for Misericordia University and the university community reasonable access to, and administrative use of, the intellectual property for whose creation Misericordia University has provided assistance in the form of substantial use of university funds, resources or facilities.

Misericordia University supports the development, production, and dissemination of intellectual property by members of its university community. The purpose of this policy is to facilitate such development, production and dissemination by clarifying the rights of the university and other members of the university community to intellectual property created by members of the university community.

Operational Definitions

When used in this policy, the term "**copyright**" shall be understood to mean that bundle of rights that protect original works of authorship and course materials fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. "**works of authorship**" (including computer programs) include, but are not limited to the following: literary works; works of nonfiction; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works. "**course materials**" can be defined as "the fixed expression of ideas and resources that are used as a basis of a course...[which] are readily and instantly subject to copyright protection," [2]. Examples of course materials include, but are not limited to the following: text, images, diagrams, graphs, multimedia presentations, instructors' notes, exercises designed for online collaboration, web-ready content, multimedia developed for web distribution (including flash animation, Java applets, video clips, and audio), individual and collaborative exercises, simulations and group projects. "**tangible media**" include, but are not limited to, books, periodicals, manuscripts, phonorecords, films, tapes, and disks.

When used in this policy, the term "**patent**" shall be understood to mean that bundle of rights that protect inventions or discoveries which constitute any new and useful process, machine, manufacture, patentable plant or composition of matter, or any new and useful improvement thereof.

When used in this policy, the term "**intellectual property**" shall mean the ownership and associated legal rights of tangible or intangible creations, including but not limited to patents, copyrights, trademarks, service marks, or other rights of any nature in works of authorship, inventions, course materials, tangible media, software, any electronically transmitted or stored information, or any other intangible property.

"Substantial use of university funds, resources or facilities" includes expenditures of university funds and substantial uses of university resources and facilities not generally available to a person by virtue of his role in the university community. By way of example, use of university resources, facilities, or materials of the sort traditionally and commonly made available to faculty members, including the routine use by a faculty member of an office, office supplies, computer, copying machine, or clerical assistance would not normally be included, whereas, the substantial use of

unusual or expensive laboratory equipment and/or laboratory personnel for research purposes, the use of printing facilities for wide distribution, the use of nonclerical university personnel, or the use of confidential information of the university would normally be included in the definition of "substantial use of university funds, resources or facilities".

Ownership of Intellectual Property

Intellectual property created, made or originated by members of the university community shall be subject to the following principles related to ownership, and all members of the university community shall abide by and acknowledge such rights of ownership as are set forth herein. Categories of ownership here are numbered and listed in order of priority such that any rights in intellectual property described in a category with a lower number shall supersede any rights in the same property described in a category with a higher number, and such that where no other category applies, Misericordia University shall be the default owner of intellectual property created by members of the university community pursuant to category 7 below. Members of the university community shall acknowledge and agree, in writing upon the request of the university at any time, to the ownership of intellectual property in accordance with these principles, and shall at the university's request, execute any written acknowledgment or join in any assignment, application, filing or registration with respect to intellectual property which pursuant to this policy is owned by the university or by any person other than such member.

1. **Sponsored Project Agreements:** The university may negotiate and enter into sponsored project agreements, which include contracts and grants between external sponsors such as corporations, government agencies or foundations and the university that specify completely or partially the ownership of intellectual property created as a result of specific projects. This category includes ownership requirements that result from a governmental funding source by operation of law and may include pro bono projects as well as funded research projects. The university shall inform members of the university community whose intellectual property rights the university reasonably believes are or may be affected by a sponsored project agreement of the relevant intellectual property provisions of that agreement in advance of the beginning of work thereon.
2. **Individual Project Agreements:** The university may negotiate and sign individual project agreements between the university and (an) individual member(s) of the university community that specify completely or partially the ownership of intellectual property created as a result of work conducted on a specific project. Individual project agreements between the university and potential creators are encouraged specifically in situations that lack precedent and do not naturally fit into standard intellectual property practices, and may be initiated by the university or any member of the university community.
3. **University Sponsored Projects:** The university shall from time to time initiate and fund specific projects that produce intellectual property and shall own the intellectual property created as a result of such projects. In particular, the university shall own intellectual property created by university employees and students who were assigned or employed specifically to produce (work-for-hire) a particular piece of intellectual property. The financial terms or other terms of support for university sponsored projects can vary from project to project, provided that participants shall be informed of the terms of the project before they either begin work or agree to begin work on it.
4. **Traditional Academic Rights:** Academic tradition accepted by the university provides that any individual creator of the following types of intellectual property retains ownership of it except where one of categories 1 through 3 above applies, or where the creator otherwise agrees in writing.: works of authorship, course materials fixed in any tangible medium, inventions, and patents.
5. **Consulting Agreements:** When members of the university community consult with entities other than the university such as corporations, foundations, businesses, governmental



agencies or the like, without making substantial use of university funds, resources or facilities, and otherwise comply with any policies and procedures of the university applicable to them, the intellectual property thereby created is presumed retained by the individuals or the external entity as specified in any consulting or other agreement between or among them. Student employment with external entities will be considered as consulting under this policy and externally employed students will respect the intellectual property policies of both the university and their employers.

6. **Independent Projects:** Any intellectual property created by an employee of the university that is not part of such employee's employment responsibilities, and that is developed without interfering with such responsibilities, and without making substantial use of university funds, resources or facilities, shall be owned by the creator. Intellectual property created by a student independently, using only resources available to all students is similarly owned by the student, but this shall not apply to work on faculty projects or university sponsored projects.
7. **Other Intellectual Property of the University:** Any intellectual property created by members of the university community within the scope of the university's mission or purposes not covered by the above principles of ownership shall be deemed to be the property of Misericordia University. This category shall apply to all intellectual property not governed by the previous items, including any intellectual property created within the normal scope of employment and/or study or a direct result thereof.

University Trademarks

Notwithstanding any other provision of this policy, Misericordia University retains sole and exclusive ownership of the name "Misericordia University", the Misericordia University seal, and all trademarks and service marks related to goods and services distributed by the university. Usage of the trademarks and service marks of Misericordia University, including usage of the name, shall be subject to policies of the university adopted and administered by the university from time to time.

Use of Intellectual Property

Where a faculty member pursuant to this policy owns intellectual property involving material created for ordinary teaching use in the classroom and in department programs, such as syllabi, tests, and course materials, Misericordia University shall be permitted to use such material for administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions. The university may not, however, alter, edit, or appropriate the work for educational purposes without the consent of the faculty member owner.

In an agreement transferring copyright for such works to a publisher, faculty authors are urged to seek to provide rights for Misericordia University to use such works for administrative purposes.

In the event that the owner of intellectual property under this policy seeks to protect such intellectual property through any legal process involving patents, copyrights, trade marks, or service marks, the university and the members of the university community shall join and cooperate to the extent reasonably required for such protection, executing any documents necessary to evidence or confirm the rights of the university and its university community members pursuant to this policy.

Funds Generated from Intellectual Property

The university and members of the university community who own intellectual property according to the above principles may voluntarily agree in writing to share rights in or revenues or proceeds of intellectual property with the university or other members of the university community, or to assign ownership to the university or other members of the university community. Any intellectual property so voluntarily assigned to the university shall be referred to as "agreement property"



In addition, it is the policy of the university that revenues or proceeds of intellectual property owned by members of the university community other than the university shall be shared with the university if (i) the member of the university community owning the intellectual property has received or made substantial use of university funds, resources or facilities in the creation making, origination, or marketing of such intellectual property or any resulting product, or (ii) any such intellectual property or product of intellectual property has been created, made, developed, originated or marketed, in whole or in part, through funds provided by the university, or through a grant from any other person, as to which grant the university or any faculty, administration or staff member employed by the university is a party. At the request of either the university or the other owner of intellectual property at any time, the parties involved shall negotiate a written agreement pertaining to the sharing of revenues and proceeds pursuant to this paragraph, and either party may cease participation in any such project where no such agreement has been reached.

Except as otherwise provided in this policy or agreed by Misericordia University and a member of the university community, funds received by the university community member from the sale of intellectual property owned by such member shall be allocated and expended as determined solely by the university community member.

Except as otherwise agreed by Misericordia University and a member of the university community, funds received by Misericordia University from the sale of intellectual property owned by the Misericordia University shall be allocated and expended as determined solely by Misericordia University.

Funds received by one or more member(s) of the university community and Misericordia University from the sale of intellectual property owned jointly by such member(s) and Misericordia University shall be allocated and distributed as agreed to in writing by all parties or, if all of the parties have no agreement in writing, equally.

Disclosure to the University

The creator of any intellectual property that is or might be owned by the university under this policy is required to make reasonably prompt written disclosure of the work to the university, and to execute any documents deemed necessary to perfect legal rights in the university and to enable the university to file patent applications and applications for copyright registration where appropriate. In addition, a member of the university community shall promptly notify the university in writing if: (i) he or she, directly or indirectly, enters into any agreement with a third party related to intellectual property which he or she owns, or in which he or she has any interest, which agreement or intellectual property is reasonably expected to generate, or which actually generates, revenues to him or her in excess of \$25,000.00 during any year, or (ii) he or she, directly or indirectly, applies for, or makes any filings with regard to, patent, copyright or trademark protection as to any intellectual property where the university, pursuant to this policy, has or may have any interest or any right to share in proceeds or revenues. The phrase "directly or indirectly" shall include any activities of a member as an individual, owner, partner, agent, director, officer, shareholder, consultant, independent contractor, or in any other capacity.

Policy Administration and Dispute Resolution

This policy shall be administered by the president of the university and such members of the administration as the president may appoint from time to time. Any question of interpretation, claim, or dispute arising out of or relating to this policy or the ownership of intellectual property under this policy will be settled by the following procedure:

1. The issue must be submitted to the university's intellectual property adjudication committee (the "Adjudication Committee") in the form of a letter setting forth the grievance or issue to be

resolved. The adjudication committee may either be a standing committee, or if not, be promptly organized on an ad hoc basis, and will be composed of seven (7) standing members and one (1) ad hoc member appointed for any adjudication. The standing members shall be two (2) members to be appointed by the faculty, two (2) members to be appointed by the staff council, one (1) member of the Board of Trustees to be appointed by the president, and two (2) members to be appointed by the student council, and shall be chaired by a member of the adjudication committee elected by the adjudication committee. The eighth (8th) member shall be a third member of either the faculty, the staff council, or the student body, dependent upon which body is the body of the university community from which the complainant comes, if any. The adjudication committee will review the matter and then advise the president of the university of its recommendation within thirty days after the matter is submitted to the adjudication committee. Within thirty days following the date the decision of the adjudication committee is issued, the president will notify the other parties of his/her acceptance or rejection of the recommendation of the adjudication committee, including a copy of such recommendation with its notice, and any such other parties shall have the right, within sixty days after receiving such notice, to appeal the president's decision to the Board of Trustees.

2. If any of the parties to the dispute is not satisfied with the president's decision after review of the adjudication committee's recommendation, the party may appeal the decision to the Board of Trustees of the university, and such Board (or any committee of such Board as such Board may appoint) shall decide such appeal. The decision of the Board (or such committee thereof) shall be final, binding, and nonappealable.

Effect of Policy

This policy shall take effect upon adoption by the Board of Trustees of Misericordia University and shall apply to all intellectual property of the university and the university community as of such date. Misericordia University may change this policy in whole or in part at any time from time to time in its discretion.

Approved by the Board of Trustees, October 2006

Amended to reflect title change from college to university in August 2007.

[1] The policy language contained herein is modified from the Sample Language for Institutional Policies and Contract Language developed by the American Association of University Professors Special Committee on Distance Education and Intellectual Property Issues.

[2] Twigg, C.A. "Who Owns Online Courses and Course Materials?: Intellectual Property Policies for a New Learning Environment," Proceedings from The Pew Symposium in Learning and Technology. 2000: p14.