

# UNIVERSITY OF DENVER INTELLECTUAL PROPERTY POLICY

## I. INTRODUCTION

The University of Denver recognizes and encourages the individual effort on the part of its employees, faculty and students leading to the creation of intellectual property. It is the University's intent to protect the rights of the individual, the University and the sponsoring entity (if involved), and to effectuate reasonable and appropriate sharing of the fruits of the enterprise in the event these creations have commercial value.

## II. POLICY

### A. Objectives. The objectives of the Patent Policy are as follows:

1. To provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and creative works, and their exploitation for the public benefit, and to guide the generation of revenue for the University and the Creator(s).
2. To fulfill the terms of sponsored agreements and other contracts relating to the development of the intellectual property.
3. To create a reasonable and workable policy that enables an efficient administration of the intellectual property issues, and that accounts for the constant advance of science and technology.

### B. Definitions

1. "Creator" shall mean the person(s) who has/have made substantial creative or authorship contributions to a work giving rise to intellectual property rights. "Intellectual Property" shall mean the legal rights in and to a Work as provided by applicable statute, regulation or judicial decision, including, without limitation, patent, copyright, trademark, service mark, trade secret, domain name registration, mask work, or plant variety protection certificate.

2. The "Work" shall mean any invention, discovery, know-how, show-how, process, material, manuscript, original data, academic course or portion thereof, learning tool or aid, or other creative or artistic work and any expression or physical embodiment thereof, including, without limitation, any sound or visual recording, multimedia presentation, model, machine, device, prototype, design, drawing, apparatus, instrumentation, circuit, computer program, database, biological material or specimen, chemical compound, other composition of matter, plan, record or laboratory notebook, whether now known or developed in the future.
3. "Derivative Work" shall mean a new "Work" which is based upon or which has evolved from the Work and which could not have been possible but for the Work. "Work" as used herein shall including derivative works.
4. "Sponsor" shall mean any external party, entity or agency with which the University has an agreement for services or other compensation.
5. "Sponsored Agreement" shall mean grants, contracts, subcontracts, and other agreements between a Sponsor and the University for the purpose of conducting research, instruction, training, and other activities at the University, or using University staff for compensation.
6. "Employee" or "Staff Member" shall mean any person employed full or part-time by the University in any capacity.
7. "Student" shall include any person enrolled for any course offered by the University in a program for an academic degree.
8. "University" shall refer to the business entity formed originally under the laws of the state of Colorado as "Colorado Seminary," now also known as the University of Denver.

C. Intellectual Property Committee. The Intellectual Property Committee is hereby established to review issues, questions or disputes pertaining to ownership of Intellectual Property rights involving possible ownership, or partial ownership by the University, and to interpret the policies of the University with respect to those issues, including this Policy. The Committee shall consist of:

1. Three members from the faculty, appointed by the Faculty Senate, for three-year, staggered terms.
2. Three members of the University administration appointed by the Vice Chancellor for Financial Affairs.
3. The Vice Chancellor for Intellectual Property and Events shall chair the Committee and, in the event of tie votes on the Committee, shall cast the deciding vote.

#### D. General Policy Provisions.

1. Application of This Policy. As a condition of their employment, enrollment or participation in University programs, or their use of funds, space, staff or facilities, all employees of the University, whether appointed, non-appointed, full or part-time, and all faculty shall be bound by this Policy, unless stated otherwise in a written agreement between such person and the University. Faculty shall be included within the term "employee." This Policy shall also apply to all students of the University in whatever program or status.
2. Patent Matters. The Patent Policy of the University, which is separately stated and incorporated herein by this reference, governs all matters pertaining to Intellectual Property created by University faculty, employees or students giving rise to patent rights, and sharing of income from commercial exploitation of those rights. The Patent Committee shall report to and be responsible to the Intellectual Property Committee.
3. General Statement Regarding Non-Patent Matters. The University acknowledges the right of faculty, staff and students to generate a Work and its associated Intellectual Property in their ordinary daily pursuits to which they have sole ownership. This general statement of ownership is qualified by the Patent Policy of the University, the policy regarding substantial University assistance set forth below, and by the doctrine "work for hire" under U. S. copyright law and Section D.9 of this Policy.
4. Substantial University Assistance. The following guidelines shall be used to determine whether "substantial University

assistance" is involved in the creation of a Work, thereby making the Work and its associated Intellectual Property the sole and exclusive property of the University:

- a. General Rule. To qualify as "substantial University assistance," the University's participation in or support of the creative or developmental activity leading to a Work must be material, significant and beyond the resources normally provided to individual Employees, Staff Members and Students. Without limiting the foregoing, the University does not regard the University's provision of normal and customary compensation, student financial aid, library resources, office or laboratory facilities, office staff or laboratory support, telecommunications facilities, individual personal computers, and ordinary and reasonable access to the University's computer network and websites or similar University provided electronic communication tools used for non-commercial scholarly pursuits, as constituting "substantial University assistance." It is recognized that the terms "normal" and "customary" as used herein are subject to change as technology and University operations evolve. Ordinarily, "normal" and "customary" will be defined through general published procedure or established University policy.
- b. Illustrations.
  - i. Substantial direction and guidance in development of materials.
  - ii. Substantial use of University software designers, programmers or other information technology staff or University computing or telecommunications facilities.
  - iii. In the case of students, support or assistance beyond ordinary and reasonable classroom/ laboratory resources provided in conjunction with a specific academic program.
  - iv. Any instructional materials, curricula, examinations, teaching or learning aids, "lessonware," "courseware" or other student interactive audio/visual material created or

used by any Employees, Staff Members or Students at the direction of the University in connection with any University-initiated strategic plan for remote or distance education or cyber teaching program. See Section D.12 of this Policy for special provisions on this subject.

- v. Substantial use of any special or rare University holdings, such as museum collections, rare manuscripts or books or the like.
  - vi. Substantial use in the Work of voice(s) or image(s) of University Employees, Staff Members or property.
  - vii. Substantial use of University student assistance beyond that which is normal and customary for the department or division.
  - viii. Substantial creative or developmental contribution to the Work by Employees, Staff Members, or Students engaged in the course of their regular employment or academic program (other than Creator(s)).
  - ix. The use in any Work of the University's name or insignia, or the name or insignia of any of its affiliate organizations (other than for the sole purpose of identification of individuals) to identify or promote any product, services or enterprise, or any other identification or reference in a Work that could reasonably be understood by members of the public to imply approval or endorsement by the University or any of its affiliate organizations. Any such use of the name or insignia of the University is strictly limited and governed by another University policy, to be separately published.
5. Reputation, Goodwill, Competition. University reserves the right to prohibit or limit the use and/or publication of any Work and the Intellectual Property therein for which it has contributed substantial University assistance, or any Work that is a "work for hire" owned by the University, if, in the

University's sole judgment, such use or publication would adversely impact the University's goodwill, competitive position or reputation as an educational institution.

6. Written Agreement Required. Whenever the element of "substantial University assistance" is perceived (by either the University or the Creator(s) to be involved in the preparation of the Work or Derivative Work(s), the parties are required, in a timely fashion, to hold good faith negotiations toward a written agreement regarding University usage, Creator(s) usage, and commercial exploitation, and all other aspects of the proposed development and use of the Work. The following procedures shall apply:
  - a. Negotiations. The Dean or Administrative Director of a particular University academic unit or administrative unit will facilitate the commencement of discussions toward an agreement with the Creator(s), in consultation with University counsel and the Vice Chancellor for Intellectual Property & Events. A University representative will be designated. All such agreements shall be reported to the Intellectual Property Committee. The Creator(s) and University may choose to be represented by legal counsel in such negotiations. A Creator may also be represented by a fellow employee of his or her choosing.
  - b. Agreements. If negotiations between the Creator(s) of a Work and the University lead to mutually acceptable terms and conditions, they shall be expressed in a written agreement. Any such agreements should protect the appropriate rights of the Creator(s) and the University, establish the party's share of any royalties or other income derived from the product and define the scope of use to be permitted by University and third parties. The Dean or Administrative Director, in consultation with the Vice Chancellor for Financial Affairs and the Vice Chancellor for Intellectual Property & Events, must approve all such agreements. In all circumstances involving substantial University assistance, the University will, at a minimum, retain the right in perpetuity to use the Work for its own institutional academic purposes. Similarly, Creator(s) shall retain the right, in perpetuity, to use the Work for reasonable personal

(non-commercial) purposes and (by reference) in academic credentials.

c. If No Agreement is Reached.

- i. Anticipatory Situations. In the case of a proposed project involving substantial University assistance (not yet commenced), either the University or the Creator(s) shall have the ability to decline to go forward with the project. In such circumstances, the University may also decline to permit University resources (beyond those normally provided) to be used by Creator(s).
- ii. Previously Commenced or Completed Projects. If a Work and the associated Intellectual Property rights therein arise or are the result of a project involving substantial University assistance that has already substantially commenced, and if the Creator(s) and University are unable to reach Agreement, the provisions of this Policy regarding Commercial Exploitation and Sharing (Sections 7 and 8 below), shall apply.

7. Commercial Exploitation. As owner, the University shall have the exclusive right to commercially exploit any Work or Derivative Work(s) created with "substantial University assistance." Said right shall endure for a period of one year following the completion of the Work, or any of the Derivative Work(s), in a classroom usable or publishable form. If the University has declined to exercise its right within the one-year period, the University will assign ownership of the Intellectual Property Rights in the Work to the Creator(s), and the Creator(s) may proceed to commercially exploit and pursue other opportunities, provided that University shall retain its right to reimbursement of expenses and royalty rights as set forth below in Section 8, and provided further that University shall have, in its reasonable discretion, the rights to veto any proposed third party commercial exploitation of any such work, if such arrangement would

materially prejudice the University's reputation, goodwill, or competitive interests as set forth in Section D.5 above.

8. Sharing of Intellectual Property Income. As a general matter, the following apportionment of Net Income shall be considered the norm as it relates to commercial exploitation of the Works and Intellectual Property hereunder, except when the written agreement between the Creator(s) and University states otherwise.

<b>Income</b>	<b>Inventor</b>	<b>Department/ Division</b>	<b>University</b>
\$0-\$25,000	100%	-0-	-0-
\$25,001 - \$50,000	40%*	30%	30%
\$50,001 and over	33 1/3%**	33 1/3%	33 1/3%

\*of the amount over \$25,000

\*\* of the amount over \$50,000

For the purposes of this Policy, "Net income" shall mean the sum of any royalties, license fees or other receipts, minus administrative, marketing, licensing, legal, equipment, materials, contract services, travel, and any other appropriate related expenses incurred by University or the Creator(s) in the process of development, creation or protection of the Work, and the associated Intellectual Property therein, but exclusive of the University's ordinary and traditional tuition income from courses taught primarily on campus and primarily to a live audience of students. (Ordinarily, course material which rises to the level of a Work hereunder, developed by a faculty member Creator to be taught by that faculty member, may not be used by University for other purposes without the consent of the Creator.) Tuition income from courses taught primarily through distance learning programs will be considered income for this purpose, provided that the name and reputation of the University will be factored in as an additional expense, valued at not less than 25% of gross receipts. The Creator(s)' share of Net Income shall be divided pro rata among such Creator(s), unless they otherwise agree in writing and so notify the University. The Chancellor or the Provost, as appropriate, shall determine how the department/division share shall be disbursed. Such department or division funds will ordinarily be used for continuation of activities of the Creator(s) in the University

context, as long as the Creator(s) remains with the University.

9. Work-For-Hire. Persons whose work product is owned by the University as work-for-hire (under the copyright law) generally are not entitled to share income under this Policy, but may be given a share if the appropriate University official or department determines that they have made an unusually significant creative contribution to the Work. Tasks performed by non-appointed employees in the ordinary course of business of the University will be considered "Work-For-Hire," unless a specific written agreement stating otherwise is executed by the Employee and an Officer of the University.

10. Sponsored Research. Often, research or related activity is subject to an agreement between a Sponsor and the University that contains restrictions concerning copyright, or the use of copyrighted materials or other Intellectual Property resulting from the project. In such circumstances, the sponsorship agreement shall govern the allocation of property rights and income. In negotiating with Sponsors, the project directors and the University should strive to protect and advance the public interest, as well as to obtain reasonable latitude and rights for the individual author and the University, consistent with the public interest and this Policy.

11. Legal Protection of University Intellectual Property. If a Work and the Intellectual Property therein are owned by or licensed to the University under this Policy, the University's legal counsel shall investigate third party rights, conduct searches and clearances, file applications and take such other steps as the University, in its sole discretion, deems reasonable and necessary to protect the rights of the University and the Creator(s). All University employees and students shall cooperate fully with University legal counsel and execute such documents as may be required in their capacity as Creator(s) hereunder. The University reserves the right to pursue multiple forms of legal protection in parallel fashion, if available. For example, the University may seek to protect a Work of computer software by copyright, patent, trade secret, and trademark. The University shall bear all costs or expenses of such protective processes, provided, however, the University shall then be entitled to full reimbursement thereof from the first revenues produced by the commercial exploitation of such Work and the Intellectual Property therein.

12. Special Provisions Regarding the Extended Learning Initiative. In recognition of the strategic importance of the work of

the Division of Extended Learning (DUXL) being developed by the University to provide courses substantially through electronic means to off-campus locations, the following special policy provisions shall apply to all Works developed in connection with DUXL originated programs:

Substantial University Assistance shall be conclusively presumed for every element of the curricula, examinations, terminology or learning aids, class materials, courseware, lessonware, interactive audio/visual material, and all other aspects of the product offered by University by the Division of Extended Learning (DUXL). A written agreement regarding rights and compensation of Creator(s) who contribute Works, in whole or in part, to these courses or to the DUXL program in general shall be a requirement. In the absence of such an agreement, where the Creator(s) has clearly consented to the use of the materials by DUXL, the Works shall be considered to fall under the work for hire provisions of Section 9 above, and Section 8 above shall not apply. This special provision (Section 12) shall not apply to the Works of faculty, staff or students primarily attached to other divisions or departments of the University engaged in projects that may be supported from time-to-time by the Division of Extended Learning.

13. Dispute Resolution. Any disputes between University and Creator(s) regarding the application, interpretation or enforcement of this Policy that are not resolved through appeal to the Intellectual Property Committee, will be resolved through expedited arbitration under the auspices of and using the rules of the American Arbitration Association. Any hearing on such matter shall be held in the vicinity of Denver, Colorado. This Policy shall be construed under the laws of the state of Colorado.

14. Other Policy Considerations. Nothing contained in this Intellectual Property Policy shall limit or abrogate the effect of other University policies regarding Fair Use of third party materials, Privacy and Security in Electronic Communication, Conflicts of Interest or Faculty Appointment, Promotions and Tenure.