

## **Dakota Wesleyan University Intellectual Property Policy**

**NOTE:** This policy was approved by the DWU faculty in October 2005 and is pending final approval by the Board of Trustees at its Spring 2006 meeting.

The purpose of this policy is to encourage, support, and reward research and scholarship, to acknowledge ownership of intellectual property, and to recognize the rights and interests of the creator, the university, the public, and external sponsors, if applicable. A campuswide climate that encourages the creation and sharing of intellectual property by faculty, staff, and students, and respects the intellectual property of others, is at the very foundation of the mission, vision, and core values of Dakota Wesleyan University.

### **Definition and Scope**

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs, and sculptures, and architectural designs. (Source: World Intellectual Property Organization)

While patents are issued for inventions that demonstrate novel, non-obvious, and useful products and methods, copyright covers works of authorship representing the tangible expression of ideas, requiring originality, and a degree of creativity. According to Title 17 of the U.S. Code (the Copyright Law), copyright protection subsists "in original works of authorship 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."

This intellectual property policy addresses ownership and rights related to copyrightable works created by Dakota Wesleyan University employees in the course of their employment, and by DWU students. Use of the intellectual property of others by Dakota Wesleyan employees and students is addressed in the university's Copyright Policy.

This policy also applies to part-time faculty members within the context of their DWU employment.

### **Basic Concepts**

The following concepts provide the underpinnings for this policy.

Work for hire. Under the concept of "work for hire," if a person creates a work during the course of her/his employment, the ownership of the work belongs to the employer. The test of what constitutes a work for hire utilizes the principles of "agency law," which include the following criteria: (1) income tax is withheld by the employer; (2) the employer pays for employee benefits, or withholds from the employee's salary for benefits; (3) the employer sets the employee's work schedule; (4) the employer provides equipment and materials used by the employee in work performance; (5) the employer and employee have a long-term work relationship; and (6) the employer has the right to assign work to the employee.

Several court opinions have resulted in what has been recognized as the “academic exception,” the essence of which is that unless extraordinary support is provided, intellectual property created by a college faculty member in normal teaching, research, and scholarly activities belongs to its faculty creator(s). This policy is based upon that assumption. The “academic exception” does not apply to non-faculty university employees.

Extraordinary support. Extraordinary support is defined as any funds, personnel, facilities, equipment, and materials that are provided to a faculty member to a degree that is significantly in excess of that available to all DWU faculty. In other words, resources do not generally permit that level of support for all faculty who may request it.

For the purposes of this policy, the following are NOT considered extraordinary support:

- use of campus computing resources and networks that are available to all faculty and staff;
- use of standard office workstation equipment and software applications provided by the university or purchased through university budget allocations, gifts, or endowments;
- use of equipment and software applications purchased through Federal grants;
- funding received through instructional development grants or Title III summer mini-grants, unless the extraordinary support conditions identified below apply;
- assistance provided by university support staff up to 120 hours per project; and
- released time of four (4) credit hours per academic term or less.

The following ARE considered extraordinary support:

- employment of a faculty member outside the normal academic year contract (e.g., during the summer or employment of a part-time faculty member as an additional responsibility) for the specific purpose of creating intellectual property, such as development of an online course to be taught by others;
- assistance provided by university support staff in excess of 120 hours per project; and
- released time of more than four (4) credit hours per academic term

Unbundling of ownership and rights. The current trend in intellectual property policy development and implementation in higher education is toward recognition that ownership and rights need not be exclusive, and that ownership and rights can be “unbundled” in the best interests of all parties. With unbundling, ownership can rest with the university with rights granted to the faculty creator, or ownership can rest with the faculty creator with rights granted to the university. This policy is based on the concept of unbundling.

### **Intellectual Property Ownership**

In the absence of extraordinary support, ownership of intellectual property created by a Dakota Wesleyan University faculty member rests with the faculty creator. Joint ownership applies in the case of intellectual property created by two or more individuals.

Ownership of intellectual property created by non-faculty university employees in the course of their employment under work-for-hire conditions, and IP created by faculty with extraordinary support under one or more of the conditions identified above, rests with Dakota Wesleyan University.

### **Unbundling of Rights in Cases of Joint Creation or Special Funding**

Intellectual property may be created through a collaboration between DWU faculty members and support staff, for example the development of digital media or online course materials. In these cases, ownership of the IP will be determined through application of the criteria above.

This section also applies in cases in which intellectual property is created by faculty through special university funding, such as instructional development grants and Title III summer mini-grants, regardless of whether a collaboration with support staff was present.

Regardless of the assignment of ownership, the following rights apply to faculty co-creators in the case of jointly-created intellectual property:

- the right to use the work(s) in the pursuit of their profession, at Dakota Wesleyan University and elsewhere;
- the right to make reproductions of the work(s) for use in teaching, scholarship, and research;
- the right to make derivative works;
- the right to alter the work(s), add to the work(s), or to update the content of the work(s);
- the right to be identified as the author(s) of the work(s);
- the right of portability; that is, the right to take the work(s) to, and use the work(s) with, a new employer;
- the right to license others to use the work(s), with any revenues to be shared equally between themselves and the University;
- the right to be informed in advance of any uses, reproductions, distributions, and dispositions of the copyrighted work(s) by the University; and
- the right to exclusive control of all decisions related to publication of the work(s).

Regardless of the assignment of ownership, the university reserves the following rights in the case of jointly-created intellectual property:

- on a limited, nonexclusive basis, the right to assign or allow other DWU faculty and students to use the work(s) in their own teaching and/or research;
- the right to control whether the University's name or logo is displayed in association with the work(s);
- the right to require an appropriate acknowledgment of university support of the creation of the work(s)
- the right to license others to use the work(s), with any revenues to be shared equally between the faculty creator and the University;
- the right to demonstrate the work(s) to others for uses directly related to advancing the mission or maintaining the culture of the University; and
- the right to be informed in advance of any uses, reproductions, distributions, and dispositions of the copyrighted work(s) by the faculty creator.

This section does not apply to documents and materials normally the responsibility of a faculty member, such as lecture notes, syllabi, and assignment directions, or to the creation of manuscripts for the purpose of publication, such as books and journal articles, unless joint authorship was intended. Ownership of such materials rests with the faculty creator(s), and the university makes no claim to rights pertaining thereto.

## **Ownership of Online Courses and Course Materials**

The idea of “ownership” of an online course is an oxymoron. No one at Dakota Wesleyan University can “own” an entire online course – only parts of online courses – because of the varying forms of intellectual property that may be incorporated into such a course. For example:

- Content and materials created for the course by the faculty member (e.g., syllabus, lecture notes, assignments, case studies, photographic images taken and digitized by the faculty member) are the intellectual property of that individual.
- The course may link to readings in the library’s electronic reserve section that were licensed specifically for use in this course.
- The course may link to online readings or other resources located in library online databases or on other web sites, that are the IP of others.
- Digital materials created for the course by university support staff are the property of the university.
- The course could incorporate digital images or video clips that were licensed for use in the course or were used under the assumption of fair use, and are owned by others.
- Comments made by students in the course’s discussion forums belong to them.
- Some materials used in the course could legitimately be in the public domain.
- The entire course could be delivered to students via a proprietary course management system, such as TigerNet, licensed from Jenzabar by DWU.

This policy recognizes that intellectual property created by a faculty member for use in an online course belongs to the faculty creator. IP created by university support staff for the course belongs to the university. Rights will be assigned according to the conditions stated in the section above.

## **Intellectual Property of Students**

Works created by Dakota Wesleyan University students for the purposes of fulfilling class assignments or degree requirements, regardless of whether university resources were utilized in their creation, are the intellectual property of their student creators, who retain ownership. Ownership of works created by student groups working collaboratively is shared among the group members.

Works created by students within the scope of university employment, including work-study, are considered works for hire and are the property of the university.

Faculty members sometimes wish to display student works in their classes, either current or subsequent, within a face-to-face class or via some electronic means such as in MyWeb or TigerNet. If faculty intend to display student works in this manner, students should be notified in the course syllabus, and they should be given an opportunity to request that their works not be displayed. A release form may be used by faculty in lieu of syllabus notification, as long as the form is signed by the students prior to display of their works.

Student works distributed to others via a storage device such as a CD-ROM or DVD require specific permission in writing, in advance, normally through a release form. Incorporation of student-owned intellectual property in media such as videotapes, CD-ROMs, or web sites produced by the university for purposes such as public relations or accreditation reviews requires specific permission in writing through a release form.

**Work Created Under Grants and/or Contracts**

Grants and contracts received by the university may result in the creation of intellectual property. The ownership of IP created through external funding normally is specified in the contract, and may rest with the funding agency. Unless specified otherwise in the contract, ownership of IP created with Federal funds belongs either to the university or the faculty creator, with determination made through application of this policy.