

JOHNSTON COMMUNITY COLLEGE PERSONNEL MANUAL

Title: Intellectual Property
Type: Board of Trustees Policy
Number: PM - 2.14

Approved: 05/17/2001

Page 1 of 5

Purpose

Sets forth Board of Trustees policy concerning the stewardship of patents and copyrights for employees who create intellectual property such as an invention, creation or discovery, as developed with College resources.

General Policy

In the pursuit of its mission, the College shall recognize that new creations and discoveries often result that are subject to, or eligible for, intellectual property protection. The stewardship of such intellectual property, consistent with the mission of the College, shall be considered an important responsibility of both the College and the Creator.

Policy Provision

Definitions

Applicable Intellectual Property:

Any invention, creation, innovation, discovery or improvement, developed with College resources, other than: traditional works of scholarship and creativity; instructional materials; and institutional works, for which assignment to the College is required by law or by a written contract to which the Creator has previously agreed; or for which the Creator seeks the assistance of the College in developing commercially (including protecting, marketing, assigning, or licensing).

Creators:

Faculty or staff members, as persons employed by the College, whether full- or part-time; visiting faculty and researchers; and any other persons, including students, who create or discover applicable intellectual property using College resources.

Device-like Software:

Software that is intended primarily and is reasonably likely to accomplish a task or to produce, manage, analyze, or manipulate a product, such as data text, a physical object, or more software. Such software acts as a tool or building block in the accomplishment of such a task or in the creation or management of such a product or result.

Direct Expenses:

Costs associated with the protection and licensing of intellectual property, excluding the salaries or other overhead costs of the College.

Information Software:

Software that is intended primarily and is reasonably likely to provide information to the user, and as akin to a textbook or encyclopedia.

Institutional Works:

Works 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 contract.

Instructional Materials:

Works, other than Institutional Works, the primary use of which is for the instruction of students, and including textbooks, syllabi and study guides.

Material Made Available for the Use of the College:

Any invention, creation, innovation, discovery or improvement which is the product of a Creator and the subject of intellectual property protection, and which the Creator voluntarily makes available for the College's use without expectation of further compensation to the Creator.

Such material may include the intellectual property contributions of Creators to committee reports, musical or dramatic performances or productions, departmental lecture note files and on-line, web-based courses programmed in BlackBoard, FrontPage or any other Web programming tool.

Net Revenue:

Revenue remaining after deducting all direct expenses necessary for obtaining protection for, and licensing, applicable intellectual property.

PERSONNEL MANUAL

Title: Intellectual Property

Number: PM – 2.14

Page 2 of 5

Traditional Works of Scholarship:

Works, other than institutional works, reflecting research and/or creativity, which within the College are considered as evidence of professional advancement or accomplishment. Such works include scholarly publications, journal articles, research bulletins, monographs, books, plays, poems and works of art, as well as information software and on-line, web-based courses.

College Resources:

All tangible resources provided by the College to Creators, including office, lab, and studio space and equipment; computer hardware, software and support; secretarial service; research, teaching and lab assistants; supplies; utilities; funding for research and teaching activities; travel; and other funding or reimbursement. Excluded resources include salary, insurance or retirement plan contributions paid to, or for the benefit of, Creators.

Assignment and Protection of Intellectual Property

The College shall not exercise intellectual property rights in any work created or discovered by a Creator other than works meeting the definition of "Applicable Intellectual Property" or "Institutional Works," unless such rights are voluntarily transferred by the Creator or secured through licenses set forth in this policy.

Applicable Intellectual Property

Creators shall assign rights in applicable intellectual property to the College. The College shall have the sole right to determine the disposition of applicable intellectual property. That determination shall take into account the interests of the College, the public and the Creator, including the Creator's professional or ethical convictions concerning the use of applicable intellectual property.

Responsibility for disposition of applicable intellectual property shall reside with the Vice President of Information Technology, subject to provisions set forth by the Administrative Council. Creators may not assign, or license rights in, applicable intellectual property to third parties without the written consent of the College.

All assignments must be in writing and shall conform to the specified requirements.

Creators of Applicable Intellectual Property shall assist as reasonably necessary for the College to obtain statutory protection for the intellectual property and to perform all obligations to which it may be subject concerning the intellectual property, including executing appropriate assignments and other documents required to set forth effectively the ownership of, and rights to, applicable intellectual property.

The Creator shall retain responsibility for intellectual stewardship of the intellectual property. The Creator shall have the right to be identified, or to refuse to be identified, as the Creator by the College and by subsequent licensees and assignees, except as required by law. The Creator shall retain the rights to pursue related research and creative activities, determine methodologies, draw conclusions, disseminate information and develop related intellectual property (including derivative works), except to the extent that the Creator has voluntarily entered into contractual arrangements or is required by legal or professional considerations to do otherwise.

Because premature or inappropriate disclosure may defeat legal protection of intellectual property, the College shall undertake to inform Creators about the consequences of potential disclosures.

The College and Creators shall be expected to work together to facilitate both scholarly disclosures and the acquisition of appropriate intellectual property protection.

Institutional Works

The College shall own intellectual property rights in institutional works, except as provided in prior written agreements between the College and the persons who create those works. The Creator(s) of institutional works shall exercise no rights in such works and shall receive no proceeds resulting from the sale, assignment, licensing or use of such works, except as provided in prior written agreements between the College and the persons who create those works.

Disclosure

Creators shall disclose promptly to the College any applicable intellectual property. Disclosure shall be made in a memo to the Vice President of Information Technology.

PERSONNEL MANUAL

Title: Intellectual Property
Number: PM – 2.14

Page 3 of 5

Revenue Distribution

All monetary proceeds from the transfer or commercialization of applicable intellectual property shall be distributed as follows, unless legal requirements or contractual agreements require otherwise:

The Creator(s), or Creator's heirs, successors and assigns, shall receive one-half (50%) of the net revenue arising from applicable intellectual property; and

The College shall receive one-half (50%) of the net revenue arising from applicable intellectual property.

The College shall own the equity interests. If and when monetary proceeds are generated by the sale of equity interests, those proceeds shall be distributed according to the policies set forth herein for revenue distribution.

The College does not act as a fiduciary for any Creator concerning equity interests or other non-monetary consideration received under the terms of this policy, and no Creator shall have any interest in, or legal right to, such equity interests or non-monetary consideration.

The College shall distribute to any Creator making this election that Creator's share of the equity interests resulting from the transfer or commercialization of applicable intellectual property. The Creator's share of the equity interests shall be determined according to the following formula:

1. The fair market value of the equity interests shall be determined as of the next business day after the day on which the Creator requests the distribution; and
2. The College shall set aside that portion of the equity interests equal in value to the direct expense incurred by the College for obtaining intellectual property protection of the applicable intellectual property, unless those expenses were covered as part of the distribution of monetary proceeds.

Licenses for Use of Material Made Available for the Use of the College

It shall be understood that many faculty, staff and students create material which is the subject of intellectual property protection and which they voluntarily make available for the use of the College and without expectation of further compensation.

The College shall retain a non-exclusive, royalty-free license to use such material made available for the use of the College, provided that significant contributions of Creator(s) are acknowledged.

This license shall include any on-line, Web-based courses or other adjunct course materials created for the use of the College with College resources. This license shall not include the right to exploit the work outside of the College or for profit.

Licenses for Non-Commercial Research and Teaching within the College

Many faculty, staff and students experience high costs and practical inconvenience in obtaining permission to use material which is the subject of intellectual property protection for research and teaching.

Creators are therefore encouraged to seek from publishers and other persons to whom Creators assign rights in their intellectual property, a non-exclusive, royalty-free license for their own non-commercial research and teaching and, where possible for anyone within the College to use that intellectual property for non-commercial research and teaching.

The Vice President of Information Technology and other appropriate persons, departments or committees shall work to develop standard license terms and shall otherwise, to the extent possible, assist Creators in securing such licenses.

Assignment or Licensing of Applicable Intellectual Property by the Creator(s)

The College may, at its sole discretion, permit the Creator(s) to assign or license applicable intellectual property. The College may not withhold consent for assignment or licensing unreasonably unless the College intends to pursue protection for the applicable intellectual property.

PERSONNEL MANUAL

Title: Intellectual Property

Number: PM – 2.14

Page 4 of 5

Such assignments or licenses shall be subject to the following provisions, unless waived in writing by the College:

1. The College shall retain for itself a royalty-free license to use the intellectual property for non-commercial research and teaching within the College;
2. The College shall receive a share of all proceeds generated from commercialization of the intellectual property after the Creator has recovered documented out-of-pocket costs for obtaining legal protection for the intellectual property, and the College's share shall be negotiated on a case-by-case basis;
3. Creator(s) shall not be entitled to a share of proceeds received by the College under this subsection;
4. In the event the Creator(s) has received a specific request for assignment or licensing of applicable intellectual property, the Creator(s) must provide the College with sufficient information to determine the marketability of the applicable intellectual property; and
5. The College shall notify the Creator in writing of any objection to the proposed assignment or licensing no later than forty-five (45) business days after receiving the Creator's request to assign or license and the supporting information.

Intellectual Property Transfer/Commercialization Agreements

The College shall welcome agreements with third parties for the development, use, dissemination and commercialization of intellectual property, consistent with the College's mission and the principles on intellectual property.

Any agreement to license or transfer ownership of the College's intellectual property by means of sale, assignment, or exchange shall be subject to this policy and shall include the terms necessary to fulfill the requirements of this policy.

Agreements relating to the development and/or commercialization of intellectual property may provide that the contracting entity bear the costs of obtaining protection for intellectual property.

College Administration of Intellectual Property

Primary responsibility for identifying, protecting, and managing applicable intellectual property, shall reside with the Vice President of Information Technology, under the policies developed and supervised by the Administrative Council. The Vice President shall request a recommendation from the Administrative Council regarding the disposition of the intellectual property.

All disclosures shall be submitted to the Vice President of Information Technology. The Vice President shall determine whether the College desires to obtain protection for the intellectual property, or otherwise make use of the intellectual property.

The Vice President shall consult, as deemed necessary, with the appropriate persons, departments or committees concerning such decisions and other matters relating to the implementation of the policy.

The Vice President shall notify the Creator promptly after having determined whether it is in the best interests of the College to seek protection for disclosed intellectual property.

If the College decides to seek protection for intellectual property, it shall proceed either through its own efforts or those of an appropriate private firm or attorney to obtain protection and/or manage the intellectual property.

In those instances where delay would jeopardize obtaining the appropriate protection for the intellectual property, the Creator may request that the Vice President of Information Technology expedite its decision as to whether or not the College intends to seek statutory intellectual property protection.

The Creator of intellectual property may appeal any adverse determination concerning the identification, protection, and/or management of such intellectual property to the College Research Policy Committee, whose determinations may be appealed to the Vice President of Information Technology.

PERSONNEL MANUAL

Title: Intellectual Property

Number: PM – 2.14

Page 5 of 5

Further appeals shall be subject to existing College policy concerning review of administrative decisions.

Implementation

In the event exceptional circumstances require any exception to the terms of this policy, such exceptions shall require the written consent of the President or designee and the Creator(s).

The Vice President of Information Technology shall, when practical, seek the advice of the Administrative Council prior to approving any exception to the terms of this policy. When prior consultation is impractical, the Vice President shall promptly notify the Administrative Council of any exceptions to the terms of this policy.

Notification

The College shall be expected to inform all persons subject to this policy of its terms as soon as efficiently possible after its adoption and at regular intervals thereafter.