

SUBJECT: Intellectual Property

Applicability: This policy covers all College District employees (including part-time and adjunct), students, and anyone using College District facilities under the supervision of College District personnel. The policy applies to all types of intellectual property.

I. Introduction

The Board recognizes the importance of intellectual property rights. The purpose of this policy is to protect the rights of the College, faculty, staff, and students. The intent of this policy is to promote instructional quality, creativity and the sharing of resources.

II. Definitions (See Addendum for expanded definitions)

Intellectual Property includes any invention, discovery or work of authorship subject to protection by patents, copyrights, trademarks or trade secrets.

Patents are legal documents issued by a federal agency to protect the ideas of any owner of a manufacturable product.

Copyright relates to a work of authorship, including (but not limited to) literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations for which certain exclusive rights are granted by law to the creator.

Trademarks may include, but is not limited to, logos, symbols, words and letters that are used to market, advertise or are otherwise associated with an individual, institution or organization.

Trade Secrets may include, but is not limited to, all types of nonpublic, uncommon information, software, codes, techniques, processes, and procedures.

Creator(s) includes Midland College District faculty, staff and any other persons employed by the College, as well as other persons, including students, who create, invent, or discover Intellectual Property.

Ownership

Individual (Employee or student) – intellectual property created without the use of substantial College resources and/or support that is developed prior to, during, or after employment or enrollment with the College.

Joint – intellectual property created by employee or students using substantial College resources or support, owned by both the College and an employee and/or student.

College – refer to “work for hire.”

Work-For-Hire includes any non-scholarly work created by an employee within the scope of employment, contractual works by an employee, student or non-College employee.

College District the term “College District” is to be used in conjunction with Midland College (otherwise known as “College”) as a way of incorporating all Midland College campuses and facilities.

Scholarly Work refers to typical academic works created by faculty.

Substantial Resources refers to resources provided by the College that are above and beyond that which is normally provided within the scope of an individual’s academic department.

Academic Freedom is the ability of faculty and students to communicate, discuss, research and pursue knowledge, facts and ideas without unreasonable interference.

III. Guidelines

1. Individual owners retain all rights to their intellectual property.
2. Faculty individual owners retain all rights for scholarly work. The following list provides examples of faculty-created and faculty-owned scholarly work, but is not exhaustive:
 - a. Instructional materials such as research data, lecture and course notes, study guides, assignments, and exams, regardless of format;
 - b. Literary works;
 - c. Musical works; including any accompanying words;
 - d. Dramatic works, including any accompanying music;
 - e. Pantomimes and choreographed works;
 - f. Pictorial, graphic, and sculptural works;
 - g. Motion pictures and other audiovisual works;
 - h. Sounds recordings;
 - i. Architectural works (including but not limited to designs and all accompanying drafts).
3. The owner of intellectual property has a right to publish for private profit.

4. The owner of intellectual property has a right to negotiate privately for the manufacture of materials.
5. College facilities, equipment and staff may be utilized for research projects, only if prior administrative approval is obtained, and institutional functionality is not impaired.
6. The employee(s) and College, as joint owners of intellectual property, may enter into a contractual agreement to determine property rights, legal protection, and royalty or profit sharing. Joint owners are responsible for any costs of representation required for the remedy or resolution.
7. Midland College employees and students maintain their right to academic freedom when using or creating scholarly works without censorship or discipline, but should disclaim that their opinions do not necessarily reflect those of the College.
8. While scholarly works of a pedagogical nature are owned by the author/creator, the College retains ownership of all course syllabi – both current and past. No one, without prior approval from all supervisors, may utilize College syllabi or teach a course individually owned by the College outside of Midland College.
9. Intellectual property resulting from research supported by a grant or contract with the Federal Government, or an agency thereof, or with a non-profit or for profit non-governmental entity is governed by the specific terms pertaining to the intellectual property rights included in the grant or contract.
10. The College retains exclusive property rights to all materials developed as “work for hire.” Professionals, faculty members, or students employed or hired to create specific intellectual property shall review and sign a Personnel Status Form (PSF) or other contract to establish ownership of the works they create. Property developed for a specific purpose under release time or through a PSF will establish ownership of the College as work for hire.
11. Midland College may claim ownership of inventions that were created on Midland College property, with Midland College substantial resources and as a scope of employee’s commission. The creator is required to disclose an invention in advance for review and approval by the President of Midland College and any intention to file a patent application, submit for publication, or obtain commercial entitlement.
12. College employees who terminate employment retain individual ownership of their scholarly works and their portion of jointly owned intellectual property. Contractual agreements should include a termination clause.

13. The merchandizing of intellectual property for individual or personal profit shall not utilize any College property and/or facilities without prior written approval by the College President or an approved representative.
14. Business proposals which provide for shared equity in a development company will state that any equity allocated to the institution is to be held in the name of Midland College and its Board of Trustees.
15. An entity that is granted the exclusive rights with respect to a particular invention will be required to reimburse the College for all expenses incurred in obtaining the patent.
16. The Board of Trustees will determine the extent of an inventor's role in the management of a business related development of his/her intellectual property.
17. Determination of substantial resources or other issues of ownership may be decided on an individual case basis by an ad hoc committee.
18. An ad hoc committee consisting of appropriate peer representation from the employee(s) academic area or discipline, a fellow student, and representatives for the College may be convened by the President to address issues pertaining to this policy.

Addendum

- A. Inventions (Links to an external site): Inventions are discoveries.
- B. Discovery (Links to an external site): "The act or finding of something for the first time."
- C. Patent (Links to an external site) (35 USC Chapter 26 [specifically § 261 and 262: Ownership and Joint Owners): "A patent is a legal document which provides protection to the ideas of any individual. Usually issued by the United States Patent Office, the patent is granted to any firm or individual. Usually, patents constitute of four different classes: Machine (a device or apparatus created by a person for the performance of a specific task, process (a process created by an individual), manufacture (any fabricated or manufactured product) or the composition of matter (any chemical mixture or compound created by a person). Patents can be sued for."
- D. Copyright: Specific Elements of Copyright Protection:
 1. Copyright law protects original works of authorship fixed in any tangible medium.
 - a. This standard is a fairly easy one to meet; it is much less stringent than that for getting a patent (see Addendum A, Distinctions Between Copyright, Patent and Trademark). As logically follows, copyright offers much less protection than patent.

- b. Copyright owners don't have to record their copyright. Copyright can simply be asserted once the work is fixed in a tangible medium. While copyright can be registered (and, if a lawsuit is filed to enforce a copyright, must be registered at that time), such registration is not necessary to create the copyright protection.
2. Covered Works are anything fixed in a tangible medium.
 - a. This includes books, private letters, paintings, computer programs, motion pictures and other audiovisual work. It also includes anything else fixed, no matter how it is fixed. Thus it includes documents "written" on a computer disk, web pages, notes on scraps of paper, even your grocery list. Anything fixed qualifies for protection.
 - b. This of course makes any policy requiring "reporting" of the creation of copyright material, or intellectual property, an absurdity.
 3. Copyright does not protect ideas, nor does it protect the labor that goes into creating a written work.
 - a. No matter how much work goes into compiling data, for example, the data itself is not protected. If a work shows some originality or creativity in the way it is put together, that creative presentation might itself be copyrighted, but the data is not.

Feist Publications Inc. v. Rural Telephone Service Co., 499 U.S. 340 (1991). In this case the Supreme Court held that alphabetical listings in telephone directory white pages are not copyrightable. The Court allowed copyright protection for compilations or directories only for any original and creative elements of the arrangement or selection, and excluded protection of the underlying data. In doing so the Court rejected a number of decisions supporting a "sweat of the brow" doctrine. The Court concluded that the sweat-of-the-brow doctrine went too far in that it "extended copyright protection in a compilation beyond selection and arrangement--...to the facts themselves."
 4. Copyright only lasts for a limited time.
 - a. Copyright now lasts for the life of author plus 70 additional years. For commercial products (commercial authors), it lasts 95 years from the date of publication.
 - b. Note, however, that the legal authority for any time limit on copyright comes from Article I, Section 8, Clause 8 of the U.S. Constitution, which promotes "the Progress of Science and useful Arts, by securing for *limited Times* to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." (emphasis added). This leaves the specific time to be set by Congress, which keeps expanding the time. It was most recently expanded by the Sony Bono Copyright Term Extension Act (CTEA) of 1998. Legal challenges to the most recent expansion were unsuccessful. *See Eldred v. Ashcroft*, 537 U.S. 186 (2003).

- E. Trademark (Links to an external site) (15 USC Chapter 22): “A trademark is a word, phrase, symbol or other indicator that identifies the source or sponsorship of goods or services. If an individual, business, or other organization uses a trademark to sell or promote goods or services, then it can gain the right to exclude others from using the trademark in connection with similar goods or services.”
- F. Trade Secrets (Links to an external site) (18 USC § 1839 and the Uniform Trade Secrets Act): means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if the owner thereof has taken reasonable measures to keep such information secret; the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public; the term “owner”, with respect to a trade secret, means the person or entity in whom or in which rightful legal or equitable title to, or license in, the trade secret is reposed.
- G. Fair Use: Limitations on exclusive rights: Fair use
Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:
1. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. The nature of the copyrighted work;
 3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. The effect of the use upon the potential market for or value of the copyrighted work.
- The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.
- H. Work-for-Hire: In determining whether any work is eligible to be considered a work made for hire under paragraph (2), neither the amendment contained in section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999 nor the deletion of the words added by that amendment—
1. Shall be considered or otherwise given any legal significance; or
 2. Shall be interpreted to indicate congressional approval or disapproval of, or acquiescence in, any judicial determination by the courts or the Copyright Office.
- Paragraph (2) shall be interpreted as if both section 2(a)(1) of the Work Made For Hire

and Copyright Corrections Act of 2000 and section 1011(d) of the Intellectual Property and Communications Omnibus Reform Act of 1999 were never enacted, and without regard to any inaction or awareness by the Congress at any time of any judicial determinations.

I. Scholarly Work: The following list is comprised of examples of such faculty-controlled and faculty-created materials that are included in the protection of “scholarly works” but the contents of this list are certainly not exhaustive:

1. Literary Works;
2. Musical works; including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographed works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audiovisual works;
7. Sounds recordings;
8. Architectural works (including but not limited to designs and all accompanying drafts);
9. Any original materials prepared for use in the classroom (both traditional and distance);

J. Substantial Resources: The discretionary use of extraordinary goods and resources made available only through employment with the College District by a College District employee for the purpose of personal gain. The intent to use the goods and resources is implied if and when the College District employee seeks to personally profit from their use of the extraordinary resources. Joint ownership will apply. "The most common standard employed by universities for claiming ownership of faculty works is the 'use of university resources' or 'significant or substantial use of university resources'. ... However, since there is no tradition of applying this standard, the process of defining it will be one of uncertainty for both parties." The boundary between what is and what is not considered substantial College resources and support will be determined on an individual case basis by a committee assigned by the President, consisting of appropriate peer representation from the employee(s) work or discipline along with representatives for the College and or a fellow student.