

Intellectual Property Policy

Purpose

The purpose of this policy is to clarify issues related to the ownership, use, and sale of intellectual property created by university personnel.

Eastern Mennonite University wishes to foster an intellectual environment that encourages creativity, innovation, and excellence while managing its resources for the benefit of all constituents. In this policy the university seeks to foster these goals and honor traditions in the academic setting while recognizing federal laws.

Definitions

Intellectual property refers to any copyrightable or patentable work.

Copyrightable work includes original works of authorship fixed in a tangible format including syllabi and other course materials, books and other literary works, articles, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, software, internet sites or other material that qualifies for protection under United States copyright law.

Patentable work is any new and useful discovery, process, machine, device, manufactured product, composition of matter, or other invention that qualifies for protection under United States patent law.

Scholarly and artistic works are works reflecting research and/or creativity that within a university are considered as evidence of professional advancement or accomplishment. Examples include publications, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, and the products of science.

Works for hire refer to works prepared by an employee within the scope of employment. (Note that the law recognizes that the copyright for works for hire rests with the institution. Materials created by faculty for their courses, however, have been considered an exception since the administration provides very little control and direction for their development.)

University resources refers to university funds, facilities, equipment and personnel.

Substantial use of university resources refers to extensive use of resources beyond what is ordinarily made available to employees. For example, for faculty “substantial use” would be reduction in teaching load or funding that goes beyond the customary release time, grants and sabbaticals awarded within current policy. **A specific example would be a year of release time to write a history of a prominent leader or agency of the Mennonite Church.** Other examples include extraordinary use of special equipment, facilities, supplies or time of university employees.

Policy Statement

EMU policy seeks to encourage faculty creativity while conserving the resources of the university. Thus, in spite of the “work for hire” principle, *intellectual property of a scholarly or artistic nature* shall be the sole and exclusive property of the creator unless a specific contract with alternative provisions has been negotiated prior to the creation of the property. The latter is desirable when the production of intellectual property involves substantial use of university resources. In this case the **provost on behalf of** the administration is responsible to initiate the negotiation.

There may be cases of “substantial use” where employees (with or without the participation of students) create intellectual property (such as a video or internet site) for an *agency outside the institution*. In such cases, prior negotiation to determine ownership shall be carried out by the provost on behalf of the university. (In general the agency will control the distribution of property, while copyright ownership will remain with the creators.)

In the case of a *commissioned work* with a person within or outside the university, ownership is determined by a written contract prepared prior to the start of the project.

Policy with respect to pedagogical materials seeks to balance the needs of all faculty and the administration. Materials created for pedagogical purposes, such as syllabi and tests, are considered to be owned by the person who authored them. However, the institution and its personnel are permitted to use or modify such materials for internal educational and administrative purposes, including reporting to accreditation agencies. Excluded from the understandings in this paragraph are works published by an established publishing house and sold to students through a vendor. In addition, in selected cases (for instance, ones that involve substantial use of university resources) the university may negotiate a different understanding than recorded here; such an understanding must be negotiated prior to the creation of the property and should be initiated by the administration.

Works for hire that would *not customarily be considered of an artistic or scholarly nature, nor created for pedagogical purposes*, shall be considered jointly owned by the creator and the university.

Intellectual property created by a university employee *outside of work time*, outside the scope of the employee’s job responsibilities, and without the use of university resources is the sole property of the creator even though the work is similar to the employee’s job duties.

Policy with respect to students attempts to balance student and institutional needs. Intellectual property created by *students* is considered the property of the student. **The university, however, reserves the right to use such material, with appropriate attribution, in promotion of the university.** Intellectual property created by students and employees jointly is considered to be jointly owned by the creators. **(The employee shall have decision making powers in regard to permissions and sales of jointly created property.)**

Funds received from the sale of intellectual property shall be allocated by proportion of ownership and expended as determined solely and independently by the owner(s).

Questions or disputes regarding the interpretation of this policy shall be mediated by a third party.

Responsible Party

Responsibility for this policy lies with the provost.

Policy Review

This policy is to be reviewed every five years.

Distribution

This policy is distributed via the Faculty/Staff Handbook.

*Approved by University Forum
December 14, 2001*

*Approved by President's Cabinet
December 17, 2001*

*Approved by Board of Trustees
March 23, 2002*

*Reaffirmed by President's Cabinet
January 12, 2005 and January 10, 2007 with slight revision in 2007*