Ivy Tech Community College of Indiana

POLICY TITLE
Intellectual Property

POLICY NUMBER
9.4 (Formerly APPM 7.11)

PRIMARY RESPONSIBILITY
Academic Affairs

CREATION / REVISION / EFFECTIVE DATES
Created February 2002/Effective February 2002

PURPOSE
Ivy Tech Community College is committed to teaching and related scholarly activities of its faculty and staff (henceforth referred to as the creators). Further, the College recognizes that in pursuit of those activities, faculty and staff will create copyrightable or patentable works such as printed materials and publications, multi-media materials, and online courses (henceforth referred to as intellectual property). These works may and often do involve rights of ownership, needs for protection, rewards from ownership, and responsibilities during development that affect the creators and the College.

The College recognizes the value in faculty and staff pursuing such activities and wishes to facilitate such through this policy. The College also recognizes that it has an obligation to itself and to the public to share in any financial benefits derived from College support used in the development of intellectual property. The purpose of this Intellectual Property policy is to clarify issues related to the ownership, sale, licensing, and distribution of intellectual property and to provide a framework that offers flexibility and protection to both creator(s) and the College.

ORGANIZATIONAL SCOPE OR AUDIENCE
Faculty and Staff

DEFINITIONS
College: Refers to Ivy Tech Community College

College Support: The use of College facilities, equipment, personnel and other College resources customarily made available to employees for the performance of their regular job duties.

Copyright: The exclusive right of the author/owner to reproduce the copyrighted work, create derivative works based on the original, distribute or sell the work, and to display or publicly perform the work. Copyright protects the work against unauthorized use or copying.
Copyrightable Work: An original work of authorship fixed in a tangible format of expression. Copyrightable works include, but are not limited to, books and other literary works, articles, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products and software.

Creator: Any faculty or staff or student who develops or creates intellectual property.

Equity: The proportionate share (ownership interest) of the intellectual property and its value held by each of the owners.

Independent Works: Works created, developed, or produced wholly on the employee's own time and without any College support.

Intellectual Property: Any copyrightable or patentable work.

License: A contract in which a copyright or patent owner gives another permission to exercise one or more of the rights reserved for the owner under copyright or patent law.

Owner(s): The creator(s) of the property or the person(s) or organizations(s) to who rights to the property have been legally transferred.

Patent: The right given to the owner to exclude others from making, using, selling, or importing a patented invention or discovery.

Patentable Work: 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.

POLICY
The College recognizes that faculty and staff, in an effort to improve their contributions to students and the mission of the College, have in the past and likely will in the future, create intellectual property without first negotiating an agreement with the College concerning ownership rights. Whether a work is undertaken by an employee without entering into a prior agreement with the College, or whether the work is undertaken at the request of the College, it is the intent of this policy that the following provisions control the relationship between the College and the creator(s).

In the first instance, when the development of intellectual property is planned by faculty or staff without having been requested by the College, the College encourages the creator(s) to first negotiate with the College for rights prior to the creation of such intellectual property relative to the ownership of that specific intellectual property.

In the second instance, when the College desires the creation of intellectual property, the College shall contract with creator(s) in advance. The ideal situation would be to negotiate such contract at the time of renewing the annual employment contract.
PROCEDURE
In contracting for a given piece of intellectual property, the following provisions shall control the relationship between the College and the creator(s).

1. Independent works
   If a work is created, developed, or produced wholly on the employee's own time and without any College support, the creator(s) shall retain all rights of equity and ownership. For example, if the creator(s) independently develops an online course, the course may be offered through the College at the discretion of the College, and the College and creator(s) shall negotiate an agreement with respect to the rights and responsibilities of each party. In any event, should the creator(s) leave the College, the College shall retain a non-exclusive, non-transferable license to offer the course for one year following that departure.

   Materials or inventions developed as part of an independent consulting project performed by College personnel for outside organizations shall not be considered to have been College supported or commissioned, and all rights to such property, other than those involving the substantial use of College funds or facilities, shall remain with the individual. Such work shall not violate state law or College policy regarding conflict of interest.

2. Creation of Online Courses or Other Works with College Support
   If the College requests or agrees to the creation of an online course or other works by an employee, or if the employee has created such a work and made use of College resources in the process without prior negotiation, the College shall have non-exclusive, non-transferable rights to use the work for three years, while the creator is employed. If the creator leaves the College, he or she may take the work to use for his or her purpose, but the College retains the right to use the work for the balance of three years. The College may continue to use the work beyond this time period in the event such an agreement was developed with the creator.

   It is expected that the creator will keep the work current by making modifications and updates as appropriate during the time the creator is employed by the College. Consideration for additional support from the region will be given if major changes to an online course or other works are required.

   While employed, the creator will not use the property in any way that is in competition with the College, without prior written consent. In the case of an online course and during the term of the creator’s employment, the creator will have the right of first refusal to teach the course. Should the author be unwilling to teach a section or sections of the course in a given academic term, or if teaching these sections would exceed a reasonable load as deemed appropriate per faculty loading policies and practices, the region has the right to ask another employee or employees to teach the course for one academic term only.
It is expected that the College and/or region will provide the necessary support, including off-loading, computer training and distance education support for the creation or development of the online course or other works.

The contracting parameters established above for the creation of online courses or other works are not intended to apply to the employee’s normal job responsibilities that are associated with traditional classroom instruction and course development, such as writing course outlines or preparation.

The terms of the contracts written for the same purpose, i.e., creation of online courses or other works, should be consistent within the region and/or College. Any exceptions to a standard agreement would require the approval of selected officers e.g., Chancellor, Executive Director of Human Resources, RAO) within the region.

3. **Works Commissioned by the College**
   If the College requests a faculty or staff member to create a specific work as a part of his or her assigned duties, the College has exclusive rights of ownership unless otherwise negotiated.

4. **Works Sponsored by External Sources**
   Typically, intellectual property rights for works developed with funds provided by external sponsors (through grants, contracts, etc.) will be specified by grant agreements, contracts, and/or other documents. In the absence of any such agreement and in cases where it is clear that intellectual property may develop as part of the work of the sponsored project, the College and involved creator(s) will negotiate and sign an intellectual property agreement that best represents the interests of both parties.

**Intellectual Property Ownership and Equity Guidelines**

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<thead>
<tr>
<th>CONDITION</th>
<th>OWNERSHIP</th>
<th>EQUITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Works</td>
<td>Individual</td>
<td>Individual: 100%</td>
</tr>
<tr>
<td>College Support</td>
<td>Individual owns College has non-exclusive, non-transferable right to use for 3 years</td>
<td>During employment: Individual 50% College 50% After employment: Individual 100%</td>
</tr>
<tr>
<td>Commissioned Works</td>
<td>College owns</td>
<td>College: 100%</td>
</tr>
<tr>
<td>Externally Sponsored Works</td>
<td>As specified</td>
<td>As specified</td>
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5. **Works of Students**
   The College encourages and supports students who produce intellectual property directly related to course assignments. Course-related activities may be carried out with access to College facilities and equipment provided appropriate channels
and guidelines are followed. Students shall adhere to the laws governing the use of copyrighted materials. Students shall have sole ownership and equity rights to property they produce for course assignments.

If the display of student work online during a course is done on a password protected web site and follows the same guidelines as the sharing of student work in the face-to-face class does, no written permission from the student is necessary. However, if the College wishes to continue displaying a student's work online beyond the semester in which the student is enrolled in the course, written permission should be obtained.

If the student creates a work while performing in an employment relationship with the College for the development of the materials in question, ownership resides with the College.

If a work is developed by a student specifically as part of a College employee's formal project, including research and scholarly publications, institution or sponsored project, ownership will reside with the faculty or staff who created the work or the College, to be determined using the provisions outlined above.

**Waiver of Participation**
The College or the employee may relinquish all or a portion of its/his/her own rights to the property at any time during the process covered by this policy.

**Disclosure of Intellectual Property**
College personnel who, during their affiliation with the College, produce intellectual property of commercial value resulting from or through the affiliation shall disclose such developments to their supervisor, who will forward the disclosure to the regional academic dean. College personnel who, subsequent to their affiliation, produce intellectual property that was supported in part by the College shall disclose such developments to their former supervisor. Disclosure in either situation must be initiated within sixty (60) days after notification of the marketability of the intellectual property.

**Exclusions**
Agreements for works developed prior to the implementation of this policy shall continue to apply. Absent such an agreement, it is the intent of the College that works developed by creator(s) prior to the implementation of this policy shall be analyzed and addressed on a case by case basis, using this policy as a guide.
The College claims no ownership of textbooks, journal articles, class/lecture notes, popular nonfiction, novels, poems, musical compositions or other artistic works developed by the faculty or staff that are not institutionally commissioned works.

**Employee Compliance with Copyright Law**
All College employees have the individual responsibility to understand and abide by copyright law in the development of materials, in teaching, and in all other College activities. Each employee must insure that his or her activities comply with fair use and in
no way infringe on the copyright or other proprietary rights of others, and that the materials used and developed at Ivy Tech State College contain nothing unlawful, unethical, or libelous, and do not constitute any violation of any right of privacy. Each employee will accurately assess and classify all materials used in or under development for College activities into one of the following categories:

1. The employee holds legal copyright to all materials in use and/or under development or such materials are not copyrightable.
2. The employee has obtained all required permissions, licenses, or releases from holders of such rights or has advised that permissions must be obtained; or
3. The employee has determined after careful study that the intended use is covered by an exemption to copyright laws.

The College shall provide support, information, training, and guidance on copyright law and its applications to employees who are involved in the development and use of intellectual property.

REFERENCES

RESOURCE PERSON
Vice Chancellor for Academic Affairs