

DUKE UNIVERSITY POLICY ON INTELLECTUAL PROPERTY RIGHTS

I. (General Principles)

- A. Duke's primary mission lies in the creation and dissemination of knowledge in works of the intellect, in whatever medium (tangible or otherwise) they may be embodied or expressed. This Policy recognizes and acknowledges that intellectual property rights (other than patent rights) may arise in such works from time to time as a result of efforts by members of the Duke community. The Policy addresses certain recurring issues of ownership with respect to such rights. (*See footnote 1*)
- B. In this Policy Duke reaffirms its traditional commitment to the personal ownership of intellectual property rights in works of the intellect by their individual creators, whether the creators work alone or with others, and whether they work privately or as members of the Duke community.
- C. As in the past, Duke also may create or commission such works in its own behalf, whether as works-for-hire or otherwise; and Duke may acquire such works from, or develop them in company with, individual authors on mutually agreeable terms.

II. (Recurring or Categorical Exceptions)

- A. Notwithstanding the general principles respecting individual ownership expressed in Article I, intellectual property rights arising in certain categories of academic works (i.e., works primarily related to the teaching or research missions of the university), appear to justify exceptional treatment on a recurring or categorical basis:
 - (1) Computer programs, when the programs are primarily created to perform utilitarian tasks.
 - (2) Data bases and similar collections of information which are obtained primarily on behalf of schools or departments rather than individuals, or which involve issues of privacy (as in the case of medical patients or identifiable human subjects) or require approval by the University's Institutional Review Board.
 - (3) Works supported by extraordinary allowances, grants or subventions (whether in money or money's worth, and whether or not supported by outside sources under contract), when designated as such in advance by the University. Works obviously created in such circumstances prior to the date of this Policy shall be deemed covered by this Policy without requiring that prior designation have been given.
 - (4) Collaborative works by persons working as members of the Duke community, when numerous individual original contributions are indistinctly merged, as a practical matter, into a new and distinct work fixed in a tangible medium of

embodiment, and the individual creators have not entered into an agreement with respect to joint authorship.

- (5) Intellectual property rights in works supported by grants or contracts shall be governed according to the terms and conditions of such grants or contracts or, in the event such grants or contracts are silent as to intellectual property rights, such grants or contracts shall be governed by this policy.

- B. In each instance, the intellectual property rights arising from the creation of these works shall vest (as works for hire or the equivalent) in Duke, which may thereafter grant licenses or royalties or both to individual creators or contributors on just and reasonable terms.

III. (Particular Provisions Applicable to Courses of Instruction Approved for Duke Credit)

- A. Intellectual property rights arising in courses approved for Duke University credit ordinarily belong to their individual creators in accordance with the general principles expressed in Article I of this Policy; but rights may vest in Duke to the extent that a course (or some portion of it) is created, acquired or developed by Duke under Article I, or when the course (or some portion of it) falls within the exceptions set forth in Article II.

- B. With respect to each such course (and whether the rights in that course belong to an individual creator or to Duke), every member of the university community at large (including students, faculty, staff and administrators) shall enjoy a permanent non-exclusive, royalty free license to make all traditional, customary or reasonable academic uses of the immediate content of that course (the License).

- (1) The "immediate content" of a course includes both the ideas and the expression arising ex tempore as the course is actually taught and delivered to students in the classroom (or otherwise at an assigned time or place); and this is so even when a permanent record of the delivery of the course is simultaneously made, as in the case (for example) of a videotaped recording of a lecture. To this extent "the immediate content" of the course is subject to the License.
- (2) But works which are created outside the classroom (or otherwise beyond the immediate temporal setting in which a course is taught or delivered) - works (for example) such as books, texts, articles, notes for lectures, outlines, photographs, videos, films, recordings, audiovisual works and the like - are not part of "the immediate content" of a course, even if they are created expressly for the purpose of being assigned or used (in whole or in part) in the actual teaching or delivery of a course. Rights in these works are not subject to the License created by this Policy, though of course they remain subject to other more general legal or customary principles applicable to fair use, whether in the academy or elsewhere.

- C. The License shall be presumed to spring into existence automatically, by virtue of a course's approval for credit by Duke with the consent of any individual rights-holder; no additional formality shall be required. No royalty shall be payable for the License, sufficient consideration for which shall be deemed to reside in the mutual benefit realized by Duke and the consenting rights-holder, as well as by the individual members of the university community.
- D. The License shall include a particular right in students duly enrolled in a course to take class notes for their personal use; but notes in a course shall not be taken or disseminated for commercial purposes unless approved by the instructor.
- E. The License also shall include a right in Duke to offer the course, or to develop and offer derivative courses of instruction, in both conventional and non-conventional settings (including courses intended for use in internet distance education projects), whether at Duke or elsewhere. The License shall continue to be available to Duke even if the faculty member in whom individual rights otherwise vest should leave Duke.
- F. No claim of rights in teaching style or the like will be recognized under this Policy; but individual instructors may claim personal rights of privacy against non-consensual commercial exploitation of their name, likeness or private personality.
- G. A willing instructor who creates a highly original or singular course ordinarily may expect a preference (as against the claims of others) with respect to any assignment to teach that course (whether in conventional or unconventional settings) from time to time; but no continuing entitlement is implied as against reasonable administrative considerations to the contrary, including the particular demands or prerequisites of the curriculum.

IV. (Particular Provisions Applicable to Internet Distance Education Projects)

Given the increasing presence of digital technologies, and the growing likelihood that distance education projects via the internet may bring about significant changes in the practices and fortunes of the academy, it appears prudent to establish additional provisions particularly applicable to such projects:

- A. Duke may appropriately consider any internet distance education project that offers the promise of securing and advancing Duke's place among the leading universities of the world. To that end, Duke may participate in the development of such projects with members of its own community; or it may enter into relationships with persons outside the established academic community. In either case, it may enter into such projects on terms and conditions which are fair and reasonable in the circumstances, whether or not they are customary in the academy, so long as they do not adversely affect the fundamental principles of governance, tenure and academic freedom otherwise recognized in conventional settings at Duke from time to time.

- B. An individual member of the Duke Faculty, who is employed on a permanent full time or equivalent basis, and who intends to enter into any non-Duke internet distance education project in which he or she proposes to teach a course regularly or recurrently, shall first disclose the proposed undertaking in advance to his or her Dean or Department Chair (or their designates), who will examine the proposed undertaking in order to insure that no conflict of interest or commitment will arise.
- (1) Conflicts of interest or commitment will be addressed generally in accordance with the terms of the University Policy on Conflicts of Interest in force from time to time.
 - (2) In addition, a conflict of interest or commitment will be presumed to arise under this Policy on Intellectual Property Rights:
 - (a) when an individual proposes to teach a non-Duke internet course substantially equivalent to a conventional course he or she is regularly assigned to teach at Duke;
 - (b) when an individual proposes to teach a non-Duke internet course in circumstances likely to be directly competitive with an existing or proposed Duke internet course which he or she has been offered an opportunity to teach;
 - (c) when an individual proposes to participate in teaching a non-Duke internet course in circumstances likely to confuse or mislead the public with respect to his or her primary obligations or allegiance as a member of the Duke Faculty; or
 - (d) when an individual proposes to participate in teaching a non-Duke internet course in circumstances likely to impair the continuing performance of his or her primary responsibilities at Duke.

The Dean or Department Chair who examines a proposed undertaking in which a conflict of interest or commitment presumptively arises under this Sub-Paragraph (2) may determine that the conflict is trivial, or that it can be cleared on terms reasonably calculated to serve the best interests of Duke and the individual faculty member alike, and in either case shall give notice to that effect promptly and in writing within ninety days, both to the individual and to the Provost; but in the absence of such a determination the individual shall not proceed further with the undertaking as proposed while remaining a member of the Duke faculty.

A faculty member who has engaged appropriately in a non-Duke distance education project as provided above shall nevertheless repeat the process of notice and clearance annually thereafter with respect to his or her continuing participation in that project. If changed circumstances thereafter create a conflict as provided above, and the conflict

cannot reasonably be cleared, the faculty member will withdraw from the project within one year of the date when the existence of that conflict is determined.

- C. The University Intellectual Property Board (established by Article VIII of this Policy) may develop additional interpretations or regulations reasonably designed to implement these provisions, and may promulgate additional requirements with respect to prior notice and clearance. But the purpose of all such additional interpretations, regulations or requirements will be to avoid unreasonable conflicts and the appearance of evident professional impropriety, rather than to limit unduly an individual's ability to engage in suitable outside professional activities, including distance education projects; and to that end, Duke will exert reasonable efforts to clear such conflicts and to eliminate any appearance of impropriety through appropriate disclaimers, licenses or the like.

V. (Provision for Declaring Extraordinary Exceptions)

The Provost, acting upon the advice or recommendation of the University Intellectual Property Board, and with the concurrence of the Executive Committee of the Academic Council, may declare additional exceptions to these principles prospectively, on just and reasonable terms, when a particular transaction or category of work appears to require extraordinary treatment. Works created specifically for or in the context of the emerging digital or internet environment, and particularly when intended directly for use in distance education ventures in which the University proposes to invest its own singular identity, may justify extraordinary treatment more often than do works in traditional media. Exceptions limited to compulsory non-exclusive licenses from an individual creator to Duke, accompanied by suitable provisions for royalty payments by Duke, will appear just and reasonable more often than will appropriations of a creator's entire intellectual property rights in a work.

VI. (Moral Rights)

The moral rights of each individual creator will be respected to the extent practicable in every case contemplated by this Policy; and in no case will the University fail to recognize an individual creator's entitlement to acknowledgment, attribution or other appropriate credit, to the fullest extent practicable.

VII. (University Name and Identity)

- A. Intellectual property rights arising in Duke University's name, logos and other impedimenta of identity belong to Duke. Such rights may be licensed from time to time upon suitable terms and conditions approved by the President or her delegates, taking into full and appropriate account the research, teaching and collegial missions of the University.
- B. Members of the Duke Community may identify themselves as such from time to time, with such indicia of their status as is usual and customary in the academy; but any use of Duke's name, logos or impedimenta of identity shall be reasonably calculated to avoid

any confusing, misleading or false impression of particular sponsorship or endorsement by Duke, and when necessary shall include specific disclaimers to that end.

VIII. (University Intellectual Property Board)

- A. This policy shall be interpreted and administered by a new University Intellectual Property Board, to consist of seven members appointed by the Provost, no fewer than four of whom shall be members of the faculty nominated by the Executive Committee of the Academic Council (and from among whom the Committee's Chair shall be appointed). Members of the Board shall serve initial terms of one to three years (as designated by the Provost); upon the expiration of each such initial term, successor members of the Board shall be appointed thereafter for a term of three years. A member may be reappointed from time to time upon renomination.
- B. The Board shall publish such additional interpretations, regulations and requirements, and shall take such other administrative actions, as are necessary to the suitable discharge of its duties and the adequate functioning of this Policy, including specific provisions for the further appointment of its members; but in every case the Committee's interpretations, regulations and requirements, as well as its administrative actions, shall be consistent with the provisions expressed in this Policy.
- C. The present University Intellectual Property Committee shall be renamed The University Patent Policy Committee, and shall retain continuing jurisdiction over the University Patent Policy, as further provided in Article XD. hereof.

IX. (Appeals and Arbitration)

A person aggrieved by the proposed application of any provision of this Policy may appeal within six months from the appearance of such grievance for a plenary ruling, on such grounds as appear relevant, just and reasonable, first, to the Provost of the University (or the Provost's delegates), who shall give decision in no more than ninety calendar days from the lodging of the appeal; and second, within ten business days after the Provost's decision, to the President of the University (or the President's delegates), who shall give decision in no more than ninety days from the date of the Provost's decision, and whose ruling shall end the University's claim of appellate jurisdiction in the matter. Thereafter, the aggrieved person may proceed as of right to binding arbitration before a single arbitrator pursuant to the commercial arbitration rules of the American Arbitration Association. Each party shall bear its own costs in connection with the proceedings; but in the event an Arbitrator finds that a party has proceeded in bad faith the Arbitrator may award costs and expenses (including attorneys' fees) to the other party.

X. (Effective Date; Prior Works)

- A. This Policy shall take effect upon approval by the President and the Provost, when concurred in by the membership of the Academic Council, and by the Board of Trustees of the University.

- B. The 1996 University Policy on Copyrightable Work shall be superseded by this Policy upon the effective date hereof.
- C. This Policy on Intellectual Property Rights shall constitute the sole Duke University Policy governing all non-patent intellectual property rights of every kind arising in any work of the intellect (cf, Article I, fn 1), and in any medium in which the work may be embodied or expressed.
- D. This Policy on Intellectual Property Rights, and the Policy on Inventions, Patents, and Technology Transfer (effective July 1, 1996) (the Patent Policy), shall be construed in pari materia so as to give reasonable force and effect to the provisions of both policies. Otherwise, the Patent Policy shall not be affected in its application to the disclosure and subsequent management of inventions, patents or technology transfers; and the jurisdiction of the Patent Policy Committee with respect to the Patent Policy shall continue unabated, pro tanto.
- E. In the event of any conflicting interpretation of the two Policies by the Intellectual Property Board and the Patent Policy Committee, the President, the Provost, and the Chair of the Academic Council (acting jointly as a committee of the whole, to be chaired by the President) shall resolve the issue promptly; and their decision in the matter shall be binding upon both the Board and the Committee. In such a case, a "person aggrieved" by their decision (as contemplated in Article IX of this Policy) may elect thereafter to appeal as provided or to proceed directly to arbitration.
- F. Intellectual property rights in works created prior to the effective date of this Policy shall be treated in accordance with the principles articulated herein, to the extent that such treatment is practicable, just and reasonable.

Approved by the Academic Council, May 11, 2000.

Footnote 1. (Throughout this Policy, the term "intellectual property rights" includes, inter alia, copyrights, trademarks and unfair competition, trade secrets, rights of publicity or privacy, the law of ideas, moral rights, and all other neighboring rights of whatsoever kind; but the term excludes patent rights arising in inventions of the sort addressed in the University's Policy on Inventions, Patents and Technology Transfer, effective July 1, 1996.)