



Southeastern Louisiana University
Intellectual Property Policy

Approved May 13, 2004



Southeastern Louisiana University

Intellectual Property Policy

Table of Contents

Objectives	<u>1</u>
Purpose/Preamble	<u>1</u>
Intellectual Property Definitions	<u>2</u>
Intellectual Property Ownership	<u>4</u>
Royalty Income	<u>5</u>
Electronic Courses	<u>5</u>
Management of Intellectual Property	<u>8</u>
Intellectual Property Advocate (IPA)	<u>8</u>
Intellectual Property Disclosure Form	<u>10</u>



Southeastern Louisiana University

Intellectual Property Policy

*As Approved by
Academic Affairs Council
May 13, 2004*

Objectives

Consistent with the policies of the University of Louisiana System, Southeastern Louisiana University's Intellectual Property Policy provides the following objectives:

1. To encourage research and scholarship as creative academic endeavors while recognizing that commercially valuable intellectual properties may result from such endeavors;
2. To delineate procedures to encourage creators to report discoveries with broad commercial potential and public benefit and to assist them, while at the same time safeguarding the interests of all concerned parties;
3. To make intellectual property developed in the course of academic research available to the public under conditions that will promote its effective and timely use and development;
4. To optimize the environment and incentives for research and scholarly activity and for the creation of new knowledge;
5. To ensure that the educational mission of the University is reinforced.

Purpose/Preamble

This policy is intended to support faculty, staff, and students in identifying and protecting Intellectual property, defining the rights and responsibilities of all involved, administering intellectual property matters, and establishing support offices to provide the required assistance. It also stipulates how much income generated should be distributed to the creators or developers and to the University.

Southeastern Louisiana University recognizes that research and scholarship should be encouraged without regard to potential gain from licensing fees, royalties, or other such income; however, the University also recognizes that patentable inventions and discoveries may arise from faculty, staff, and student research. The policies governing the administration of such inventions should provide adequate recognition and incentive to inventors and at the same time ensure that the University will share in the rights pertaining to inventions in which it has an equity. Any incomes accruing to the University shall be used in the furtherance of the University's academic mission, e.g., instruction, research, and public service. Decisions as to the disbursement of such funds shall take into account recommendations by the Intellectual Property Committee.

Intellectual Property Definitions

Applicable Intellectual Property - Any intellectual property developed with University resources, other than traditional academic copyrightable works, for which assignment to the University is required by law or by a written contract to which the Creator has previously agreed; or, for which the Creator seeks University assistance in commercial development (including protecting, marketing, assigning, or licensing).

Author- Copyrightable Works (as defined in Title 17 USC sect. 102) –

1. Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:
 - a. literary works;
 - b. musical works, including any accompanying words;
 - c. dramatic works, including any accompanying music;
 - d. pantomimes and choreographic works;
 - e. pictorial, graphic, and sculptural works;
 - f. motion pictures and other audiovisual works;
 - g. sound recordings; and
 - h. architectural works.

Computer Software (as defined in System policy) - Shall include one or more computer programs existing in any form or any associated operational procedures, manuals, or other documentation, whether protectable or protected by patent or copyright.

Creator (as defined in System policy) - An individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" shall include, but not be limited to, faculty, professional staff, administrative and support staff, and students. "Creator" shall also include the definition of "inventor" as used in the U.S. patent law and the definition of "author" as used in the U.S. Copyright Act.

Institution Resources Usually and Customarily Provided (as defined in System policy) - Shall include such support as office space, library facilities, ordinary access to computers and networks, or salary and shall be described in the policy as either "incidental" or "significant." The phrase does not include use of students or employees as support staff to develop the work, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the institution unless approved as an exception.

Incidental Use - Usage that has little or no impact on the usage of institution resources by other persons at the University and results in minimal additional expenses for the University.

Significant Use - Usage that has a noticeable impact on the usage of institution resources by other persons at the University, and/or which results in additional expenses for the University.

Intellectual Property (as defined in System policy) - Inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data, and other creative or artistic works that have value. Intellectual property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes physical embodiments of intellectual effort; for example, models, machines, devices, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

Inventor – One who creates inventions patentable.

Inventions Patentable (as defined in Title 35 USC sect. 101) – Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Net Income - Funds raised from the commercialization of applicable intellectual property that remain after the University and the Creator(s) have been reimbursed for resources expended in the creation, procuring, maintaining, and marketing of the intellectual property.

Ownership (Copyright) (as defined in Title 17 USC sect. 201) –

1. Initial Ownership - Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.
2. Works Made for Hire - In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.
3. Contributions to Collective Works -Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Scholarly Works (as defined in System policy) - Shall include all intellectual properties not covered in Technical Works that are of an artistic, scholarly, instructional, or entertainment nature.

System - Unless otherwise indicated, “System” or “the System” refers to the University of Louisiana System.

Technical Works - (as defined in System policy) -Shall include intellectual properties that are of a scientific, engineering, or technical nature such as patentable or unpatentable inventions (including biological materials), computer software, and institution collections.

Technology Transfer -The dissemination of intellectual property through commercialization or other means.

Traditional Academic Copyrightable Works (as defined in System policy) - A subset of copyrightable works created independently and at the creator’s initiative for traditional academic purposes. Examples include class notes; books, theses and dissertations; articles; non-fiction, fiction, and poems; musical works; dramatic works including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; or other works of artistic imagination that are not created as an institutional initiative.

University - Unless otherwise indicated, “University” or “the University” refers to Southeastern Louisiana University.

Works Made for Hire (as defined in Title 17 USC sect. 101) - A “work made for hire” is-

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work

prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

Intellectual Property Ownership

1. The rights of Southeastern Louisiana University in intellectual property will vary depending on the proportionate contribution of the institution to the creation of the intellectual property or on the type of contract agreed upon with cooperating agencies. Works of intellectual property can vary from those wholly financed by the University or by a University-administered fund to projects that receive no significant University support.
2. Southeastern Louisiana University shall assert ownership of intellectual property
 - a. When an employee is acting within the scope of his or her employment or in official association with the University,
 - b. When an employee is hired or commissioned to create a specific work,
 - c. When more than incidental use of institution resources usually and customarily provided occurs,
 - d. When the intellectual property results from activities supported by federal funds or third-party sponsorship, or
 - e. When the intellectual property results from activities involving the use of University information not available to the public or funds administered by the University.
3. Southeastern Louisiana University shall not assert ownership of intellectual property
 - a. When intellectual property is conceived, developed, and reduced to practice by a member of University personnel on his/her own time outside the scope of his/her employment or association with the University and with University facilities, materials, or resources, and where only incidental use of institution resources usually and customarily provided has occurred, or
 - b. When the intellectual property is a creation of traditional academic copyrightable works in the creator's field of expertise.
4. Joint ownership may occur under certain circumstances such as when scholarly works involve the services of other institution employees (e.g., development of multi-media courseware).
5. Southeastern Louisiana University shall seek to negotiate ownership of inventions arising during performance of research sponsored by any private sponsor at Southeastern Louisiana University and/or government sponsor. Southeastern Louisiana University retains the right to enter into such agreements whenever such action is considered to be both in its best interest and in the public interest.
6. The Intellectual Property Committee shall consider special cases not covered by the above statements or which arise because of conflict of interest, and an appropriate recommendation will be submitted to the University administration.

7. The provisions of this policy are subject to any applicable laws, regulations, or specific provisions of the grants or contracts that govern the rights in intellectual property created in connection with sponsored research.

Royalty Income

In cases where the University exerts ownership, the distribution of monetary proceeds from applicable intellectual property shall be distributed as follows:

For all net income

- the Creator shall receive 40%
- the University shall receive 30%
- the College shall receive 15%
- the Department where the work was accomplished shall receive 15%

Electronic Courses

Philosophy Statement

New technologies have eroded barriers to the duplication and re-distribution of university courses and course materials. Unlike traditional courses, electronic courses are easily copied and can be used for purposes beyond traditional instruction. As a result, universities have begun to revisit policy on intellectual property and address issues related to electronic courses such as ownership rights, revenue sharing, and course commercialization. At the same time, the fundamental tenets of academic freedom are compelling universities to search for mutually beneficial ways to protect the interests of all parties involved in the creation and delivery of electronic courses. Depending on the circumstances surrounding development of an electronic course, ownership may reside with the university, the employee, or both. So as to encourage the continued development of alternative delivery systems and to provide for the needs of students, it is incumbent upon universities to set forth policy that clearly states the rights, responsibilities and obligations of all parties involved in the delivery of electronic courses.

Definitions and Distinctions

1. **Customary and Extraordinary**

Customary conditions apply to situations in which faculty are provided normal support, such as standard office and laboratory space, library facilities, ordinary access to computers and networks, or salary. Extraordinary conditions apply to situations in which substantial use of specialized or unique staff, facilities and equipment or other special subventions or compensation is provided by the University to the faculty to create online courses. Under "Extraordinary" conditions, faculty enter into contracts with the University.

2. **Intellectual Content and Commercialization**

Intellectual Content refers to material contained within a course; namely, syllabi, lecture notes, bibliographies, readings, examinations, and other elements created by faculty. Commercialization covers activities such as marketing, distribution, dissemination, licensing, and institutional management, among other services provided by the University.

3. **Supplementary and Entirely Online**

Supplementary refers to Web-based course modules created by faculty to supplement conventional classroom teaching. Entirely Online are courses delivered to distance-learning students entirely over the Web.

4. **Development and Teaching**

Development refers to creation of online syllabi, lecture notes, bibliographies, readings, examinations, and other elements in advance of instruction. The individual (or individuals jointly) engaged in these activities is called Developer.

Teaching refers to the activity in which faculty instruct distance-learning students Entirely Online. The individual (or individuals jointly) engaged in this activity is called the Teacher.

5. **Copyright Ownership and Transfer of Copyright**

Under Extraordinary conditions, the Developer creates an Entirely Online course, Developer assumes "Copyright Ownership" and "Transfers Copyright" to the University for Commercialization.

Copyright rests with the faculty member when Supplementary modules for conventional classroom teaching are developed, without Transferring Copyright.

Concepts

1. **Portability**

- a. Faculty members are free to use their Supplementary Web-based course materials at other institutions without the University's prior approval.
- b. Entirely Online Web-based courses Developed at the University, created under Extraordinary conditions, may not be offered at other institutions without the University's prior approval.
- c. Negotiated licensing fees may apply to other University's when a former faculty member teaches Entirely Online Web-based courses Developed at Southeastern under Extraordinary conditions.

2. **Unbundling Intellectual Property Rights**

a. **Developer's Right of First Refusal**

In the event the University wishes to offer a course Developed by a Full-time faculty member under Extraordinary conditions, it is recommended that Developer be given the "right of first refusal" to teach the course.

b. **The University's and Developer's Licensing Rights**

When the University licenses Entirely Online Web-based courses to third parties – such as other educational institutions, publishers, distributors, information providers, scholarly societies, corporations, and other commercial and nonprofit entities – Developer and the University may share the proceeds.

c. **Developer's Scholarly Rights**

Developers are given the right, without requesting permission from the University, to use Intellectual Content from their Entirely Online course – even those created under Extraordinary conditions – in scholarly contributions to books, articles, conventional courses, seminars, lectures, and similar scholarly activities in print and in person. The same applies to Intellectual Content from Web-based material prepared as supplementary to conventional courses.

d. **The University's Commercial Rights**

The University has the right to Commercialize and License Entirely Online Web-based courses created under Extraordinary conditions. In the event the University fails to Commercialize or License such courses in a mutually agreed schedule, such rights may revert to Developer.

e. **The University's Digital and Other Electronic Rights**

The rights to derivative digital and electronic works – such as television, film, video, CD-ROM, DVD, computer disc, audio, and other recordings derived from Entirely Online Web-based courses, created under Extraordinary conditions – rest with the University. In the event the University fails to exploit such rights in a mutually agreed schedule, such rights revert to Developer. Developer may seek permission from the University to use these rights in connection with his or her own scholarly activities.

Plain English Scenarios

Ownership of the electronic course may reside with the employee, the University, or both. The following scenarios outline the criteria for deciding ownership of the course:

1. SCENARIO 1: The copyright for an electronic course shall belong to the employee when the electronic course is created at the employee's own initiative under Customary conditions (i.e., only incidental use of university resources have occurred). This would apply to employees who create an electronic course during off-work hours and consumption of university resources (such as disk space, computer paper, etc.), if any, does not exceed that traditionally and commonly made available to the employee.

Example: A faculty member has been approached by a textbook publishing company to develop an Internet course as a companion to a textbook. This is an agreement between the faculty member and a third-party and the university has no involvement. The course may or may not be used for instructional purposes at the university.

2. SCENARIO 2: The copyright for an electronic course shall be jointly owned by the employee and the university when the electronic course is a) created by faculty and a party whose contribution would be a work for hire, or b) when substantial institutional resources were used to develop or produce the electronic course (i.e., both are Extraordinary conditions).

Example 1: Distance education specialists hired by the University assist faculty by contributing labor and other university resources to the development of Internet courses, whether or not the course is to be used for instructional purposes at the university.

Example 2: A faculty member creates an Internet course using resources exceeding that which is traditionally and commonly made available to faculty members.

3. SCENARIO 3: The copyright for an electronic course shall belong to the University when the electronic course is created under a contract with the university (work for hire). This would apply to non-faculty employees who create the electronic course within the scope of their employment (e.g., distance education specialists hired by the university), or faculty who create the electronic course as a condition of his or her employment.

Example 1: A distance education specialist hired by the university develops an Internet course for a department to be delivered by faculty in future semesters.

Example 2: A department head asks a faculty member to develop an Internet course to be delivered as part of the department's course offerings in a future semester.

Example 3: The University contains a statement in the employee handbook that states that development of Internet courses for instructional purposes at the university is within the scope of employment.

Management of Intellectual Property

1. Acknowledgement of Institutional Authority

The President of Southeastern Louisiana University has the ultimate authority for the stewardship of intellectual property appropriate to the University's role, scope, and mission.

2. Intellectual Property Committee

The Intellectual Property Committee shall have the following responsibilities:

- a. Devise, subject to approval by the proper authorities, institutional intellectual property policies, and advise the Provost on the implementation of those policies, and the status and conduct of the University's technology transfer efforts.
- b. Serve as advocate to the University's personnel for the institution's technology transfer efforts.
- c. Recommend to the Provost the equitable distribution of income from the development and marketing of those intellectual property rights in which the University has a vested interest.
- d. Serve as the University's Intellectual Property Advocate (IPA)

3. Intellectual Property Committee Membership and Selection

The committee shall consist of nine voting members. The Provost shall appoint three administrators (department head or above) and one unclassified staff member. The Provost shall appoint five faculty members, taking into consideration the recommendation of the Faculty Senate.

4. Intellectual Property Committee Procedures

- a. All decisions shall be made by a majority vote of the members present, provided that a quorum is present.
- b. Committee members shall maintain confidentiality of the specific issues brought before it. Failure to respect that confidentiality shall result in immediate dismissal from the Committee.
- c. By a majority vote, the Committee shall elect its chair each year.
- d. The Committee shall meet at least once each fall and spring semester.
- e. The Committee shall attach the following disclaimer to all policy recommendations that it makes:

"The above recommendation by the Intellectual Property Committee represents our decision based on the information available at the time the decision was made. Any changes in the information, regardless of the recommendation, should be reported to the IP Committee. We reserve the right to change our decision based on any new information."

Intellectual Property Advocate (IPA)

The responsibilities of the IPA shall be to:

1. Encourage research and scholarly activities.

2. Review and recommend to the Provost changes in procedure.
3. Resolve questions of intellectual property ownership.
4. Make such recommendations as are deemed appropriate to encourage disclosures and ensure prompt and effective handling, evaluation, and management of intellectual property opportunities while protecting the interests of the University, the University of Louisiana System, and the public.



Intellectual Property Disclosure Form

Note: The purpose of this form is to allow a person, or persons, to announce research projects and claim a level of ownership. This form need only be filled out if the researcher wishes to negotiate an ownership agreement with the University that differs from the standards set forth in the University's Intellectual Property Policy and the faculty handbook. Researchers who create intellectual property without completing this form agree by default to accept all standards set forth in the University's Intellectual Property Policy and the faculty handbook. Authors may also want to complete this form simply to have a record of starting a project, those who are a part of the project, and/or percentage of work performed in said project.

1. Title of Research Project: _____

2. Researcher(s) / Author(s) / Inventors / Participants / Artists (Herein known as "Researcher(s)")

Name: _____	Name: _____
Dept.: _____	Dept.: _____
E-mail: _____	E-mail: _____
Phone: _____	Phone: _____
% of Contribution: _____	% of Contribution: _____
Name: _____	Name: _____
Dept.: _____	Dept.: _____
E-mail: _____	E-mail: _____
Phone: _____	Phone: _____
% of Contribution: _____	% of Contribution: _____
Name: _____	Name: _____
Dept.: _____	Dept.: _____
E-mail: _____	E-mail: _____
Phone: _____	Phone: _____
% of Contribution: _____	% of Contribution: _____

3. Are there any outside companies assisting or funding this project? Yes/No:

4. Give a narrative description of this project. Specify University Resources to be used for this project. (Attach additional pages if necessary)

5. Where and/or how will this idea be used/implemented? Include possible uses. (Attach additional pages if necessary)

6. Provide a schedule of research in months/years format. (Attach additional pages if necessary)

7. What, specifically, is expected to happen once research is complete? (Attach additional pages if necessary)

8. What percentage of intellectual property already dedicated to this project was brought to Southeastern prior to creating this document? _____

8a. Please explain this information/research, if any, and how you feel it should be handled in terms of any possible monies from this project's completion. (Attach additional pages if necessary)

9. How would you like the Intellectual Property aspect of this project to be handled?

- Researcher(s) agree to Southeastern's Intellectual Property Rules and Regulations and agree to them fully.
- Researcher(s) do not agree with Southeastern's Intellectual Property Rules and Regulations and wish to have this project brought before the Intellectual Property Committee.

Please explain the concerns and/or suggestions the researcher(s) would like to bring before the committee. (Attach additional pages if necessary)

10. Please sign below to state that all information, to the best of your knowledge, is true. By signing you are also affirming that you have been made aware of, and understand, Southeastern's Intellectual Property Rules and Regulations contained within this document and the faculty handbook. Sign Full Names:

Researcher: _____	Date: _____
Researcher: _____	Date: _____
Researcher: _____	Date: _____
Researcher: _____	Date: _____
Researcher: _____	Date: _____
Researcher: _____	Date: _____
Department Head as witness* _____	Date: _____

**If researcher(s) span departments, only one department head signature is required to act as witness.*

5/13/04