

**Florida Southern College  
INTELLECTUAL PROPERTY POLICY**

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## **INTELLECTUAL PROPERTY POLICY**

### **I. BACKGROUND**

At Florida Southern College (the "College"), research is undertaken to enhance the education of its students, to stimulate a spirit of inquiry, to solve problems, and to discover new information. This policy is a compilation of guidelines and general information related to patents, trade secrets, copyrights, trademarks, and other intellectual property issues at the College. The policy is intended to recognize and encourage faculty, student, and staff creative endeavors such as research, patentable inventions, and other pieces of intellectual property and to protect the rights and interests of College constituents as well as the College itself. Further, the College wishes to support such creative endeavors of students, faculty, and staff by providing certain resources, information, and assistance consistent with this policy.

The College's Intellectual Property Policy is designed to encourage the development and use of new inventions and to identify works and inventions that may be of commercial value to the College in a timely manner. Adequate recognition of and incentive to potential inventors through the sharing of the financial benefits resulting from the creation and development of patentable inventions and other marketable forms of intellectual property promotes this development and provides Florida Southern with additional funding to continue its research programs.

### **II. LEGAL CONSIDERATIONS**

The College is committed to complying with all applicable laws regarding copyright and other forms of intellectual property.

With the passage of the Bayh-Dole Amendments, Public law 96-517, entitled "The Patent and Trademark Amendments Act of 1980," the federal government improved colleges' and universities' ability to retain intellectual property, including inventions. Through this law, nonprofit organizations, including colleges and universities, have the right to retain title to inventions they have created through government grants and contracts. The Act reflects Congress' intent to allow these organizations to use the patent's protection to "effectuate the transfer of government-funded inventions to the public."

The Intellectual Property Policy of Florida Southern College is modeled after Florida State law Section 240.229, Fla. Stat., which authorizes public universities to license, protect, and otherwise deal with the work products of its personnel. Florida Southern believes the standards established under this statute are appropriate guidelines for its intellectual property policy. Florida Southern personnel must disclose certain works and all inventions, which they consequently may develop or discover while employed by the school. This policy sets forth the standards under which Florida Southern's ownership of such items is determined.

Questions of ownership or other matters pertaining to materials covered by this policy shall be resolved by the Vice President and Dean of the College (or his or her designee) in consultation with others, as appropriate. In the event that resolution of such matters becomes controversial, the Vice President and Dean of the College (or his or her designee) will convene an Intellectual Property Committee as described in Section V, Patents.

### **III. WHO IS COVERED BY THIS POLICY**

This policy covers all College personnel, including, but not limited to, faculty, administrators, office and technical staff, student employees, students, contractors, consultants, and anyone who participates or intends to participate in teaching and/or research or scholarship projects at the College, as well as all others whose primary work affiliation is with the College, whether compensated or not. College personnel are covered to the extent that their creative work involves the use of College resources such as space, facilities, equipment, staff or funds.

## **IV. COPYRIGHT POLICY**

### **A. What is Covered**

Under the federal copyright law, copyright subsists in "original works of authorship" that have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. These works include:

- literary works such as books, journal articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- musical works including any accompanying words;
- dramatic works, including any accompanying music;
- pantomimes and choreographic works (if fixed, as in notation or videotape);
- pictorial, graphic and sculptural works, including photographs, diagrams, and sketches;
- motion pictures and other audiovisual works such as videotapes;
- sound recordings; and
- architectural works.

### **B. General Statement of Policy**

In general and subject to the provisions in this policy, all rights in copyright remain with the creator unless:

- the work is a "work for hire";
- the work is commissioned by the College;
- the work is subsidized in whole or in part by the College; or
- the work is otherwise subject to contractual obligations.

### **Scope of Copyright Protection**

Copyright protection does not extend to any idea, process, concept, discovery or the like, but only to the work in which it may be embodied, illustrated, or explained. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described could be freely copied unless it enjoys some other protection, such as a patent.

Subject to various exceptions and limitations provided for in the copyright law, the copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute copies by sale or otherwise, and display or perform the work publicly. Ownership of copyright is distinct from the ownership of any material object in which the work may be embodied.

### **Books, Articles, and Similar Works, Including Unpatentable Software**

In accord with academic tradition, except to the extent required by the terms of funding agreements, the College does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. Such works include those of students created in the course of their education, such as papers, theses, and articles. The College claims no ownership of popular nonfiction, novels, poems, musical compositions, unpatentable software, or other works of artistic imagination that are not institutional works (see "Institutional Works as Work for Hire"). Copyright in pedagogical, scholarly, or artistic works to which the College disclaims ownership under this policy shall be held by the creators regardless of whether the work constitutes a "work for hire" under copyright law.

### **Ownership and Use of Course Materials (including class technology and videotapes of classroom activities)**

All course materials including, but not limited to Jenzabar (and other course management tools) materials, syllabi, videotapes of classroom activities, websites, etc. developed by a Florida Southern faculty member belong to the faculty member unless grant or other outside funding sources dictate otherwise. Faculty ownership of such course materials does not, however, entitle the faculty member to any additional compensation from the College as a result of appropriately enrolled students' use of such materials. Faculty ownership of such course materials also does not preclude the College from using such materials for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions. Materials brought to the College from other institutions are bound by any ownership constraints from the institution at which they were developed; barring none, they belong to the faculty member.

The use of images of students or student-generated materials outside of a currently-enrolled class is not permitted without a signed release from the student(s). This includes videotaping, website images, and class materials where the original intent of the assignment was solely for a particular course. If the purpose of the class is to create a website, video or other materials for future courses, this permission is not needed.

### **Institutional Works as "Work for Hire"**

The College shall retain ownership of works created as institutional rather than personal efforts--that is, works created by administrators and staff for College purposes in the course of the creators' employment, College-commissioned faculty work, or works resulting from simultaneous or sequential contributions over time by numerous faculty, staff, and/or students. The employer (i.e., the College) by law is the "author," and hence the owner of works for hire for copyright purposes; therefore, Florida Southern College owns all rights, intellectual and financial, in such works. Administrators, faculty, and staff who gain professional expertise through such work, however, may engage in professional activities--conferences, consulting, etc.--that may result in compensation.

"Work for hire" is a legal term defined in the Copyright Act as "a work prepared by an employee within the scope of his or her employment." For instance, work assigned to programmers is "work for hire" as defined by law as is software developed for College purposes by students and staff working collaboratively. This definition includes works prepared by employees in satisfaction of sponsored agreements between the College and outside agencies. Certain commissioned works also are works for hire if the parties so agree in writing. The mere fact that multiple individuals have contributed to the creation of a work shall not cause the work to constitute an institutional work. Where a work is jointly developed by College faculty or staff or student employees and a non-College third-party, the copyright in the resulting work typically will be owned jointly by the College and the third party. In such instances, both the College and the other party would have nonexclusive rights to the work, subject to the duty to account to each other.

### **Works of Non-Employees**

Under the Copyright Act, works of non-employees such as consultants, independent contractors, etc. generally are owned by the creator and not by the College, unless there is a written agreement to the contrary. As it is Florida Southern's policy that the College shall retain ownership of such works (created as institutional rather than personal efforts, as described in "Institutional Works as Work for Hire"), the College will generally require a written agreement from non-employees that ownership of such works will be assigned to the College. Examples of works that the College may retain from non-employees are as follows: reports by consultants or

subcontractors, computer software, architectural or engineering drawings, illustrations or designs, and artistic works.

### **Work Subsidized by the College**

All works subsidized, in whole or in part, by the College through a reduction in teaching load, a summer stipend, a sabbatical, collaborative student/faculty research and creative endeavors, use of College support personnel, or use of college facilities shall be owned by the creator subject to the right of the College to recover up to the first \$2,000 of royalties to be deposited in the Faculty Development Account for future faculty development or in another account mutually agreed upon by the creator of the work and the College. Further, any actual costs paid by the College in the research and publication of such works shall be fully reimbursed by the creator.

Under certain conditions, the College may agree to accept a lesser amount than what it is entitled to under this provision and deposit it in a College-designated account.

### **Disagreements as to the Previous Provisions Concerning Copyright**

When there are disagreements concerning the applicability of this policy or the recovery and distribution of royalties under this policy, the Intellectual Property Committee will be convened to review the issues. See section V. of this policy for the composition of the Intellectual Property Committee and its process.

### **C. Use of Copyrighted Material**

Florida Southern College is committed to complying with all applicable copyright laws. This includes the full exercise of the rights accorded to users of copyrighted works under the "fair use" provision of federal copyright law.

Consequently, the College shall inform and educate its faculty, staff, and students about their fair use rights and the application of the four factors for determining those rights as set forth in 17 U.S.C. Section 107. The fair use clause provides generous, but not unlimited, provisions for the use of copyrighted material in classroom settings.

Students, faculty and staff members are expected to comply with copyright laws. Distribution of materials protected by copyright without permission of the copyright owner may be a violation of federal or state law. It is the responsibility of those reproducing materials to make sure the reproduction is consistent with U.S. Copyright Law (<http://www.copyright.gov/>).

Florida Southern College does not permit the unlawful reproduction or distribution of commercially copyrighted music, movies, and software. The College is committed to taking reasonable steps to avoid misuse of its computer network. If violations are discovered or suspected, College personnel may report infringement to appropriate authorities or take other action, including, but not limited to: warning the user, removing the material, or terminating access to the material.

### **D. Use of the College Name in Copyright Notices**

The following notice should be placed on College-owned materials:

Copyright © [year] Florida Southern College. All Rights Reserved.

No other institutional or departmental name is to be used in the copyright notice, although the name and address of the department to which readers can direct inquiries may be listed. The date in the notice should be the year in which the work is first published, i.e. distributed to the public or any sizable audience.

Additionally, works may be registered with the United States Copyright Office using its official forms (<http://www.copyright.gov/forms/>).

### **E. Reconveyance of Copyright to Creator**

When copyright is assigned to Florida Southern because of the provisions of this policy, the creator of the copyrighted material may make a request to the Vice President and Dean of the College that ownership be conveyed back to the creator. Such a request can, at the discretion of the Vice President and Dean of the College, be granted if it does not: (1) violate any legal obligations of or to the College, (2) limit appropriate College uses of the materials, (3) create a real or potential conflict of interest for the creator, or (4) otherwise conflict with College goals or principles.

## **V. PATENTS**

Florida Southern College is a comprehensive educational institution whose fundamental mission is to provide educational excellence in all academic programs. Florida Southern recognizes that research, particularly that involving collaborative investigations between students and faculty, is one of the highest forms of education.

All potentially patentable ideas and inventions developed in whole or in part by College personnel in the course of their employment, or with more than incidental use of Florida Southern College resources, shall be disclosed in writing to the Office of the Vice President and Dean of the College. Written disclosure should include the (1) name of the inventor, (2) what was invented, (3) circumstances that led to the invention, and (4) information concerning what might be subsequent activities surrounding the invention.

Following the written disclosure, The Vice President and Dean of the College will convene the Intellectual Property Committee to review the invention disclosure information submitted. The Intellectual Property Committee will consist of two faculty members of the Vice President and Dean of the College's choosing, two faculty members selected by the inventor, and a fifth faculty member agreed upon by the four other faculty members. This Committee will make a recommendation to the Vice President and Dean of the College either to seek a patent using College funds or to decline further action.

If the College refuses to pursue application of the idea/invention, the inventor may then seek other aid outside the College to assess the patentability of the invention. If no action is taken, all patent rights revert to the inventor.

If there is positive action on an application, the College may wish to pursue evaluation of the invention from technical development consultants to ascertain whether there is sufficient interest and potential financial return, which would make the acquisition of a patent feasible.

The remaining steps in the process are:

1. A patent is obtained or institutional steps are put into place to protect the invention as a trade secret. These steps may ensure that, in the event of not immediately applying for a patent, proper protection is maintained and limited disclosure and publication are delayed to a later date.
2. A patent, if any, is licensed and royalties are earned.
3. Legal enforcement of patent rights begin.

### **A. Royalties**

The College shall be eligible to collect royalties in the event a patent is granted to the College.

## **B. Sharing of Royalties**

Royalty distribution shall be as follows:

1. 100 % will accrue to the College for recovery of costs associated with the patent/license development. This would include all fees for preparing and processing patents. All marketing and licensing fees would also be included.
2. Remaining income would be distributed according to the following:
  - a. Inventor(s) or their heirs 40% of gross royalties.
  - b. Inventor(s) Department 20% of gross royalties.
  - c. College 40% of gross royalties.

Under certain conditions, the College may agree to accept a negotiated percentage of equity in place of all or some portion of the license or royalty fee(s).

## **VI. TRADEMARKS**

Trade and service marks are distinctive words or graphic symbols identifying the sources, product, producer, or distributor of goods or services. Trade or service marks relating to goods or services distributed by the College shall be owned by the College. Examples include names and symbols used in conjunction with the College wordmark and logo and those names or symbols associated with College athletics, events, programs, software, or activities.

*Florida Southern College's Intellectual Property Policy is based on policies adapted, with permission, from Rollins College.*