

Policies and Procedures

<i>SECTION:</i> Academic Concerns	<i>NO.</i> 4.2.3.			
<i>CHAPTER:</i> Faculty	<i>ISSUED:</i> 4/3/96	<i>REV. A</i> 1/14/00	<i>REV. B</i> 6/26/00	<i>REV. C</i> 2/15/02
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PURPOSE

The Intellectual Property Policy is to define the conditions for ownership, legal protection, licensing, and development of any intellectual property conceived or first reduced to practice by any Creighton University associated personnel. Intellectual property exempt from this policy is defined, and the division of any income resulting from the development if intellectual property is defined.

POLICY

- A. Applicability:** The Intellectual Property Policy of Creighton University is applicable to all intellectual property conceived or first reduced to practice, in whole or in part, by any full-time or part-time faculty, staff, students, contractors, commissionees, non-employees participating in research projects (visiting faculty, industry personnel, fellows, etc), or others, with more than incidental use of University resources, including personnel, facilities, equipment, services, supplies, trade secrets, employment time (based on a 40 hour week), or funds paid by the University, whether for reimbursement, direct compensation, or by contract. All personnel shall agree as a condition of employment, or of undertaking investigation and development activities, at Creighton University to the conditions in the Intellectual Policy Agreement for Creighton University Personnel (Form OTT-1)(APPENDIX I). This Policy shall be contractually incorporated into the Handbook for Faculty, and Form OTT-1 shall be signed by any non-faculty individuals who may develop intellectual property. Intellectual property shall come under the provisions of this Policy whenever the developer's duties include research and investigation, and the intellectual property developed arose during the course of such investigation and is relevant to the field of inquiry in which the developer was employed, or when the development involved the use of University resources. This Policy **shall not apply** to intellectual property developed for which no substantial University resources or funds were used, which was developed entirely on the developer's own time, which does not relate to the field of the developer's University employment, which does not result from work performed by the developer for the University.
- B. Third Party Arrangements for Research and Development:** Whenever grants, contracts, consulting arrangements, commissions, or agreements, verbal or written, are made or signed to support research or development or clinical trials with other teaching and research institutions, business, industry, governmental agencies, or other third parties, such agreements shall contain intellectual property clauses conforming to this Policy governing the ownership, licensing, and control of any resulting intellectual property. All such agreements shall use agreed standard clauses or shall be cleared through the Director, Office of Technology Transfer. Any agreements with third parties not in conformance with this policy shall be approved in advance by the University.

Public Law 96-517, the Patent and Trademark Amendments Act of 1980, as amended by Public Law 98-620, gives nonprofit organizations and small businesses the right of first refusal to the title to inventions made during the performance of government grants and contracts, with some limited exceptions. If the University does not diligently pursue protection and/or licensing, the invention shall then be referred to the Federal sponsoring agency, and the developer may then request assignment of title from the Government agency. The government shall be given an irrevocable, nonexclusive, royalty-free license. Under the Copyright Act commissioned works of non-employees are owned by the creator, and not by the commissioning party, unless there is a prior written agreement to the contrary. Thus all agreements,

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commissions, and contracts, shall have provisions providing for the ownership of all copyrightable materials.

- C. Ownership of Intellectual Property:** The University shall own, or shall be assigned title by the developer, to all intellectual property rights for intellectual property as defined in this Policy, i.e. patents, copyrights, or trademarks, conceived or reduced to practice, in whole or in part, by any personnel directly or indirectly using more than incidentally any University resources, unless specifically exempted by this Policy. Whenever a project is undertaken which may possibly develop intellectual property where ownership and rights may be in question, initial discussion should be held between the developer and the Chair and/or Dean, and an understanding developed and recorded with regard to the intellectual property rights. The developer, or the University, shall each grant the other an irrevocable, nonexclusive, royalty-free, paid up license to the intellectual property for internal, noncommercial use. The owner of the intellectual property shall diligently pursue securing patent, copyright, or trademark protection and licensing for commercial development, but if the owner is not interested in securing protection or developing licensing, or is not diligent in its pursuit, the other party shall have the right to request assignment of ownership to pursue such protection and/or licensing at their own expense. Such assignment shall be granted unless there are reasonable grounds for refusal. Such assignment shall be requested and granted within one year of disclosure, or within nine months of publication or public availability. If the owner pursues protection in the United States the developer may request permission to pursue foreign protection rights separately, and such permission shall be granted if the owner does not diligently pursue such rights. The owner may waive, assign, license, or transfer in the whole, or in part, any of these rights at any time. [Note: Many foreign patents require application prior to publication or public use, although United States law permits one year.] The University agrees that the developer(s) collectively are free to place intellectual property in the public domain, if in the best interest of technology transfer, provided this is not in violation of the terms of any agreements that supported or related to the work.
- D. Definition of Intellectual Property:** Intellectual property for the purposes of this Policy, shall be defined as:
- 1. Invention(s):** A novel and useful idea relating to a process, a machine, an article of manufacture, a compound, the composition of matter, or an apparatus or improvement thereof made or conceived by the developer. Inventions include new and improved devices, systems, circuits, chemical compounds, mixtures, bioengineered organisms, etc.
 - 2. Copyrights and Similar Materials:** Copyrights are the protections provided various forms of written, visual, electronic, and artistic expression, including most software (a set of ordered instructions or programs used to control the operations of a computer). [Note: Some software may be patentable.]
 - a. Excluded Items:** The following classes of intellectual property are excluded from the disclosure, ownership, and royalty distribution provisions of this Policy, unless they are works-for-hire, or institutional projects specifically and substantially directly funded by the University, as defined in 4.b.(2) and (3) following. These excluded classes, whether in print, video, or electronic form, are books, articles, computer software, and similar works intended to disseminate the results of academic or scholarly activities, including dissertations, papers, articles, teaching materials, and syllabi. Similarly excluded are

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popular nonfiction books, novels, poems, musical compositions, art works, and other works of artistic imagination. Copyrights on these excluded classes of intellectual property, unless works-for-hire, or specifically and substantially directly funded by the University, shall vest in the creator with no requirement for disclosure or distribution of royalties to the University. If copyrights of excluded items vest in the University by law, the University shall, on request, assign such copyrights to the creator(s) of such works. It should be noted that in the majority of instances of published material that the publisher requires that ownership of the copyright be assigned to the publisher prior to publication, and an agreement on the split of royalties is then negotiated.

- b. **Directly Funded Projects (Institutional Projects):** It is agreed that for all intellectual property arising from sponsored agreements or other research, or from scholarly projects, specifically and substantially directly supported by University funds, that ownership of copyrights of works resulting from such projects shall vest in or be assigned to the University. Royalty income from such projects shall ordinarily be distributed as in F. following. This section shall not apply unless there is an agreement in place between the investigator and the University regarding such specific and substantial direct support and the ownership of any resulting copyright(s).
 - c. **Works-for-Hire:** Ownership of works created on projects on which the employee was employed and specifically directed by the University as a part of the employment or contractual agreement to invent or develop such works, i.e. works-for-hire, shall vest in the University, and shall not be subject to royalty proration under this Policy. This is true regardless of whether or not the work is developed in the course of sponsored research, nonsponsored research, or nonresearch activities. Examples are the development of computer software for specific purposes.
3. **Trade Marks:** Trademarks and service marks are distinctive words or graphic symbols identifying the source, product, producer, or distributor of goods or services. Any trademark or service mark that results from activities at or through the University shall be owned by the University.
 4. **Trade Secrets:** Any proprietary intellectual property arising out of University work as defined in this Policy that is not patented, copyrighted, or otherwise protected, whether or not it is patentable or copyrightable, shall be owned by the University. Trade secrets are properties which are not generally known or accessible, and which give competitive advantage to the owner. Since trade secrets are essentially not legally protected, and the only protection is restriction of dissemination and signed secrecy agreements, this concept should rarely apply in the University setting.

E. Disclosure: All intellectual property developed by any full-time or part-time faculty, staff, students, contractors, commissionees, non-employees participating in research, or others at Creighton University shall be disclosed to the Director, Office of Technology Transfer as soon as the invention or intellectual property is conceived or reduced to practice. The disclosure shall describe the invention or intellectual property and it uses, list the inventors, and describe the circumstances leading to the invention and subsequent activities. Disclosure need not be made on copyrightable items clearly excluded in 4. preceding from the definition of intellectual property. Disclosure shall be made for all potentially patentable

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inventions, nonexcluded copyrights, trademarks, and other intellectual property developed by individuals subject to this policy, regardless of the source of funding or the use of University resources, in order to clearly determine ownership. Disclosure shall not be made to the sponsor of the research or development until after submission to the Director, Office of Technology Transfer.

The Director shall determine on all disclosures received whether to pursue protection and licensing, or whether to assign ownership to a sponsor or the developer, on request. All developers shall cooperate fully with the Director in supplying and executing all necessary documents for the approved course of action.

F. Royalty Distribution: All income received from royalties and/or licensing or sale of any intellectual property not excluded by this Policy, by the University, or by the developer of the intellectual property, regardless of ownership, shall be distributed successively as follows:

1. Directly assignable expenses, outside of the University and/or the developer, for applications for and securing of protection, or for licensing.
2. A 15% technology transfer fee for developments administered by the Office of Technology Transfer.
3. Payments of contractually required amounts to sponsors or other institutions participating in the development of the Intellectual Property.
4. Payment to the developer(s), split according to their degrees of involvement, of 50% of the net return (total minus 1., 2., and 3.).
5. Payment to the University of 25% of the net return (total minus 1., 2., and 3.).
6. Payment to the University School(s), split according to their degrees of involvement, in which the developer(s) is appointed, of 12.5% of the net return (total minus 1., 2., and 3.).
7. Payment to the University Department(s), split according to their degrees of involvement, in which the developer(s) is appointed, of 12.5% of the net return (total minus 1., 2., and 3.).

Note 1: When there is more than one developer, or more than one School or Department, payments shall be prorated based on the contribution of each as agreed between the parties and the Director of the Office of Technology Transfer, and as approved by the President.

Note 2: Funds designated for the University, School, and Department shall be used to support the development of further intellectual properties and research. Funds for the University shall be administered by the President, those for the School by the Dean, and those for the Department by the Chair.

Note 3: In the case of intellectual property developed by a group where the distribution of royalty to individuals would be impractical or inequitable, such as a laboratory project, the developer(s) share shall be allocated by the Dean to a fund for the developing unit.

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- G. Publication:** The policy of the University is openness in research, and the ability of investigators to publish research results. Investigators shall not enter into projects requiring secrecy without the specific permission of the Dean. A project requiring secrecy is defined as one in which the sponsoring or granting documents are not freely publishable, access to security classified information is necessary to carry out the research, or one in which there is a reasonable expectation that any documents generated will be restricted by an outside sponsor from publication for a period in excess of 90 days. Secrecy based on reasonable provisions to protect the rights and privacy of all individuals is acceptable. Provisions from a sponsor requiring submission of publications for review and comment, or for patenting purposes, are acceptable provided there is no reason to expect that the sponsor would attempt to suppress publication or require substantive changes. If confidential information has been made available to the investigator the confidentiality of such information may be protected, and the person furnishing such information may require submission of any manuscript for review and comment and deletion of specific items constituting disclosure of such confidential information within 90 days. It should be noted that in the United States application for a patent must be submitted within one year of publication or public use of the invention, but for many foreign countries patent applications must be submitted prior to publication or public use.
- H. Intellectual Property Board:** The President shall appoint a Board of nine to twelve voting members, and shall designate a Chair, which shall review and monitor on an ongoing basis the Intellectual Property Policy and the activities of the Office of Technology Transfer, and shall offer advice and consultation to the Director. The Board shall review specific cases and problems encountered. All cases of significant disagreement between the Director of the Office of Technology Transfer and any developer of intellectual property with regard to the applicability of the Intellectual Property Policy, or its application, shall be referred to the Board for consideration. The Board shall recommend an appropriate resolution, which if not acceptable to both parties, shall be referred to the supervising Dean designated by the President, and then through the appropriate University Vice President to the President for resolution. The Board shall consist of at least one member from each of the Schools and Colleges of the University. In addition, the Vice-President for Administration and Finance, and the Director of the Office of Technology Transfer shall be ex-officio members without vote. Appointments to the Board shall be for staggered three year terms.
- I. Functions of the Office of Technology Transfer (OTT):** The Director, OTT, shall report to the President of Creighton University, who may delegate in writing immediate supervision and ongoing monitoring to an appropriate Dean. The Director of the Office of Technology Transfer shall maintain liaison with, and provide advice and consultation to, faculty and staff to identify intellectual property which is potentially patentable, copyrightable, or registerable as a trademark or service mark, and promote its protection, technology transfer, and licensing. The Director shall represent the University in accepting those developments in which the University has a significant interest, and shall diligently pursue their protection, transfer, and licensing. The University shall pay all necessary fees and costs for protection and licensing of accepted developments. For those developments to which the University does not wish to make a commitment, the Director shall promptly assign such developments, on request, to the developer, sponsor, or other appropriate party.

The Director, OTT, shall provide reasonable amounts of advice, consultation, and assistance to faculty and staff to assist developers in protecting, transferring, and licensing developments which do not come under the Intellectual Property Policy, or which have not been accepted by the University. The developer shall be responsible for all necessary fees and costs for protection, transfer, and licensing of developments not

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accepted by the University. There shall be no charge for reasonable amounts of advice, consultation, and assistance from OTT.

For accepted developments OTT shall prepare a customized marketing plan and establish an appropriate action plan. The major goals shall include:

1. to transfer technology to the commercial sector for public benefit.
2. to establish sources of unrestricted income to be used for institutional purposes.
3. to encourage industry to support the direct costs of research and training.
4. to generate consulting and science-advisory opportunities for the faculty.
5. to assist in the development of local and regional enterprises.

The Director, OTT, shall advise and recommend to the University Contracting Officer policy and its implementation for the protection and sharing of intellectual property ownership, technology transfer, and licensing for all University grants, contracts, and agreements.

The Director, OTT, shall be responsible for the protection, transfer, and licensing activities associated with all University technologies, shall administer the licenses, and maintain records regarding the receipt and distribution of all royalty, licensing, and other related income. The Director shall make recommendations with regard to all cases of disputed ownership, licensing, or income distribution concerning intellectual property developed by any full-time or part-time faculty, staff, students, contractors, commissionees, non-employees participating in research projects, and others at Creighton University. All unresolved disputes shall be referred to the Intellectual Property Board for consideration and recommendations for resolution. Those issues not satisfactorily resolved shall be referred to the supervising Dean designated by the President, and then through the appropriate University Vice-President to the President, for resolution.

SCOPE

The Intellectual Property Policy applies to all intellectual property (inventions, devices, creations; written, visual, electronic, software, or artistic expressions; trademarks; or trade secrets) conceived or first reduced to practice. Excluded copyrighted materials are specified. It applies to all full-time or part-time faculty, staff, students, contractors, commissionees, or non-employees (visiting faculty, industry personnel, fellows, etc.) participating in research projects at Creighton University, as a condition of employment or research participation.

ELIGIBILITY

All full-time or part-time faculty, staff, students, contractors, commissionees, or non-employees (visiting faculty, industry personnel, fellows, etc.) participating in research projects at Creighton University, are covered immediately and continuously on an ongoing basis, as a condition of employment or participation.

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All terms are defined in the Intellectual Property Policy in paragraph D.

ADMINISTRATION AND INTERPRETATION

The Intellectual Property Policy is administered by the Office of Technology Transfer. The Director, Office of Technology Transfer, reports to the President, Creighton University, who may delegate, in writing, immediate supervision and monitoring to an appropriate Dean. All disputes between developers of intellectual property and the Director, Office of Technology Transfer shall be referred to the Intellectual Property Board, appointed by the President, for consideration and a recommended solution. If the recommendation is not mutually acceptable it shall be referred through the Supervising Dean to the appropriate Vice-President and to the President for resolution. Questions regarding the interpretation of the Intellectual Property Policy should be referred to the Director, Office of Technology Transfer, or the University Counsel.

AMENDMENTS OR TERMINATION OF THIS POLICY

Creighton University reserves the right to modify, amend, or terminate this policy at any time. The Intellectual Property Policy constitutes a contract with all University faculty through the current edition of the Handbook for Faculty, and is binding with regard to all development of intellectual property disclosed to the University, undertaken by mutual agreement between the developer and the University, or developed under external contracts in place, up to the effective date of modification, amendment, or termination. Intellectual Policy Agreements for Creighton University Personnel may also be in place, which are subject to modification, amendment, or termination in the same manner as set forth above.

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APPENDIX I

Intellectual Policy Agreement for Creighton University Personnel

In consideration of my employment or continued employment by Creighton University, my contractual relationship with Creighton University, the receipt of remuneration from Creighton University, participation in projects administered by Creighton University, access to or use of facilities provided by Creighton University, and/or other valuable considerations, I hereby agree as follows:

1. I shall disclose to Creighton University all potentially patentable inventions conceived or first reduced to practice in whole or in part in the course of my University responsibilities, or with more than incidental use of Creighton University resources. I further agree to assign to Creighton University all of my rights, title, and interests in such potentially patentable inventions, to execute and deliver all documents, and do any and all things necessary and proper on my part to affect such assignment.
2. I shall disclose and assign or confirm in writing to Creighton University all my rights, title, and interests, including any associated copyrights, in and to copyrightable materials created, except as excluded by the Creighton University Intellectual Property Policy:
 - a. in the course of any research, grant, or contract, or other agreement entered into by Creighton University, if the terms of the agreement require creation of copyrightable materials, or require some interest in them be conveyed to Creighton University, to the sponsor, or to any other party;
 - b. in the course of my employment (that is, as a work-for-hire, or as an institutional work); or
 - c. in the course of a project specifically and substantially directly supported by University funds where an agreement is in place between the investigator and the University regarding such support and the ownership of any resulting copyrights.
3. I am now under no consulting or other obligations to any third person, organization or corporation in respect to rights in inventions or copyrightable materials which are, or could reasonably be construed to be, in conflict with this agreement.

NOTE: If you do have an agreement with another employer, or anyone else, that would apply to copyrightable materials or to potentially patentable inventions conceived or first reduced to practice, in whole or in part, with more than incidental use of Creighton University resources, do not sign this form. You must consult with the Dean of your School or College for resolution of any conflicts before using any Creighton University resources, and to develop specific written exceptions to this agreement prior to signing.

4. I shall not enter into any agreement creating copyright or patent obligations in conflict with this agreement. I further agree to be bound by the terms of any grants, contracts, or other agreements entered into by Creighton University in which I am an investigator or participating worker, regarding patent and copyright obligations.

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5. This agreement is effective as of the date of signing, or of hire or entering into any covered contractual relationship, and is binding on myself, my estate, heirs, and assigns.

Signed this _____ day of _____, _____

(Signature)

(Printed or Typed Name)

(Title)

(Department)

(Social Security Number)

NOTE: This agreement does not apply to any invention which is an invention for which no significant Creighton University equipment, supplies, facilities, or trade-secret information were used, and which was developed entirely on the developer's own time, and neither (a) related to Creighton University research, nor results from any work performed by the developer for Creighton University.

Original to Office of Technology Transfer, copy to signer.

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APPENDIX II

Course Materials for Distance Learning: Creation, Use, Ownership, Royalties, Revision and Distribution of Electronic-Based Course Materials

Introduction

The purpose of this appendix is to protect the rights of both the faculty member and the University in the creation and use of distance learning course materials. Since the demand for distance learning appears to be increasing and the continuing creation of electronic-based course materials seems likely, it is important to address the issues raised by the creation, use and distribution of various forms of electronic-based course materials and to clarify the rights and responsibilities of the parties involved.

General Guidelines

- **Reporting Authority.** It is likely that a faculty member creating distance learning course materials will be doing so in the school/college of his or her primary appointment. If a faculty member develops distance learning course materials for another school or college, responsibility to his/her primary Dean is not waived. This policy describes the obligations of faculty members to report intentions to develop distance learning course materials to his/her primary Dean prior to negotiating with any other entity.
- **Initiation of Distance Education Course Materials.** As a general rule, faculty members should meet with their Dean (Dean of the school or college where his or her primary appointment resides) or the Dean's designee prior to creating electronically-based course materials for distance learning in order to reach an agreement as to the appropriate category classification. (See more on this below)
- **Copyright Ownership.** The University Intellectual Property Policy (4.2.3) recognizes that in most instances faculty members own copyright in the scholarly works they create. Faculty members thus normally hold copyright in the electronic-based course materials they create on their own initiative. Creighton University's Intellectual Property Policy recognizes University ownership of copyright in works created under contract as institutional projects or works-for-hire. Any owner of copyright in electronic-based course materials may secure copyright registration; joint owners may, but do not have to, agree to bear responsibility for enforcement of the copyright. Copyright Law controls ownership of works of students. Students own copyright in their works and creators of new works incorporating student materials must obtain their permission. Specific copyright ownership rights are addressed in Categories I-IV below.
- **Royalties.** Royalties will only be paid for electronic-based course materials for courses delivered to students in classes that are outside the faculty member's scope of employment including electronic-based course materials used in programs marketed or licensed to outside organizations. Absent a contract specifying to the contrary, specific division of royalties is addressed in Category I-IV below. When multiple faculty members create electronic-based course materials for which a royalty is to be paid, the faculty members shall determine by prior written document the division of royalties. Absent a written document of division of royalties, the faculty members shall divide their share equally.
- **Contributed Materials.** Liabilities result from use of materials copyrighted by others, and use of voice and

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image files without seeking appropriate permissions. It is the policy of the University that all faculty comply with the law, including copyright and privacy laws; therefore, it is the responsibility of the creator(s) of electronic-based course materials to obtain all permissions and releases necessary to avoid infringing copyright or invading the personal rights of others.

- **Protecting the Work.** Faculty members will decide registration and enforcement action to protect works they own. Creighton University will determine whether to register the copyright and will determine enforcement action of the works it owns, either solely or jointly.
- **Conflict of Commitment.** Nothing in the Creighton University Intellectual Property Policy as amended by this Appendix II is intended to interfere with a faculty member's duties for the University generally set out in Section III C of the Faculty Handbook. Nor is it intended to undermine the authority of the faculty member's Dean to assign courses and duties to faculty member in his/her discretion. While employed, a faculty member may not engage in any activity which competes with the business of the University.
- **Retention of Nonexclusive License.** Except in Category I below, the University shall retain a non-exclusive educational license in perpetuity to reproduce and use the electronic-based course materials in teaching University classes. Compensation to the faculty member for use of the course shall be as specified in Categories I-IV below.
- **Termination of Agreement.** Either the University or the Creator may terminate a License Agreement without cause at any time upon ninety days prior written notice to the other party.
- **End of Employment.** Each License Agreement shall survive the end of employment for a period of three years unless terminated as described in this policy. However, the License Agreement may be extended beyond that date by mutual agreement of both the University and the Creator.
- **Precedence.** In the event of a disagreement of interpretation between this Appendix and the Intellectual Property Policy, the Intellectual Property Policy takes precedence.

Definitions:

Copyrightable Creation: Original work that has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. A Copyrightable Creation includes such creations as book, journals, musical works, videos, multimedia products, sound recordings, pictorial or graphical works, etc. A copyrightable creation may be the product of a single creator or a group of creators who have collaborated in the creation of the work.

Copyright protects the expression of an idea, not the idea itself. Such expression must be in some retrievable form such as handwriting, type, computer disk, magnetic tape, or other storage medium. Copyright covers the expression in literary, artistic, or musical works, websites, video recordings, sound recordings, photographs, and sculpture. Copyright automatically comes into being when the idea is fixed in a tangible medium of expression, but the protection of copyright cannot be enforced without registration of the copyright.

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Course: Any class or instructional unit offered by the university. A course may be for-credit or not-for-credit, required or not required for a degree or certificate, and includes classes or instructional units sponsored by the University for professional or personal development. A course does not include multi-media developed by support personnel.

Course Materials: Materials including, but not limited to, lectures, recorded answers to questions, assignments, visual aids, and other materials presented by the course creator and/or instructor including, but not limited to text, images, syllabi, diagrams, graphs, multimedia presentations, videos, exercises for collaboration, simulations, and group projects that are created to illustrate or explain the subject matter.

Creator: Person whose ideas become fixed in a tangible medium. Merely carrying out work that is directed by another does not meet this definition.

Distance Education/Distance Learning (as used in this appendix): Instruction and use of electronic-based course materials where the teacher and the student may be separated geographically, so that face-to-face communication is absent for some or all students taking the course; communication is instead by one or more technological media. This communication consists of live or recorded audio and/or visual presentations, and/or material using the Internet, direct signal or cable transmission by telephone line, fiber-optic line, digital and/or analog or other electronic means, now known or hereinafter created, and utilized to teach any course originating or sponsored by the University.

Electronic-Based Course Materials: Materials, either in print, audio, video or electronic form used in conjunction with a distance learning course.

Scope of Employment: Scope of employment includes the duties or activities attached to the employment position or bearing a reasonable relationship to it. Duties may be listed in a job description or employment contract, or may be assigned by one's supervisor, or may be generally understood expectations of a discipline, field or trade. The duties may be performed during normal business hours and at University facilities, but the time and site of their performance do not necessarily determine ownership of the product of the work.

Specific Categories Assigning Ownership and Royalties

Development of Course Materials in School or College of Faculty Member's Primary Appointment

As a general rule, faculty members should meet with their Dean (Dean of the school or college where his or her primary appointment resides) or the Dean's designee prior to creating electronically-based course materials for distance learning in order to reach an agreement as to the appropriate category classification. Once the category has been determined, a written license agreement shall be executed by the faculty member and the University. The Dean has the responsibility to establish the category. In the event of an unresolvable dispute, appeal may be made to the Intellectual Property Board for final resolution. It is understood that in some circumstances this category classification may change based on a modification in University support for the project. Changes in classification require agreement between the Dean and the faculty member, and a new license agreement will be executed to supersede the one that is in place.

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Development of Course Materials Outside of the School or College of Faculty Member's Primary Appointment

In cases where the electronic course materials are being developed for a school or college other than the faculty member's primary appointment, his or her primary Dean must be notified prior to reaching any contractual arrangement. The Dean may approve, may restrict the use of University resources involved in the project, or deny permission for the faculty member to participate.

If approval from the faculty member's primary Dean is secured, the faculty member should meet with the contracting entity, normally a Dean or his or her designee, in order to reach agreement as to the appropriate category classification for the course materials. Once the category has been determined, a written license agreement shall be executed by the faculty member and the University. The contracting Dean has the responsibility to establish the category. In the event of an irresolvable dispute, appeal may be made to the Intellectual Property Board for final resolution. The faculty member has the responsibility to provide his or her primary Dean with a copy of the license agreement. It is understood that in some circumstances this category classification may change based on a modification in University support for the project. Changes in classification require agreement between the Dean and the faculty member, and a new license agreement will be executed to supersede the one that is in place.

Right to Establish Further Guidelines

Individual academic and administrative units may wish to establish further guidelines, consistent with this policy, to clarify the distinction between minimal and substantial for that particular unit.

Category I – Totally Faculty Generated

Description of Individual and University Contribution:

The work resulted from an individual's efforts with no use of University resources. Additionally the individual developed the work on his/her own time.

Examples:

1. A faculty member in Sociology works with a publishing company to create a Web-based course. The publishing company provides 700 hours of instructional design and production support and the course is mounted on the company's server. All of the work is done on the faculty member's own time, but some of the development is done on weekends using the faculty member's office computer. Creighton University-licensed development software that is available throughout the department is also used. The course is mounted on a commercial server.
2. A professor in forensic psychology is approached by the publishing arm of a learned society to create a CD containing 2,000 images of evidence that this professor has photographed in preparing for classes over the years. The professor took the photographs on weekends using his/her own camera and film, but on the department's copystand. The learned society creates and markets the CD.

Ownership and Compensation

The individual owns the copyright, may receive compensation for work, and retains all distribution rights. This category is substantially similar to "Excluded Items" in Section D.2.a. of the Intellectual Property Policy. Such

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distribution and compensation rights are governed by the "conflict of commitment" statement in the Faculty Handbook (Section III. C. 1.) and as required by law. A Faculty Member may not engage in any activity which conflicts with his/her full-time commitment to the University and which conflicts or competes with the business of the University in the judgment of the President and his/her Dean.

Category II– Minimal University Resources

Description of Individual and University Contribution:

The work resulted from the individual's efforts including the use of minimal routine resources of the university, including assigned or general-use office equipment and computers, libraries, generally-available information resources, photocopiers, local telephone, office supplies, limited administrative/clerical support or limited use of shared university resources. The majority of the work was completed on the faculty member's own time (outside his/her usual business hours). Use of the university's dedicated laboratories, computer centers, media centers and/or dedicated equipment is considered more than minimal use of University's resources.

Examples:

- i. A faculty member works with Digital Inc., a Web course publishing company, to put the course, "Serving an Aging Population," totally on the Web. The University provides funds to purchase time from the Media Television to videotape two hours of lecture to be streamed as part of the course. In addition, the University's Media Services checks out to the faculty member one of two digital recording workstations for a period of two weeks. Digital Inc. spends over 300 hours recording materials provided by the faculty member and creating the Web course, and mounts the course on their server. The faculty member works on the project almost exclusively on his/her own time.
2. An adjunct faculty member who teaches Accounting Principles for Non-Profit Agencies for the University volunteers to put half of the course on the Web. The University provides 30 hours of training on WebCT, the Web platform utilized. The University also provides twenty hours of assistance in creating a Power Point Presentation to be used as part of the course. The adjunct faculty member spends 200 hours creating the course on his/her own time. The course is mounted on the University's server.

Ownership and Compensation

The individual faculty member owns the copyright and has the right to distribute it and receive compensation for any distribution outside the University's course delivery, with permission of the individual's Dean or his/her designee to ensure compliance with the conflict of commitment clause in the Faculty Handbook (Section III. C. 1.). The University retains a non-exclusive royalty-free educational license in perpetuity to use the work as part of a Creighton University Course. The University also retains a non-exclusive royalty-bearing commercial license to market the Course outside the University.

If licensed for commercial purposes either by the University or the faculty member, the University and the faculty member will each receive a percentage of the royalty as negotiated. In case of multiple creators, the creators will share the royalty according to the "Royalties" statement in General Guidelines above. The Intellectual Property Policy Board will resolve disputes regarding compensation. The Intellectual Property Policy Board's resolution of the dispute will be final.

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Category III– Substantial University Resources Are Provided

Description of Individual and University Contribution:

The work resulted from the individual's efforts with substantial University resources above and beyond those normally provided. Use of any University-paid time or funding, or the use of facilities, equipment, staff assistance, and/or significant administrative support that exceeds minimal use, as described above, including use of dedicated laboratories, dedicated computer centers, and dedicated equipment.

Substantial use of University resources occurs when the creation of the work requires use of University resources beyond those widely available to University personnel and students in support of their academic work within their respective departments, colleges, academic or administrative units.

Substantial use requires extensive unreimbursed use of University resources (equipment, computational facilities, laboratory space, studio space, performance space, financial resources or human resources) that are essential to the creation of intellectual property. Incidental use of University resources does not constitute substantial use, nor does extensive use of resources commonly available to all faculty, students, and staff (such as libraries, office space, electronic mail, local telephone, and office computer equipment) nor does extensive use of a specialized facility for routine tasks.

Examples:

1. A faculty member volunteers to make his/her department's "Pharmacokinetics" Course totally available on the Web. The faculty member is provided with a course release in the Spring Semester and paid for a course in the summer to create the product. The faculty member also contributes some of her own time. The University's graphic designers and web developers spend over 100 hours converting course notes to a web-based platform, contributing pedagogical advice to make the web pages effective teaching tools. The course is mounted on the University's server.
2. The University's MBA Program decides to offer the degree by taping courses and allowing employees of two corporations to download the courses to view on their own schedules. Three faculty members from the MBA Program will rotate grading and answering questions for each course. A faculty member who teaches Human Resource Management volunteers to offer the first course. During the next year, this faculty member is given a course release each semester and paid for two courses in the summer. The University funds production time in the Media Television for the production of the tapes. Media Services contributes significant hours in digitizing the tapes. The faculty member spends 60 hours over the year of his/her own time designing the course for television delivery. The University mounts the course on its server.

Ownership and Compensation

The individual and the University jointly own the copyright. The University and the Creator each have the right to market the course outside the University, subject to Category III Ownership and Compensation requirements of the Intellectual Property Policy. The University has the right to distribute it and receive compensation. If licensed for commercial purposes either by the University or the faculty member, the University and the faculty member will each receive a percentage of the royalty as negotiated. In case of multiple creators, the creators will share the royalty according to the General Guidelines above.

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Category IV– Work Made for Hire – University Assigns Duty to Faculty Member to Create a Work

Description of Individual and University Contribution:

A faculty member of the University was contracted to create a specific product. The University provided all resources for the work. The work was carried out totally within the faculty member's scope of employment.

Example:

1. The Dean of the School of Nursing assigns a faculty member to a course that will be videotaped and broadcast the next year to sites in five hospitals as part of a new Master's Program offered by the school. The faculty member is given course releases for the fall and spring semester and is paid a task payment. All of the design and production work is done during working hours. A contract for this work is signed by the faculty member and the University. The faculty member is assigned a .5 FTE research assistant for the academic year. Media Television contributes 250 hours in the design and production of the videotapes.

Ownership and Compensation

The University owns the copyright, has an exclusive educational and commercial ownership and license authority. The faculty member is not entitled to payment of royalty. Since "Work-for-Hire" and "Institutional Projects" require a contract between the faculty member and the University, no license agreement is required.

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LICENSE AGREEMENT FOR DISTANCE LEARNING CATEGORY I

This License Agreement (“Agreement”) is made effective as of _____ by and between _____, (hereinafter referred to as “Creator”), and Creighton University (hereinafter referred to as “University”). This license agreement pertains to the Electronic-based Course Materials in the course entitled _____.

The parties agree as follows:

To be bound by all of the terms in the University’s Intellectual Property Policy (4.2.3.)

The parties further agree as follows:

- Policy Category:** The course fits within Category I of the Policy.
- Copyright:** The Copyright is owned by the Creator.
- Educational License:** (If applicable) The Creator grants /does not grant Creighton University a non-exclusive educational license to use the work as part of a Creighton University course. If the University uses the work in a course not taught by the Creator, then the University will compensate the creator at a rate of _____% of the tuition paid by each student in that class. The compensation will be paid at the end of each semester or summer session as applicable. With each compensation payment, the University will submit to the Creator a written report that sets forth the calculation of the amount of the compensation payment. In case of multiple creators, the creators will share their percent royalty as follows:
 _____% to _____
 _____% to _____
 _____% to _____
- Commercial License:** The Creator has the right to market the course outside the University, subject to Category I Ownership and Compensation requirements of the Intellectual Property Policy. The Creator permits / does not permit the University to market the course outside the University. If permitted, the University and the Creator will share the royalty as follows:
 _____% of gross tuition to Creator and _____% to the University. In case of multiple Creators, the Creators will share their percent royalty as follows:
 _____% to _____
 _____% to _____
 _____% to _____
- Term of License.** This license continues in force for three (3) years, with automatic one-year extensions unless this agreement is terminated or modified by either party. Faculty member will update the course material at least _____ times per year. The faculty member's name will / will not be used with the course material.

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6. **Transfer of Rights.** This Agreement shall be binding on any successors of the parties. Neither party shall have the right to assign its interests in this Agreement to any other party, unless the prior written consent of the other party is obtained.
7. **Entire Agreement.** This Agreement and the applicable Creighton University policies contain the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
8. **Amendment.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.
9. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
10. **Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
11. **Venue.** The parties herein agree that this contract shall be enforceable in Omaha, Nebraska and if legal action is necessary to enforce it, exclusive venue shall be in Douglas County, Nebraska
12. **Governing Law.** This contract shall be governed by and construed in accordance with the laws of the State of Nebraska.

Creator: _____

Date _____, 200__

Dean or Assigned Designee _____

Date _____, 200__

Vice President for Administration & Finance _____

Date _____, 200__

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LICENSE AGREEMENT FOR DISTANCE LEARNING CATEGORY II

This License Agreement ("Agreement") is made effective as of _____ by and between _____, (hereinafter referred to as "Creator"), and Creighton University (hereinafter referred to as "University").

This license agreement pertains to the Electronic-based Course Materials in the course entitled _____.

The parties agree as follows:

To be bound by all of the terms in the University's Intellectual Property Policy (4.2.3.)

The parties further agree as follows:

- Policy Category:** The course fits within Category II of the Policy.
- Copyright:** The Copyright is owned by the Creator.
- Educational License:** The Creator grants Creighton University a non-exclusive, royalty free educational license to use the work, in perpetuity, as part of a Creighton University course.
- Commercial License:** The Creator has the right to market the course outside the University subject to Category II Ownership and Compensation requirements of the Intellectual Property Policy. The Creator permits the University to market the course outside the University. The University and the Creator will share the royalty as follows: ____ % to Creator and ____ % to the University. In case of multiple Creators, the Creators will share their percent royalty as follows:
 _____ % to _____
 _____ % to _____
 _____ % to _____
- Term of License.** This license continues in force for three (3) years, with automatic one-year extensions unless this agreement is terminated or modified by either party. Faculty member will update the course material at least ____ times per year. The faculty member's name will / will not be used with the course material.
- Transfer of Rights.** This Agreement shall be binding on any successors of the parties. Neither party shall have the right to assign its interests in this Agreement to any other party, unless the prior written consent of the other party is obtained.
- Entire Agreement.** This Agreement and the applicable University policies contain the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
- Amendment.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.
- Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this

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<i>SECTION:</i> Academic Concerns	<i>NO.</i> 4.2.3.			
<i>CHAPTER:</i> Faculty	<i>ISSUED:</i> 4/3/96	<i>REV. A</i> 1/14/00	<i>REV. B</i> 6/26/00	<i>REV. C</i> 2/15/02
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Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. **Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
11. **Venue.** The parties herein agree that this contract shall be enforceable in Omaha, Nebraska, and if legal action is necessary to enforce it, exclusive venue shall be in Douglas County, Nebraska.
12. **Governing Law.** This contract shall be governed by and construed in accordance with the laws of the State of Nebraska.

Creator: _____

Date _____, 200__

Dean or Assigned Designee _____

Date _____, 200__

Vice President for Administration & Finance _____

Date _____, 200__

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LICENSE AGREEMENT FOR DISTANCE LEARNING CATEGORY III

This License Agreement ("Agreement") is made effective as of _____ by and between _____, (hereinafter referred to as "Creator"), and Creighton University (hereinafter referred to as "University").

This license agreement pertains to the Electronic-based Course Materials in the course entitled _____.

The parties agree as follows:

To be bound by all of the terms in the University's Intellectual Property Policy (4.2.3.)

The parties further agree as follows:

1. **Policy Category:** The course fits within Category III of the Policy.
2. **Copyright:** The Copyright is jointly owned by the Creator and the University.
3. **Educational License:** Creighton University retains its non-exclusive, royalty-free educational license to use the work as part of a University course.
4. **Commercial License:** The University and the Creator each have the right to market the course outside the University, subject to Category III Ownership and Compensation requirements of the Intellectual Property Policy. If licensed for commercial purposes either by the University or the Creator, the University and the Creator will share the royalty as follows: ____ % to Creator and ____ % to the University.

In case of multiple Creators, the Creators will share their percent royalty as follows:

_____ % to _____

_____ % to _____

_____ % to _____

5. **Term of License.** This license continues in force for three (3) years, with automatic one-year extensions unless this agreement is terminated or modified by either party. Faculty member will update the course material at least ____ times per year. The faculty member's name will / will not be used with the course material.
6. **Transfer of Rights.** This Agreement shall be binding on any successors of the parties. Neither party shall have the right to assign its interests in this Agreement to any other party, unless the prior written consent of the other party is obtained.
7. **Entire Agreement.** This Agreement and the applicable Creighton University policies contain the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.
8. **Amendment.** This Agreement may be modified or amended, if the amendment is made in writing and is signed by both parties.
9. **Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this

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Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

10. **Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
11. **Venue.** The parties herein agree that this contract shall be enforceable in Omaha, Nebraska and if legal action is necessary to enforce it, exclusive venue shall be in Douglas County, Nebraska
12. **Governing Law.** This contract shall be governed by and construed in accordance with the laws of the State of Nebraska.

Creator: _____

Date _____, 200_

Dean or Assigned Designee _____

Date _____, 200_

Vice President for Administration & Finance _____

Date _____, 200_