

November 2011

5.503 Intellectual Property

Follow this and additional works at: http://aura.antioch.edu/policies_500_5x

Recommended Citation

"5.503 Intellectual Property" (2011). *5.500 Research & Intellectual Property (Academic)*. 3.
http://aura.antioch.edu/policies_500_5x/3

This Article is brought to you for free and open access by the 5.000 Academic Policies at AURA - Antioch University Repository and Archive. It has been accepted for inclusion in 5.500 Research & Intellectual Property (Academic) by an authorized administrator of AURA - Antioch University Repository and Archive. For more information, please contact dpenrose@antioch.edu, wmcgrath@antioch.edu.



Type of Policy <input checked="" type="checkbox"/> University <input type="checkbox"/> <i>Campus</i> <input type="checkbox"/> <i>Department/Unit</i> <input type="checkbox"/> Interim		Intellectual Property	
Academic Policies		Policy 5.503	
		Effective date: October 25, 2003	
Policy History:	Approved by:	Resolution #	Date
Approved	Board of Governors	10.25.03:05	October 25, 2003
Revised	Office of University Counsel	N/A	November 1, 2017
Responsible Office	Responsible Administrator:	Contact information	Applies to:
Office of Vice Chancellor of Academic Affairs	Vice Chancellor of Academic Affairs	937-769-1890	All Employees

I. Introduction and Purpose

The purpose of this policy is to ensure fairness and equity in the development and dissemination of useful creations, products or processes at Antioch University (AU). This policy clarifies individual and institutional copyrights, patent rights and related intellectual property rights associated with ownership and with the distribution of benefits that may be derived from the creation of various types of intellectual property. This policy applies to all full- or part-time employees, who may create intellectual property within the scope of their employment while under contract with Antioch University. This policy also clarifies rights pertaining to students' academic creations.

II. General Policy

A. Ownership of the various rights associated with copyright and patent are dependent upon the specific type of intellectual property involved. Antioch University asserts a limited ownership interest in some of these rights to the extent set forth below. Unless otherwise provided for under this policy, rights associated with works produced as "works-made-for-hire", works supported by a direct allocation of funds through the University for the pursuit of a specific project, works commissioned by the University or other works that make "substantial use" of institution resources or personnel, as well as patents through assignment belong to Antioch University. As further set forth below, where the University owns rights

to particular intellectual property, the creator is entitled to share in the royalties generated by that property.

B. In keeping with the norms of academic tradition, except to the extent set forth in this policy, Antioch University does not claim ownership to pedagogical, scholarly or artistic works. These works encompass those of students created in the course of their education, such as dissertations, papers and articles. The University claims no ownership in popular nonfiction, novels, textbooks, poems, musical compositions, unpatentable software, or other works of artistic imagination which are not institutional works, and did not make significant use of University resources or the services of University non-faculty employees working within the scope of their employment.

III. Definitions and Comments

A. Copyright

Copyright is the intangible property right conferred by Federal statute for an original work fixed in a tangible medium of expression. Copyright provides the owner with the following exclusive rights in a work to reproduce, to prepare derivative works, to distribute by sale or otherwise, to perform publicly, and to display publicly.

B. Institutional Works

Institutional works include works that are supported by a specific allocation of AU funds or that are created at the direction of AU for a specific AU purpose. Mediated courses, courseware, mediated instructional materials, degrees, certificates, workshops and seminars are institutional works when the assignment is made to a faculty member or employee in the normal course of their employment contract, and the assignment is made by the administrator to whom the faculty member or employee reports under that contract. AU shall retain ownership of works created as institutional works. Institutional works also include works whose authorship cannot be attributed to one or a discrete number of authors.

C. Mediated Courses

Mediated courses are defined as courses taught primarily through electronic media, such as web-based, videotaped audiotaped, or distance-learning courses. These courses have the capability of being duplicated and disseminated electronically.

D. Mediated Courseware

Mediated courseware is defined as teaching aids created or deployed electronically. Mediated courseware may incorporate text, graphics, video, and audio elements. Examples of such materials include without limitation: hypertext modules, simulation software, web sites, and databases containing numbers, images, or text.

E. Quality Teaching

The term "quality teaching" refers to standards as defined by the employing campus where the faculty member is appointed. Should a question arise about whether an innovation is required for "quality teaching," a written opinion will be obtained from the unit leader, (Program or School Head, Dean, etc.). The faculty member need not obtain a

written opinion before undertaking the innovation; however, failure to obtain an advance opinion means that the faculty member will be bound by a later determination made in the sole discretion of AU that the innovation was required for “quality teaching.”

F. Rights, Responsibilities and Liabilities

Ownership of intellectual property implies responsibility and liability as well as the right to control use of the property. The owners of intellectual property as described in this document will be responsible for assuring the proper use by others of materials for which copyright, patent rights, or other intellectual property rights are held.

G. Student Creation or Work

A student creation or work is a work produced by a registered student without the use of University funds (other than student financial aid), that is produced outside any University employment, such as work study or graduate assistantship or Antioch College cooperative education experience, and is not a sponsored or commissioned work by the University, a cooperative employer, or other outside agency.

H. Substantial Use

Substantial use of institutional resources will mean that in connection with the project at issue the creator of the materials received staff, salary or material support beyond that normally provided to a typical faculty member at AU for activities within the scope of his or her employment. Examples of non-significant use include ordinary use of desktop computers and University libraries. Should a question arise about whether support is beyond the norm, the unit leader (Program or School Head, Dean, etc.) will provide a written opinion concerning the level of use of AU support and facilities. The employee may or may not obtain such an opinion prior to commencing the research project. However, an employee who fails to request and receive such an advance opinion will be bound by any later determination made in the sole discretion of AU that the employee made “substantial use” of institutional resources.

I. Work for Hire

Work for hire, as used in this policy, is defined by the federal Copyright Act as a work prepared by an employee within the scope of the employee's employment. The Copyright Act further provides that in the case of work made for hire, the employer owns all of the rights comprised in the copyright. Where expressly stated in this policy, the University has modified the work-for-hire doctrine in a manner designed to allow faculty, staff, and students to benefit substantially from their creative works. In implementing the policy, and in resolving questions that may arise, the University will use the definition of work for hire that is established under federal law.

IV. Copyrightable Property

A. Mediated Courses, Mediated Courseware and Institutional Works

1. Self-initiated Mediated courses/courseware

a) Self-initiated course material developed without assistance of University Support Units.

b) The employee who develops a course/courseware shall be considered the "initiator" of the course/courseware when he/she develops an idea for a new course/courseware or changes an existing course/courseware beyond the level ordinarily required for quality teaching. In this case, notwithstanding the work-for-hire doctrine, the ownership of both the content and presentation shall remain with the initiator.

c) No royalty, rent or other consideration shall be paid to the employee when that mediated course/courseware is used by anyone for instruction at AU and such mediated course/courseware shall not be used or modified by other AU staff without the consent of the initiator. Even though the initiator owns the course/courseware/institutional work, the initiator shall not sell, lease, rent or otherwise use it in a manner that competes with for-credit or revenue-producing offerings of AU, unless that use has received the approval of the Program Head or Dean.

d) Approval to offer the course outside of the institution can be requested through the Program Head or Dean. Approvals shall be forwarded to the Provost and shall be granted in the University's sole discretion. If approval is granted, the initiator shall reimburse AU, from revenues derived from offering the course/courseware, for any substantial use of institutional resources. As owner of the materials, the initiator is responsible for securing and maintaining any and all copyright permission related to the content or presentation of the course/courseware, and for responding to any other legal actions resulting from the use of the material. These provisions shall continue to apply to the course/courseware developed during the initiator's employment at the University, after the initiator's employment terminates for any reason.

2. Self-initiated course material developed with assistance of Antioch University Support Units

a) When employees develop mediated courses/courseware, both content and presentation, without specific direction from AU or its agents, and also utilize the services of campus or University support units, such as technology support units, etc. in its development, the University makes no claim to the content of the course/courseware, notwithstanding the work-for-hire principle.

b) However, the ownership of the specific presentation or materials created by the support unit shall remain with AU. A written agreement that specifies the respective contributions of the employee and of the support unit(s) shall be prepared by the employee. If an employee fails to have such a written agreement prepared and signed by the University's authorized representative prior to the use of the support unit, the employee is bound by any later University determination made in its sole discretion regarding the respective contributions of the employee and the support unit. Ordinarily no royalty, rent or other consideration shall be paid to the employee when that mediated course/courseware is used by anyone for instruction at AU. Such mediated course/courseware shall not be used or modified without the consent of the creator(s).

c) If the creators wish to use the presentation or materials in a manner that competes with for-credit or revenue-producing offerings of AU, they must obtain the approval of their Program Head and Dean and also of the Director of any and all support units which aided in the creation of the presentation. This approval to offer the course outside of the institution can be requested through the Program Head, Dean and support unit Director. Approvals shall be forwarded to the Provost and approval shall be granted or withheld in the University's sole discretion.

d) If the University grants approval, the University, as owner of the copyright of the material created by the support unit, will provide the employee with a limited license to use the material and will share revenues derived from offering the course in a manner similar to the sharing of royalties from patents. The creator is responsible for securing and maintaining all copyright permission related to the content. The support units involved in the creation of the presentation will secure and maintain any and all copyright permission related to presentation of the course/courseware and to responding to any other legal actions resulting from the use of the presentation.

3. Institution-directed Mediated Course/Courseware and Institutional Works

a) When Antioch University specifically directs the creation of a mediated course/courseware or institutional work as described in this policy, the resulting course/courseware or institutional work, and any rights inhering in it, belong to AU. Antioch University shall have the right to revise it and decide how the mediated course/courseware or institutional work may be utilized in instruction.

b) The institution in its sole discretion may specifically agree to share revenues and control rights with the creator. At the time of the assignment, the AU administrator who has directed creation of course/courseware will inform the employee assigned to this task in writing of the University's right of ownership. The faculty member may request an agreement on the sharing of revenue and control. If the employee and administrator cannot reach agreement, the matter may be referred to the Learning Resource Committee for resolution.

c) The University will provide the resources to secure any and all copyright permissions related to the content or presentation. The University shall retain and manage any copyright permissions. The University will be responsible for responding to any other legal actions resulting from the use of the material.

d) In the case of mediated courses, courseware, and institutional works, developed as a collaboration among various campuses of the University, the courses, courseware, and institutional works shall belong to Antioch University because the creation of such is institution-directed and institution-supported. Reservation of any limited rights to the creator(s) in the courses, courseware or institutional work shall be determined by a written stipulation signed by affected parties prior to the creation of the work. Delay or failure in reaching agreement shall not excuse the employee from his or her obligation to complete the mediated course, courseware or institutional work as directed by the supervising administrator.

B. Materials Other Than Mediated Courses, Courseware or Institutional Work

These provisions shall apply to materials which do not fall into the category of mediated courses, mediated courseware, or institutional work.

1. Scholarly and Artistic Work

a) Notwithstanding substantial use of institutional resources or the "work-for-hire" doctrine, the ownership of textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works,

syllabi, lecture notes, and like works shall reside with the creator and any revenue derived from the creator's work shall belong to the creator.

b) Antioch University includes in its interpretation of scholarly works those presented at professional meetings and/or electronically distributed. World Wide Web pages, transparencies for projection, electronic presentation, etc., of scholarly activity remain the property of the creator as stated in this section.

2. Manuscripts for Academic Journals

a) Notwithstanding any use of institutional resources or the work-for-hire doctrine, the ownership of manuscripts for publication in academic journals shall reside with the creator and any revenue derived from the works shall belong to the creator.

b) Ownership is limited to the scholarly work and does not necessarily extend to data or other scholarly information which the scholar may have collected or obtained during the course of the project, or to other creations which may be based on the same scholarly information. If the scholar's project is supported by funds or other resources from agencies external to AU and requires substantial use of Antioch resources, the ownership and location of the scholarly information will be determined by an agreement between AU and the agency, or by the published requirements of the agency. In the absence of such requirements or agreements, and for projects which receive no external support, and where substantial use of campus or University resources has been made, the data and other scholarly information collected as a result of the scholarly activity of a AU employee will remain the property of Antioch University, and will reside physically within the University or one of its campuses [run-on?].

V. Patent and Register able Intellectual Property

A. General Provisions

1. The rights to patentable inventions resulting from University-sponsored research shall be assigned in writing to Antioch University. The University may, at its sole discretion, waive its rights in favor of the inventor. If it retains them, it will execute an agreement with the inventor(s) providing for royalty payments on income derived from the patent. The term "University-sponsored research" includes not only research covered under an official University research contract, but also any research-like activity or other creative endeavor carried out by employees in the course of their official duties or responsibilities, or any activity that makes substantial use of resources of the University or one of its campuses. Modification of provisions of this section may be made by the University to conform to the requirements of the United States Government when contracting with the United States Government or a Federal Government Agency.

B. Patentable Inventions

1. Disclosure

Anyone who conceives an invention resulting from a research project sponsored by the University shall inform the Academic Dean of the Campus, who will recommend whether or not Antioch University should pursue a patent application on the subject invention. The University is free to follow the recommendation of the Dean, or to waive its rights to the invention subject to the rights of any sponsor. If the University waves its rights, the inventor is free to patent the invention, subject to the rights of the Sponsor.

2. Assignment/Sharing of Revenues

a) When any revenue is obtained by the University from the assignment or licensing of any patent, not less than fifty (50) percent of revenues shall be paid to the inventor(s). This revenue sharing shall begin only after the University recoups its direct costs in patenting the invention. The University underwrites all direct costs of obtaining a patent, including legal counsel retained for that purpose, and costs of facilitating the discovery of the patentable invention, and maintaining patent registration. The remainder of any shared revenue, less a portion that may be retained by the University to fund its operation, shall be retained by the campus or University unit which directly employs the faculty or employee.

b) In case of projects sponsored in part by an outside party or individual, a written contract shall be made between the institution and the cooperating agency, and shall include a statement of policy regarding patents that is substantially equivalent to this policy subject to § III. A above. In the case of a research project where all costs, including overhead, salaries of investigators, reasonable rent on the use of equipment, etc., are paid by an outside party, the outside party and the University may negotiate the allocation of all patent rights prior to the provision of any funding by the outside party.

C. Software

Software is another form of intellectual property covered by this policy. Software can be copyrighted, and is therefore subject to the policies in Section II, above. Some software embodies algorithms that can be the subject of a patent. Any software that may fall into that category should be treated as an invention, and handled by its inventor, and the University as described in the paragraphs (III.B) that apply to patentable inventions. Software that falls into the mediated courseware category will be covered by the Mediated Courseware section of this policy. Software that is to be distributed with textbooks as supporting material will be covered by the Scholarly and Artistic Works or the Mediated Courseware sections of this policy depending on which section is applicable. Software that does not fall into any of these categories, that may be commercialized, and as to which the creator made substantial use of University resources, will be treated as mediated courseware

under Section II.A.1.a or b, depending on which section is applicable of this policy.

D. Other Intellectual Property

Intellectual property may exist in the form of material that is not patentable, but which by its nature can be protected. An example of this would be anything produced from a biological material harvested from a unique continually growing culture. This type of intellectual property may be protectable, and revenue may be generated by licensing agreements with parties interested in commercial production. This type of intellectual property is to be treated by its creator and the University in the same fashion as described above for patentable inventions.

VI. Student Creation or Work

A. The ownership of a student creation or work submitted in fulfillment of academic requirements shall be with the creator(s). By enrolling in the institution, the student gives the institution a nonexclusive royalty-free license to mark on, modify, and retain the work as may be required by the process of instruction. The institution shall not have the right to use the work in any other manner without the written consent of the creator(s).

B. If the student is performing work sponsored or commissioned by the University, ownership is limited to the student creation or work and does not extend to data or other scholarly information the student may have collected or obtained during the course of a project or to other creations which may be based on the same scholarly information. Such data and other scholarly information collected will remain the property of Antioch University and kept by the University.

C. If the student's project is supported by funds or other resources from agencies external to Antioch University and substantial use of University resources is involved, the ownership and location of the scholarly information will be determined by the agreement between Antioch University and the agency or by the published requirements of the agency. In the absence of such requirements or agreements and for projects which receive no external support and where substantial use of University resources is involved, the data and other scholarly information collected as a result of the student academic creation will remain the property of Antioch University and be kept by the University.

D. Students are responsible for obtaining and maintaining copyright permissions related to their creations.