

POLICY & PROCEDURES MEMORANDUM

TITLE:	INTELLECTUAL PROPERTY RIGHTS
EFFECTIVE DATE:	September 15, 2015
CANCELLATION:	none
CATEGORY:	Academic Affairs (AA)

POLICY STATEMENT

In accordance with the Louisiana Community and Technical College System (LCTCS) [Policy 1.042, Intellectual Property and Shared Royalties](#), Delgado Community College recognizes the need for and desirability of encouraging the broad utilization of the results of academic research by bringing innovative findings to practical application. Accordingly, the College recognizes that research and scholarship should be encouraged without regard to potential gain from licensing fees, royalties, or other income. The College also acknowledges that intellectual properties and discoveries may arise from the activities of faculty, staff, and students in the course of the duties or through the use, by any person, of institutional resources including but not limited to facilities, equipment, or funds.

This policy and procedures memorandum governs the administration of such intellectual properties and is intended to provide adequate recognition and incentive to creators and, at the same time, ensure that Delgado will share in the rights pertaining to intellectual properties in which the College has invested equity. Delgado Community College is committed to assisting faculty, staff, and other researchers in properly disclosing their scholarly work, in complying with applicable laws and formal agreements, and in gaining the protection available under federal laws governing patents, copyrights, trademarks, and other appropriate provisions.

To the extent consistent with all federal and state intellectual property law, this policy and procedures memorandum provides guidelines and procedures for determining rights to ownership, compensation and use of proceeds, copyright issues, and addressing disputes regarding intellectual property. Specific procedures and responsibilities are outlined in detail in this memorandum.

PROCEDURES & SPECIFIC INFORMATION

1. **Purpose**

The primary purpose is to provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and its transfer for the public benefit, while the secondary purpose is to enhance the generation of revenue for the College and the creators.

2. **Scope and Applicability**

To the extent consistent with all federal and state intellectual property law, this policy and procedures memorandum applies to all persons/entities employed/contracted by Delgado Community College using institutional resources and/or facilities under the supervision of Delgado employees, and students.

3. **Definitions**

Delgado Community College adopts the following LCTCS definitions:

- A. **Intellectual Property** - Inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data, and other creative or artistic works that have value. Intellectual property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.
- B. **Traditional Academic Copyrightable Works** – A subset of copyrightable works created independently and at the creator’s initiative for traditional academic purposes. Examples include class notes; books, theses and dissertations; articles; non-fiction, fiction, and poems; musical works; dramatic works including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; or other works of artistic imagination that are not created as an institutional initiative.
- C. **Creator** - An individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. “Creator” shall include, but not be limited to, faculty, professional staff, administrative and support staff, and students. “Creator” shall also include the definition of “inventor” as used in the United States patent law and the definition of “author” as used in the United States Copyright Act.
- D. **Institutional Resources Usually and Customarily Provided** – Include such support as office space, library facilities, ordinary access to computers and networks, or salary and shall be described in this policy as either “incidental” or “significant.” The phrase does not include use of students or employees as support staff to develop the work, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the College unless approved as an exception.

- E. **Technical Works** – Include intellectual properties that are of a scientific, engineering, or technical nature such as patentable or unpatentable inventions (including biological materials), computer software, and institution collections.
- F. **Scholarly Works** – Include all intellectual properties not covered in Technical Works that are of an artistic, scholarly, instructional, or entertainment nature.
- G. **Computer Software** – Includes one or more computer programs existing in any form or any associated operational procedures, manuals, or other documentation, whether protectable or protected by patent or copyright.

4. **Objectives**

In accordance with [LCTCS Policy 1.042, Intellectual Property and Shared Royalties](#), Delgado Community College has five objectives regarding intellectual property:

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

5. **Rights to Ownership/Disclosures**

A. **Overview**

Delgado Community College has ownership of intellectual property created:

1. by an employee within the scope of his or her employment, *or*
2. by an employee who is hired or commissioned to create a specific work, *or*

3. when more than incidental use of institutional resources usually and customarily provided occurs, *or*
4. when the intellectual property results from research supported by federal funds or third-party sponsorship.

The College does not assert ownership of intellectual property unrelated to job responsibilities and where only incidental use of institutional resources usually and customarily provided has occurred. Nor does the College assert ownership of traditional academic copyrightable works. Delgado Community College has the right to recover costs and/or right to use the work. Joint ownership may occur under certain circumstances such as when scholarly works involve the services of other Delgado employees (e.g., development of multi-media courseware, etc.)

B. Principles

1. The College may assert ownership in intellectual property of all types (including, but not limited to, any invention, discovery, trade secret, technology, scientific or technological development, and computer software) regardless of whether the property is subject to protection under patent, trademark, copyright, or other laws, except as stipulated in the conditions in #2 below.
2. The College may assert their interest in intellectual property related to the creator's academic or professional field, regardless of the medium of expression. Delgado has ownership of all intellectual property created by persons under the conditions* stated below:
 - a. if intellectual property is created by an employee within the specific scope of employment; *or*
 - b. if intellectual property is created with the use of College facilities or resources usually and customarily provided; *or*
 - c. if intellectual property is commissioned by the College pursuant to a signed contract or agreement; *or*
 - d. if intellectual property is created by a person who was hired specifically or is required as part of his or her job responsibilities to produce it; *or*
 - e. if intellectual property fits within one of the nine categories of works considered "works for hire" under copyright law; *or*
 - f. if intellectual property results from research supported by federal funds or third-party sponsorship.

*Works related to an employee's job responsibilities, even if he or she is not specifically requested to create them, will belong to the institution as works-for-hire. A copyright work is related to an employee's job responsibilities if it is the kind of work an employee is employed to do and if the work is done, at least in part, for use at work or for use by fellow employees, the employer, or the employer's clients. Use of personal time or other facilities to create the work will not change its basic nature if the work is related to the creator's job as described above. Works that have nothing to do with job duties will remain the property of the creator, so long as he or she makes no more than the incidental use of institution facilities usually and customarily provided.

3. The College does not have ownership when the creator is a student, professional, faculty, or non-faculty researcher *and* the intellectual property is a traditional academic copyrightable work in the creator's field of experience.** Even though such a work may be within the scope of employment, it is the property of the creator unless it is a scholarly work (a) created by someone who was specifically hired or required to create it or (b) commissioned by the institution. In either of these cases, the institution, not the creator, will own the intellectual property.

**The use of the terms "professionals" and "researcher," together with faculty members and students, is intended to encompass all those individuals who routinely create scholarly works (e.g., educational, artistic, musical, literary, or architectural work). For example, if a library administrator writes a book about Louisiana History, his or her field of expertise, the institution should not assert ownership of the book.

4. In the case of traditional academic copyrightable work*** that involves significant institutional resource contributions, the College reserves the right to secure rights (including but not limited to joint ownership), for example, to use the work and to recover its investment, in a contract with the creator. If a project involves the use of significant institutional resources, the creator and the institution shall agree before the project begins on the use of facilities, allocation of rights to use the work, and recovery of expenses and/or sharing of benefits from commercialization of the work.

***The College's main concerns with traditional academic copyrightable works owned by professionals, faculty, non-faculty researchers, and students are not to allocate and recover resources that may be contributed to the creation of such works.

5. In addition to traditional academic copyrightable work created by professional, faculty, researcher, or student creators in their field of expertise, a creator shall own intellectual property under the following conditions:
- a. if it is unrelated to the creator's job responsibilities and the creator made no more than incidental use of institution resources usually and customarily provided; *or*

- b. if it is intellectual property that has been released to the creator in accordance with the requirements of this policy.
6. College facilities or resources are NOT to be used:
- a. to create, develop, or commercialize intellectual properties unrelated to an individual's employment responsibilities; *or*
 - b. to develop or commercialize intellectual properties further that have been released to a creator except when approved by the College and when the College retains an interest under the terms of the release.

6. **Organization/Management/Administration**

A. **Acknowledgement of College Impact and Authority**

Delgado recognizes that the evaluation of inventions and discoveries and the administration, development and processing of patents and licensable inventions involve substantial time and expense and require special talents and expertise. The Chancellor has ultimate authority for the stewardship of intellectual property developed at the College, which includes the determination of ownership, assignment, protection, licensing, maintenance of records, oversight of revenue or equity collection and distribution, and resolution of disputes among creators and/or responsible College department heads. The Chancellor designates responsibility for oversight of intellectual property to the Vice Chancellor for Academic Affairs, who in turn works with the appropriate units to ensure compliance with College and LCTCS policies.

B. **Disclosure**

All intellectual property in which the College has an ownership interest under the provisions of this policy and that has the potential to be brought into practical use for public benefit or for which disclosure is required by law will be reported promptly in writing by the creator to the College's Vice Chancellor for Academic Affairs through the appropriate department heads. The disclosure is to constitute a full and complete disclosure of the subject matter of the discovery or development and identify all persons participating therein. The creator is to furnish such additional information and execute such documents from time to time as may be reasonably requested. Annually, the creator shall report to the College the proceeds and/or units distributed for all copyrightable works and intellectual property.

C. Evaluation and Exploitation Decisions

After evaluation of the intellectual property and review of applicable contractual commitments, the College may develop the property through licensing, may release it to the sponsor of the research under which it was made (if contractually obligated to do so), may release it to the creator if permitted by law, or may take such other actions as are determined to be in the public interest. Exploitation by the College may or may not involve statutory protection of the intellectual property rights, such as filing for patent protection, registering the copyright, or securing plant variety certification.

D. Questions Related to College Ownership

In the event there is a question as to whether the institution has a valid ownership claim in intellectual property, such intellectual property should be disclosed in writing to the institution by the creator. Such disclosure is without prejudice to the creator's ownership claim. The institution will provide the creator with a written statement as to the institution's ownership interest.

E. Abandonment of Intellectual Property

Should the College decide to abandon development or protection of institution-owned intellectual property, ownership may be assigned to the creator as allowed by law subject to the rights of sponsors and to the retention of a license to practice for College purposes. The minimum terms of such license shall grant the institution the right to use the intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The College may retain more than the minimum license rights, and the assignment or license may be subject to additional terms and conditions, such as revenue sharing with the institution or reimbursement of the costs of statutory protection, when justified by the circumstances of development.

F. Commercialization by Creator

The College may, at its discretion and consistent with the public interest, license intellectual property to the creator on an exclusive or nonexclusive basis. The creator must demonstrate technical and business capability to commercialize the intellectual property. Agreements with creators will be subject to review and approval of conflict-of-interest issues in accordance with this policy.

G. **Decision-Making Timeline**

Within 120 days of receipt of a complete intellectual property disclosure, the College will inform the principal creator of its substantive decisions regarding protection, commercialization, and/or disposition of intellectual property that he or she has disclosed. The College shall be bound by any confidentiality agreement made with any external parties.

H. **Dispute Procedures**

The following constitutes the College's dispute resolution procedure:

1. If issues related to ownership of intellectual property arise at the College and cannot be resolved informally, all persons/entities as defined in *Section 2, Scope and Applicability*, may seek resolution through an ad hoc Intellectual Property Dispute Resolution Committee.
2. This committee will assist the Vice Chancellor for Academic Affairs with fact finding, dispute mediation, and recommendations, and will be composed of the following members:
 - Two (2) academic division deans appointed by the Vice Chancellor for Academic Affairs, designating one to serve as committee chair
 - One (1) Distance Learning and Instructional Technology representative appointed by the Dean of Distance learning and Instructional Technology
 - One (1) Library staff member appointed by the Dean of Library Services
 - One (1) Business and Administrative Affairs representative appointed by the Vice Chancellor for Business and Administrative Affairs
 - Five (5) faculty members selected by lot from the College's existing [Faculty Grievance Committee Pool](#). The Vice Chancellor for Academic Affairs or his/her designee, in the presence of all parties involved will select by lot five (5) members and two (2) alternates of the Faculty Grievance Committee Pool to serve on an Intellectual Property Dispute Resolution Committee for the specific dispute. After all names are selected by lot, each party involved, as applicable, may each challenge one member. Should challenges be issued, the challenged member will be excused and replaced with one of the alternates, drawn by lot.

3. If the dispute is not successfully resolved, the Committee will make a recommendation to the Vice Chancellor for Academic Affairs. Upon review of the recommendation and consultation with appropriate college units, the Vice Chancellor for Academic Affairs will notify all parties in writing regarding his or her decision within 10 business days of the committee's recommendation.
4. All parties may appeal the decision of the Vice Chancellor for Academic Affairs to the Chancellor within 5 business days of notification of the Vice Chancellor's decision. The Chancellor will notify all parties in writing regarding his or her decision within 10 business days of receipt of the written appeal. The decision of the Chancellor is final.

7. **Proceeds Distribution**

In the event that royalties are generated by intellectual property rights assigned or licensed to the College, an appropriate share of such royalties shall be paid to the creator. The College may recover its costs before the following conditions apply. The creator's share will be determined according to the following:

1. In cases where the College or the creator, as the case may be, assign such intellectual property rights to a research corporation under contract to the College or to the LCTCS, the share of royalties to be paid to the creator shall be governed by the terms of the contract between the College or LCTCS and the research corporation.
2. In cases where the intellectual property is covered by a contractual agreement with a sponsoring agency, the financial arrangements shall be in accordance with that contractual agreement as negotiated between the College and the contracting agency.
3. In cases of sponsorship by federal agencies, compliance with the appropriate federal regulations shall be effected in the ultimate agreement.
4. In cases where the College retains ownership of an intellectual property from a creator or creators, and/or expends funds to develop and market the intellectual property, any royalties generated will be used first to cover the expenses of filing, procuring, maintaining, and marketing the intellectual property. Forty percent of the net royalties will be paid to the creator, and sixty percent will be retained by the College from which the intellectual property originated.

5. Net royalties on intellectual property available to the College are to be used for research, development, and other scholarly activities and allocated one hundred percent to the College where the intellectual property originated.
6. In instances where the College chooses not to retain ownership of the intellectual property, the creator shall obtain permission from the Chancellor, or his or her designee, before associating the institution's name, logo, etc., with the intellectual property.
7. The LCTCS Board of Supervisors may approve exceptions to the established royalty distribution in extraordinary circumstances.

Reference:

Louisiana Community and Technical College System [Policy 1.042, Intellectual Property and Shared Royalties](#)

Louisiana Community and Technical College System [Policy 3.002, Faculty Rights and Responsibilities Participating in Electronically-Supported Instruction](#)
[Delgado Community College Copyright Compliance Policy](#)

Review Process:

Instructional Technology Committee 8/27/15

Distance Learning and Instructional Technology Council 8/27/15

Academic Affairs Council 9/3/15

College Council 9/15/15

Distribution:

Electronic Distribution Via the College's Website