

Intellectual Property Policy
Abilene Christian University
Revised November, 2003

1.0 Introduction

1.1 Abilene Christian University (ACU) recognizes and encourages development of new and useful devices and processes, publication of scholarly works, and development of computer software as an integral part of the processes of learning, service, and research. ACU acknowledges that faculty, staff and students regularly prepare, usually through individual effort and initiative, articles, pamphlets, courseware and software (including mediated courseware and software for instructional technology in the classroom), and other scholarly and technological works (hereby termed "intellectual property") that may be subject to the provisions of copyright law and may generate royalty income for the authors, inventors, or creators. Publication, manufacture, or production may also result from work supported either partially or completely by the institution. Given the increasing number and variety of works created at ACU, the ownership of and rights to the intellectual property has presented an exigent situation.

2.0 Purpose Statement

2.1 The purpose of the **Intellectual Property Policy** (hereby the name of this document) is to define the ownership and rights of the "creators" or the "originators" (including full-time and part-time faculty, staff and students) and "the University" ("the University" being Abilene Christian University) and to provide policies and an administrative body to govern those policies.

2.2 This **Intellectual Property Policy** seeks to foster the creation and dissemination of knowledge while defining individual and institutional rights and the distribution and sharing of revenues and other benefits that result from the creation and commercialization of intellectual property.

3.0 Terms and Definitions:

3.1 **Intellectual property** can be either an invention or an expressed idea that can be bought, sold, bailed or licensed. This "property" can be protected by patents, copyrights, trade secrets and trademarks. These protections are used to prevent others from the unauthorized manufacture, copying, use or sale of the property in tangible form. Inventions are novel and unobvious and can be protected by patents when practiced. Expressed ideas consist of literature, music, art, software, etc. When these ideas are expressed in a tangible medium, they can be protected by copyright.

3.2 A **copyright** is granted by the United States government to the author or creator of the "original works of authorship." A copyright is used largely for the "creative arts," text and software. Copyrights are granted for the term of the life of the author and an additional 50 years. Once assigned, a copyright enables a work to be the sole property of the author. The copyright allows either the author or persons deriving rights for the author, to rightfully withhold others from copying or otherwise using the work without permission. A copyright is automatically secured when the work is created or "fixed" in a tangible medium. No

publication or registration or other action in the Copyright Office is required to secure copyright registration; however, it is required that a copyright be registered before a lawsuit is brought.

3.3 The proper **copyright notice** consists of three things: 1) The letter “c” in a circle © (called the “copyright symbol”) or the word “copyright”, or the abbreviation “Copr.,” 2) The year of the first publication; and 3) The name of the copyright owner. An example of the proper copyright notice is:

Copyright © 1999 Abilene Christian University

3.4 **Copyrightable materials** include but are not limited to literary works such as books, journal articles, tests, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; lectures, musical or dramatic compositions, unpublished scripts, computer programs, CD-ROMs, maps, blueprints, textual materials, pictures, graphics, sculptures, art works, motion pictures, videos, films, filmstrips, charts, transparencies, and other visual aids, live video and audio broadcasts, programmed instructional material; research notes, research data reports, and research notebooks and other works produced in the university environment.

3.5 **Fair use** is a use of copyrighted material which is permitted by law even though no express authorization is granted by the copyright owner as long as the use is for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. Demonstration of such a purpose is not, by itself, sufficient to sustain a claim that the use is “fair.” Fair use determinations are made on the basis of the following four statutory factors: “1) the purpose and character of the use; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for the value of the copyrighted work.” (See Section 107, U.S. Copyright Act, 1976).

4.0 Policy Statements:

4.1 Policy on establishing **The University Committee on Intellectual Property** (UCIP): The University Committee on Intellectual Property will be established and will be responsible for making policy recommendations to the Provost for dealing with copyrights and related mechanisms for the protection/exploitation of intellectual properties.

4.1.1 The UCIP will consist of three members: the Assistant Provost for Research, the University Counsel, and a third member designated each year by the Assistant Provost for Research and chosen from the University Research Council. The Assistant Provost for Research will also choose on a case-by-case basis a fourth person who has knowledge about an area in question to serve as an ad hoc member.

4.2 Policy on **authority and responsibility** of UCIP: The committee shall have the following authority and responsibility with respect to intellectual property:

4.2.1 To develop and recommend University policy to the Provost dealing with intellectual property, including the revision of this document.

4.2.2 To hear and make recommendations to the Provost on disputed ownership of copyrightable materials.

4.2.3 To hear and make recommendations on disputed equities of the University, the creators and other parties associated with the intellectual property concerned.

4.2.4 To make recommendations to the Provost for the sharing of royalties between the University and the creator of the intellectual property in which the University has a proprietary interest.

4.2.5 To promulgate such guidelines and procedures as may be necessary for the implementation of this policy, subject to review and approval of the Provost.

4.2.6 To review all disclosures of copyrightable materials. Such review, when possible, should occur prior to submission of such information to any other party. Exceptions to this practice must be approved by the chairperson of the committee and by the author of the copyrightable materials.

4.2.7 To review as appropriate, agreements on copyright matters that may be entered into as a prerequisite to University participation in a sponsored project or receipt of a grant or contract.

4.2.8 To establish deadlines for the disposition of copyrightable materials.

4.2.9 If a decision is made by the University not to pursue an interest in created materials, to advise the appropriate administrators on the assignment of the University's rights to copyrightable materials.

4.3 Policy of **applicability**: This Intellectual Property Policy applies to all full-time and part-time employees of the University. Students attending the University are covered by this policy under two circumstances: 1) when they are in an employment relationship that involves the creation of intellectual property and 2) when they are assisting in a project managed by faculty or staff of the University.

4.3.1 Otherwise, student works created in fulfillment of academic requirements belong to the student. However, by enrolling in the institution, the student gives the institution a nonexclusive royalty-free license to mark, modify or retain the work as required by the institutional process. Institutional policies or course syllabi should identify how intellectual property created by students will be treated. The institution shall not have the right to use the work in any other manner without the student's consent.

4.4 Policy on "**nominal use**": nominal use of University resources shall mean use that is customary or usual given the employee's appointment and academic assignments. For example, the use of office, computer, photocopier, telephone, office supplies, secretarial assistance, and other assigned resources in the ordinary support of his or her responsibilities and assigned activities is considered to be nominal. University personnel may make such nominal use of University resources and devote office time in carrying out a range of professional activities. Furthermore, the University recognizes that ownership of any intellectual property resulting from such activities rests with the developer(s) along with the rights to any income generated, as long as university resources are used in this nominal (or customary) fashion, and the time involvement of the developer(s) of the

intellectual property in questions does not compromise the individual's (s') core responsibilities in teaching, research, and service.

4.5 Policy on “**substantial use**”: Substantial use of University resources shall mean use of university facilities, equipment, personnel and an employee's own time beyond nominal (or customary) as described above. Substantial use of resources occurs when creation of the work or intellectual property in question requires use of University resources beyond those allocated to individuals in support of assigned responsibilities and activities within their respective departments or colleges. Such usage may occur as a result of actions of the personnel involved, may occur when specific assignments are given to personnel, or may occur in situations where contracts or other obligations are involved. The University will retain title to all intellectual property that involves substantial use of University resources. However, the university grants authors permission to assign copyright for purposes of publishing scholarly materials, such as journal articles and chapters in books.

4.5.1 The following examples generally define substantial use when they are applied, singly or in combination, in support of a revenue-producing work. It is the responsibility of the dean, director, or equivalent supervisor to evaluate situations and determine whether or not substantial use of resources has occurred. Faculty members or other employees also have an obligation to promptly notify their supervisors when they believe their work will involve more than nominal use. Furthermore, such notification must be accomplished before the execution of an assignment of rights with the University Committee on Intellectual Property. The following are examples of substantial use:

4.5.2 Extended use of time and energy by the developer(s) in creation or promotion of a work which results in a reduction in the levels of teaching, scholarship, or other assigned university activities, and the developer's (s') anticipated instructional load in these areas is at a level significantly lower than normal;

4.5.3 Greater than customary or nominal use of University facilities such as laboratories, studios, equipment, production facilities, or specialized computing resources in direct support of development of the work in questions;

4.5.4 Extraordinary University funding in support of the work's creation, publication, manufacture or production;

4.5.5 Direct assignment or commission from the University to undertake a creative project as a part of the developer's regular appointment;

4.5.6 Substantial use of funding from gifts to the University to support creation of the work(s) involved;

4.5.7 Production of the works under specific terms of a sponsored research grant or contract;

4.5.8 Use of specifically designated University funds to support media production. Such use and support will require negotiation and agreement by the developer(s) and his/her (their) respective supervisors as to the ultimate management and financial considerations concerning the resulting work as intellectual property. Whenever possible, such use and

support will be identified in advance of or during the project, by the developer(s) and his/her (their) respective supervisors.

4.6 Policy on “**work-for-hire**” or “**made-for-hire**”: Except as herein provided, the University shall obtain the entire right, title, and interest in and to any work or intellectual property made by any faculty or staff member of the University: (a) with a substantial contribution by the University of facilities, equipment, materials, funds, or information, or of time or services of other University employees during working hours, or (b) which is made in consequence of the official assigned duties of the creator or originator.

4.6.1 For the purpose of this policy, it shall be deemed that a work or intellectual property has been “made-for-hire” if the employee is employed or assigned to: (a) invent, improve, or perfect any art, machine, design, manufacture, or composition of matter, (b) conduct or perform research, development work, or both, (c) supervise, direct, coordinate, or review University financed or conducted research or development work, or both, or (d) act in a liaison capacity with agencies or individuals engaged in such research or development. This assignment, however, does not preclude the sharing of royalties or other payments with the employee in accordance with this policy.

4.6.2 The University claims no interest in the work or intellectual property if University facilities, services, funds, or time have not been used. An example would be works or intellectual properties resulting from pursuance of a hobby, not related to the employee’s University activities, and conducted off-campus.

4.6.3 Copyrights – In order to encourage creative efforts by the faculty and staff, the University will exercise its rights as an employer under the concept of “work-made-for-hire” only when: (1) the materials subject to copyright represent an assigned duty of a member of the faculty or staff of the University, and/or (2) substantial use of University facilities and resources is made in the production of the materials.

4.6.4 In any case, where the contribution of the University, as measured by the foregoing criteria, is de minimis and is insufficient to equitably justify the requirement of assignment to the University of the entire right, title, and interest, the University shall reserve an exclusive, irrevocable, royalty-free license in the copyrightable work with those in power to grant licenses for all University purposes.

4.7 Policy on **Exception**: In the event that an originator or creator of some work or intellectual property desires to take exception to the policies on nominal use, substantial use and/or work-for-hire (policies 4.3, 4.4 and 4.5) that originator or creator may do so based on the following criteria and process.

4.7.1 The originator or creator has to present in advance a strong and persuasive rationale based on extraordinary considerations in writing to the University Committee on Intellectual Property prior to assuming ownership of the copyright on the work or intellectual property.

4.7.2 The approval of such request will require an official consent of the UCIP.

4.7.3 In exceptional cases, the creator or originator would be obligated to provide remuneration to the University for expenses incurred through the use of University facilities

during the development of the work or intellectual property. The remuneration will be paid back in terms to be agreed upon by the creator or originator and the UCIP.

4.8 Policy on **Revenue Sharing**: Where the University has an equity position in an intellectual property, the creator and the University will share equally in any income received by or on behalf of the University from royalties, front-end payments, or incentives, after any expenses incurred by or on behalf of the University to protect, market, or develop the intellectual property have been repaid to the University. In this context, the “University” shall be understood to include all those units (e.g., departments, centers, etc.) which have contributed materially towards development of the intellectual property. The University’s share of royalties or other income shall be divided commensurate with involvement of the University units during development. In usual practice, division of the University’s share shall follow recommendations of the UCIP and shall typically include an assignment to the employee’s primary unit (e.g., departments, centers, etc.) equal to at least 10 percent of the total income as defined above. The remaining portion of the University’s share shall be used to maintain an environment supportive of employee activities in development of intellectual properties.

4.9 Policy on **Use by Non-owners**

4.9.1 Where the University is the owner of intellectual property created by an originator, the University agrees to grant the originator a non-exclusive and irrevocable license in relation to the intellectual property.

4.9.2 Where an originator is the owner of intellectual property created in the course of employment with the University, the originator agrees to grant the University a non-exclusive and irrevocable license in relation to the intellectual property.

4.9.3 Where the intellectual property arises from the work which has been specifically commissioned by the University, or which has been produced for teaching or administrative purposes, the University’s license includes the right to adapt the subject matter of the intellectual property.

4.9.4 Where a license has been granted the license must not: (a) commercially exploit the intellectual property, or assign the license, or grant a sub-license, without the consent of the University, such consent not to be unreasonably withheld; or (b) do anything which would jeopardize the protection or enforcement of the owner’s intellectual property rights.

4.10 Policy on **Reporting or Disclosure**: All materials in which the University may have a proprietary interest under any provision of this policy shall be promptly reported in writing by the University personnel concerned, through their department heads, to the UCIP. The purpose of this disclosure is to determine whether, and to what extent, the University has a proprietary interest in the materials. This report shall include a full and complete disclosure of the subject matter of the materials concerned and identity of all persons participating in the development.

4.11 Policy on **Ownership of Intellectual Property**: The Copyright Act (P.L. 94-553) provides that, when a copyrightable work is produced by one person who has been employed by another for that purpose, it is the employer and not the actual creator or originator that is the copyright proprietor. In the academic setting, complex issues can

arise as to whether the faculty or staff person produced the copyrightable work in the course of his or her employment. Generally, the courts have placed a heavy burden of proof on the employee to establish the copyright was not a product of his or her employment.

4.12 Policy on **Dispute Resolution**: Should any issues develop as to the ownership of the intellectual property involved, the UCIP shall make a finding as to ownership and shall report for final resolution such findings to the Office of the Provost. The parties involved shall be entitled to appear before the Committee and to present evidence with respect to the disputed ownership. The Committee's determination shall be made in writing and shall contain a statement of the basis for its decision.

4.12.1 The Provost, on his/her own motion or at the request of any interested party, may review any determination of the Committee. The Provost may affirm, modify, or reject any determination of the Committee.

4.13 Policy on the **Right of Appeals**: The creator or originator of an intellectual property covered by this policy shall have the right to appeal application of the policy regarding ownership, equity, classification, sharing of royalties, disposition, management, or exploitation of a copyright, or any procedure relating thereto, to the UCIP.