

30-2 Intellectual Property

30-2-1 Purpose • 30-2-2 Policy • 30-2-3 Administration • 30-2-4 Implementation and Dissemination

1. **Purpose.** The staff, students and faculty of the Eastern New Mexico University System (the System), contribute to the advancement of knowledge through basic research, enter into professional and public service and engage in creative productivity. This policy is intended to support faculty, staff, administrators and students in identifying and protecting intellectual property and stipulates the relative rights and responsibilities of the parties. The policy further delineates when income, if any, generated from Intellectual Property should be distributed to the creators, and/or developers, and/or to the University.
2. **Policy.** The policy authorizes and adopts herein the document “2019 Eastern New Mexico University System Intellectual Property” as defining the rights and responsibilities of staff, faculty, students and administrators in matters of intellectual property ownership, shared ownership, and royalty income, and establishes support resources to provide the required assistance to protect or attempt commercial exploitation of intellectual property.

Procedures

3. **Administration.** This policy is administered by the ENMU System Intellectual Property Committee. The ENMU System Intellectual Property Committee (the Committee), chaired by the Portales vice president for Academic Affairs (VPAA), shall make recommendations to the President of the ENMU System and Board of Trustees regarding general or specific implementation of the intellectual property policies. The Portales VPAA has oversight responsibilities for the Intellectual Property area.
4. **Implementation and Dissemination.** The VPAA shall chair the ENMU System Intellectual Property Committee. The committee shall determine matters of intellectual property ownership, royalty income, property rights for online and alternative delivery course materials and content, and other issues regarding the general management of intellectual property. The committee shall be responsible for implementation of the ENMU System Intellectual Property Policy, and may implement directives through the committee chair. The System will make available to all students, employees, faculty and others who have access to University instructional or research resources the “Eastern New Mexico University System Intellectual Property” document via online posting and other dissemination practices.

Approved January 1994.

Revision approved by Board of Regents on December 12, 2008.

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2019 EASTERN NEW MEXICO UNIVERSITY SYSTEM INTELLECTUAL PROPERTY POLICY

PREAMBLE

This policy is intended to support faculty, staff, administrators and students in identifying and protecting Intellectual Property. It also defines the rights and responsibilities of all involved, and administers Intellectual Property matters and establishes support resources to provide the required assistance. This policy also stipulates how much income generated from Intellectual Property should be distributed to the creators, or developers, and the University.

Eastern New Mexico University recognizes that patentable inventions and discoveries may arise from faculty, staff, administrators and student research and effort. The policies governing the handling of such inventions should provide adequate recognition and incentive to inventors and at the same time ensure that the University will share in the rights. Incomes accruing to the University shall be used in the furtherance of the University's academic mission, e.g., instruction, research, and public service. Decisions as to the disbursement of such funds shall take into account recommendations by the ENMU System Intellectual Property Committee.

OBJECTIVES

Intellectual Property, including but not limited to; inventions, processes, copyrightable and patentable works, trademarks and other creative products of scholarship and production that have the potential to benefit the public through practical application and that may result from the activities of University employees in the course of their employment or through the use, by University students or by any person, of University resources. The purpose of this policy is to provide the necessary incentives and protections to encourage the discovery and development of new knowledge, and its application and transfer for the public benefit. In so doing, the University is guided by the following goals:

1. To optimize the environment and incentives for research and scholarship, and for the creation of new knowledge at the University;
2. To enhance and protect the discovery, learning and engagement missions of the University;
3. To recognize and protect the interest of the public, individual creators of novel concepts, inventions and materials, the University and of sponsors of research and scholarship;
4. To bring the fruits of scholarship and productivity into practical use for the benefit of society as quickly and effectively as possible;
5. To protect the traditional freedom of its faculty and staff to publish pedagogical, scholarly and/or artistic works;
6. For the University to meet the objectives of academic science and to disseminate the knowledge resulting from research, from professional and public service and from the creative productivity of those affiliated with the University;
7. For the University to increase its links to the world of commerce and industry;

8. For the University to provide revenue for further research, and to protect itself, Intellectual Property Creators and the resources of the state, which are invested in the University;
9. To assure that any funds received and retained by the University as a result of commercial development of Intellectual Property shall be used for the advancement and extension of technical and scientific investigation, research and experimentations, public service and instruction; and
10. To ensure that Intellectual Property conceived by more than one (1) Creator shall be managed by the University on the same basis as that conceived by a single Creator.

INTELLECTUAL PROPERTY DEFINITIONS

Applicable Intellectual Property: Any Intellectual Property developed for the University with University funds. Note: Traditional Academic Copyrightable Works and Non-Traditional Academic Copyrightable Works are the property of the Creator and are excluded.

Author-Copyrightable Works (as defined in Title 17 USC section 102): Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- a. literary works;
- b. musical works, including any accompanying words;
- c. dramatic works, including any accompanying music;
- d. pantomimes and choreographic works;
- e. pictorial, graphic, and sculptural works;
- f. motion pictures and other audiovisual works;
- g. sound recordings; and
- h. architectural works.

Computer Software: Shall include 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.

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 U.S. patent laws and the definition of “author” as used in the U.S. Copyright Act.

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 and animal variety protection certificates. It also includes physical embodiments of intellectual effort; for example, models, machines, devices, apparatus, instrumentation, circuits, Computer Software and visualizations, biological materials and inventions, chemicals, other compositions of matter, plants, and records of

research.

Inventor: One who creates Inventions Patentable.

Inventions Patentable (as defined in Title 35 USC section 101): Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Net Income: Funds raised from the commercialization of applicable Intellectual Property that remain after the University and the Creator(s) have been reimbursed for resources expended in the creation, procuring, maintaining, and marketing of the Intellectual Property.

Non-Traditional Academic Copyrightable Works: A subset of copyrightable works created independently at the Creator's initiative for non-academic purposes and not created using University funds.

Ownership (Copyright) (as defined in Title 17 USC section 201):

1. Initial Ownership - Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.
2. Works Made for Hire - In the case of a work made for hire, the employer or another person for whom the work has been prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.
3. Contributions to Collective Works - Copyright in each separate contribution to a collective work is distinct from copyright in the collective work as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of the copyright in the collective work is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in the same series.

Patent: Includes, but may not be limited to, any of the available types of patents broadly referred to as utility patents, which refer to tangible inventions; design patents, which refer to ornamental or aesthetic creations used as such; and plant patents, which include reproducible plants.

Scholarly Works: Shall include all intellectual properties not covered in Technical Works that are of an artistic, scholarly, instructional, or entertainment nature.

Technical Works: Shall 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.

Technology Transfer: The dissemination of Intellectual Property through commercialization or other means.

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.

University: Unless otherwise indicated, “University” or “the University” refers to the “Eastern New Mexico University System” with campuses in Portales, Roswell, and Ruidoso.

Works Made for Hire (as defined in Title 17 USC section 101): A “work made for hire” is;

1. a work prepared by an employee within the scope of his or her employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

All quotations of and references to Federal Laws and/or Statutes shall refer to the latest amended version of the Statute or Law in effect at the time.

INTELLECTUAL PROPERTY OWNERSHIP

1. Eastern New Mexico University shall assert ownership of Intellectual Property:
 - a. When an employee or student is creating exclusively for the University in an official association with the University;
 - b. When an employee is hired or commissioned to create a specific work.
2. Eastern New Mexico University may assert shared ownership of Intellectual Property:
 - a. When the Intellectual Property results from activities supported by federal funds or third-party sponsorship; and/or
 - b. When the Intellectual Property results from activities involving the use of University funds or information not available to the public as administered by the University; and/or
 - c. When joint ownership occurs under certain circumstances such as when Scholarly Works involve the services of other institutional employees; and/or
 - d. When laboratory equipment and laboratory supplies or university funds are employed.

3. Eastern New Mexico University shall not assert ownership of Intellectual Property:
 - a. When Intellectual Property is a work under copyright,
 - b. When Intellectual Property is conceived, developed, and reduced to practice by a faculty member, student or University personnel on his/her own time outside the scope of his/her employment or association with the University and without using University funds; or
 - c. When the Intellectual Property is a creation of Traditional Academic Copyrightable Works in the Creator's field of expertise.
4. The ENMU System Intellectual Property Committee shall consider special cases, as determined by the University, not covered by the above statements or special cases which arise because of conflicts of interest, and an appropriate recommendation will be submitted to the University System Chancellor.
5. The provisions of this policy are subject to any applicable laws, regulations, or specific provisions of the grants or contracts that govern the rights in Intellectual Property created in connection with sponsored research. These policies and the ENMU System Intellectual Property Committee is charged with making recommendations and policies subject to the University Chancellor and Board of Regents.
6. In all cases where the University chooses not to assert ownership interests in Intellectual Property, those interests shall remain vested with the Creator.
7. All Students, Employees and the University are subject to the provisions of this Intellectual Property policy. Students, Employees, and the University will execute all documents necessary to effectuate the Intellectual Property rights as described in and are consistent with the provisions of this policy.

ROYALTY INCOME

In cases where the University exerts ownership, the distribution of monetary proceeds from applicable Intellectual Property shall be under the authority of the University Chancellor. In the absence of clearly articulated exigent circumstances, the cumulative distribution shall be as follows:

For all Net Income under \$5,000

- the Creator shall receive 100%

For all Net Income over \$5,000 to \$20,000

- the Creator shall receive 75%
- the University shall receive 10%
- the College and/or Unit shall receive 7.5%
- the Department and/or Program (or college, if no departments and/or programs) where the work was accomplished shall receive 7.5%

For all Net Income over \$20,000

- the Creator shall receive 50%
- the University shall receive 20%

- the College and/or Unit shall receive 15%
- the Department and/or Program (or college, if no departments and/or programs) where the work was accomplished shall receive 15%

If there is disagreement on the negotiated division of Net Income between the University and the Creator, either party may refer the matter to the ENMU System Intellectual Property Committee for consideration and recommendation. The ENMU System Intellectual Property Committee, with the VPAA of the Portales campus as chair, shall make a final recommendation on the matter to the University System Chancellor and Board of Regents.

Nothing in this policy will require the University to commercialize or otherwise develop or monetize any specific Intellectual Property. If the University elects not to commercialize, or otherwise develop or monetize any specific Intellectual Property within a reasonable time, than the rights shall revert to the student or employee.

ONLINE AND ALTERNATIVE DELIVERY COURSES

Philosophy Statement

Online and Alternative Delivery Courses are easily copied and can be used for purposes beyond traditional instruction. As a result, ownership rights, revenue sharing, and course commercialization are important issues to address. The fundamental tenets of academic freedom compel Eastern New Mexico University to search for mutually beneficial ways to protect the interests of all parties involved in the creation and delivery of Online and Alternative Delivery Courses. Depending on the circumstances surrounding the development of an online course, ownership may reside with the University, the employee, or both. So as to encourage the continued development of alternative delivery systems and to provide for the needs of students, it is incumbent upon Eastern New Mexico University to set forth policies that clearly state the rights, responsibilities and obligations of all parties involved in the delivery of Online and Alternative Delivery Courses.

Definitions and Distinctions

1. Online and Alternative Delivery Courses

Online and Alternative Delivery Courses include any class that is not taught in an exclusive face-to-face environment. Online and Alternative Delivery Courses may include, but are not limited to; hybrid, Mediasite, Collaborate, and the use of other technologies that expand the historical face-to-face environment.

2. Customary and Extraordinary

Customary conditions apply to situations in which faculty are provided normal support, such as standard office and laboratory space, musical instruments, laboratory equipment, usual and customary tools and implements, library facilities, ordinary access to computers and networks, and/or salary from the university. **Extraordinary** conditions apply to situations in which substantial use, above and beyond customary use of specialized or unique staff, facilities and equipment or other special subventions or additional compensation is provided by the University to the faculty to create online courses. Use of equipment not generally available to the public may be considered extraordinary conditions. Under certain extraordinary conditions, faculty may enter into contracts with the University regarding the status of Intellectual Property created.

3. **Intellectual Content and Commercialization**

Intellectual Content refers to material contained within a course; namely, syllabi, lecture notes, bibliographies, readings, examinations, and other elements created by faculty.

Commercialization covers activities such as marketing, distribution, dissemination, licensing, and institutional management, among other services that may be provided by the University, or any entity the University may enter into an agreement that provides commercialization and other related services to the University.

4. **Development**

Development refers to creation of online syllabi, lecture notes, bibliographies, readings, examinations, and other elements in advance of instruction. The individual (or individuals jointly) engaged in these activities will be called Developer.

5. **Copyright Ownership and Transfer of Copyright**

Under Extraordinary conditions, in which the Developer creates an Online and/or Alternative Delivery Course, Developer assumes Copyright Ownership and may Transfer Copyright to the University for Commercialization.

Concepts

1. **Portability**

- a. Online and Alternative Delivery Courses developed at the University, created under Extraordinary conditions, may not be offered at other institutions without the University's prior approval.
- b. Faculty members are free to use their Customary Online and Alternative Delivery Course materials at other institutions without the University's prior approval.
- c. The University may negotiate licensing fees with other institutions when a former faculty member uses Online and Alternative Delivery Course material developed under Extraordinary conditions at Eastern New Mexico University.

2. **Unbundling Intellectual Property Rights**

a. **Right of First Refusal for Developer**

In the event the University wishes to offer a course developed by a full-time or part-time faculty member, it is required that Developer be given the "right of first refusal" to teach the course.

b. **Licensing Rights for the University and Developer**

When the University licenses Online and Alternative Delivery Courses to third parties, such as other educational institutions, publishers, distributors, information providers, scholarly societies, corporations, and commercial and nonprofit entities; Developer and the University may share the proceeds.

c. **Scholarly Rights for the Developer**

Developers are given the right, without requesting permission from the University, to use Intellectual Content from their Online and Alternative Delivery Courses, even those created under Extraordinary conditions, in scholarly contributions to books, articles, conventional courses, seminars, lectures, and similar scholarly activities in print and in person. The same applies to Intellectual Content from online material prepared as supplementary to conventional courses.

d. **Commercial Rights for the University**

The University has shared rights and may use any materials that have been recorded on Mediasite. This right shall exist for a maximum of five semesters, excluding summers, after the Developer of the course materials has ceased to be employed by the University. Further extensions may be negotiated.

The University has the right to commercialize and license Online and Alternative Delivery Courses created. In the event the University fails to commercialize or license such courses within five semesters, excluding summers, such rights shall revert to the Developer.

e. Digital and Other Electronic Rights for the University

The rights to derivative digital and electronic works, such as television, film, video, CD-Rom, DVD, Blu-Ray, computer disc, audio, and other recordings derived from entirely Online and Alternative Delivery Courses, created under Extraordinary conditions, rest with the Developer and the University. In the event the University fails to exploit such rights in a mutually agreeable and /or commercially reasonable timeframe, such rights revert to the Developer. The Intellectual Property Rights Committee should communicate the University's intentions in a reasonable timeframe.

The University has shared rights and may use any derivative digital and electronic works derived from any Online and Alternative Delivery Courses created under these provisions. These rights shall exist for a maximum of five semesters, excluding summers, after the Developer of the course materials has ceased to be employed by the University. Further extensions may be negotiated.

MANAGEMENT OF INTELLECTUAL PROPERTY

The ENMU System Intellectual Property Committee, subject to the authority of the University Chancellor and the Board of Regents, shall have authority for matters arising concerning Intellectual Property issues at the University.

1. ENMU System Intellectual Property Committee Membership and Selection

- a. The ENMU System Intellectual Property Committee shall consist of nine voting members. The Vice President of Academic Affairs (VPAA) of the Portales Campus shall serve as chair of the committee. The Chancellor or his designee shall appoint one additional administrator (department head or above), or a professional staff employee. The Portales Campus Eastern New Mexico University Faculty Senate shall appoint four faculty members. The Portales Campus ENMU Student Senate shall appoint one student representative. The ENMU Roswell Campus President shall appoint one committee member. The ENMU Ruidoso Campus President shall appoint one committee member.
- b. Committee Members, except students, shall serve for three (3) years in staggered terms. Students shall be appointed for a one-year term.

2. Acknowledgment of Institutional Authority

The ENMU System Intellectual Property Committee as chaired by the Portales Campus Vice President of Academic Affairs (VPAA) of Eastern New Mexico University, subject to the authority of the University Chancellor and the Board of Regents, makes recommendations for the stewardship of Intellectual Property appropriate to the University's role, scope, and mission.

3. ENMU System Intellectual Property Committee Responsibilities

The ENMU System Intellectual Property Committee shall have the following responsibilities:

- a. Devise institutional Intellectual Property policies (subject to approval by the Board of Regents);
- b. Advise the Chancellor, administration and faculty on the implementation of Intellectual Property policies;
- c. Serve as an advocate to the University's administration, faculty, students, staff and other personnel;
- d. When there are questions or concerns, the ENMU System IP Committee shall recommend to the administration and faculty the equitable distribution of income from the development and marketing of Intellectual Property rights in which the University has a vested interest subject to the University Chancellor and Board of Regents;
- e. Advocate for policies and information promoting the development and promotion of the University's Intellectual Property interests;
- f. Make recommendations as to issues related to applicability of this policy.
- g. ENMU System Intellectual Property Committee Procedures
 - (1) All decisions shall be made by a majority vote of the members present, provided that a quorum of six or more is present. The ENMU System Intellectual Property Committee may promulgate additional rules for efficient committee operations.
 - (2) The ENMU System Intellectual Property Committee members shall maintain confidentiality of the specific issues brought before it.
 - (3) The Portales Campus VPAA shall chair the ENMU System Intellectual Property Committee.
 - (4) The ENMU System Intellectual Property Committee shall attach the following disclaimer to all policy recommendations that it makes:
"The above recommendation by the ENMU System Intellectual Property Committee represents our recommendation based on the information available at the time the decision was made. Any changes in the information provided to the committee, regardless of the recommendation, should be reported to the ENMU System Intellectual Property Committee."
- h. Implementation and Dissemination
 - (1) All employees shall receive a copy of these policies upon entering employment and shall acknowledge receipt of these policies,
 - (2) Students and non-employees shall receive a copy of these policies upon being granted the access to University instructional resources, facilities, equipment or other assets and shall acknowledge receipt of these policies
 - (3) Students, Employees and the University hereby assign all Intellectual Property Rights as described in and are consistent with the provisions of this policy.
 - (4) All agreements and other documents relating to these policies shall be kept on record in the Portales Office of the VPAA.
 - (5) In the case of the University's primary interest, the Portales Campus VPAA, in consultation with the ENMU System Intellectual Property Committee, may submit the Intellectual Property to an agent for his or her consideration of patents, copyrights or similar Intellectual Property protection, which may be contractually acquired. If the agent the University employs declines to undertake commercial exploitation of the Intellectual Property and to protect the Intellectual Property appropriately, the University may take the following actions:
 - i. Submit the Intellectual Property to another agent or agents;
 - ii. Release the rights in the Intellectual Property to the creator; or
 - iii. Release the title of the property, if required by an agreement with a third party, to that party.

In all events, the University shall not delay its actions unduly, as any delays could negatively affect the value of the Intellectual Property.

- (6) The University, Employees, and/or Students may negotiate and agree to modifications to this policy provided these modifications are agreed to in writing, and signed by the parties and signed by the Portales Vice President of Academic Affairs as Chair of the ENMU System Intellectual Property Committee.
- (7) The Portales Campus VPAA, in consultation with the ENMU System Intellectual Property Committee, may negotiate with the Creator and/or third parties in order to obtain the maximum ownership interest in the Intellectual Property for the University, and none of the provision of these policies shall be construed in a way to limit the terms of any agreement reached with a third party.
- (8) The ENMU System Intellectual Property Committee shall make its recommendation generally within four (4) calendar weeks of the time the matter is referred to the committee.
- (9) Creators shall be free to agree on any division of income between or among themselves. Advance arrangements between Creators shall be honored by the University.
- (10) Agreement with Agent: Any agreement the University enters into with an agent shall be reduced to writing, after consultation with the ENMU System Intellectual Property Committee, and shall not come into effect until the written document is signed by the Portales Campus VPAA, the Chancellor, and the Board of Regents. Any such agreement shall include, but shall not be limited to:
 - i. A commitment, on the part of the agent, to use his or her best efforts to ensure prompt protection for commercial development of the Intellectual Property and
 - ii. A reservation to the University of a royalty-free license to use the Intellectual Property for non-commercial purposes.
- (11) The ENMU System Intellectual Property Committee shall be responsible for determining when the University has a primary interest and the respective interests of any third party.