

MAINE COMMUNITY COLLEGE SYSTEM

GENERAL ADMINISTRATION

Section 206

SUBJECT: CREATING PATENTS AND COPYRIGHTS

PURPOSE: To govern the creation of patents and copyrights in and by the Maine Community College System

A. Introduction

The Maine Community College System is a public institution devoted to teaching, research, service and other scholarly activities. Its faculty, staff, and employed students carry on research and other activities supported by the System from its own resources or by contracts or grants with outside sponsors. This policy defines and establishes the respective rights, equities and obligations of the System and its scholars and employees to any copyrightable or patentable materials, inventions or discoveries (hereinafter referred to as "intellectual property") resulting from their work.

B. Objectives

The objectives of this policy are to:

1. Increase the incentive for creative intellectual effort by those in the System;
2. Establish principles for determining the rights of the System, scholars and sponsors with relation to intellectual property;
3. Provide the mechanism for making public the results of research and other scholarly activities, while safeguarding the interests of the System, authors and inventors; and
4. Recognize the right of authors and inventors to realize tangible benefits from their intellectual property.

C. Definitions

The following definitions apply to the application of this policy:

1. "MCCS" means the Maine Community College System, in its entirety and any all of its colleges or organizational components.

2. "Product of M CCS research" means the intellectual property arising out of duties or responsibilities for which an individual is compensated by the M CCS. Such products include:
 - a. inventions;
 - b. designs and development;
 - c. models;
 - d. works of authorship;
 - e. any strain, variety or culture of an organism, or any portion, modification, translation or extension of these items;
 - f. other legally protectable material, including know-how and trade secrets;
 - g. processes; and
 - h. mineral discoveries.

3. "Copyrightable material" means:
 - a. books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests and proposals;
 - b. lectures, musical or dramatic compositions, and unpublished scripts;
 - c. films, film strips, charts, transparencies, and other visual aids;
 - d. video and audio tapes and cassettes;
 - e. live video or audio broadcasts;
 - f. programmed instruction materials;
 - g. computer software. The term "computer software" encompasses computer materials in the broadest sense, including programs, user's manuals and other accompanying explanatory materials and computerized data-bases. It includes, for example; microcode, subroutines, operating systems, high level languages application programs, etc., in whatever form expressed, e.g., machine or assembly language, source or object code, etc., or embodied, e.g., chip architecture, ROM, disk or tape storage and/or program listings;
 - h. paintings, sculptures and photographs, and
 - i. other materials or works which qualify for protection under the copyright laws of the United States or other protective statutes whether or not copyrightable thereunder.

4. "M CCS resources" means M CCS computers, laboratories, classrooms, audio-visual or telecommunications equipment, testing or fabricating facilities, any unique equipment or facilities not ordinarily available to the general public, or access to the expertise or collaboration of M CCS employees not ordinarily available to the general public without charge.

5. "Incidental use of M CCS resources" means those uses that are minor, temporary or of other insignificance relative to the creation and/or production of the work product in issue. Incidental use shall not ordinarily, in and of itself, create an equity position for the M CCS for the purposes of this policy.

6. "Significant use of M CCS resources" means those uses that are more than incidental.

D. Responsibilities of the Parties

1. Responsibilities of the Researcher, Author, Scholar and/or Inventor

Responsibility for timely disclosure of intellectual property subject to this policy rests with the researcher, author, scholar and/or inventor (hereinafter collectively referred to as "researcher(s)") who shall take all reasonable steps, including the execution of assignments where necessary, to permit prompt evaluation of the intellectual property and perfection of patent or other rights. Researchers are required to consult with M CCS legal counsel, through the System Office, to assure from the beginning of research activities that all required actions will be taken to perfect copyrightable or patentable intellectual property.

It is the responsibility of the researcher to disclose fully to the M CCS president the circumstances surrounding the invention including the names of all those within or outside of the M CCS who participated in the invention. Employees of the M CCS who believe that they have invented items outside the scope of this policy shall not file, or permit others to file in their name, patent applications without providing at least thirty days' notice and a statement of the circumstances of the invention to the M CCS president. Upon request, additional information as to the nature and circumstances under which the item was developed and a copy of the invention disclosure shall be provided.

Researchers planning to engage in consulting or business activities, and those charged with approving such plans on behalf of the M CCS, are responsible for ensuring that any related agreements with external entities are not in conflict with this policy or other commitments involving the M CCS.

The M CCS must preserve any basis that may exist for protecting items subject to this policy. In some cases, tangible property belonging to the M CCS, including but not limited to models, devices, designs, computer programs, cell lines, antibodies, recombinant materials, chemical compounds, compositions, formulations, plant varieties, and records concerning inventions or discoveries, constitutes a portion of that basis. Therefore, written approval must be obtained before tangible property associated with products of M CCS research is transferred to any person or entity for commercial purposes.

2. Responsibilities of the M CCS

When the M CCS makes a determination to exercise its rights to intellectual property, it will promptly make appropriate efforts to protect them legally and with the assistance of the researcher it will search out and initiate negotiations with prospective licensees, or take other appropriate steps to bring the development into commercial use.

If the M CCS chooses neither to exercise its rights through pursuit of legal protection and commercial development or otherwise, nor to transfer the rights to another party, nor to dedicate the rights to the public, they shall be transferred or waived to the researcher, if so requested in writing.

If the M CCS has chosen to protect an item, but does not arrange for its commercial development or dedication to the public within a reasonable time, the researcher may make a written request for transfer or waiver of rights from the M CCS. The M CCS president will either grant the request or will advise the researcher of the M CCS's plans for the intellectual property; in addition to the retention by the M CCS of a non-transferable, royalty-free license, appropriate conditions agreed to by the researcher and the M CCS president shall be applied to any transfer or waiver.

The M CCS shall treat disclosures of intellectual property subject to this policy as confidential and shall make reasonable efforts to avoid loss of rights due to lack of appropriate documentation or to improper or premature disclosure or to publication without proper copyright notice, but it will not be liable in regard to any such loss.

All releases, agreements or other instruments intended to be binding on the M CCS shall be signed by the president of the M CCS.

E. General Principles

Researchers who during their association with the M CCS create intellectual property shall cooperate with the M CCS in defining the rights to the intellectual property which result as a consequence of their research or other scholarly activities by promptly providing the designated college office with a report describing the circumstances under which the intellectual property was conceived and reduced to practice, with particular attention to the following:

1. Naming the sponsor, if any, of the project or program;
2. Stating whether the intellectual property is within the researcher's normal area of activities and responsibilities at the M CCS; and
3. Indicating the extent to which equipment, facilities, materials or employees provided by the M CCS were employed in the work which led to the creation of

the intellectual property. The M CCS president shall be responsible for providing an outline for the reporting of intellectual property.

F. Determination of Rights, Equities and Obligations

It is the policy of the M CCS to recognize the interests of all parties involved, in the creation of intellectual property, to provide the mechanism for making a proper and equitable distribution of benefits, and to assist researchers in benefiting from their creative efforts.

1. Individual Efforts

Intellectual property resulting from research or other scholarly work conducted wholly at the expense of the researcher, on the researcher's own time, without use or with only incidental use of M CCS facilities, equipment, or materials, or outside the individual's normal field of activities and employment responsibilities are the property of the researcher and the M CCS asserts no interest and undertakes no responsibility with respect to such property. It shall be the responsibility of the researcher to demonstrate that these criteria are present. In such cases the M CCS, if requested to do so, will waive any claims to such intellectual property.

It is not intended that this policy will change the traditional relationship between the M CCS and the authors of textbooks and other scholarly and artistic works. Therefore, except in those cases in which the production of books and artistic works is a part of a sponsored program or of specifically assigned duties, copyrights in textbooks, monographs, papers, musical compositions, works of art or unpublished manuscripts, will be the sole and exclusive property of the creator.

2. M CCS-Assisted Efforts

Intellectual property resulting from research or other scholarly work involving more than incidental use of M CCS facilities, equipment or materials, presumes an equity interest on the part of both the researcher and the M CCS. Ownership shall reside with the M CCS with the researcher having a right to share in any resulting income. The M CCS may waive its interest to permit the property to be exploited at the researcher's expense. In such cases, a royalty-free license shall be granted to the M CCS for its own scholarly and educational purposes in recognition of the use of its facilities.

3. M CCS-Assigned Efforts

Intellectual property which results from research or other work conducted by researchers which has been specifically assigned by the M CCS, or which results from M CCS financing either through time of the researcher or through the direct and significant use of M CCS facilities, equipment or materials, must be submitted to the M CCS for determination of ownership and disposition. In some cases, such work will be assigned to a competent agency, firm or foundation with which the M CCS has a publishing evaluation or exploitation agreement.

Employee involvement in textbook preparation not specifically assigned by the M CCS is a special case. Even with incidental use of M CCS facilities, the M CCS asserts no ownership interest and does not sponsor publication or commercial exploitation. Further, it is not the intent of this policy that a faculty member's general obligation to produce scholarly and creative works constitutes a specific assignment as defined above.

4. Outside Sponsorship

Rights with respect to intellectual property which result from research or other scholarly work financed wholly or partially by industrial, philanthropic or other organizations, or by individuals, shall be handled in accordance with the terms of the contract, grant or other agreement governing such work. The project director responsible for the research should inform those working on the project of their rights under such contracts, grants or other agreements before initiation of a project or program.

Most sponsors of M CCS research are willing to agree to an equitable arrangement regarding the exploitation of discoveries arising from research they have sponsored. Proper provisions relating to the rights and equities of the scholar and the M CCS should be included in all such agreements. The M CCS will provide assistance through the M CCS president.

5. Federal Government Sponsorship

Researchers are obligated to report to the appropriate government agency all intellectual property derived from research financially supported by any government agency. The ensuing determination of the government's rights and interests may result in:

- a. The government acquiring and reserving to itself principal and exclusive rights, in which event any exploitation of the intellectual property rests wholly with the government; or
- b. The government determining that the public interest requires that the intellectual property be disclosed in the open literature. In this case, no copyright or patent action can be taken; or
- c. A release of the intellectual property to the M CCS (through special petition or under an institutional agreement between the governmental agency and the M CCS, or under applicable law), if it is determined that it is in an area in which public interest does not require that the government reserve to itself principal and exclusive rights. In this event, the M CCS may handle the intellectual property in either of the following ways:
 - (1) M CCS may act to obtain an assistance agreement through a competent agency, firm or foundation with which the M CCS has a publishing, evaluation and exploitation agreement. The government retains rights to a royalty-free, non-exclusive, irrevocable license throughout the world under any copyright or

patent which may be issued on intellectual property sponsored under governmental programs, to use the intellectual property for government purposes, and any rights granted by the MCCS are subject to this reservation, or

- (2) MCCS may, on the advice of or rejection of the intellectual property by a competent agency, firm or foundation, or on the advice of or rejection of the intellectual property by the MCCS president, or both, take no further action. In this case no additional action can be taken unless the government or the MCCS reconsiders and does so.

G. Disposition of Income

The many circumstances in which copyrights or patents may be produced at the MCCS, the need for equitable division of income with its researchers, and the prudent exercise of public trust require a clear MCCS policy for the disposition of income from intellectual property. The following policy applies to the four categories, described above.

1. Individual Efforts

The MCCS will assert no claims on income realized from copyrights or patents developed from the individual efforts of its employees as defined above.

2. MCCS-Assisted or MCCS-Assigned Efforts

Income realized from copyrights or patents resulting from MCCS-assisted or MCCS-assigned work under this policy shall be divided as follows:

- a. 15% of gross income to the researcher;
- b. 5% of gross income to the researcher's department or other administrative unit; and
- c. 80% to the MCCS.

If more than one researcher contributes to the production of the income, the 15% share shall be divided equally among the researchers, unless a written agreement providing for some other division is filed with the MCCS prior to the application for copyright or patent.

3. Sponsored Efforts

Income realized from copyrights or patents developed as a result of a sponsor-supported effort shall be allocated in accordance with the terms of the contract, grant or other agreement. Any income paid to the MCCS shall be divided as follows:

- a. 15% of gross income to researcher;
- b. 5% of gross income to the scholar's department or other administrative unit; and
- c. 80% to the MCCS.

If more than one researcher contributes to the production of the income, the 15% share shall be divided equally among the researchers, unless a written agreement providing for some other division is executed prior to the application for copyright or patent.

The income allocated to the MCCS shall be used to underwrite the administrative costs of the patent and copyright program and to further the teaching, research and public service missions of the MCCS in accordance with established college budgeting procedures.

H. Administration

The president of the System, with the assistance of the president of the relevant college, will:

1. Review applications from researcher for MCCS sponsorship of patents or copyrights or for waivers of MCCS interests in intellectual property;
2. Determine the relative equities or rights held by the MCCS, its researchers and sponsors, if any;
3. Authorize application for patent or copyright;
4. Release patent or copyrights to the researcher if deemed to be of limited commercial value or under unusual circumstances, subject to granting royalty-free rights to the MCCS;
5. Negotiate licenses and other agreements concerning the commercialization of intellectual property;
6. Foster communications with other college committees on matters of mutual concern; and
7. Assist appropriate MCCS officers in negotiating agreements concerning rights to intellectual property created as a result of research or other scholarly activities funded by contracts, grants or other agreements.

I. Other Provisions

1. If the president of the System waives the MCCS interest, the intellectual property

shall be released to the researchers.

2. Whenever the M CCS determines that it has no proprietary interest in intellectual property or whenever the M CCS releases the same to its researchers, they shall agree not to use the M CCS name in any attempts of further commercialization.
3. The M CCS or the researcher may freely assign their rights under any patent or copyright to a third party. Timely notification of such action will be made to the other party.
4. The principles and policies set forth in this policy assume that no researcher will use M CCS facilities, equipment or materials in any way for the purposes of providing consulting services to agencies, firms or other organizations without M CCS endorsed agreements. When consulting is done in conformity with M CCS policy, the governing agreements shall specify the extent of M CCS participation in intellectual property arising therefrom.
5. The president of each college shall report annually all income realized from copyrights, patents and licenses arising from intellectual property created by M CCS researchers.

REFERENCES: 17 U.S.C. §101, et seq. (copyrights); 35 U.S.C. §101, et seq. (patents); 20-A M.R.S.A. §12706(1), (9) and (18); §12709(14); and §12712(9)

DATE ADOPTED: June 24, 2009

DATE(S) AMENDED: