

POLICY TITLE: INTELLECTUAL PROPERTY POLICY

I. Purpose

The purpose of this policy is to set forth the rights and obligations of the college, its employees, its students and its contractors with regard to intellectual property.

II. Scope

This policy applies to all full-time and part-time LCC faculty, staff, and administrators including those persons working, with or without monetary compensation, on any project under the direction and control of the College and to anyone using college facilities or conducting activities under the supervision of college personnel ("Members".) Contracts and subcontracts between LCC and persons who are not Members ("Vendors") will generally include language that determines the ownership of intellectual property that is developed under the purpose of the particular contract.

Work that is created, authored, conceived, or invented, in whole or in part, by any Member during the period of employment, attendance or other relationship with LCC. For purposes of this policy intellectual property means patents, trademarks, copyrights, and trade secrets including, but not limited to inventions, books, articles, study guides, syllabi, workbooks, manuals, bibliographies, instructional packages, tests, video or audio recordings, films, slides, transparencies, charts, graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, software, and databases.

III. General

A. Disclosure

Each Member who, during the period of employment by or relationship with LCC, solely or jointly, creates, authors, conceives or invents any Intellectual Property, whether or not such Intellectual Property is patentable or copyrightable, should disclose it in writing to the Vice president of Academic Affairs, so that a determination can be made as to whether it is Member Intellectual Property or LCC Intellectual Property.

B. Ownership

1. LCC Intellectual Property.

Intellectual Property is owned by LCC when the Member, or Members, who create the Intellectual Property, are required by the terms of employment to create, author, conceive, or invent the Intellectual Property or the Intellectual Property results from substantial LCC support including, but not limited to, use of LCC facilities, equipment, other staff, and computing and graphic services.

2. Member Intellectual Property.

If the Intellectual Property is created, authored, conceived, or invented:

(a) wholly independent of the scope of the Member's employment by or relationship with LCC or

(b) as a consequence of performing the Member's teaching or administrative duties, but is not required by the terms of employment, then the Intellectual Property shall be the property of the Member who has created, conceived, invented or authored the Intellectual Property ("Member Intellectual Property") and the Member is free to exploit such Intellectual Property. Some examples of Member Intellectual Property are books, tests, course-related materials, slides, transparencies, and bibliographies. If the Member Intellectual Property is under B.2.(b) above, the Member shall grant LCC a non-exclusive, irrevocable, royalty free, perpetual license to use the Intellectual Property for educational purposes within LCC.

3. Procedures for Securing Ownership in Intellectual Property.

Upon the disclosure of Intellectual Property by a Member or Members, the Vice President of Academic Affairs shall have the sole discretion to determine the College's position on whether the Intellectual Property is LCC Intellectual Property or Member Intellectual Property. If it is determined that it is Member Intellectual Property, then LCC shall provide a written Waiver of any ownership interest on the part of LCC in the Member Intellectual Property and the Member shall execute a non-exclusive, irrevocable, royalty free, perpetual license to LCC to use the Member Intellectual Property for educational purposes within LCC.

If it is determined that the property is LCC Intellectual Property, then it will further be determined whether LCC (i) will exploit and benefit from the Intellectual Property or (ii) will waive any rights in such Intellectual Property and assign those rights to the Member or Members who have created the LCC Intellectual

Property under such conditions, if any, deemed appropriate by LCC. If LCC desires to exploit and benefit from LCC Intellectual Property, then the Member, or Members, who have created LCC Intellectual Property shall, at the request of the Vice President, execute an assignment of any and all right, title, and interest which the Member, or Members, may have or may have had at any time in the LCC Intellectual Property and shall cooperate fully with LCC in its efforts to perfect and protect its ownership in the LCC Intellectual Property, including the execution of any and all papers, applications, and the like in return for a share of the revenues generated from such LCC Intellectual Property.

4. Revenues from Exploitation of LCC Intellectual Property.
In the event that any revenues are received by LCC from the licensing, sale, or grant of other rights associated with any LCC Intellectual Property or any patents or copyrights obtained thereon, except for monies received from an outside sponsor in payment for or in relation to a research or other project conducted by or for LCC, the Member or Members who created such LCC Intellectual Property shall be entitled to receive not less than 50% (unless otherwise negotiated) of the net proceeds of such money royalties received by LCC. The term "net proceeds" as used in this statement of policy shall mean gross money proceeds less the cost of obtaining and protecting the rights to such LCC Intellectual Property including, by way of illustration and not limitation, procuring, renewing, licensing, selling, defending, and enforcing any patents, or copyrights obtained thereon ("Direct Costs".) Within sixty days after the end of each fiscal year, LCC will provide a statement for each such Member setting forth 1) all revenues received for the fiscal year and associated with the respective LCC Intellectual Property, 2) all Direct Costs incurred for the fiscal year and associated with the respective LCC Intellectual Property, and 3) the net proceeds upon which the Member's share therein is based. If the amount of Direct Costs for any fiscal year exceeds the revenues for the same year, the excess amount will be carried over to the next fiscal year and charged against revenues received in that year.
5. Intellectual Property Developed Under Third Party Contracts.
From time to time LCC enters into contracts with third party vendors ("Vendors") pursuant to which Intellectual Property may be used or developed. If the LCC Member is merely suggesting concepts or ideas regarding the contract project,

and is not actually inventing, reducing an invention to practice, or fixing an idea in tangible expression, the LCC Member is likely not contributing to an Intellectual Property. In those contracts where there is no anticipation that any Members of LCC will be creating or contributing to the creation of any Intellectual Property, the Vendor contract should provide:

(1) at a minimum, that LCC has a non-exclusive, fully paid up license to fully utilize any Intellectual Property of the Vendor which is necessary in order for LCC to enjoy the benefits and object of the contract, whether or not the Intellectual Property was developed during the course of the contract project or prior to the contract relationship; **or**

(2) ideally, that the resulting creation or work is a “work for hire” and all Intellectual Property rights developed during the course of the contract project are owned by LCC and, any pre-existing Intellectual Property rights are the subject of a non-exclusive, fully paid up license in favor of LCC to fully utilize such Intellectual Property to the extent necessary for LCC to enjoy the benefits and object of the contract.

If the LCC Member is closely involved in determinations of specifications, testing, authoring code, authoring works, or any other inventive or creative expression, then the LCC Member may well be a contributing inventor or author. In those contracts where, in the determination of the Vice President of Academic Affairs, Members of LCC may be involved in creating or developing Intellectual Property, LCC’s intellectual property counsel should review the contract prior to acceptance by LCC.

If counsel determines that the contract project is likely to involve the LCC Member or Members as contributing inventors or authors, then there are several options for contractual provisions which reflect that fact. If the Vice President of Academic Affairs determines that LCC has no interest in exploiting the invention or work which results from the contract relationship, then LCC can negotiate an assignment of its and its Member’s rights in the invention or work in return for consideration. Such consideration may be monetary non-monetary, or a combination of both. An example of a non-monetary consideration would be an exclusive license back to LCC to rights in the invention or work in a specific field of use

such as education, or a specific geographic area, such as the Midwest.

If the Vice President of Academic Affairs determines that LCC has an interest in exploiting the invention or work by licensing or assignment of the invention or work to third parties, then LCC's options will depend on whether the Intellectual Property is an invention or a copyrighted work. If it is an invention, both LCC and the Vendor should have the right to exploit the patent without accounting to the other. If the Intellectual Property is a copyrighted work, LCC will have to either obtain an assignment of the Vendor's interest or will have to account to the Vendor for half of the profits from the exploitation of the copyrighted work.

6. Student Ownership Issues

When Intellectual Property is developed by students, not paid for their work ("Student Intellectual Property"), LCC will not claim ownership rights in that Intellectual Property unless one of the following conditions is met:

- (a) there is a signed agreement between the student and LCC which provides that LCC have exclusive or shared rights to the Student Intellectual Property; **or**
- (b) the student's work was part of a larger work for which LCC owns all or part of the Intellectual Property rights and the student was told in writing before he/she began the work that LCC owned the larger work and that the student would not own any Intellectual Property rights in the work.

7. Intellectual Property Use

In the educational setting faculty and staff often have the need to use or incorporate, in whole or in part, existing works, information, or materials in connection with course preparation, course presentation or course materials. The existing works, information or material ("Pre-Existing Works") may or may not be intellectual property, the rights to which belong to others. They may fall outside the scope of works protected under the law or they may be within the public domain. If these Pre-Existing Works are within the scope of works protected under the law and they are not in the public domain, use of them by a faculty or staff member without permission of the owner of the Works may have serious consequences to the individual faculty or staff member and to the College ("LCC"), namely civil and

criminal liability. This policy is intended to address the issues that arise, and the guidelines which the faculty and staff should follow when use of another's Pre-Existing Works is desired or required in order to carrying on the business of LCC.

There are very few works of the type which faculty or staff members would want to use or incorporate into works for use in LCC business that are not protected by copyright. An idea is not copyrightable, but the expression of an idea is. Procedures, processes, systems, and methods of operation are not copyrightable. Facts and titles are not copyrightable. LCC assumes that every Pre-Existing Work which is desired or required to be used, in whole or in part, by faculty or staff is a copyrightable work. In order to use such a Pre-Existing Work, in whole or in part, the faculty or staff member must:

- 1) determine if the Work is in the Public Domain,
- 2) determine if the desired or required use of the Work is a "fair use", **or**
- 3) obtain the permission of the owner of the copyright in the Work.

Determination as to whether a work is in the public domain is a very complex and often impossible exercise. Because previous copyright laws in the United States accorded indefinite protection to unpublished works, and because the duration of copyright for published works was different under the previous copyright laws than it is today, figuring out if a work has fallen into the public domain is difficult. Complicating the issue even more is the fact that under the previous copyright law, if the notice of copyright was omitted from a published work and not corrected within a certain time, the work fell into the public domain. Because of the difficulty in determining whether a work is in the public domain, LCC assumes that no Pre-Existing Works are in the public domain. Accordingly, any time a faculty or staff member uses a Pre-Existing Work, either in whole or in part, the use must be a "fair use" or permission must be obtained from the owner of the copyright in the Work.

8. Fair Use of Pre-Existing Works of Others.

The owner of the copyright in a Pre-Existing Work has the exclusive right to:

- 1) copy,
- 2) distribute,
- 3) perform,

4) display, **and**

5) make derivative works from that Work.

If anyone, other than the owner of the copyright, does any of those five things, it is an infringement of the copyright owner's rights and the person infringing may be liable for damages to the copyright owner as well as criminal penalties. The copyright laws create an exception for certain uses of copyrighted works which the law calls "fair use". The copyright laws list "criticism, comment, teaching, scholarship and research" as examples of "fair use". To determine whether a particular use of another's Pre-Existing Work is a "fair use", you must consider the character of the use (whether it is commercial or non-profit), the nature of the Pre-Existing Work (whether it is mostly factual or more creative), the amount and importance of the part of the Pre-Existing Work which is used, and the effect of the use on the copyright owner in the marketplace. These determinations are obviously very subjective and it is possible for reasonable persons to arrive at different conclusions. Any fair use analysis should be undertaken in a conservative manner. The following are some illustrations of typical educational uses of Pre-Existing Works which will more likely than not be protected as fair use if the guidelines are followed:

- *Creating Course packs or Research Copies:* Limit the course pack materials to single chapters from multi-chapter books, single articles from magazine or journal publications, and very few graphics from any publication. Use of any course pack containing Pre-Existing Works should be limited to one or two semesters of any class.
- *Digitizing and Using Images:* Many images are readily available online or for sale or license at a fair price. Images should only be used with permission from the owner of the copyright in the image. The library can request permission from the copyright owner at the time the image is digitized. If you do not have permission from or have not licensed the image from the copyright owner, limit access to all digitized images to students enrolled in the class and terminate access to the images at the end of class.
- *Digitizing and Using Pre-Existing Works in Multimedia Materials:* A faculty or staff member may, for the creation of class assignments, curriculum materials, remote instruction, examinations, student portfolios, or professional symposia, incorporate others' Pre-Existing Works into a multimedia work if the material from any one Pre-Existing Work is a very small amount, if copies of the multimedia work are limited to

those required to achieve the educational purpose, and if the multimedia work is used for the purpose for no longer than two years.

- *Displaying and Performing Pre-Existing Works in Distance Learning:* Distance Learning may necessitate making and distributing copies of Pre-Existing Works in which case the policies for course packs should be followed. In addition, Distance Learning may often involve the display and performance of others' Pre-Existing Works. If Pre-Existing Works are displayed and performed in live interactive distance learning classes or in delayed transmission of faculty instruction 1) use the rules of thumb for classroom use, small portions, limited time, and limited access, 2) be certain that either the faculty or staff member or LCC owns a legal copy of the work, 3) include any copyright notices on the original or attributions to the source, and 4) include a legend that making a copy of this display or performance may violate copyright laws. Check any licenses acquired with materials specifically purchased for Distance Learning to determine whether the licenses provide authority for use of display and performance of the materials without such restrictions.
- *Music:* For performance purposes, sheet music may be copied in its entirety only for an emergency when purchased copies are not available for an imminent performance provided that purchased replacement copies are substituted in due course. For academic purposes, other than performances, 1) excerpts of musical works may be copied, provided that the number shall not exceed one copy per student and that no more than 10% of the entire work is contained in the excerpt and 2) a single copy of an entire performable unit may be made by a teacher for the purpose of scholarly research or class preparation provided that the unit is a) confirmed by the copyright owner to be out of print or b) unavailable except in a larger work. A performance of a musical work by a student may be recorded only for teaching purposes or for the student's portfolio. One copy of a sound recording of a musical work may be made for classroom or reserve room use.
- *Electronic Library Reserves:* Since library reserve is an extension of the classroom, the fair use analysis for course packs is a safe rule of thumb to apply. Use only materials necessary for the course and limit the amount to single articles or chapters or other small parts of any given work.

Include any copyright notice on the materials used, along with appropriate attribution and a notice that copying of the reserve material is prohibited. Limit access to the reserve material to students enrolled in the class and terminate access at the end of the class. Do not use the same reserve materials for more than two semesters of any class.

IV. Responsibility

The College's Vice President of Academic Affairs is responsible for the oversight of this policy.

Revised 3/17/03