

## **ARTICLE 25**

### **INTELLECTUAL PROPERTY**

#### **WHAT CHANGES ARE PROPOSED**

- Expands definition of “work” to include relevant materials.
- Moves and incorporates relevant definitions, language, and terms found in Article 14. Assignment of Responsibilities.
- Adds definition and terms related to “appreciable” university support.
- Adds “both” university and faculty member as holder of IT rights and recipient of proceeds where work is not independent.
- Adds provisions for “personal work product” as the property and under the control of faculty.
- Clarifies terms addressing disclosures and releases for work.
- Changes policy regarding consultation for release of rights from “may” to “shall.”

#### **WHY THE CHANGES ARE IMPORTANT**

- Aligns definitions with modern convention.
- Places terms and language in the context of a more appropriate article.
- Facilitates proper interpretation and reference to other articles.
- Creates fairer distribution of rights and proceeds in and from intellectual property.
- Protects personal faculty work product.
- Reduces disclosure requirements for works developed without appreciable university support and used solely for purpose of instruction.
- Insures consultation occurs where appropriate.

**ARTICLE 25**  
**INTELLECTUAL PROPERTY**

25.1 University Authority and Responsibilities. Section 1004.23, Florida Statutes, authorizes each university to establish rules and procedures regarding patents, copyrights, and trademarks. Such rules and procedures shall be consistent with the terms of this Article.

25.2 Definitions. The following definitions shall apply in this Article:

- (a) A "work" includes but is not limited to any copyrightable material, such as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, pictorial or graphic works, and sculptural works. ~~Instructional technology material, as defined in the Assignment of Responsibilities Article, Section 14.14(a), is included in this definition.~~ A work may also include "Instructional technology material" defined to include video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs and all forms of electronic media, computer assisted instructional course work, programmed instructional materials, three dimensional materials and exhibits, and combinations of the above materials, which are prepared or produced in whole or in part by a faculty member, and which are used to assist or enhance instruction.
- (b) An "invention" includes any discovery, invention, process, composition of matter, article of manufacture, know-how, design, model, technological development, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these items. ~~Instructional technology material, as defined in the Assignment of Responsibilities Article, Section 14.14(a), is included in this definition.~~
- (c) ~~"Instructional technology material" is defined in the Assignment of Responsibilities Article, Section 14.14 (a).~~
- (d) "University support" includes the use of university funds, personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the University. For University support to be considered appreciable it must go beyond the resources commonly or routinely provided or made available to similarly situated faculty members for the performance of their instructional assignment. For example, the use of resources such as the libraries; one's office, office computer and other University assistance and training, compensated or not, or facilities; and office supplies is not considered appreciable University support.

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25.3 Works and Property Rights.

(a) Independent Efforts. A work made in the course of independent efforts is the property of the faculty member, who has the right to determine the disposition of such work and the revenue derived from such work. As used in this Section, the term "independent efforts" means that:

- (1) the ideas came from the faculty member;
- (2) the work was not made with the use of appreciable university support; and
- (3) the university is not held responsible for any opinions expressed in the work.

(b) University-Supported Efforts.

(1) If the work was not made in the course of independent efforts, the work is the property of both the university and the faculty member and both shall share in the proceeds therefrom.

(2) Exceptions. The university shall not assert any rights to the following works:

- a. Those works for which the intended purpose is to disseminate the results of academic research, ~~or~~ scholarly study, or creative efforts such as books, articles, electronic media, databases, poems, musical compositions, and works of art regardless of media; and
- b. Works developed without the use of appreciable university support and used solely for the purpose of assisting or enhancing the faculty member's instructional assignment. Examples of such works include case studies, textbooks, laboratory manuals and class notes produced in connection with scheduled courses of instruction, regardless of the medium.

(c) Personal Work Product. Consistent with law and other applicable provisions of this Agreement and the legitimate interests of the University, personal correspondence, notes, raw data, and other work product related to a faculty members assigned duties shall be the property of the faculty member who shall have the right to control such materials.

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(c) Disclosure and Releases.

- (1) Upon the creation of a work and prior to any publication, the faculty member shall disclose to the President or representative any work made in the course of appreciable university-supported efforts, together with an outline of the project and the conditions under which it was done. Consistent with the provisions of Section 25.3(b)(2)~~a.~~, above, faculty members need not disclose ~~regarding books, articles, and similar~~ works, the intended purpose of which is to disseminate the results of academic research or scholarly study ~~work~~ and works developed without the use of appreciable university support and used solely for the purpose of assisting or enhancing the faculty member's instructional assignment.
- (2) The President or representative shall assess the relative equities of the faculty member and the University in the work.
- (3) Within sixty (60) days after such disclosure, the President or representative shall inform the faculty member whether the University seeks an interest in the work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of the faculty member and the allocation of proceeds resulting from such work. Creation, use, and revision of such works shall also be the subject of the written agreement between the faculty member and the University as well as provisions relating to the use or revision of such works by persons other than the creator. The faculty member shall assist the University in obtaining releases from persons appearing in, or giving financial or creative support to, the development or use of these works in which the University has an interest. All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.
- (4) The faculty member and the University shall not commit any act which would tend to defeat the University's or faculty member's interest in the work and shall take any necessary steps to protect such interests.
- (5) Consistent with the provisions of this Article and prior to their use, releases shall be obtained from persons appearing in, or giving financial or creative support to the development or use of work defined in this Article, and the faculty member shall certify that such development or use does not infringe upon any existing copyright or other legal right. The faculty member shall be liable to the Trustees and the University Administration for judgments resulting from such infringements.

129 (6) The University Administration shall assist the faculty member in obtaining  
130 releases regarding instructional technology materials when:

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132 (a) the University Administration has asserted an interest in such  
133 materials; or

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135 (b) the University Administration has assigned the faculty member to  
136 develop such materials.

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139 25.4 Inventions and Property Rights

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141 (a) Independent Efforts. All inventions made outside the field or discipline in which  
142 the faculty member is employed by the University ~~and~~ or for which no appreciable  
143 university support has been used are the property of the faculty member, who has  
144 the right to determine the disposition of such work and revenue derived from such  
145 work. The faculty member and the President or representative may agree that the  
146 patent for such invention be pursued by the University and the proceeds shared.

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148 (b) University-Supported Efforts. An invention which is made in the field or discipline  
149 in which the faculty member is employed by the University, or by using appreciable  
150 university support, is the property of both the University and the faculty member  
151 and both shall share in the proceeds therefrom.

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153 (c) Disclosure/University Review.

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155 (1) A faculty member shall fully and completely disclose to the President or  
156 representative all inventions which the faculty member develops or  
157 discovers while an employee of the University, together with an outline of  
158 the project and the conditions under which it was done. With respect to  
159 inventions made during the course of approved outside employment, the  
160 faculty member may delay such disclosure, when necessary to protect the  
161 outside employer's interests, until the decision has been made by the outside  
162 employer whether to seek a patent.

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164 (2) If the University wishes to assert its interest in the invention, the President  
165 or representative shall inform the faculty member within 120 days of the  
166 faculty member's disclosure to the President or representative.

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168 (3) The President or representative shall conduct an investigation which shall  
169 assess the respective equities of the faculty member and the University in  
170 the invention, and determine its importance and the extent to which the

- 171 University should be involved in its protection, development, and  
172 promotion.  
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- 174 (4) The President or representative shall inform the faculty member of the  
175 University's decision regarding the university's interest in the invention  
176 within a reasonable time, not to exceed 135 days from the date of the  
177 disclosure to the President or representative.  
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- 179 (5) The division, between the University and the faculty member, of proceeds  
180 generated by the licensing or assignment of an invention shall be negotiated  
181 and reflected in a written contract between the University and the faculty  
182 member. All such agreements shall comport with and satisfy any  
183 preexisting commitments to outside sponsoring contractors.  
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- 185 (6) The faculty member shall not commit any act which would tend to defeat  
186 the University's interest in the matter, and the University shall take any  
187 necessary steps to protect such interest.  
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- 189 (b) ~~Independent Efforts. All inventions made outside the field or discipline in which~~  
190 ~~the faculty member is employed by the University and for which no university~~  
191 ~~support has been used are the property of the faculty member, who has the right to~~  
192 ~~determine the disposition of such work and revenue derived from such work. The~~  
193 ~~faculty member and the President or representative may agree that the patent for~~  
194 ~~such invention be pursued by the University and the proceeds shared.~~  
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- 196 (e) ~~University-Supported Efforts. An invention which is made in the field or discipline~~  
197 ~~in which the faculty member is employed by the University, or by using university~~  
198 ~~support, is the property of the University and the faculty member shall share in the~~  
199 ~~proceeds therefrom.~~  
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- 201 (d) Release of Rights.  
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- 203 (1) In the event a sponsored research contractor has been offered the option to  
204 apply for the patent to an invention or other rights in an invention, the  
205 University shall use its good offices in an effort to obtain the contractor's  
206 decision regarding the exercise of such rights within 120 days.  
207
- 208 (2) At any stage of making the patent applications, or in the commercial  
209 application of an invention, if it has not otherwise assigned to a third party  
210 the right to pursue its interests, the President or representative may elect to  
211 withdraw from further involvement in the protection or commercial  
212 application of the invention. At the request of the faculty member in such  
213 case, the University shall transfer the invention rights to the faculty member,  
214 in which case the invention shall be the faculty member's property and none

215 of the costs incurred by the University or on its behalf shall be assessed  
216 against the faculty member.

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218 (3) All assignments or releases of inventions, including patent rights, by the  
219 President or representative to the faculty member shall contain the provision  
220 that such invention, if patented by the faculty member, shall be available  
221 royalty-free for governmental purposes of the State of Florida, unless  
222 otherwise agreed in writing by the University.

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224 (e) University Policy.

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226 (1) The University shall have a policy addressing the division of proceeds  
227 between the faculty member and the university.

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229 (2) Such policy ~~may~~ shall be the subject of consultation meetings pursuant to  
230 the Consultation article.

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232 (f) Execution of Documents. The University and the faculty member shall sign an  
233 agreement individually recognizing the terms of this Article.

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235 25.5 Outside Activity.

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237 (a) Although a faculty member may, in accordance with Article 26, Conflict of  
238 Interest/~~Outside Activity~~, engage in outside activity, including employment,  
239 pursuant to a consulting agreement, requirements that a faculty member waive the  
240 faculty member's or University's rights to any work or inventions which arise during  
241 the course of such outside activity must be approved by the President or  
242 representative.

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244 (b) A faculty member who proposes to engage in such outside activity shall furnish a  
245 copy of this Article and the University's patents policy to the outside employer prior  
246 to or at the time a consulting or other agreement is signed, or if there is no written  
247 agreement, before the employment begins.

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