

# MANUAL OF POLICY

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**POLICY NUMBER:** 1-10

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**POLICY TITLE:** All Personnel Except Full-Time Instructional Personnel:  
Intellectual Property

**LEGAL AUTHORITY:** FLORIDA STATUTE 1001.64

**DATE OF LAST REVIEW:** 6/21/2005, 6/19/2007, 7/21/2009, 7/19/2011 and 7/16/2013

**DATE OF BOARD ACTION:** 2/28/1979, 6/22/2001 and 6/19/2007

## **Section 1. College Authority and Objectives.**

Pursuant to Florida Statutes 1001.64, the District Board of Trustees of Miami Dade College, on behalf of Miami Dade College (the "College"), has established this Policy for College Employees, except for members of the faculty bargaining unit, regarding patents, copyrights, and trademarks. The College desires to encourage and assist College Employees in the development of new works, names, materials, ideas and inventions for the mutual benefit of the students, the College, and the College's Employees.

## **Section 2. Purpose.**

This policy sets forth the rights and obligations of College Employees who create Intellectual Property while performing work for the College.

## **Section 3. Exceptions.**

A. Non-ownership. Net Revenues shall not be paid by the College to College Employees in circumstances where the College does not fully own the Intellectual Property or where the Intellectual Property is Sponsored by Outside Sources, unless otherwise agreed to by the parties in writing.

B. New Laws or Amended Laws. This Policy shall be subject to all applicable federal, state, and local laws, rules and regulations, now or hereinafter enacted, including those specifically applicable to the College as an educational institution ("collectively Laws"). If new Laws are enacted or if there are Amendments to existing Laws that make it unlawful for the College to perform its obligations set forth below or that impact the College's ability to perform its obligations, this Policy and any related agreements shall be suspended as of the effective date of the new or amended Laws. This Policy will also have to be modified accordingly.

C. Intellectual Property Pending, Completed, or Modified as of Policy Effective Date: This Policy shall not apply to Intellectual Property pending, completed, or to be modified as of the Effective Date of this Policy. These situations shall be addressed by the College and the College's Employees on a case-by-case basis.

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## **Section 4. Definitions.**

The following definitions are established for purposes of this Policy (listed in alphabetical order).

A. "College Employees" as used in this Policy shall mean any and all Part-Time College Employees and Full-Time College Employees, except for members of the faculty bargaining unit.

(1) "Full-Time Employee(s)" means any and all Full-Time: (a) Professional Exempt Contractual Employees; (b) Professional Exempt Non-Contractual and (c) Support Non-Exempt.

(2) "Part-Time Employee(s)" means any and all Part-Time: (a) Regular Employee(s), (b) Temporary Employee(s), including, but not limited to all temporary employees working full time under a written contract, (c) Administrative Employees, (d) Instructional Employees, (e) Non-Instructional Employee(s), (f) Substitute Employees, (g) Hourly Employee(s), (h) Contractual Employees, (i) Student Employees, (j) any other part-time employees, all as defined in College Procedure 2010.

B. "College Resources" means anything owned by the College and provided to College Employees to use, including, but without limitation, office space, desktop personal computers, software, supplies, facilities and equipment and any other like items.

(1) "Incidental Use of College Resources" means minimal use of College Resources which does not interfere with the performance of the College Employee's required duties and does not: (a) involve any out-of-pocket expense on the part of the College for materials or other resources; (b) involve more than minimal use of other College Employees; (c) consume more than ten (10%) of the College Employee's normal duty time and (d) demand more than 10% of the College Employee's normal work hours.

The term "Incidental Use of College Resources" shall not apply to Intellectual Property created pursuant to: (a) an assigned duty; (b) Intellectual Property Sponsored by Outside Sources; or (c) a Work-For-Hire Agreement.

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(2) "Substantial Use of College Resources" means use of College Resources that exceeds the limits of Incidental Use of College Resources. The use of facilities generally available to the public, such as libraries, shall not constitute Substantial Use of College Resources. It is the responsibility of the College Employee to clarify with the College Provost, or designee, any issues regarding whether the College Employee is making Substantial Use of College Resources.

See College Procedure 7900: Guidelines for Use of Miami Dade College Computing Resources.

C. "Effective Date" means the date on which this Intellectual Property Policy is officially adopted and approved by the District Board of Trustees of Miami Dade College. This Policy shall not be retroactive.

D. "Independent Efforts" means Intellectual Property created or developed by a College Employee without the use of any College personnel, support or resources.

E. "Intellectual Property" means any and all Copyrightable Material (including, but not limited to, all derivative works, updates and modifications), Inventions, Tangible Research Materials, Trademarks, Trade Names, and Trade Secrets, as these terms are defined under applicable federal, state, and local laws.

F. "Intellectual Property Sponsored by Outside Sources" means Intellectual Property created with funds, personnel, resources, and facilities administered and controlled by the College which are provided by governmental, commercial, industrial, or other public or private organizations or individuals which shall be considered, for the purpose of this Policy, to be funds, personnel, resources, and facilities provided by or through the College. By way of example, but not by way of limitation, this would include grants.

G. "Net Revenues" means gross receipts of anything of value less expenses incurred in connection with the creation, commercializing and/or copyrighting or patenting of the Intellectual Property, including, but not limited to, direct costs of obtaining and securing copyrights or patents, indirect costs as determined by the College, and all attorneys' fees. For purposes of this Policy, Net Revenues only includes Net Revenues collected by the College.

H. "Work for Hire" shall have the same meaning as set forth in the Copyright Act, Title 17, U.S.C. Section

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101, et. seq., and as used in this Policy specifically refers to any work specially ordered or commissioned by the College that is performed by a Part-Time Employee or performed by a Full-Time Employee outside of the Full-Time Employee's regular duties and for which the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. All Work for Hire situations in which no written instrument has been executed shall be considered and resolved on a case-by-case basis in accordance with the provisions of this Policy.

## **Section 5. Ownership/Use of Intellectual Property.**

- A. Ownership: The College shall own all Intellectual Property created by College Employees except for Intellectual Property created by Full-Time Employees through: (a) Independent Efforts or (b) Incidental Use of College Resources.
- B. External Consulting Agreements. Consulting Agreements secured by Full-Time Employees for purposes of creating Intellectual Property through (a) Independent Efforts or through (b) Incidental Use of the College's Resources, do not require approval from the College. However, College Employees must still comply with all Laws, such as those relating to conflicts, and with College Policies and Procedures regarding outside employment. Full-Time Employees performing outside consulting work with Substantial Use of College Resources or pursuant to assigned duty must receive the College's prior written approval of the consulting agreement prior to commencing the work.

See College Policy II-18: Full-Time Personnel: Outside Employment; College Procedure 2410: Performance Standards and Appeal Procedure for All Professional Exempt Contractual and Support Employees; and College Procedure 2500: Leaves for Professional Development.

- C. Works for Hire: A Part-Time Employee or a Full-Time Employee who creates Intellectual Property for the College outside of the Part-Time or Full-Time Employee's regular duties shall be required to execute a Work-For-Hire Agreement prior to commencing the creation of any Intellectual Property for the College. All Work- for-Hire situations in which no written instrument has been executed shall be considered and resolved on a case-by-case basis in accordance with the provisions of this Policy.

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D. Use of Intellectual Property: The use of Intellectual Property is divided into two categories.

(1) Internal Use: The College shall be entitled to use internally for any purpose within the College, free of charge, any and all Intellectual Property created by College Employees, except for Intellectual Property created through Incidental Use of College Resources or Independent Efforts. The College shall also be entitled to extend this authorization to other College Employees. Except for instances that constitute fair use as that term is defined in the Copyright Act, a College Employee who creates Intellectual Property through Incidental Use of College Resources or Independent Efforts shall be entitled to determine whether the Intellectual Property may be used by the College or other College Employees.

(2) External Use For all Intellectual Property owned by the College, the College shall have the sole right, but not the obligation, to determine whether to commercialize any Intellectual Property. Notwithstanding anything in this Policy to the contrary, the College always reserves the right unilaterally to negotiate and enter into agreements for the exercise, sale, use, including use for free, or other disposition of any and all rights in Intellectual Property owned by the College.

Any dispute regarding the use of Intellectual Property shall be resolved under the dispute resolution provision set forth in Section 10 of this Policy. Notwithstanding the above terms, nothing in this Policy vests rights in any College Employee who produces Intellectual Property as the result of an unauthorized use of College Resources.

## **Section 6. Intellectual Property Net Revenue Provisions.**

This Section shall only apply to Intellectual Property fully owned by the College and to Net Revenues collected by the College. All Net Revenues for College owned Intellectual Property shall be received by and/or paid to the College. The College shall have no obligation to pay uncollected Net Revenues due under this Policy. Further, the College shall have the sole discretion to determine whether or not to pursue legal proceedings to collect monies due for Intellectual Properties fully owned by the College.

A. Exclusions: There shall be no Net Revenues payable under this Policy for:

(1) Intellectual Property created by Full-Time Employees through Independent Efforts or

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through Incidental Use of College Resources;

(2) Intellectual Property created by Part-Time Employees. This Intellectual Property shall be considered Work-For-Hire;

(3) Intellectual Property created by Full-Time Employees under a Work-For-Hire Agreement with the College;

(4) Intellectual Property Sponsors by Outside Sources, unless otherwise agreed to by the parties in writing; and

(5) Any other Intellectual Property other than that covered in Section B below.

B. Net Revenues: For each Intellectual Property, including any derivatives, updates or modifications thereof, created by a Full-Time Employee(s) under assigned duties or through Substantial Use of College Resources who has executed all documents and agreements required under this Policy, the College shall set aside forty percent (40%) of collected Net Revenues twice each year to be divided equally among those College Employee(s) who created, updated, or modified the Intellectual Property for which the College collected royalties. Notwithstanding these terms, these College Employees may agree in writing to an alternate percentage of distributions that the College shall honor subject to the condition that there shall be no dispute among the parties.

C. Prerequisites to Disbursement of Net Revenues: In order to insure that there is no mutual misunderstanding between the College and the College's Employee as to the rights regarding the payment of collected Net Revenues under this Policy, the College and College Employees agree to the following:

(1) Prior Written Authorization - Prior to commencing the creation of Intellectual Property or within thirty (30) days of beginning the creation, pursuant to an assigned duty; a Work-For-Hire Agreement; or with Substantial Use of College Resources, a Full-Time Employee shall secure prior written approval from the College Provost, or designee and shall execute a written agreement acknowledging and accepting the terms of this Policy. This agreement shall also include written representations, warranties, licenses, assignments of interest, disclosures, indemnifications, and hold harmless agreements, and other documents requested by the College to assure the College's ownership in the Intellectual Property and to indemnify and hold harmless the College from and against any and all claims or actions

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against the College pertaining to the creation, ownership or use of Intellectual Property.

If a Full-Time Employee fails to comply with the above terms for the creation of Intellectual Property created pursuant to an assigned duty; a Work-For-Hire Agreement; or Substantial Use of College Resources, the College Provost for Academic and Student Affairs, or designee will determine how to resolve each situation on a case-by-case basis.

## **Section 7. Incorporation of a Student or Others Works in Intellectual Property.**

If any Full-Time Employee or Part-Time Employee (or their respective heirs, where applicable) creates Intellectual Property that includes works by other parties, including a student, the College Employee(s) shall obtain written permission, in form and content acceptable to the College, to incorporate any other parties' work in the Intellectual Property. These obligations are part of the College Employee(s) duties to the College and include without limitation, assignments of any Intellectual Property, non-disclosure agreements, and other representations and warranties as the College may require to protect its interests. The College Employee must also obtain appropriate releases from students or other party (ies) to include the name(s), likeness (es) or other identifying indicia of student(s) other party(ies) in the Intellectual Property or any public relations materials relating to the Intellectual Property.

## **Section 8. Recording of Presentations.**

Students may record classroom lectures or other presentations using tape recorders or other electronic or mechanical devices provided that the student only uses the recording for educational reasons and not for any financial gain.

Recording of classroom presentations and/or distance learning broadcast sessions may be used only for the purpose of student review or system failure unless otherwise agreed to by the College and the College Employee.

## **Section 9. Death, Retirement or Cessation of Employment.**

Any Full-Time Employee who is entitled to receive Net Revenues under this Policy shall continue to receive

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Net Revenues upon death, retirement or upon voluntarily ending employment with the College for two (2) years after ending employment with the College. However, all rights of any College Employee to receive Net Revenues under this Policy shall immediately terminate upon the involuntary termination of employment with the College and all Net Revenue that would have been due to the College Employee shall then be paid to the College.


## **Section 10. Dispute Resolution.**

The College shall appoint a committee comprised of administrators and support staff personnel. The College shall establish procedures for any College Employee to petition the committee regarding a dispute pertaining to Intellectual Property. These disputes include, but are not limited to disputes regarding ownership rights, usage rights, and percentage of royalty, revenue payments or publication clearance. The committee shall be chaired by the College Provost, or designee. The committee chair shall be responsible to make a recommendation to the College President to resolve any dispute under this Policy. Any decision made by the College President shall be final and shall not be subject to any reconsideration.

## **Section 11. Term.**

The College's obligations to pay Net Revenues under this Policy shall in no event continue beyond the term of the protection of the relevant Intellectual Property.

See College Procedure 6000: Methodology for the Procurement of Goods and Services Used by the College.

	7/16/13
<b>CHAIRMAN</b>	<b>DATE</b>