

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

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TITLE: INTELLECTUAL PROPERTY RIGHTS

**POLICY
REFERENCE NUMBER: 3-0-100**

**DIVISION OF
RESPONSIBILITY: Academic Affairs**

DATE OF LAST REVISION: March 23, 2004

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION / THE SC TECHNICAL COLLEGE SYSTEM.

The State Board for Technical and Comprehensive Education is a public trustee of State and local resources. Consistent with this trust and pursuant to State and Federal copyright, patent and ethics statutes and standards, the State Board and the technical colleges shall manage Intellectual Property rights in a manner that:

1. Encourages the creation of intellectual property by all employees;
2. Provides for the sharing of intellectual property between all institutions which are members of or affiliated with the State Board for Technical and Comprehensive Education System;
3. In limited circumstances and by prior written agreement only, may provide for a portion of the net proceeds from the commercial exploitation of specifically designated intellectual property to be awarded to the employee(s) who created the work on the institution's behalf;

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4. Protects agency resources and assures that they are used consistently with system and college missions; and
5. Uses intellectual property to serve the public good.

Within the limitations prescribed in Procedure 3-0-100.1, the State Board for Technical and Comprehensive Education delegates to college presidents or in the case of system office employees, to the Executive Director, the authority to enter into written property ownership agreements with employees or independent contractors who create original works involving copyrights, patents or other forms of intellectual property for use or ownership by the college or the system office.

Each technical college and the system office shall develop guidelines and procedures for entering into intellectual property agreements, provided the terms of any such arrangements:

- Waive the institution's copyright to no more than class lectures, notes, or course syllabi, or to scholarly works which are not created within the scope of employment, or to scholarly works which are not created using agency resources;
- Under no circumstances provide for a portion of the net proceeds from the commercial exploitation of intellectual property to be awarded to an employee(s) who created the work on the institution's behalf if the material was created within the scope of his or her employment, or if the material was created by using any agency resources;
- Are fully compliant with the provisions of the State Ethics Act, Policy 8-0-102: Personal Benefit from Projects or Written Materials, and Policy 8-0-105: Ethics Requirements for Employees;
- Will not violate the provisions of the Federal Copyright Act, or any other federal law or regulation.

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Intellectual property developed by a non-employee third-party consultant pursuant to the terms of a written and signed contract will generally be considered to be owned by the college or system office, unless otherwise provided in the consulting contract. Nothing in this procedure precludes a college or the system office from entering into such a consulting contract where the parties have agreed that the non-employee consultant will own the materials upon creation.

DEFINITIONS

- Employee - Any individual employed by a technical college or by the System Office to perform assigned tasks. Third-party consultants are not employees within the meaning of the State Board for Technical and Comprehensive Education Intellectual Property Rights Policy and these procedures.
- Intellectual Property - Any product of intellectual activity that is unique, novel, unobvious and/or original, or otherwise subject to copyright or patent protections pursuant to Title 17 or Title 35 of the U.S. Code of Laws.

NOTE: A state agency has 11th Amendment immunity from Title 17 lawsuits; however, 11th Amendment immunity does not extend to lawsuits against State employees in their individual capacities.