



Board of Trustees

Policy Statement

University Policy Library

Operational Area:	Academic Affairs
Responsible Executive:	Chief Executive Officer
Responsible Office:	Academic Affairs Office
Effective:	July 1, 2020

Intellectual Property

Academic Affairs

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I. Introduction

- A. **Authority:** Colorado Revised Statutes (C.R.S.) § 23-54-102, *et seq.* (2020) authorizes the Trustees of Metropolitan State University of Denver ("MSU Denver" or "University") to establish rules and regulations to govern and operate the University and its programs. The MSU Denver Trustees retain authority to approve, interpret, and administer policies pertaining to University governance. The MSU Denver Trustees authorize the MSU Denver President to approve, administer, and interpret policies pertaining to University operations.
- B. **Purpose:** The purpose of this intellectual property policy (the "IP Policy") is to clearly explain the ownership structure of intellectual property developed by members of the MSU Denver community. MSU Denver seeks to foster academic freedom and to encourage the free exchange of ideas. In accordance with these ideals, it is important to adequately protect Intellectual Property and have an agreed upon ownership structure.
- C. **Scope:** This policy applies to and governs all University Personnel and students. Paid student employees and paid student interns are governed in the same manner as other University Personnel.



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II. Roles and Responsibilities

- A. **Responsible Executive:** Chief Executive Officer
- B. **Responsible Administrator:** Chief Academic Officer
- C. **Responsible Office:** Office of Academic Affairs
- D. **Policy Contact:** Chief Academic Officer, 303-615-1900

III. Definitions

For the purposes of this IP Policy, the following definitions apply:

- A. **"Academic Publications"** see Traditional Works of Faculty and Professional Authorship as defined below.
- B. **"Computer Works"** is defined below at § IV.C.5.
- C. **"Copyright"** means those rights granted to authors or creators of original works of authorship under United States copyright law. Copyright is actually a bundle of rights that attach to the work, which varies based upon the nature of the work. Where Copyright is referred to herein, it means the entire bundle of rights associated with the work, unless otherwise specified.
- D. **"Course Construct"** includes the course title, course description, required materials, learning objectives, detailed content outline, evaluation of student performance, alignment of program and course learning objectives, discussion board structures, assessment structure and automation, and the online University course template.
- E. **"Creator"** means the creator of intellectual property. Creator includes an inventor of a patentable invention, and an Author of a copyrightable work. For intellectual property, such as data, which may be neither copyrightable nor patentable, Creator includes those persons who make a significant, intellectual contribution to creation of the intellectual property.



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- F. **"Online University Course"** is defined below at § IV.C.3.
- G. **"Project Deliverables"** is defined below at § IV.C.7.
- H. **"University Personnel"** is defined below at § IV.B.1.
- I. **"Traditional Works of Faculty and Professional Authorship"** also referred to herein as **"Academic Publications"** shall mean those scholarly, scientific, literary, dramatic, musical, and artistic works created within their disciplinary expertise by faculty members and other University Personnel whose employment includes scholarly research and publication, such as scholarly articles published in journals independent of the University and works such as literary or scholarly books, textbooks (including Open Access Resources), pedagogical research and Evidence Based Practice manuals, standard operating procedures and methods of research, taxonomical identifications, laboratory manuals, research posters, 3D printed objects and 3D printing instructions, creative, non-textual works (such as paintings, sculptures, musical compositions, films, and other audiovisual creations, scientific illustrations, models, *etc.*) that are produced as part of professional activities, digital humanities projects, and similar publications created by faculty members and other University Personnel whose employment includes research and educational activities within their disciplinary expertise and which do not result directly as a specified deliverable from projects funded in whole or in part by the University or a sponsored research agency. Traditional Works of Faculty and Professional Authorship shall also include theses or dissertations of faculty or graduate students.
- J. **"Discoveries"** includes the invention and/or discovery of a new, useful, and non-obvious design, process, machine, or an improvement of the above.
- K. **"Research Results"** means all data sets, data analyses, reports detailing all optimized conditions and procedures, test results, laboratory notes, techniques, and any other results that are obtained in the performance of research.



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- L. **"Funded Research"** includes research that is conducted with University Support, beyond that commonly made available.
- M. **"University Support"** shall include the use of University funds, personnel, facilities, equipment, materials, or technological information, beyond that commonly made available, such as office supplies, salary and benefits, normal use of library resources and computing facilities, or a standard computer and software package, and includes funds or other such support provided by other public or private organizations when the University is the contracting party, or when such funds are arranged, administered, or controlled by the University.
- N. **"Work-Made-For-Hire"** shall mean a work made for hire as defined in 17 U.S.C. § 101, and includes works created by University Personnel in the scope of their employment and specially commissioned works created pursuant to a written agreement which specifies that the work is a work made for hire, and which is a category of work eligible to be a work made for hire. Works created as a specific deliverable resulting from sponsored research or grants are Works-Made-For-Hire. Traditional Works of Faculty and Professional Authorship are not Works-Made-For-Hire.

IV. Policy Statement

MSU Denver is dedicated to supporting and encouraging our faculty, staff, and students to engage in and learn from the expansive range of scholarly, technical, and artistic opportunities we offer. Intellectual property ("IP") plays an important role in our efforts. Intellectual property law secures for individual authors and inventors certain exclusive rights and benefits, and thereby encourages them to create and innovate. The results of their efforts then benefit the larger community. Ownership of IP rights, therefore, should be properly balanced between MSU Denver (also referred to herein as the University) and University Personnel. Furthermore, adequate recognition of and incentive to potential inventors through



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the sharing of the financial benefits resulting from the transfer and development of patentable inventions, and other marketable forms of IP, encourages the creation of such IP. At the same time, MSU Denver's share in the financial benefits provides funds for ongoing operations or further research at MSU Denver.

A. OVERVIEW OF INTELLECTUAL PROPERTY OWNERSHIP AT MSU DENVER

In general, the ownership and disposition of intellectual property follows these principles:

1. Copyrights, Generally

Copyrights in most works of authorship by University Personnel that are created with University Support are Works-Made-For-Hire and, as such, are typically owned by MSU Denver. However, as discussed below in Section 3.C., MSU Denver has agreed that copyright in course materials will be owned by faculty and other University Personnel functioning in a faculty role, and that copyright in online course materials will be handled pursuant to the MSU Denver Online and Digital Course Materials policy. Traditional Works of Faculty and Professional Authorship will be owned by the author, and MSU Denver will have no right to license or use such Works. Rights in copyright to computer programs, code, or algorithms, unless created for class and treated as Course Materials, are owned by MSU Denver and treated as rights to inventions, more akin to patents. Rights in administrative documents belong solely to MSU Denver.

2. Inventions, Discoveries, and Patents, Generally

Rights to inventions and discoveries made by University Personnel with University Support will be owned by MSU Denver, not the inventor. Principally, these are the types of rights potentially subject to protection by



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patents. Although Computer Works are generally protected by copyright and not by patents, rights in this subject matter will also be owned by MSU Denver. However, no personnel shall be obliged to engage in the commercial exploitation of their work or to provide commercial justification for the direction of their research. Personnel who have made, discovered, or developed an invention, improvement, or discovery shall have the sole right to decide whether, in consultation with the University, to seek a patent at all or to allow the public use of their invention, improvement, or discovery and whether, in consultation with the University, and by what means and on what terms to patent, produce, or market the invention, improvement, or discovery. If the decision is made to patent, produce, or market the invention, improvement, or discovery, licensing revenue will be shared between the inventors/authors of the IP rights that are licensed and the University, as set forth in Section IV.D.

3. Policy Scope

Reference to works of authorship, inventions, and discoveries made or created with University Support broadly covers activities by University Personnel that are done using MSU Denver funds, personnel, facilities, equipment, materials, or technological information beyond that commonly made available, such as office supplies, salary and benefits, normal use of library resources and computing facilities, or a standard computer and software package, and includes such support provided by other public or private organizations when arranged or administered by MSU Denver. Activities that are outside all of these categories or occur entirely when personnel are not on contract are not subject to this policy, with the exception that any invention, discovery, or Computer Work must be



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disclosed to MSU Denver in order to permit a determination if they are truly outside the scope of this IP Policy.

B. PERSONS TO WHOM THIS POLICY PERTAINS

1. Generally

This IP Policy applies to and governs all University Personnel. University Personnel include all MSU Denver employees. Paid student employees or paid student interns (including teaching and research assistants) are governed in the same manner as other University Personnel. Students who are not MSU Denver employees are governed by this IP Policy, but generally retain all rights to their works of authorship, inventions, or discoveries, subject to certain rights of MSU Denver provided in this IP Policy, unless contributing to a project where the IP is owned by the Principle Investigator.

2. Sabbaticals/MSU Denver Faculty Visiting other Institutions

Full-time faculty members who are on sabbatical, or are serving as visiting faculty at another institution, remain subject to this IP Policy unless other arrangements are made in writing. Because another institution at which a full-time MSU Denver faculty member is visiting is likely to have its own IP policy that may apply to visiting faculty members, and thus be in conflict with this IP Policy, faculty members who will be visiting other institutions should inform the Vice Provost for Faculty Affairs of their intention. MSU Denver can then determine if there is a potential conflict and negotiate a written resolution in advance. Excepting extraordinary circumstances, faculty who are serving as visiting faculty at another institution are likely to



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be deemed employees of that institution and governed by its IP policy during their time there.

3. Faculty Visiting MSU Denver

Similarly, faculty of other institutions who are serving as visiting faculty at MSU Denver are governed by this IP Policy during their time at MSU Denver and are deemed to be University Personnel for purposes of this policy even if not in an employer-employee relationship with MSU Denver. Again, because the institution from which that person is visiting is likely to have its own IP policy that may apply to its faculty members when they are visiting other institutions, and thus be in conflict with this IP Policy, faculty members who will be visiting from other institutions are strongly encouraged to notify their home institution in order to permit a resolution in advance.

4. Part-Time Employees

Part-time employees (including adjunct and part-time faculty) of MSU Denver who are full-time employees of another organization will be governed in the first instance by the IP policy of that other organization, with this IP Policy applying only to activities that are specific to their employment by MSU Denver. Part-time employees (including adjunct and part-time faculty) of MSU Denver who are not employed full-time at another organization, but who are employed part-time at another organization, will be governed in the first instance by this IP Policy, except that the IP policy of the other part-time employer(s) will apply to activities that are specific to such other employer(s).



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C. WORKS OF AUTHORSHIP; COPYRIGHT INTERESTS

1. Generally

- a. In the course of their work at MSU Denver, University Personnel create a broad range of materials protected by copyright law. Copyright attaches to, and copyright law protects, original works of authorship fixed in a tangible medium of expression. This expression is not limited to literary works; it includes other forms of creative work, such as musical compositions, drawings, sculptures, and audiovisual creations. Under the "Work-Made-For-Hire" rule of 17 U.S.C. § 101, an employer is considered to be the author, for copyright purposes, of all works created by its employees within the scope of their employment, and accordingly also owns the copyright to such works.
- b. Traditional Works of Faculty and Professional Authorship are not considered "Works-Made-For-Hire" and are deemed to belong to the Creators.
- c. Accordingly, in this IP Policy we recognize the ownership by University Personnel of certain works, and we allow personnel to retain or exercise rights in, or grant the right to use, certain categories of work which are owned by MSU Denver, while we retain ownership and copyright of such works. As further described below, these rights are allocated based on the following categories for copyright purposes: (1) Traditional Works of Faculty and Professional Authorship (Academic Publications), (2) Course Materials, (3) Administrative Works, (4) Computer Works, (5) Data and Research Results, and (6) Project Deliverables.



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2. Academic Publications – Traditional Works of Faculty and Professional Authorship

- a. We expect and encourage faculty members and other University Personnel whose employment includes scholarly research and publication to publish in traditional and online scholarly journals, to make other contributions to academic literature, and to produce other textual and non-textual works as part of their professional activities. In the interests of academic freedom, we do not direct the choice of subject matter or treatment, nor do we require that any specific publication be created, and thus such Traditional Works of Faculty and Professional Authorship are not Works-Made-For-Hire. MSU Denver does not assert ownership of such works of authorship and recognizes copyright ownership belongs to the Creator(s). This category includes but is not limited to manuscripts intended for publication (including for self-publication), abstracts, poster presentations, slides and other materials intended for use at conferences, creative works, and theses of graduate students. *For a more complete definition of Traditional Works of Faculty and Professional Authorship, see § II.1 above.* This category does not include Computer Works made by University Personnel whose duties of employment include the creation of such works for the benefit and use of MSU Denver. Faculty members, particularly in the computer science, engineering and related disciplines, create Computer Works for research and publication in the same manner as faculty members in other disciplines create other scholarly works, and in such



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circumstances those Computer Works are deemed Traditional Works of Faculty and Professional Authorship.

- b. Traditional Works of Faculty and Professional Authorship shall belong to the Creators of such works. Information owned by the University, such as data, illustrations or research results resulting from funded research, may be used by faculty members and other University Personnel whose employment includes research and publication to create Traditional Works of Faculty and Professional Authorship, but shall remain the property of the University. Confidential information of the University or of third parties may not be used except with specific written permission from the University and from all individuals or entities who have an interest in the confidential information. Assignments or licenses to such works granted by University Personnel shall grant only rights to the work as a whole and shall transfer no rights to use of the University materials except as part of the work as a whole.

3. Course Materials and Syllabi

- a. Course Materials include all works created by faculty and other University Personnel functioning in a faculty role for or used in teaching an MSU Denver course. Course materials include the syllabus, handouts, tests and exams, grading criteria, discussion forums, interactive assignments, classroom visuals (slides, PowerPoint presentations, *etc.*), dynamically created code during class sessions, appearing in course handouts, and lecture notes, and the like. Course Materials do not include materials produced by a third party, such as a textbook company, and used by the



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faculty or other University Personnel functioning in a faculty role with minimal modification in accordance with copyright law.

- b. Because MSU Denver has an interest in the continuity of educational programs offered at MSU Denver, MSU Denver will be the owner of course construct prepared by University Personnel as part of their assigned duties. Authors remain free and are hereby granted by MSU Denver a non-exclusive license to copy, use and make derivative works of their own syllabi at other institutions, to share them with colleagues at other institutions, and to make them available (if they so desire) on an MSU Denver webpage.
- c. Course Materials other than Syllabi, including Online and Digital Course Materials are owned by the Creator. MSU Denver may license such materials and copyrights for teaching, research, and other educational pursuits, at the discretion of the faculty member. At the request of a Dean or department chair, the faculty member or other University Personnel functioning in a faculty role shall provide a copy of course materials used in teaching an MSU Denver course. However, the Dean or chair must obtain the permission of the creator in order to further share these materials except when the sharing of said materials is necessary for course continuity within the current term when the original instructor of record is unable to continue the course.
- d. An Online University Course is a course in which instruction and interaction occurs via electronic transmission, correspondence, or within the University-licensed learning management system. All materials prepared for, or in connection with existing instructional methods "online," "hybrid," and "self-paced online" are



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considered Course Materials; however, such materials are subject to the MSU Denver Online and Digital Materials Policy, which controls in case of any conflict with this IP Policy. That policy provides that the faculty member owns the copyright in these materials, though if substantial, University resources (defined as the use of MSU Denver instructional design team expertise and financial compensation for the development of new or existing digital materials) are used to develop those materials, the faculty member owns intellectual property rights throughout their employment at the University, and the University does not retain rights to usage of those materials during employment of the faculty member. The faculty member may elect to allow other members of the faculty or staff to use their course materials at their discretion. When the faculty member concludes employment at the University, the University maintains a three-year, nonexclusive, royalty-free license to continue offering the course.

4. Administrative Works

- a. Administrative Works include all works of authorship prepared for MSU Denver's use that are not Academic Publications, Course Materials, or Computer Works. Administrative works include, for example, materials for recruiting employees or students; internal publications, such as handbooks or newsletters; internal materials of a confidential or nonpublic nature, such as memos or reports concerning budgets or personnel matters; materials or reports intended for the general public or subgroups of the public, such as alumni or donors; and materials of the type created by organizations and businesses generally.



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- b. Administrative works also include works in which MSU Denver has an identity interest or functional interest. The University has an identity interest in works that are integral to and reflect on the identity of the University. For example, the University has an identity interest in the University's name, and any image, trademark or logo of the University. MSU Denver also owns IP in which it has a functional interest. The University has a functional interest in works that are used to enhance the effective functioning and coordination of ongoing operations of the University, or in which the University has a contractual or legal obligation.
- c. Copyright in and to Administrative Works vests in MSU Denver and is solely owned by MSU Denver. No rights belong to, or remain with, the authors. Notwithstanding the foregoing, upon request, in appropriate circumstances, MSU Denver may grant to the original Creator(s) limited rights to the use of artistic works that may be included in Administrative Works or the right to use MSU Denver Administrative Works for use in scholarly works or for training or teaching purposes.

5. Computer Works

Computer Works include computer programs, code, algorithms, and the like. When such works are made with University Support by University Personnel whose duties of employment include the creation of such works for the benefit and use of MSU Denver, such works will be owned by MSU Denver and are considered Works-Made-For-Hire. The authors are permitted to use them for their own personal noncommercial use, such as teaching and conducting research. Faculty, students, and other researchers are permitted to distribute Computer Works, with the stipulation that MSU



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Denver is identified as the copyright holder of the software in all such distributions, as long as the Creator does not sell or otherwise monetize them, for example by: sharing publicly without charging for download or use, such as on one's personal website, an MSU Denver website, a code repository, *etc.*; share Computer Works with any interested parties, non-publicly, for free; include source code or compiled software as part of or supplement to any Traditional Works of Faculty and Professional Authorship. If MSU Denver grants a license to a Computer Work to a third party, the permissible use by the authors may be narrower. In such a case, MSU Denver will inform the authors of the restriction, and the authors will be required to abide by them. Computer Works made by faculty as part of their research or scholarly publications will be treated as Traditional Works of Faculty and Professional Authorship. Computer Works made by faculty as part of their teaching duties will be treated as Course Materials. Notwithstanding ownership of copyright by MSU Denver, MSU Denver encourages and supports the free exchange of ideas among educational and similar institutions and does not prohibit its personnel from sharing Computer Works outside of MSU Denver for educational purposes or for internal use of such other institutions. Resale or for-profit use will still require a license from MSU Denver.

6. Data and Research Results

- a. Data and Research Results shall belong to MSU Denver if a result of funded research. Data, research results, illustrations and other similar information owned by the University, other than confidential information of the University or third parties, may be used by faculty members and other University Personnel whose employment includes scholarship and publication to create



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Academic Publications. However, University-owned material, such as data, illustrations or research results resulting from funded research which may be contained within Traditional Works of Faculty and Professional Authorship, shall remain the property of the University. Assignments or licenses to such works granted by Authors shall grant only rights to the work as a whole and shall transfer no rights to use of the University-owned materials except as part of the work as a whole.

- b. In accordance with recognized scientific research procedures, University Personnel are required to record all research data and information accurately and clearly and to keep all such data in a permanent and retrievable form, which information and documents shall belong to the University, as long as it does not violate the *Code of Federal Regulations* ("C.F.R.") for the Protection of Human Subjects (45 C.F.R. pt. 46). In regards to human subjects research, data shall only be kept and retrieved in accordance with the procedures presented to and approved by the Institutional Review Board ("IRB") as to not violate confidentiality. In addition, with regard to a patentable invention, original laboratory data must be kept for the life of the patent. University Personnel must also securely store tangible property (such as biological materials, chemical compounds, and electronic storage devices) related to an invention or work to which the University has asserted or may assert its ownership rights. Personnel who leave the University may be permitted to copy their laboratory notebooks and take the copies with them, or to take samples of tangible property with them, although they are required to



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maintain the confidentiality of the data contained within the notebooks or the tangible property. The original notebooks will remain at the University if they do not contain human subjects information or violate the Federal Policy for the Protection of Human Subjects. The transference of data shall follow the protocols set forth by the IRB.

- c. Data, research results, laboratory notebooks and tangible property may contain confidential information of MSU Denver, and in particular may contain confidential information of others, particularly data relating to human subject research or medical or personnel records. In addition, such data and other materials may be subject to the rights of the sponsors of the work that resulted in those data or materials. All MSU Denver personnel, during their employment at MSU Denver, and after leaving such employment, are obligated to maintain the confidentiality of such confidential information, to comply with the rights of sponsors, and to comply with all laws relating to the use of such information.

7. Project Deliverables

When MSU Denver engages in sponsored or contract research work, whether as a result of a federal or state grant, a sponsored research agreement or a specific contract, such work typically contains rights reserved by or granted to sponsors, and generally requires MSU Denver to provide materials, information, and/or reports concerning the work or its results to the funding entity. The materials required to be prepared for sponsors and other materials generated from such funded work are collectively referred to herein as "Project Deliverables." Project Deliverables are Works-Made-For-Hire and are owned by MSU Denver, subject to



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outside agreements. Subject to the rights of funding entities, and the requirement to maintain the confidentiality of certain information which is required to be kept confidential (such as confidential information of sponsors provided in connection with the work, or information of third parties, such as individuals involved in a study), faculty members and other creators may utilize such project deliverables (or portions thereof) in their teaching and research.

8. Distinguishing Between Categories

University Personnel create many different kinds of Intellectual Property, and disputes may arise over the categorization of works. For Faculty and other University Personnel whose employment includes scholarly research and publication, generally, if a work is circulated in a non-commercial realm and non-monetized, it is considered an Academic Publication; however, works that are monetized and/or commercially promoted may be considered an invention or discovery if the work was made or conceived with University Support. For works created by Creators who are faculty members or other University Personnel functioning within a faculty role, the Provost is permitted in the exercise of the Provost's judgment to determine the category into which a given work of authorship falls, and such exercise of judgment shall be final, subject only to the right of an aggrieved person to request review by the Faculty Senate. The Faculty Senate may establish procedures for reviewing the dispute. For works created by Creators who are non-faculty University Personnel and not functioning within a faculty role, the President, with the advice and input from the General Counsel, is permitted in the exercise of the President's judgment to determine the category into which a given work of authorship falls, and such exercise of judgment shall be final, subject only to the right



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of the aggrieved person to request review by the Staff Senate. The Staff Senate may establish procedures for reviewing the dispute. For clarity, this IP Policy does not prohibit, restrict, or condition the use by members of the MSU Denver community of a work of authorship for which copyright is owned by MSU Denver to (i) comply with any obligations imposed on them by law; (ii) report violations of law or policy to persons or organizations responsible for, or authorized to, investigate or otherwise act upon such violations or reports; or (iii) in connection with any accreditation requirements.

9. Outside Consulting

a. Outside Consulting Agreements

- i. University Personnel who engage in outside employment or consulting activities while under contract are required to inform MSU Denver in advance of their intention in accordance with MSU Denver's Policy on Conflict of Interest in Outside Employment and Personal Activities and Relationships. MSU Denver can then determine in advance if there may be a potential conflict and negotiate a written resolution in advance. Any consulting agreement must disclose the personnel's duty to the University and must protect the University's interest.
- ii. University Personnel cannot modify the intellectual property ownership structure established in this IP Policy by unilaterally entering into a contract for outside employment or consulting activities. However, MSU Denver understands that some outside employment or consulting opportunities may require different arrangements. Faculty members



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seeking a modification of this IP Policy to pursue such opportunities should contact the Provost; non-faculty University Personnel seeking a modification of this IP Policy to pursue such opportunities should contact the President.

- b. **Disclosure of Inventions Made During Outside Consulting.** Current and former University Personnel remain obligated to disclose to MSU Denver any inventions or discoveries made while employed by MSU Denver but which are made during outside consulting, or during a sabbatical or other extended leave, notwithstanding their employment by or association with another institution or organization that would itself claim ownership of such invention or discovery. An invention made by University Personnel in the course of a paid consulting engagement for a company may be assigned to the company only if it is unrelated to the activities for which they are employed by the University or the invention was not made or conceived with University Support. Delineation of ownership of such an invention will be bound by the predetermined agreement arranged when University Personnel disclose their intention to engage in outside consulting in accordance with the MSU Denver Policy on Conflict of Interest in Outside Employment and Personal Activities and Relationships.

D. INVENTIONS; DISCOVERIES; PATENT RIGHTS

1. Ownership and Rights

- a. An invention which is made in the field or discipline in which the Creator is engaged by the University or made with the use of University Support is the property of the University. The Creator



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does hereby assign to the University all right, title, and interest in such inventions and agrees to execute any additional documents necessary to carry out such assignment. The Creator shall share in the proceeds therefrom in accordance with this IP Policy, subject to preexisting commitments to outside sponsoring agencies. An invention will be considered not to have involved University Support if no University facilities or resources were used beyond that commonly made available to all University Personnel, such as basic office supplies, ordinary use of library resources and computing facilities, or a standard computer and software package, including but not limited to space, computer hardware or software beyond that commonly made available to all University Personnel, laboratory equipment and supplies, no University-administered funds beyond those required for the payment of the Creator's salary and benefits, no University property and no University Personnel other than the Creator himself or herself, are involved in the conception or reduction to practice of the invention.

- b. No University Personnel shall be obliged to engage in the commercial exploitation of their work or to provide commercial justification for the direction of their research. University Personnel who have made, discovered, or developed an invention, improvement, or discovery shall have the sole right to decide whether, in consultation with the University, to seek a patent at all or to allow the public use of their invention, improvement, or discovery and whether, in consultation with the University, and by



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what means and on what terms to patent, produce, or market the invention, improvement, or discovery.

- c. **Creators' Rights to Inventions.** An invention made outside the field or discipline in which the Creator is engaged by the University and for which no University financial support beyond those required for the payment of the Creator's salary and benefits has been used is the property of the Creator. In the latter case, however, the Creator and the University may agree that the invention be pursued by the University and the proceeds shared pursuant to this IP Policy.
- d. **Governmental Rights in Certain Inventions.** Current governmental regulations permit educational institutions to retain rights and title to patentable inventions which result from federally funded experimental, developmental and research work. Retention of rights by a university is contingent upon the satisfaction of a number of obligations by the university and the inventor(s). These obligations must be met to protect the parties' interests. Though the University may retain rights and title to such patentable inventions, the federal government retains a royalty-free license and places certain other restrictions upon the ultimate disposition of the patent(s). Federal law requires institutions that accept federal funding to have a written agreement in place with researchers that assigns intellectual property developed with federal funding to the University. Since the University is the recipient of federal research funding, all members of the University community must execute a written agreement that assigns any such intellectual property to the University, and which



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requires that they will promptly disclose patentable inventions to the University and will execute any and all instruments necessary to protect the rights of the government and/or the University.

2. **Research Financed by Outside Sponsors or Via Partnerships**

Inventions and discoveries developed by University Personnel sponsored by or in connection with research financed by outside sponsors or via partnerships with third parties, including private businesses, shall be the property of MSU Denver. It is therefore the University's policy, except in unusual cases, to require that works and inventions developed in the course of University research sponsored by private persons, businesses and not-for-profit entities, and federal, state, and local, governmental agencies be the property of the University. This is necessary to permit the University to meet its legal and contractual obligations to the outside sponsors, including federal and state funding entities. In addition, funding agreements with governmental or commercial entities generally provide rights to the funding entities to intellectual property developed with the funding. For example, an exclusive option may be accorded to the third party with regard to intellectual property. The third party may be offered the option to acquire an exclusive license within a stated number of months from the disclosure of the invention or discovery. In negotiating research agreements with Outside Sponsors, University administrators will make every effort to inform potentially affected researchers and to invite them meaningfully in early-stage negotiations concerning invention management and Intellectual Property rights. Researcher participation in all institutionally negotiated sponsored research agreements will always be voluntary.



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3. Disclosure Requirements

- a. **Generally.** All persons to whom this IP Policy pertains shall disclose to MSU Denver any invention, discovery, or Computer Work first made, conceived, or reduced to practice (i) during the period of employment and continuing for one year following the conclusion of employment (in the case of University Personnel), or (ii) during the period of enrollment (in the case of students). Disclosures must be made on an Inventions Disclosure Form, available from the Provost's Office. If the person making the disclosure is of the view that the invention, discovery, or Computer Work was not made with University Support, and thus is not owned by MSU Denver, the individual shall communicate that view at the time of disclosure to permit MSU Denver to assess ownership rights. If the University does not challenge the view that the invention, discovery, or Computer Work was not made with University Support, and thus is not owned by MSU Denver, within three months of submittal of the disclosure form, then the University shall be deemed to have accepted as accurate the assertions contained therein.
- b. **Timely Disclosure**
 - i. Because patent rights may be lost if information describing an invention is published prior to filing of a patent application, all inventors should make a serious effort to file an Invention Disclosure Form with the Provost's Office at least one (1) month prior to any public disclosure (including but not limited to disclosures required in connection with sponsored research requirements, and any proposed



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publication or presentation, such as at academic conferences). If possible, this disclosure should be made two (2) months prior to any public disclosure as this will give MSU Denver more time to ensure that the invention is adequately protected, if warranted.

- ii. All invention disclosures shall clearly state whether a publication or public disclosure is anticipated, and the date of such anticipated publication or public disclosure.

MSU Denver understands that due to unforeseen circumstances, even disclosing an invention one (1) month before public disclosure may be difficult in some circumstances. Accordingly, when the anticipated date of publication or public disclosure is less than one month from the date of invention disclosure, the date of the impending public disclosure should be clearly flagged so that MSU Denver can attempt to protect the rights in an expedited manner.

c. **Protection of Patent Rights**

- i. MSU Denver may, but is not obligated to, file a patent application directed to inventions or discoveries owned by it pursuant to this IP Policy. The Creators shall cooperate with this endeavor by signing and delivering to MSU Denver (or designated patent counsel) assignments, inventors' oaths, and other documents necessary or useful to obtain patent protection and to have the record ownership of any patent applications or patents vest in MSU Denver. Prosecution will be handled by patent counsel selected and retained by



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MSU Denver, or by patent counsel selected and retained by a licensee of the patent rights.

- ii. Decisions regarding patent prosecution, including decisions to continue or abandon prosecution, shall be made by MSU Denver or its licensee in their discretion. The assigning person(s) shall have no right to have MSU Denver apply for, or continue prosecution of, any patent application or patent.

- d. **Assignment or License Back of Invention.** If MSU Denver determines that it does not wish to apply for, or continue prosecution of, any patent application or patent that is subject to this IP Policy, it will consider a request by the inventor(s) to assign or license the potential patent rights back to them. The decision to agree to such a request, however, is subject to MSU Denver's sole discretion, and it has no obligation to agree to such request, even if it decides to abandon (or not file) a patent application.

MSU Denver will adopt the policies, procedures and forms of agreements to be used for such assignment, such that all inventors are treated fairly and equally regarding such assignments. If MSU Denver decides in its sole discretion to entertain such a request, MSU Denver and the inventor(s) shall discuss the terms on which rights will be assigned or licensed, which would typically include an obligation by the inventor(s) to pay MSU Denver for the assignment or license, and repay to MSU Denver any patent or out-of-pocket costs expended by MSU Denver in its attempts to protect and commercialize the invention. Notwithstanding the commencement of any such discussion, MSU Denver may decide at any time to discontinue



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discussions or reject any offer by the inventor(s) in its sole discretion.

- e. **Revenue Sharing.** MSU Denver shall share with the inventor(s), and author(s), any income received by MSU Denver from licensing or otherwise monetizing such IP owned by MSU Denver. The income that is subject to this policy is Net Proceeds, meaning the gross income received by MSU Denver from licensing or otherwise monetizing IP, less direct out-of-pocket expenses incurred by MSU Denver in obtaining, securing, and licensing or otherwise monetizing such IP. These out of-pocket expenses include, for example, patent prosecution costs, attorneys' fees and expenses for licensing efforts, and other directly allocable expenses incurred in such efforts. Gross income does not include payments from licensees for research support, the value of materials supplied by a licensee, or the reimbursement of identified expenses incurred by MSU Denver. Use by the University of any IP for or in furtherance of University business is not monetizing of IP, and any monetary or incidental benefit received by the University as a result of such use, such as tuition or fees from students, will not be included as income to be shared under this policy.
- i. The portion of Net Proceeds shared with the inventor(s) and author(s) will be shared equally with the University in accordance with AAUP guidelines.¹

¹ AAUP "Recommended Intellectual Property Policies from the Canadian Association of University Teachers" document "CAUT Advisory on Intellectual Property," pg. 5. Accessed 11/26/19.



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- ii. When there is more than one inventor and/or author, the allocation of the inventors' and authors' share among the inventors and/or authors shall be determined by written allocation agreement among them, a copy of which must be provided to MSU Denver, and which will be requested at the time of invention disclosure. If there is no written allocation agreement, all inventors/authors will receive equal portions, unless otherwise determined by the Provost in the Provost's sole discretion.

E. STUDENT INTELLECTUAL PROPERTY OWNERSHIP

1. Generally, MSU Denver claims no interest in any IP created or developed by a student, unless the student was contributing to a project where the IP is owned by the Principle Investigator. However, any IP developed by a student when acting as University Personnel is governed by the same IP ownership structure and revenue sharing that is applied to University Personnel.
2. Owing to the collaborative nature of education, MSU Denver is permitted to use student-created IP for non-commercial, academic purposes to further the goals of MSU Denver. Such possible uses include, but are not limited to, using the IP as an example in another class or asking future students to use a former student's IP as a starting point in a new project. In addition, MSU Denver shall have a non-exclusive, royalty free, perpetual license to copy, retain, and use for MSU Denver's academic and educational purposes, any tests, assignments or other materials submitted to MSU Denver by a student incidental to the education process, including student theses or dissertations. On occasion, a non-employed student may be provided with the voluntary opportunity to participate in a project



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sponsored by an outside entity. The student will be advised and have the opportunity to choose whether or not to participate in such work. If the student chooses to do so, any intellectual property developed by the student on such project will be deemed to be IP created by University Personnel.

V. Related Information

- A. MSU Denver Online and Digital Materials Policy
- B. MSU Denver Conflict of Interest in Outside Employment and Personal Activities and Relationships Policy
- C. AAUP Statement on Intellectual Property [<https://www.aaup.org/report/statement-intellectual-property>]
- D. AAUP Report "Defending the Freedom to Innovate: Faculty Intellectual Property Rights After Stanford v. Roche" [<https://www.aaup.org/report/defending-freedom-innovate-faculty-intellectual-property-rights-after-stanford-v-roche>]
- E. AAUP Recommended Intellectual Property Policies from the Canadian Association of University Teachers [<https://www.aaup.org/get-involved/issue-campaigns/intellectual-property-risk/recommended-intellectual-property-policies>]

VI. Policy History

- A. **Effective:** July 1, 2020
- B. **Revised:** This policy supersedes Section 5.9 of the *MSCD Trustees Manual*, 2007 and revisions effective April 1, 2019.
- C. **Review:** This policy will be reviewed every five years or as deemed necessary by University leadership.



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VII. Policy Approval

A handwritten signature in black ink, appearing to read "Janine Davidson", is positioned above a horizontal line.

Janine Davidson, Ph.D.
President, Metropolitan State University of Denver

A handwritten signature in blue ink, appearing to read "Barbara Barnes Grogan", is positioned above a horizontal line.

Barbara Barnes Grogan
Chair, Board of Trustees, Metropolitan State University of Denver