



MINNESOTA STATE
Board of Trustees

AGENDA ITEM SUMMARY

NAME: Academic and Student Affairs Committee

DATE: March 19, 2025

TITLE: Proposed Amendment to Board Policy 3.26 Intellectual Property (Second Reading)

Action

Review and Discussion

This item is required by policy

PRESENTERS

Satasha Green-Stephen, Senior Vice Chancellor for Academic and Student Affairs

PURPOSE

Board Policy 1A.1 Minnesota State Colleges and Universities Organization and Administration, Part 6. Board Policies and System Procedures requires board review and approval of proposed board policy changes and that each board policy is reviewed at least once every five years.

BACKGROUND INFORMATION

The proposed amendment changes Part 1. Policy Statement into two sections: Part 1. Purpose and new Part 2. Policy. Renumbered the Part headings 3 through 10, deleted outdated language, applied the writing standards, and made several technical edits.

RECOMMENDED ACTION (SECOND READING DRAFT)

The Academic and Student Affairs Committee recommends that the Board of Trustees approve the proposed amendment to Policy3.26.

Date Presented to the ASA Committee: 1/28/25

Date Presented to the Board of Trustees: 3/19/25

Date of Implementation: 3/19/25

PROPOSED CHANGES (SECOND READING DRAFT)

Single underlining represents proposed new language.

Strikeouts represent existing language proposed to be removed.

1 3.26 Intellectual Property

2

3 Part 1. ~~Purpose~~Policy Statement

4 The Board of Trustees endeavors to develop and maintain a post-secondary educational system
5 marked by academic excellence. Research and development of original works and inventions
6 that require intellectual property protection are a vital part of the academic community.

7

8 Part 2. Policy

9 The board recognizes and acknowledges that colleges, universities, and the system office may
10 create or commission the creation of ~~such~~ works on its behalf and incorporates in board policy
11 the traditional higher education commitment to faculty and student ownership in creative and
12 scholarly works.

13

14 Part ~~32~~. Applicability

15 This policy applies to colleges, universities, the system office and their respective employees,
16 student employees, and students.

17

18 Part ~~43~~. Definitions

19 For the purposes of this policy only, the following definitions apply.

20

21 **Agreement**

22 A signed written contract between or among a corporation, business, individual(s), and a
23 college, university, or the system office, but does not include sponsorship agreements and
24 collective bargaining agreements between the board and exclusive bargaining
25 representatives.

26

27 **Collective bargaining agreement**

28 A negotiated contract between the board and a specific bargaining unit.

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30 **College or university**

31 A Minnesota State college or university.

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33 **College, university, or system office resources**

34 College, university, or system office services and all tangible resources such as buildings,
35 equipment, facilities, computers, software, personnel, research assistance, and funding.

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37 **Creator/Inventor**

38 The individual or group of individuals who invent, author, discover, or are otherwise
39 responsible for the creation of intellectual property. ~~And i~~inventor refers to the creator of
40 an invention that may be patentable.

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Employee

Any person employed by the State of Minnesota as defined by the Public Employees Labor Relations Act (PELRA).

Faculty

Full-time and part-time employees performing work in bargaining units 209 and 210 and other employees who teach or conduct research with a level of responsibility and self-direction equivalent to that traditionally exercised and enjoyed by instructional unit employees when engaged in similar activities, e.g., the preparation of research articles for peer review journals by Administrative and Service Faculty (ASF) members or graduate students.

Intellectual property

Any work of authorship, invention, discovery, or other original creation that may be protected by copyright, patent, trademark, or other category of law.

Intellectual property rights

All the protections afforded the owner or owners of an original work under law, including all rights associated with patent, copyright, and trademark registration.

Jointly created work

A work prepared by two or more individuals who intend their separate contributions be merged into a single work.

Minnesota State

The public higher education system established at Minn. Stat. Ch. 136F. Minnesota State includes the Board of Trustees, office of the chancellor, system office, colleges and universities, and any part or combination thereof.

System office

The central administrative office under the direction and supervision of the chancellor which is part of Minnesota State.

Sponsor

A person, company, organization, or governmental entity, other than Minnesota State, that provides funding, equipment, or other support for a college, university, or the system office to carry out a specified project in research, training, or public service.

Sponsorship agreement

A written agreement between the sponsor and a college, university, and/or the system office that may include other parties such as the creator of the work.

Student

An individual enrolled in a class or program at a Minnesota State college or university at the time the intellectual property was created.

90 **Student employee**
91 A student who is paid by any college, university, or the system office for services performed.
92 Graduate assistants and work-study students are student-employees. For graduate students
93 who teach, see Faculty definition.
94

95 **Substantial use of resources**
96 Substantial use exists when resources are provided beyond the normal professional,
97 technology, and technical support supplied by the college, university, and/or system office
98 to an individual or individuals for development of a project or program.
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100 **System**
101 See Minnesota State definition.
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103 **Types of Works**

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105 **Institutional work**
106 A work made for hire in the course and scope of employment by an employee or by any
107 person with the use of college or university resources, unless the resources were
108 available to the public without charge or the creator had paid the requisite fee to utilize
109 the resources.
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111 **Personal work**
112 A work created by an employee outside their scope of employment and without the use of
113 college or university resources other than resources that are available to the public or resources
114 for which the creator has paid the requisite fee to utilize.
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116 **Scholarly work**
117 A creation that reflects research, creativity, and/or academic effort. Scholarly works include
118 course syllabi, instructional materials (such as textbooks and course materials), distance learning
119 works, journal articles, research bulletins, lectures, monographs, plays, poems, literary works,
120 works of art (whether pictorial, graphic, sculptural, or other artistic creation), computer
121 software/programs, electronic works, sound recordings, musical compositions, and similar
122 creations.
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124 **Student work**
125 A work created by a person in their capacity as a student.
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127 **Works made for hire**
128 Works produced by employees within the scope of their employment or specially
129 commissioned works.
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131 **Part 54. Ownership of Intellectual Property Rights**

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133 **Subpart A. Basic ownership rights of creative works**
134 The ownership rights to a creation must be determined generally by the provisions in
135 Subpart A, but ownership may be modified by an agreement, sponsorship agreement, or
136 other condition described in Part 4, Subpart B or C.

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1. **Institutional works.** Intellectual property rights in institutional works belong to the college or university. A course outline is an institutional work. A college, university, or the system office may enter into a written agreement with a non-faculty employee granting the employee ownership of a work that the parties agree is of a scholarly nature as described in Subpart A.2. For the purposes of this policy, scholarly works are not considered institutional works.
2. **Scholarly works.** Intellectual property rights in scholarly works belong to the faculty member or student who created the work, unless an agreement, sponsorship agreement, or other condition described in Subpart B or C provides otherwise.
3. **Personal works.** Intellectual property rights in personal works belong to the creator of the work.
4. **Student works.** Intellectual property rights in a student work belongs to the student who created the work. A work created by a student to meet course requirements using college or university resources for which the student has paid tuition and fees to access courses/programs or using resources available to the public, is the property of the student. A work created by a student employee during the course and scope of employment is an institutional work and the intellectual property rights belong to the college or university unless an agreement, sponsorship agreement, internship agreement, or other condition described in Subpart B or C provides otherwise.

Subpart B. Modification of basic ownership rights

The general provisions for ownership of intellectual property rights set forth in Subpart A may be modified by entering into a signed written agreement as provided in this subpart, following collaborative discussion among the affected parties, or through the substantial use of resources.

1. **Sponsorship agreement.** The ownership of intellectual property rights in a work created under a sponsorship agreement is determined by the terms of the sponsorship agreement. If the sponsorship agreement is silent on ownership of intellectual property rights, ownership will be determined under applicable law.
2. **Collaborative agreement.** A college, university, or the system may participate in projects with persons, corporations, and businesses to meet identified student, citizen, community and industry needs. Ownership rights pursuant to any collaboration must be addressed pursuant to this policy.
3. **Specially Commissioned Work agreements.** Intellectual property rights to a work specially ordered or commissioned by a college or university from a faculty member or other employee, and identified as a specially commissioned work at the time the work was commissioned, is a work made for hire and belongs to the college or university. The college or university, and the employee shall enter into a written agreement for creation of the specially commissioned work.
4. **Student Internship agreement.** The ownership of intellectual property rights in a work created during a student internship is determined by the terms of the internship agreement. If the agreement is silent on ownership of intellectual property rights, ownership is determined under applicable law.
5. **Open Educational Resource (OER) Agreements.** When colleges, universities, and the system office use OER agreements, authors will retain ownership of the copyright to their works, but agree to share the works through an Open or Creative Commons license.
6. **Substantial Use of Resources.** In the event a college, university, or the system office provides substantial resources to a faculty member for creation of a work that is not an

187 institutional work created under a sponsorship agreement, individual agreement, or special
188 commission, the college, university, and/or the system office and the creator shall own the
189 intellectual property rights jointly in proportion to their respective contributions. ~~made~~. Use
190 of resources is considered substantial when the additional support received is beyond the
191 normal support level made available by a college, university, and/or the system office to the
192 individual in their position.

193 194 **Subpart C. Other ownership factors**

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196 1. **Collective bargaining agreement.** In the event the provisions of this policy and the
197 provisions of any effective collective bargaining agreement conflict, the collective bargaining
198 agreement must take precedence.
- 199 2. **Jointly created works.** Ownership of jointly created works is determined by separately
200 assessing which of the above categories applies to each creator, respectively. Jointly created
201 works involving the contributions of students and/or student employees must be assessed
202 considering all relevant categories of ownership rights as set forth above.
- 203 3. **Sabbatical works.** Intellectual property created during a sabbatical is defined as a scholarly
204 work. Typical sabbatical plans do not require the use of substantial college/university
205 resources as defined in Part 2 of this policy. If the work created as part of an approved
206 sabbatical plan requires resources beyond those normal for a sabbatical, the parties may
207 enter into one of the applicable arrangements set forth in Part 4, Subparts B or C.
- 208 4. **Minnesota State, college, or university name.** Intellectual property rights associated with
209 Minnesota State's identity, the identities of its colleges and universities, logos, and other
210 indices of identity belong to the respective entity. Such rights may be licensed pursuant to
211 reasonable terms and conditions approved by the chancellor, presidents or their designees,
212 respectively. Minnesota State employees may identify themselves with ~~the~~ such title of their
213 position as is usual and customary in the academic community; but any user of the
214 Minnesota State's or a college's or university's name, logo, or indicia of identity shall take
215 reasonable steps to avoid any confusing, misleading, or false impression of particular
216 sponsorship or endorsement by the system, its colleges or universities. When necessary,
217 specific disclaimers must be included.
- 218 5. **Works owned jointly by colleges, universities, and the system.** Colleges, universities, and
219 system ownership interests in jointly owned intellectual property must be determined by
220 the relative contributions made by each contributor - unless otherwise provided in a written
221 agreement. The ownership interests may be expressed in percentages of ownership or an
222 unbundling of the rights associated with the work, whatever the parties agree to. This
223 paragraph applies only to allocation of ownership interests among a college, university, or
224 Minnesota State. The ownership of any other joint owner must be determined in
225 accordance with applicable policy, collective bargaining agreement, or personnel plan
226 provisions, or as negotiated among the parties.
- 227 6. **Equitable distributions.** In any instance in which a college, university, or Minnesota State
228 ~~and/or its colleges or universities~~ executes an agreement with an individual, corporation,
229 business, or other entity for economic gain using intellectual property in which the colleges,
230 universities, or ~~the~~ Minnesota State has an ownership interest, the colleges, universities, or
231 the system must receive an equitable distribution. The proceeds of the equitable
232 distribution must be shared among the creators of the work as determined by agreement in
233 accordance with this policy.

234 235 **Part 65. Management of Intellectual Property**

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237 **Subpart A. Record-keeping**

238 Each college and university shall maintain a record-keeping system to manage the
239 development and use of its intellectual property.

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241 **Subpart B. Contracts involving intellectual property**

242 College, university, and system office contracts involving intellectual property must be
243 reviewed by the Office of General Counsel or Attorney General's Office before signing,
244 unless the contract is one of the Minnesota State approved contract templates.

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246 **Part 76. Preservation of Intellectual Property Rights**

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248 **Subpart A. Protection of rights**

249 A college, university, or the system office shall undertake such efforts, as it deems
250 necessary to preserve its rights in original works when it is a sole or joint owner of the
251 intellectual property rights. A college, university, or the system office may apply for a
252 patent, trademark registration, copyright registration, or other protection available by law
253 on any new work in which the college, university, or the system office maintains intellectual
254 property rights.

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256 **Subpart B. Payment of costs**

257 A college, university, or the system office may pay some or all costs required for obtaining a
258 patent, trademark, copyright, or other classification on original works for which the college,
259 university, or the system office owns or jointly owns the intellectual property rights. If a
260 college, university, or the system office has intellectual property rights in a jointly owned
261 work, the college, university, or the system office may enter into an agreement with joint
262 owners relating to the payment of such costs.

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264 **Part 87. Commercialization of Intellectual Property**

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266 **Subpart A. Right of commercialization**

267 The college, university, or the system office that owns or has shared intellectual property
268 rights to a work may commercialize the work using its own resources or may enter into
269 agreements with others to commercialize the work as authorized by law. Upon request of a
270 creator who retains intellectual property rights in a work, the college, university, or the
271 system office shall advise the creator of progress in commercializing the work.

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273 **Subpart B. Sharing of proceeds**

274 An employee who creates a work and retains an intellectual property interest in such work
275 in which the college, university, or system office maintains intellectual property rights is
276 entitled to share in royalties, licenses, and any other payments from commercialization of
277 the work in accordance with applicable collective bargaining agreements, individual
278 agreements, and applicable laws. All expenses incurred by the college, university, or the
279 system office in protecting and promoting the work, including costs incurred in seeking
280 patent or copyright protection and reasonable costs of marketing the work, must be
281 deducted and reimbursed to the college, university, or the system office before the creator
282 is entitled to share in the proceeds.

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284 If a college, university, or the system office decides not to pursue patent or copyright
285 protection in a jointly owned work and the creator/inventor decides to pursue such
286 protection, all expenses incurred by the creator/inventor in protecting and promoting the
287 work including costs incurred in seeking patent or copyright protection and reasonable
288 costs of marketing the work, must be deducted and reimbursed to the creator/inventor
289 before the college, university, or the system office is entitled to share in the proceeds.
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291 Net proceeds generated from the commercialization of works owned jointly by colleges,
292 universities, or the system office (not creators/inventors) will be distributed in accord with
293 the terms of a written agreement, or absent an agreement, in amounts equal to the relative
294 contributions made by the colleges, universities, or the system office.
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296 **Subpart C. Intellectual property account**

297 Each college, university, and the system office shall deposit all net proceeds from
298 commercialization of intellectual property in its own general intellectual property account.
299 The president/chancellor (or designee) may use the account to reimburse expenses related
300 to creating or preserving the intellectual property rights of the college, university, or system
301 office or for any other purpose authorized by law and board policy, including the
302 development of intellectual property.
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304 **Subpart D. Trademarks**

305 Income earned from the licensing of college, university, or system trademarks and logos is
306 not subject to the requirements of Subpart C for distribution of funds.
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308 **Part 98. Assignment of Rights**

309 310 **Subpart A. College, university, or system office assignment**

311 A college, university, or the system office may assign all or a portion of its rights in a work to
312 the creator, corporation, business, or to any other person in accordance with the law and
313 when in the best interests of the college, university, or the system. As a condition of the
314 assignment, the college, university, or the system office, may preserve rights, such as a
315 royalty-free, perpetual, irrevocable, non-exclusive license to use and copy the work in
316 accordance with the preservation and the right to share in any proceeds from
317 commercialization of the work.
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319 **Subpart B. Creator assignment**

320 Any person may agree to assign some or all of their intellectual property rights to the
321 college, university, or system. The creator may preserve any rights available to the creator
322 as part of the assignment.
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324 **Subpart C. Assignment in writing**

325 Any assignment of intellectual property rights must be in writing and signed by the assignor
326 and assignee.
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328 **Part 109. Dispute Resolution Process**

329 The system office may develop procedures to resolve disputes relating to this policy.

Related Documents:

- [Board Policy 3.22](#) Course [Outlines and Course Syllabi](#) ~~and Course Outlines~~
- [Board Policy 3.27](#) Copyrights
- [System Procedure 3.22.1](#) Course [Outlines and Course Syllabi](#) ~~and Course Outlines~~
- [System Procedure 3.26.1](#) Patent Inquiry Procedures
- [Finance Contract Templates](#)

To view any of the following related statutes, go to the Revisor's Web site

(<https://www.revisor.mn.gov/>). You can conduct a search from this site by typing in the statute number.

- Minnesota Statutes 136F Minnesota State Colleges and Universities
- Minnesota Statutes 16C.05 Contract Management; Validity and Review
- [Public Employees Labor Relations Act \(PELRA\)](#)

Policy History:

Date of Adoption: 06/19/02

Date of Implementation: 01/01/03

Date of Last Review: 04/22/20

Date & Subject of Amendments:

Xx/xx/25 – Change Part 1. Policy Statement into two sections: Part 1. Purpose and new Part 2. Policy. Renumbered the Part headings 3 through 10, deleted outdated language, applied the writing standards, and made several technical edits.

04/22/20 – Reorganized the types of works in the Part 2 Definition section, added student internship agreements and open educational resource agreements in Part 4, Subpart B, 4 & 5; deleted the intellectual property coordinator language in Parts 5 and 10; added language on system legal counsel's review of contracts involving intellectual property in Part 5, Subpart B; changed Part 5 into the management of intellectual property, and made general technical edits throughout the policy.

Additional [HISTORY](#).