



**MINNESOTA STATE**  
Board of Trustees

**AGENDA ITEM SUMMARY**

**NAME:** Academic and Student Affairs

**DATE:** January 29, 2025

**TITLE:** Proposed Amendment to Board Policy 3.26 Intellectual Property (First 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 Renumbered the Part headings 3 through 10, deleted outdated language, applied the writing standards, and made several technical edits.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 (FIRST READING DRAFT)**

The Academic and Student Affairs Committee recommends that the Board of Trustees approve the proposed amendment to Policy 3.26.

*Date Presented to the ASA Committee:* 1/29/25

*Date Presented to the Board of Trustees:* First reading – no action taken.

*Date of Implementation:* TBD

## PROPOSED CHANGES (FIRST 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.

29

##### 30 **College or university**

31 A Minnesota State college or university.

32

##### 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.

36

##### 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~~nventor refers to the creator of  
40 an invention that may be patentable.

41

##### 42 **Employee**

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

45

46 **Faculty**

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

53

54 **Intellectual property**

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

57

58 **Intellectual property rights**

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

61

62 **Jointly created work**

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

65

66 **Minnesota State**

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

70

71 **System office**

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

74

75 **Sponsor**

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

79

80 **Sponsorship agreement**

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

83

84 **Student**

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

87

88 **Student employee**

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

92

93 **Substantial use of resources**

94 Substantial use exists when resources are provided beyond the normal professional,  
95 technology, and technical support supplied by the college, university, and/or system office  
96 to an individual or individuals for development of a project or program.

97

98 **System**

99 See Minnesota State definition.

100

101 **Types of Works**

102

103 **Institutional work**

104 A work made for hire in the course and scope of employment by an employee or by any  
105 person with the use of college or university resources, unless the resources were  
106 available to the public without charge or the creator had paid the requisite fee to utilize  
107 the resources.

108

109 **Personal work**

110 A work created by an employee outside their scope of employment and without the use of  
111 college or university resources other than resources that are available to the public or resources  
112 for which the creator has paid the requisite fee to utilize.

113

114 **Scholarly work**

115 A creation that reflects research, creativity, and/or academic effort. Scholarly works include  
116 course syllabi, instructional materials (such as textbooks and course materials), distance learning  
117 works, journal articles, research bulletins, lectures, monographs, plays, poems, literary works,  
118 works of art (whether pictorial, graphic, sculptural, or other artistic creation), computer  
119 software/programs, electronic works, sound recordings, musical compositions, and similar  
120 creations.

121

122 **Student work**

123 A work created by a person in their capacity as a student.

124

125 **Works made for hire**

126 Works produced by employees within the scope of their employment or specially  
127 commissioned works.

128

129 **Part 54. Ownership of Intellectual Property Rights**

130

131 **Subpart A. Basic ownership rights of creative works**

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

135

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

#### 155 **Subpart B. Modification of basic ownership rights-**

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

- 160
- 161
- 162 1. **Sponsorship agreement.** The ownership of intellectual property rights in a work created  
163 under a sponsorship agreement is determined by the terms of the sponsorship agreement.  
164 If the sponsorship agreement is silent on ownership of intellectual property rights,  
165 ownership will be determined under applicable law.
- 166 2. **Collaborative agreement.** A college, university, or the system may participate in projects  
167 with persons, corporations, and businesses to meet identified student, citizen, community  
168 and industry needs. Ownership rights pursuant to any collaboration must be addressed  
169 pursuant to this policy.
- 170 3. **Specially Commissioned Work agreements.** Intellectual property rights to a work specially  
171 ordered or commissioned by a college or university from a faculty member or other  
172 employee, and identified as a specially commissioned work at the time the work was  
173 commissioned, is a work made for hire and belongs to the college or university. The college  
174 or university, and the employee shall enter into a written agreement for creation of the  
175 specially commissioned work.
- 176 4. **Student Internship agreement.** The ownership of intellectual property rights in a work  
177 created during a student internship is determined by the terms of the internship agreement.  
178 If the agreement is silent on ownership of intellectual property rights, ownership is  
179 determined under applicable law.
- 180 5. **Open Educational Resource (OER) Agreements.** When colleges, universities, and the system  
181 office use OER agreements, authors will retain ownership of the copyright to their works,  
182 but agree to share the works through an Open or Creative Commons license.
- 183 6. **Substantial Use of Resources.** In the event a college, university, or the system office  
184 provides substantial resources to a faculty member for creation of a work that is not an  
185 institutional work created under a sponsorship agreement, individual agreement, or special

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

### 191 **Subpart C. Other ownership factors**

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

## 231 **Part 65. Management of Intellectual Property**

### 232 **Subpart A. Record-keeping**

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

238

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

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

243

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

245

246 **Subpart A. Protection of rights**

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

253

254 **Subpart B. Payment of costs**

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

261

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

263

264 **Subpart A. Right of commercialization**

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

270

271 **Subpart B. Sharing of proceeds**

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

281

282 If a college, university, or the system office decides not to pursue patent or copyright  
283 protection in a jointly owned work and the creator/inventor decides to pursue such  
284 protection, all expenses incurred by the creator/inventor in protecting and promoting the  
285 work including costs incurred in seeking patent or copyright protection and reasonable  
286 costs of marketing the work, must be deducted and reimbursed to the creator/inventor  
287 before the college, university, or the system office is entitled to share in the proceeds.  
288

289 Net proceeds generated from the commercialization of works owned jointly by colleges,  
290 universities, or the system office (not creators/inventors) will be distributed in accord with  
291 the terms of a written agreement, or absent an agreement, in amounts equal to the relative  
292 contributions made by the colleges, universities, or the system office.  
293

#### 294 **Subpart C. Intellectual property account**

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

#### 302 **Subpart D. Trademarks**

303 Income earned from the licensing of college, university, or system trademarks and logos is  
304 not subject to the requirements of Subpart C for distribution of funds.  
305

### 306 **Part 98. Assignment of Rights**

#### 307 308 **Subpart A. College, university, or system office assignment**

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

#### 317 **Subpart B. Creator assignment**

318 Any person may agree to assign some or all of their intellectual property rights to the  
319 college, university, or system. The creator may preserve any rights available to the creator  
320 as part of the assignment.  
321

#### 322 **Subpart C. Assignment in writing**

323 Any assignment of intellectual property rights must be in writing and signed by the assignor  
324 and assignee.  
325

### 326 **Part 109. Dispute Resolution Process**

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



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**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 \(PELRA\)](#)

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**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](#).