

ARTICLE TWENTY-SEVEN INTELLECTUAL PROPERTY

27.1 Introduction:

Franklin Pierce University recognizes and reaffirms the traditional academic freedom of the faculty to engage in scholarly activity and to publish freely without restriction. In keeping with this philosophy, the University recognizes that Intellectual Property originated by a faculty member covered by this Agreement shall be the sole and exclusive property of the faculty member, unless this Article Twenty-Seven provides otherwise.

27.2 Definitions.

Terms used herein and not otherwise defined shall have the following meanings:

27.2.1 Inventors - University faculty who have developed Inventions.

27.2.2 Creators - University faculty who have developed Creations.

27.2.3 Originator - An Inventor and/or Creator.

27.2.4 Disclosure - A reporting of an Invention or Creation to the University.

27.2.5 Intellectual Property – Intellectual Property refers to Creations and Inventions.

27.2.6 Official Syllabus - the version of the official syllabus developed for use by the Faculty member in the classroom which is posted or otherwise made available to students and thereafter used by the Faculty member and students in a course.

27.2.7 Instructional Materials - such materials, including innovative products or procedures (which may appear in a variety of forms, such as printed matter, slides, web-based productions or multimedia presentations) resulting from or enhancing the teaching/learning process.

27.2.8 Inventions - All inventions, discoveries, computer programs, software and/or codes, methods, uses, products or combinations, whether or not patented or patentable at any time under the Federal Patent Act as now existing or hereafter amended or supplemented.

27.2.9 Creations – Creations refers to all textbooks, research proposals, official course syllabi developed for use by Faculty in the classroom, original works of art, and Instructional Materials, whether in written or electronic format, and all other Written Creations, Recorded Creations, Arts and Crafts, and Mediated Creations developed by Faculty and used or created for instructional purposes.

27.2.9.1. Written Creations - All academic and/or literary, dramatic, and musical materials or works and all other materials or works including computer programs and software and/or codes, published or unpublished, whether or not copyrighted or copyrightable at any time under the Federal Copyright Act as now existing or hereafter amended or supplemented.

27.2.9.2 Recorded Creations - All sound, visual, audio-visual, and television films, disks, tapes, software and/or codes, kinescopes or other recordings or transcriptions, published or unpublished, whether or not copyrighted or copyrightable at any time under the Federal Copyright Act as now existing or hereafter amended or supplemented.

27.2.9.3 Arts and Crafts - Paintings, sculptures, weavings, prints, and other arts and crafts whether or not copyrighted or copyrightable at any time under the Federal Copyright Act as now existing or hereafter amended or supplemented.

27.2.9.4 Mediated Creations – Technology-based academic materials developed for live or delayed communication via video, audio, CD-ROM, computer, Internet, or other electronic means now known or hereafter developed, including the software developed to support electronic instructional content for both credit-bearing and non-credit-bearing courses, whether or not copyrighted or copyrightable at any time under the Federal Copyright Act as now existing or hereafter amended or supplemented.

27.2.10 Specially commissioned - Works that have been specifically requested by the University that are created outside the general scope of the faculty member's duties and which are specifically requested by the University, possibly with payment by the University of additional compensation for the faculty member's creation of the Specially Commissioned Work.

27.3 **Sponsored Work:**

For Intellectual Property created with the support of an outside entity such as a grant or contract from a government entity or a grant or contract from a foundation, a non-profit, or from private industry, the rights to such Intellectual Property shall be subject to the terms of the applicable agreement. The University shall enter into agreements regarding ownership of a faculty member's work only with the faculty member's written consent and agreement of the faculty member, which shall be obtained prior to entering into any contract or grant application. The RFF shall be informed of any University requests for such faculty consent and agreement and shall have the right to attend and participate in the development of such agreements, including the provision of legal advice.

27.4 **Substantial Use of University Facilities or Funds:**

Rights to Intellectual Property involving substantial use of University facilities or funds shall be shared equally by the University and the originating faculty member, provided that such substantial use is specific to the creation. "Substantial use of University facilities or funds" means dedicated and extensive use of University facilities, personnel, and/or other resources. Payment by the University of salary from unrestricted funds and funding through funds established in Articles 9, 10 and 20 of this Agreement shall not constitute substantial use of University funds. Customary and ordinary access to offices, library, lab facilities, computers, networks, and course management systems shall not be deemed substantial use of University facilities. Any claim to ownership by the University in or to Intellectual Property that has been created with substantial use of University facilities or funds must be asserted in writing in advance of the release of funds or provision of access to facilities forming the basis of the University's claim of "substantial use". The University and faculty-member shall enter into a written agreement addressing joint ownership and shared revenue. The RFF shall be informed of any claims by the University and shall have the right to attend and participate in the development of such agreements, including the provision of legal advice. In any such agreement, the University and the faculty member shall each grant the other party a non-exclusive, non-sublicensable, royalty-free license to use the work for educational purposes.

27.5 **Specially Commissioned Intellectual Property.**

Intellectual Property that is created, made, or invented by a faculty member when specially commissioned by the University, shall be owned equally by the University and Originator, who shall have coextensive rights in and to the Intellectual Property. Any revenue generated directly from the sale, licensure, performance, production or other disposition of the Intellectual Property to individuals or entities outside of the University (by way of example and not limitation, revenue generated from ticket sales to a public showing of a documentary that was produced by a faculty member and was specially commissioned by the University) shall be shared 50/50 between the University and Originator. The parties acknowledge and agree that revenue generated from student tuition payments falls outside of this agreement, shall not be shared and shall remain 100% with the University. Intellectual Property that is created, made, or invented by a faculty member using funds established in Articles 9, 10, or 20 of this Agreement shall not be considered "specially commissioned by the University" for the purposes of this Agreement. The RFF shall be informed of any claims by the University regarding specially commissioned works and shall have the right to attend and participate in the development of any agreements regarding such works, including the provision of legal advice. In any such agreement, the University and the faculty member shall each grant the other party a non-exclusive, non-sublicensable, royalty-free license to use the work for educational purposes.

27.6 University Contracts with Third Parties

The University has the right to make provisions for the assignment, licensure, and/or other disposition of Inventions and Creations resulting from University contracts with third parties subject to the applicable faculty member's right to consent and the terms of any written agreement between the University and the faculty member as provided in Section 27.3.

27.7. Statement for Inclusion in Research Proposals and Contract/Agreements

The statement (contained in Appendix I) regarding the University's Policy on Patents, Copyrights, & other Intellectual Property shall be included in research proposals and contracts/agreements for the development or creation of Intellectual Property unless an exception to this inclusion requirement has been approved in advance in writing by the Provost.

27.8 Disclosure Requirements for University Research Proposals and Contracts/Agreements

The Provost or his/her designee is responsible for insuring that the statement found in Appendix J, or a similar statement the material terms of which are the same, is included on a form submitted with each proposal or contract/agreement for the development or creation of Intellectual Property. The proposal or contract/agreement submittal form should be signed by all faculty who will be participating in the project.

27.9 Disclosure of Inventions and Creations¹

Any Invention(s) and Creation(s) covered by this Agreement shall be disclosed by the Originator(s) in accordance with University procedures to be developed by the University and the RFF and related to the same. The Originator(s) shall work closely with officials of the University and of any organization to whom the University assigns rights to such Inventions and Creations in pursuing the protection of any and all rights in and to the same, including but not limited to applications for patents, registering copyrights, and pursuing licensing.

27.10 Assistance for Inventions and Creations in Which the University Claims No Rights

The University, at its discretion and on a case-by-case basis, will provide, upon request, direct institutional support or assistance to secure patent, copyright and trademark registrations and other intellectual property rights and interests to University faculty who have developed Invention(s) or Creation(s) in which the University does not otherwise claim any rights, provided that, in order to receive such assistance, the Originator(s) shall be required to assign certain rights to such inventions and creations to the University pursuant to a mutually

¹ The definition of "Creations" has been revised to exclude class notes and other items which Douglas Ley requested be deleted.

agreeable assignment, licensing and/or revenue sharing agreement. The RFF shall be informed of any requests by the University to assign certain rights and shall have the right to attend and participate in the development of such agreements, including the provision of legal advice. In any such agreement, the University and the faculty member shall each grant the other party a non-exclusive, non-sublicensable, royalty-free license to use the work for educational purposes.

27.11 Licensing

The University and all faculty members acknowledge and agree that, when Invention(s) or Creation(s) are created in the course of sponsored research, the sponsor shall normally receive an option to acquire a limited-term, royalty-bearing, non-sublicensable, exclusive license to such Inventions or Creations. Exclusive licenses may also be granted where industrially sponsored research and development may result in reduction-to-practice of previously conceived inventions in which the University has acquired rights, including those resulting from federally sponsored research.

27.12 Publicity

The name of the University or reference to the University shall not be used in any form of publicity related to the Intellectual Property covered under this Article Twenty-Seven without prior written approval from the University.

27.13 Waiver or Release of University's Rights

The University, at its sole discretion, may elect to waive any claim of ownership under this Article, but such waiver shall not compromise or waive any other rights under this Agreement and/or in and to any other Inventions or Creations. If the University asserts a claim of ownership in an Invention or Creation, but elects not to seek a patent or copyright or otherwise pursue commercial development (which determination shall be made solely by the University) for an Invention or Creation to which it has rights or has been assigned rights, it will assign its rights to such Invention or Creation back to the Originator.