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SECTION J. RIGHTS AND RESPONSIBILITIES RELATED TO CREATIVE WORKS *(last revised June 14, 2000)*

J.1 General Policy

Inventions, Academic Materials, Publications, and other creations, hereafter referred to as Works, are the natural outgrowth of activity in teaching, research, and service. University faculty members, administrative professionals, state classified staff, student employees, and anyone affiliated in a professional capacity with the University and using University Resources, who are inventors and creators (hereafter referred to collectively as "Members"), shall provide notification of their creation of Works to the appropriate administrator(s) and indicate their association with the University in all professional Publications.

In the interest of encouraging the development of new and useful scholarly material and the publication of such works, the University

will continue the tradition of not claiming ownership or a share of the proceeds from scholarly works such as Academic Materials, textbooks or their equivalent not supported through the use of University Resources as defined below or expressly commissioned by the University or popular or scholarly nonfiction, novels, poems, sculpture, musical compositions, or other artistic works. A faculty member's general responsibility to produce scholarly and creative works does not constitute an express commission of Works. Subject to the use of such courses for continuing or distance education purposes, (see Section J.12.3) members are sole copyright holders in their own lectures and any publication, recording, or broadcasting of lectures must be authorized by the Members concerned.

J.2 Definitions

Academic Materials

Materials used for pedagogical purposes including, but not limited to recorded and live digital, video, and audio presentations; photographs, films, graphic illustrations, transparencies, and other visual aids; programmed instructional packages; computer programs and data bases; and scripts, study guides, syllabi, tests, and other items that accompany, or are used to present or demonstrate, the above described materials. Academic Materials may be copyrighted, patented, and/or trademarked.

Contributing Unit

An organizational entity, other than the Member's home department, that provides University Resources directly in the creation or production of Works.

Department

The home department, either an academic department or other University entity, of the Member's appointment or contract.

Information Support Technologies

Includes technologies or processes used to support the electronic capture, storage, retrieval, transformation, and presentation of digital data and information or to interface between digital forms and other communications and information media, but excludes the content presented and stored in word processors, databases, or other capture, storage, retrieval, transformation, or presentation programs.

Inventions

New, useful, and non-obvious ideas and/or their reduction to practice that result in, but are not limited to, new devices, processes, and/or methods of producing new and/or useful industrial operations and materials; any produced article useful in trade; any composition of matter, including chemical compounds and mechanical mixtures; any plant covered under plant patent laws, the Plant Variety Protection Act, or other methods that provide protection; biological materials including cell lines, plasmids, hybridomas, monoclonal antibodies, and genetically-engineered organisms with commercial potential; many new designs in connection with the production or manufacture of an article including computer software, data bases, circuit design, prototype devices and equipment; and any improvement upon existing processes or systems. An Invention may be copyrighted, patented, and/or trademarked.

Inventors and Creators

Members responsible for the conception, ideas, and content of Inventions and other Works. Support staff such as research assistants, photographers, artists, producers, computer programmers, printers, and others contribute to the Works but are not considered Inventors or Creators unless they substantially influence the original and novel aspects of the Works.

Other Creations

Creative and artistic endeavors and performances and all other Works.

Publications

Textbooks, bulletins, circulars, pamphlets, reports, information releases, exhibits, demonstrations, and other scholarly or popular writings regardless of medium. Publications may be copyrighted and may include any of the items described

above in Academic Materials.

University Resources

Funds, supplies, equipment, physical facilities, support personnel, and/or other services or property of the University, including Information Support Technologies. In consideration of the benefit that accrues to the University from individual scholarly activity, the University has concluded that University Resources shall not include the Member's time, use of the library, or use of personal office including any office computer or data processor located therein.

Works For Hire

Expressly-commissioned Works for instructional, public service, or administrative use, by the University are deemed to be "works for hire" and property of the University. (See also Section J.12.2.)

J.3 Ownership and Rights

Ownership and rights to Works having potential monetary or commercial value depend on the origin, type, and amount of resources used in the creation of Works. The Vice President for Research (hereinafter referred to as "VPR") is responsible for making ownership and licensing decisions for works pursuant to Section J. Decisions by the VPR concerning software will consider whether such software is Academic Material. When software is Academic Material, and not developed using University Resources, the Member retains ownership (see also Sections J.3.1, J.7, and J.12.2). The following provisions shall govern the ownership of Works.

J.3.1 Works Supported by the University

With the exception of Academic Materials not supported through the use of University Resources, Works developed using University Resources or reduced to practice¹ in the course of a Member's University responsibilities and those expressly commissioned by the University shall be the property of the University and the Members who created them. Members shall execute written assignments and such other documents as may be necessary to transfer to the University or its designee their rights, title, and interest in such Works that are determined by the VPR to have potential monetary or commercial value, unless otherwise specified in written agreements under Section J.7.4. Associated with such transfer, the Member retains the following non-reassignable rights to use Academic Materials other than those which are or may be patented ("Non-patentable Academic Materials") without obtaining permission from the University, unless waived in writing:

- a. The right to use or reproduce such Non-patentable Academic Materials in other scholarly endeavors;
- b. The right to update or revise the content of such Non-patentable Academic Materials except that the University shall not be obligated to provide further resources unless the revisions are requested by the University or agreed to jointly by the University and the Member;
- c. The right to be identified as the creator of such Non-patentable Academic Materials if desired;
- d. The right to make derivations of such Non-patentable Academic Materials; and
- e. The right to use such Non-patentable Academic Materials in other scholarly endeavors with a new employer.

Notwithstanding the foregoing, if any such Non-patentable Academic Materials are the subject of an exclusive license to a third party, the Member shall be deemed to have waived the foregoing rights in consideration of the potential for royalty distribution as set forth in Section J without execution of a written waiver.

J.3.2 Works Financed by the Member

Works created by Members without University Resources are the property of the Members, and the University will not administer, finance, or provide other support as to these Works. Members have the use of their offices, including any office computer or data processor located therein, and the Library without charge; all other University Resources may be used only with the prior written permission of the department head and dean or director and/or the payment of the appropriate fees to cover the associated costs. The University requires Members not to engage in outside activities or use University Resources that interfere with the Member's University duties and/or University operations.

J.4 Notification of Works (*last revised February 6, 2001*)

Members must provide notification of the creation of Works to their appropriate administrator(s) and indicate their association with the University in all professional Publications. The VPR, in making ownership decisions, shall determine whether works have been created with or without University Resources (see Section J.3.2). In this determination, the VPR shall consider three (3) factors:

- a. The extent to which the Member was the initial creator of the Work;
- b. The extent to which the University controlled the content or authority over the Work; and
- c. Whether the University provided support for the Work other than the library, the Member's office and any personal computer or data processor located therein.

When the Member declares in such notification that a disclosed Work is not the property of the University, the VPR will announce a decision as to the University's position on ownership within sixty (60) calendar days from receipt of notification of Works by Members. Works having potential monetary or commercial value and created using University Resources must be reported in writing through the Member's department head and dean or director to the VPR. Notification must be timely to protect the rights of the Member(s) and the University in compliance with this policy and the strict requirements of the United States and foreign patent, trademark, and copyright laws.

J.5 Classification and Disposition of Works Supported by University Resources

The VPR, on the advice of counsel if desired, shall classify any works created with University Resources into one (1) or more of the following categories and report such action to the Member, the Member's department, and/or any contributing unit.

- a. The Work is subject to terms of a sponsor's contract and handled accordingly (see Section J.7.3).
- b. The Work is subject to terms of a special agreement and handled accordingly (see Sections J.7.1 through J.7.4 and J.12.2).
- c. The Work is in the public domain and/or serves the public interest and is to be released to the general public.
- d. The Work is the property of the University and is to be protected by patent, copyright, or trademark.
- e. The Work is the property of the University and is to be managed and/or marketed as an item of commercial value through an internal or external agent.
- f. The University has no interest in managing and/or marketing the Works and waives the right to receive an assignment of the Member's interest. However, notwithstanding such waivers, the University retains the right to use said Works in teaching and research. If the University or its marketing agent (see Section J.6) does not file for appropriate intellectual property protection or make continued efforts at marketing or fails to make such effort within six (6) months of notification of Works, the University's rights to a Work, excepting the use described above, shall be released to the Member. This time line can be extended by mutual agreement of the Inventor/Creator and the University.
- g. The Work has not sufficiently developed beyond the concept phase to allow the University to make a determination of its interests in which case the original position between the Member and the University is resumed with regard to this policy.

J.6 Administration of Marketable Works (*last revised February 2003*)

The VPR is responsible for the administration of Works having potential monetary or commercial value created with University Resources and for the selection of internal or external marketing agents that meet the best interests of the Inventors or Creators and University. The primary marketing agent for the University is the Colorado State University Research Foundation (hereinafter referred to as "CSURF"). For Academic Materials, CSURF works with the Division of Continuing Education (hereinafter referred to as "DCE") as well as the VPR. However, the VPR has the discretion to select an alternative marketing agent whenever he or she determines that it would be in the best interests of the Member(s) or the University. All arrangements with internal or external agents must be covered by written agreements approved by the VPR and the agent. Generally, it will be necessary for the University to assign its ownership interests in Works to such agents to facilitate the marketing and development of such Works.

J.7 Special Circumstances

The following provisions shall govern the designation of rights and administration and handling of Works under specified circumstances.

J.7.1 Works Created by Members While Consulting

Rights to Works resulting when a Member acts as a consultant with non-University entities must be specified in the agreement under which the Member acts (see Section D.7.6, Consulting Policy). Members must be cognizant that Works may represent the culmination of endeavor in a specialized field, often conducted with University Resources. Therefore, prior to providing rights to sponsors or entering into agreements that contemplate such assignments of rights, Members must contact their appropriate administrator(s) and the VPR for advice and counsel to protect their own and the University's interests (see Section D.7.7, Conflict of Interest). Consulting by Members shall not give rights to University-owned Works to non-University entities without a written agreement among the University, its marketing agents, and the non-University entity.

J.7.2 Works Involving More Than One Member

When Works result from the joint efforts of Members, a written agreement among the parties must specify ownership, allocations, and other rights. The VPR is responsible for determining the provision of rights when disagreements occur among parties (see Section J.11, Member's Right of Appeal).

J.7.3 Works Financed Wholly or in Part by Outside Agencies

Rights to Works financed wholly or partially by governmental, industrial, philanthropic, or other external organizations or persons must be specified in contracts or written agreements that protect the University's interest. Before work begins, the Member responsible for a contract or agreement must advise all coworkers of their rights. The VPR will exercise every effort to assure that contracts and agreements secure commercial value and patent, trademark, or copyright rights favorable to the Members and the University.

J.7.4 Works Created or Marketed Under Special Conditions

Works created or marketed under special conditions affecting ownership and/or rights must be covered by written agreements. A written agreement requires the approval of the Member(s), his or her department head(s), dean(s), and/or director(s), any contributing unit(s), and the VPR.

J.8 Distribution of Proceeds

J.8.1 Marketing of Works

Royalties, whether derived from options, fees or similar payments, resulting from licensing of Works to non-University entities, will be distributed as provided in such agreements prepared pursuant to Sections J.5 and J.7.1 through J.7.4.

The primary marketing agent for Colorado State University is CSURF (see Section J.6), which shall work with the DCE as well as the VPR in marketing of Academic Materials. The CSURF shall be responsible for collecting and distributing royalty income from licensed University Works which it administers. For any royalties derived by CSURF from such licenses, CSURF will be reimbursed for its direct costs attributable to marketing, patenting, and licensing incurred in connection with each license agreement ("direct costs"). The DCE also will be reimbursed for its direct costs attributable to equipment and materials used in the production of Academic Materials. After reimbursement of those direct costs, CSURF shall retain twenty (20) percent of net royalties for marketing Academic Materials. The remaining eighty (80) percent net royalties will be distributed as follows:

- 35 percent Inventor(s)/Creator(s)
- 10 percent Inventor(s)/Creator's(s') Department/College
- 20 percent DCE
- 15 percent Provost

The CSURF shall retain forty (40) percent of the net royalties for all other Works. The remaining sixty (60) percent net royalties will be distributed as follows:

- 35 percent Inventor(s)/Creator(s)

10 percent Inventor(s)/Creator's (s') Department/College
15 percent VPR

The department/college, DCE, Provost, and VPR share in these royalties which shall be used to promote and support research, scholarship, and instructional activities.

J.8.2 Royalty Distributions

Any proceeds accruing to Members in Section J.8.1 constitute royalties, not salaries, and will be paid as royalties to Members through the University's external agent/assignee. If a Member leaves the University, the Member's portion of proceeds will continue to be paid to the Member. If the Member dies, the Member's portion of the proceeds will continue to be paid in accordance with the testamentary disposition (wills, trusts and similar mechanisms) or, in the absence of such disposition, as provided by law.

J.9 Works Published by the University

Members who author or are responsible for official University Publications, not including scholarly works, must clear the material through their respective department heads, deans, and/or directors.

J.10 Member's Right of Review

Any Member who deems that continued use or marketing of Non-patentable Academic Materials is detrimental to the University or the Member's personal or professional reputation may call for a review by the department and/or college using procedures described in department and/or college codes. If department or college codes contain no applicable procedures or if disagreements are not resolved at that level, they shall be referred to the Provost for decision (see Section J.11). Notwithstanding the foregoing, if any such Non-patentable Academic Materials are the subject of an exclusive license to a third party, the Member shall be deemed to have waived the foregoing right of review in consideration of the potential for royalty distributions as set forth herein.

J.11 Member's Right of Appeal

Decisions on Works by the VPR may be appealed to the Provost who may overrule the VPR's decision. Any Member who feels aggrieved by decisions of the Provost has access to the University's mediation and grievance processes (see Section K).

J.12 Academic Materials

Members are sole copyright holders of the content of their own lectures (Section J.1), whether prepared for traditional classroom delivery or by any other means. Members may use their class materials, including lecture notes, in the preparation of textbooks or other Works. Members are encouraged to use appropriate instructional techniques and technologies that will best serve the educational objectives of students. Recordings, videotapes, or other technologies prepared in the ordinary course of teaching to meet the reasonable needs of currently enrolled students, including distance or handicapped students, and not involving University Resources, shall belong to the Member. When Academic Materials are created with University Resources, the interests in those Academic Materials are shared by the Member and the University and are covered in Section J.3.1.

The Member is not authorized to utilize recordings, videotapes, or other technologies prepared using University Resources for purposes of personal economic gain, commercial advertising, or other unacceptable uses described in University policy. A University web site may not be used for economic gain, commercial advertising, or other unacceptable uses as described in University policy. Members are responsible for obtaining all permissions necessary to avoid copyright infringement or invasions of privacy, whether specifically commissioned or not.

J.12.1 Ownership and Licensing of Academic Materials not Specifically Commissioned by the University or Developed Using University Resources

Academic Materials created by Members on their own initiative in the ordinary course of teaching to meet the reasonable needs of currently enrolled students, including distance or handicapped students, and not involving University Resources, belong to the Member. The Member has sole control over the content and use of the Academic Materials, is authorized to place supplemental classroom materials on a University Web site, may set access permissions to that site, and may assert exclusive copyright in their works. The University shall not exploit the Academic Materials nor authorize other employees to use the Academic Materials or derivatives of those Academic Materials in their classes without permission of the Member.

The ownership of student works created in the course of academic requirements shall be with the student and the University may retain the work as needed for its instructional or record-keeping purposes. The University and the Members may not use the work in any other manner without the written consent of the student.

Ownership of Works created in the course of sponsored research or other agreements are subject to the provisions described in Section J.7.

J.12.2 Ownership and Licensing of Academic Materials Commissioned by the University

The University shall have an exclusive license to use and market Academic Materials provided they are expressly commissioned as agreed to in writing by the University and the Member. A Member's general responsibility to teach specific courses of instruction shall not constitute an express commission of course materials, and this general responsibility is not bound by the "Works for Hire" provision of Section 101 of the Copyright Law of 1976. (See also Section J.1.)

J.12.2.1 Use of Commissioned Academic Materials in University Outreach Programs

Commissioned correspondence courses, videos, computer programs, on-line courses, instructional CD ROMS, and other forms of technology-assisted or mediated instruction produced by a Member for registered distance students shall be delivered through the DCE. The University shall provide resources, including technical support personnel and quality production facilities, necessary for the development of education outreach courses.

Courses offered for academic credit through the Colorado State University DCE must be approved for that purpose by the Faculty Council. The Member, with the concurrence of his or her department head and the DCE, may set the maximum enrollment allowed for each outreach course in which they may participate, taking into consideration the extra efforts that may be associated with some types of outreach courses, the financial viability of the course, and any necessary minimum enrollment.

In the interests of encouraging the development of Academic Materials, the University may commission such development. A written agreement must be negotiated between the University and the Member which includes specifics as to remuneration, changes in effort distribution, time limits for use of Academic Materials, marketing and distribution rights, revisions, licensing, etc. (see following sections). In return for remuneration and/or other considerations, the Member shall assign to the University an exclusive license to use the Academic Material for a period negotiated between the University and the Member, with the Member retaining those rights specified in Section J.3.1.a-e. The termination date shall be specified in writing and shall be based upon a joint determination of the Member and the DCE ("the parties") on the likely viability of the Academic Materials for future instruction. The parties may agree at a future date to extend the termination date based upon the continuing viability of the Academic Materials or the availability of revisions and updates.

No derivative of Academic Materials shall be prepared or licensed without the written approval of the Member (see also Section J.12.3) nor shall any other Member have the right to use the Academic Materials without such written approval. The Member who created the Academic Material retains the right to correct errors and provide updated information.

The Member may use and enter into agreements concerning personally-prepared derivative works of University-commissioned Academic Materials when they are no longer in the employ of the University, so long as those derivatives, excluding textbooks and scholarly/artistic works, do not significantly conflict with the economic rights of the University. Notwithstanding any use of University Resources, express commission of works, or licensing agreements, the Member retains ownership of textbooks, artistic works and manuscripts prepared for publication in scholarly works, and any revenue derived from these works shall belong to the Member.

J.12.2.2 Licensing of Academic Materials to Third Parties

Pursuant to the commission, the University, through the DCE and CSURF, may license or lease to third parties the marketing and distribution rights to the Academic Materials. The details of agreements with third parties shall be available for public inspection and shall incorporate provisions of Sections J.3.1.a-e and J.12.3 that are designed to protect the professional standing and reputation of the Member.

Expenses and proceeds from such licensing shall be dealt within accordance with the provisions in Section J.8.1.

J.12.3 Right to Revise or Limit Period of Use of Works Expressly Commissioned or Supported by University Resources

The Member retains those rights specified in Section J.3.1, notwithstanding any assignment of rights to Academic Materials by the Member to the University, unless waived in writing by the Member. Conditions for revision of University commissioned Academic Materials (if different from the following paragraph in this section) shall be contained in the written agreement between the University and the Member. However, revisions initiated by the Member, without using University Resources, may be made at anytime, subject to approval by the Member's department head and the DCE.

If the Academic Material has been used without revision for a period of two (2) years, the University shall request the Member to review the Academic Materials for possible revision or for termination of use. As long as the Member is in the employ of the University, that Member shall have the first right to revise or supervise revisions of Academic Materials as described in Section J.3.1.b. If either the University or the Member finds that the Academic Material has become outdated, inadequate to the educational needs, or contains errors and the Member does not wish to prepare revisions, or if the Member cannot produce the revisions in an agreed upon period of time, the University may assign another Member to prepare these revisions. If the cost of revision is found excessive by the University, the University may decline to make the revisions (see Section J.3.1.b). If the Member has left the employ of the University, the University in its sole discretion may contract with the former Member to prepare appropriate revisions, retain the former Member as a consultant for revisions, or assign the task of revision to a Member with appropriate expertise. The University shall renegotiate appropriate payments for the continued use of any revised Academic Materials when such revisions were not prepared by the Member or former Member.

¹ Black's Law Dictionary generally defines "reduced to practice" as "accomplished when an inventor's conception is embodied in such form as to render it capable of practical and successful use."