

# BLUE RIDGE COMMUNITY AND TECHNICAL COLLEGE ADMINISTRATIVE PROCEDURE

**SERIES:** 1 | **General Rule**  
**NUMBER:** AP1603 | **Intellectual Property**

**Scope:** Intellectual Property  
**Approval Date:** 03/13/15  
**Effective Date:** 03/13/15

## SECTION 1 PURPOSE

The Intellectual Property procedure of Blue Ridge Community & Technical College (“Blue Ridge CTC”) serves to

- Provide guidance to faculty, staff, administrators, and students regarding the ownership, licensing, and commercialization of Intellectual Property created by employees independently or with the support of the college;
- Make scholarly work as free and openly available as possible to contribute to the public benefit of our service area
- Assure that the intellectual fruits of the college are easy to find and available for open sharing – including access, adoption, revision, re-purposing and adaptation – in order to maximize their educational impact.

## SECTION 2 DEFINITIONS

- 2.1 Intellectual Property – all intellectual and creative works that can be copyrighted, including, but not limited to, educational materials and products, multimedia products, computer software and materials, research materials, and online course packages. It does not cover traditional scholarly works such as literary or artistic works or course lecture notes.
- 2.2 Institution-Supported Works – Intellectual Property created by a college employee which meets any one or more of the following criteria:
- The work is a regular part or routine product of the employee's job duties or activities.
  - The work is the product of a specific contract made in the course of employment with the college.
  - The work constitutes a work for hire, including, but not limited to, reassigned time, grant funds, salary stipend, or other material or financial assistance.
  - The development of the work involves significant use of college resources.
- 2.3 Independent Works – Intellectual Property created by an employee which meets all of the following criteria:
- The work is the result of individual initiative.
  - The work is not the product of a specific contract or assignment made as a result of employment with the college.
  - The work is not a work for hire.

- The work is neither a regular part nor a routine product of the employee’s duties or activities.
  - The work does not involve significant use of college resources.
- 2.4 Grant-Funded Works – intellectual property created in the course of carrying out the provisions of any grant, except those grants for general operating support, capital projects, or any other donation not expected to fund the creation of intellectual property.
- 2.5 Student Works – in the case of students, Intellectual Property produced through individual initiative without significant use of college resources as a part of a student’s coursework for which the student has paid tuition and fees. Student works belong to the student, including papers, artistic works, and other creative works made by students in the instructional process.
- 2.6 Significant Use – the use of college-funded or supported resources including, but not limited to, facilities, time, equipment, technology, property, personnel, reassigned time, grant funds, salary stipend, leave with pay, or any other material, human, or financial assistance; and/or the use of any appreciable expenditure of college funds that would not have otherwise occurred. The use of College Resources is considered “significant” when it entails a level of use not ordinarily available to all, or virtually all, faculty, staff, or students.
- Note: Occasional use of college-owned computer hardware and software, office or classroom space will not ordinarily constitute significant use. If an employee creates Intellectual Property that is the same as, directly related to, or substantially similar to a project in which the employee is engaged at the College, then significant use of college resources is presumed. However, the employee will be provided the opportunity to submit evidence which clearly establishes that the Intellectual Property was developed without significant use of college resources in order to invalidate this presumption.
- 2.7 College Employee – any person hired as an employee of Blue Ridge Community & Technical College either full or part time. In addition, a student is a college employee for purposes of this procedure if the student receives support in the form of wages, salaries, tuition waivers, or stipend from funds administered by the college.
- 2.8 Fair Use – a use of copyrighted material, for purposes of criticism, comment, news reporting, teaching, scholarship, or research that is not an infringement of copyrights. Demonstration of such a purpose is not, by itself, sufficient to sustain a claim that the use is fair. The four fair use factors must be reviewed to determine if the faculty, student, or staff member is in compliance with the spirit of the law.
- What is the purpose of the use?
  - What is the nature of the work to be used?
  - What amount of the work will be used?
  - What effect will use have on the market for this work?
- 2.9 Copyright License– written permission of a copyright or patent owner for use of copyrighted material, usually limited to a particular period of time and/or a specified type of use.

## **SECTION 3 OWNERSHIP RIGHTS**

- 3.1 If an employee or student develops Intellectual Property that arises in part or in whole from the significant use of college resources, Blue Ridge CTC will have complete and exclusive ownership of the work. However, the employee or student who plans to publish or patent the product may enter into an agreement with the college as discussed in section 5, Rights Agreement.
- 3.2 Intellectual property rights in independent works that meet all of the criteria listed in section 2.3 belong to the creator of the work.
- 3.3 Intellectual property rights in institution-supported works that meet at least one of the criteria in section 2.2, unless otherwise provided in a written rights agreement, belong to Blue Ridge CTC. The college owns all rights to a copyrightable or patentable work created by the employee or student with significant use of college resources. With the permission of the president or designee, the college retains the option to release the rights of an institution-supported work to the creator through an appropriate written rights agreement.
- 3.3 The ownership of grant-funded works shall be dictated by the grantor. In cases where the grantor does not specify ownership rights, grant-funded works shall be owned by the faculty, staff, student, or consultant who created it, but should be published under open terms (i.e. licensed under the most recent version of the Creative Commons Attribution license). This means the work is openly licensed but still owned by the faculty, staff, student, or consultant who created it.
  - 3.3.1 If works created with grant funding include parts or all of pre-existing works that do not belong to the college or the author, those included sections must be clearly marked to indicate whether they are used under another license (and if so, which), by permission of the copyright owner, by right of fair use, or by virtue of public domain.
  - 3.3.2 If the work of a consultant will be incorporated in the grant-funded work, the contract with the consultant must give the college rights to comply with this procedure by assigning copyright to the consultant and by requiring the consultant to attach a Creative Commons license to the work.
  - 3.3.3 Openly licensed works should be easy to locate, preferably without the requirement of registration or fees to view the content.

## **SECTION 4 PUBLICATION AND DISCLOSURE**

- 4.1 All college employees must promptly disclose to their supervisor the creation of all Intellectual Property subject to this policy for which they intend to seek patent, copyright, or trademark. Prompt disclosure is necessary in order to assist in the prevention of conflicts of interest and conflicts of commitment and to preserve Intellectual Property rights.

- 4.2 Written disclosure, signed by the President or his or her designee, must occur prior to publication of written works, application for patentable discoveries (including software) or products eligible to trademark, or any other works intended for commercial development.
- 4.3 The disclosure must include the identity of all persons who claim any interest in the creation of the disclosed Intellectual Property. Failure to make such a disclosure promptly creates a presumption that such Intellectual Property constitutes institution-supported works.

## **SECTION 5 RIGHTS AGREEMENT**

A college employee may enter into a written rights agreement with Blue Ridge CTC for release or transfer of rights, or for an equitable arrangement for joint ownership, sharing of royalties, or reimbursement to the college for its costs and support, which may include publication and distribution of institution-supported works. In all such cases, the agreement shall provide that Blue Ridge CTC will have the right to use the work at no cost for its educational purposes. The agreement must be signed by the college employee, all interested parties, and the President or his or her designee.

## **SECTION 6 DISPUTE RESOLUTION**

Notwithstanding the grievance process provisions set forth in WV Code 6C-2, if a dispute regarding the ownership or use of Intellectual Property which arises between Blue Ridge CTC and a college employee, the parties shall first negotiate the matter between themselves in good faith. If direct negotiations do not lead to resolution, either party may request the matter be submitted to mediation under the following procedure:

- i. Either party may submit a request for mediation to the head of Human Resources, including relevant supporting documentation. Supporting documentation shall contain, at a minimum, a statement of the issues involved in the dispute, and the names and contact information of all parties that are directly or indirectly involved in the dispute.
- ii. The head of Human Resources shall arrange a mediation session to occur within thirty business days of the submission of request for mediation and notify the parties of the arrangements within ten business days of the receipt of request for mediation. Such arrangements shall include the date, time, and location of the mediation session.
- iii. The head of Human Resources shall select a neutral mediator who is capable of making an independent assessment of, and rendering an objective decision with respect to the dispute. Such a mediator (a) may or may not be an employee of the college and (b) may not be a member of any department from which the dispute arises.
- iv. At least ten days prior to the scheduled mediation session, each party shall provide the mediator with a brief written statement setting forth its position. At the session, the parties shall produce and/or verbally present all information reasonably required for the mediator to understand the issues and to render a fair decision. The mediator may require any party to supplement such information as reasonably necessary. Additional sessions may be

held as necessary to reach a final resolution, at the times and in the manner prescribed by the mediator.

- v. The mediator's decision shall be a non-binding recommended resolution, submitted in writing to the head of Human Resources and each party. (The mediator does not have the authority to impose a settlement on the parties, but will attempt to help them reach a satisfactory resolution of their dispute.) Whenever necessary, the mediator may obtain advice concerning technical aspects of the dispute.
- vi. If the initial mediation process does not resolve the dispute within ninety days after the written notice for mediation is delivered, either party may commence proceedings with the West Virginia Public Employees Grievance Board.

APPENDIX:

A: Example Scenarios

DISTRIBUTION LIST:

President  
Executive Assistant to the President  
Vice President of Workforce Development & Engineering Technologies  
Vice President of Instruction  
Vice President of Business and Information Technology  
Vice President of Enrollment Management  
Vice President of Human Resources  
Chief Financial Officer  
Vice President of IT Services  
Faculty Council Chair  
Classified Staff Council Chair  
Student Board Representative

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President

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Date

Example of an Independent Work:

Mr. Thomas, an assistant professor of History, writes a non-fiction book without being assigned to do so by the college, and the writing of the book is not a regular part nor a routine product of his job duties. If Mr. Thomas decides to publish and copyright his book, ownership rights belong to Mr. Thomas.

Example of an Institution-Supported Work:

Dr. Mitchell is an associate in the office of Information Technology which just adopted a new database system for campus-wide use. She decides to write an instructional manual explaining how to use each feature and function of the program and gets her supervisor's permission to take on the project. Dr. Mitchell writes the manual at the office during normal working hours, but uses her own laptop computer so she can continue work at home. Once complete, Dr. Mitchell distributes an electronic version of the manual to employees who are grateful for the resource.

If Dr. Mitchell decides to publish and copyright her manual, ownership belongs to the college since she was acting within the scope of her position and using significant college resources. Prior to seeking copyright for the manual, Dr. Mitchell could provide written disclosure to her supervisor and enter into an agreement with the college for ownership rights to the manual.

Example of a Grant-Funded Work:

Mr. Milford is creating a software program for engineering students funded by a grant awarded to the college by the National Science Foundation. The provisions of the grant do not explicate ownership rights of the software. Mr. Milford will own the software program, but must publish it under open terms using the Creative Commons Attribution license, which allows others to copy, redistribute, and make changes to the program as long as appropriate credit is given to him as the original creator.