



ADAMS STATE UNIVERSITY
Part III: Academic Policy

Chapter 100-10: Undergraduate Academic Policies: Faculty Policies

Policy Number: 100-10-02

Subject: Intellectual Property

Effective Date: Revised July 14, 2021

Supersession: N/A

Office of Primary Responsibility: Office of Academic Affairs

Policy Statement

Intellectual Property Policy for Educational Materials, Scholarly Works, and Creative Works.

Purpose

Creating and disseminating knowledge are fundamental missions of Adams State University. The objective of this policy is to enhance the environment for the development of educational materials, scholarly works, and artistic works by clarifying the rights and responsibilities of the University and its employees. The University encourages and supports the creative work of its employees and recognizes that they typically produce educational materials, scholarly works, and artistic works over time, often at multiple institutions, and to a significant extent at their own expense (e.g., while in graduate school).

This policy does not change the traditional relationship between the University and employees who, independent from using substantial University resources (as defined below), retain broad rights of ownership of educational materials, scholarly works, and artistic works. Notwithstanding the provisions of the 1976 Copyright Act, this policy generally affirms the traditional “teachers’ exception” to the work-for-hire doctrine. This policy functions in accord with other Adams State University policies and federal and state statutes and regulations.

Definitions

- A. Artistic works: Include, but are not limited to, novels, short stories, poems, and scripts, whether published or unpublished, films and videos, and visual artworks in any medium.
- B. Educational materials: Include, but are not limited to, textbooks, electronic media, multimedia works, syllabi, tests, assignments, study guides, class notes, lecture notes, course handouts, research proposals, graphic illustrations, workbooks, manuals, instructional software, web pages, blogs, and electronically deliverable courses (course materials designed for the web, distance education, and other technology-oriented educational materials); published creative works, monographs, and papers; unpublished

manuscripts; models; musical compositions; and works of visual, dramatic, and performance art.

- C. Scholarly works: Include, but are not limited to, research notes, articles, books, monographs, and other research materials both published and unpublished, presentations (including visual materials), webpages, blogs, research proposals, proposals for published material, and grant proposals.
- D. Substantial use of University: Resources means use of University resources above and beyond those customarily provided to University employees. Examples of “customarily provided” resources may include, but are not limited to, office equipment such as photocopiers, telephones, and scanners; library services such as online databases and interlibrary loan; assistance from work-study students; laboratory facilities; and individual personal computers and reasonable access to the University’s computer network, websites, and similar electronic communication tools used for non-commercial scholarly pursuits.
- E. Substantial use of University resources: Includes such things as equipment and staff support beyond those ordinarily available to faculty as well as supplemental pay or release from regular duties provided for the creation of a work, with the exception, however, of sabbatical leave taken by faculty under the terms of the Adams State University Faculty Handbook; such leave shall not be considered substantial use of University resources.

In cases where it is not clear whether the use of University resources is “customarily provided” or “ordinarily available,” a determination shall be made by the relevant department chair, supervisor, or other unit director. Factors for determining borderline cases include the extent to which the University employee was the initial creator of the work; the extent to which the University controlled the content of or exercised authority over the work; and the extent to which the work was prepared in graduate school, at another institution, or in the ordinary course of teaching.

Procedures

A. General Rights of Ownership.

The University agrees to make no ownership or licensing claims on educational materials, scholarly works, and artistic works, regardless of their form of expression or mode of delivery, created by its employees, except in the following cases:

1. cases in which the production of the materials is a part of University-sponsored or grant-sponsored programs or activities;
2. cases in which the materials are created under the specifically assigned duties of employees other than faculty;
3. cases in which substantial University resources (as defined below) were used in creating the materials;
4. cases in which the creation of the materials is a) specifically commissioned by the University or b) done as part of an explicitly designated assignment other than normal faculty scholarly pursuits; and

5. cases in which the materials are a derivative of or otherwise use pre-existing University intellectual property.

Where these exceptions apply, the assignment of intellectual property rights to the University shall be by means of negotiated written agreements between the creator and the University. Where it is not clear whether or not these exceptions apply, creators are strongly encouraged to pursue a negotiated written agreement as stipulated in "Required Negotiated Written Agreements" below. In the absence of such an agreement, ownership rights will default to the creator.

B. Who Is Covered by This Policy

This policy is applicable to all units of Adams State University, and to all University employees, part-time and full-time, including faculty, instructors, administrators, staff, and student employees. Also included are employees on a leave of absence who are using substantial University resources.

Students who have not used substantial University resources to develop educational materials will own the materials they create, unless their work is part of a larger work over which the University has rights and intends to exercise them. In particular, students own any works they create as part of their participation in a course. Students who hold awards such as scholarships or fellowships through the University on which a funding body has placed restrictions as to intellectual property of educational materials developed during the course of the award will be bound by those restrictions.

Creators of works published, broadcast, webcast, or cablecast by the University's student-run campus media (the Paw Print, KASF-FM, Grizzly Media Productions, and the Sandhill Review) are not covered by this policy. Ownership of such works shall be determined by the policies of the Adams State University Communications Board.

C. Rights to Educational Materials.

Subject to the exceptions above, educational materials for classes and learning programs, including electronically deliverable courses, syllabi, assignments, and tests, shall be the property of the creator. Notwithstanding the "General Rights of Ownership" section above, the University shall be permitted to use any educational materials for limited administrative purposes, such as satisfying requests of accreditation agencies for faculty-authored syllabi, assessments, and course descriptions. Such usage shall extend beyond the creator's employment with the University.

D. Duty to Report.

Any person formally affiliated with Adams State University shall be obligated to report in a timely manner any efforts to create educational materials falling under the exceptions listed in the "General Rights of Ownership" section above. Such reporting shall be to the Vice President for Academic Affairs.

E. Required Negotiated Written Agreements. Negotiated written agreements are required under the following circumstances:

1. Substantial Use of University Resources: If substantial University resources are used, or their use is anticipated, at any point in the creation of educational materials, scholarly works, or artistic works, then a negotiated written agreement must be signed by the creator(s) and a designated representative from the campus unit where the materials will be created.

Substantial use of University resources in and of itself does not require that ownership or licensing rights be automatically shifted to the University. However, depending on the terms of the negotiated contract, substantial use of University resources may result in an obligation to share revenues with, reimburse, or confer a license on the University. Agreements negotiated under this policy may be altered by mutual agreement.

2. Multiple creators. In cases where more than one party is responsible for creating educational materials, scholarly works, or artistic works, a negotiated written agreement signed by all creators and the University shall be required. This agreement shall usually specify (1) the rights of each party to use, distribute, and sell the materials; and (2) the division of revenues between the parties. Parties may include but are not limited to individuals, research teams, external funding agencies, and the University.

F. Content of Negotiated Written Agreements. A negotiated written agreement will usually specify the following:

1. the rights of the creator and the University to use, distribute, modify, and sell the educational materials, scholarly works, or artistic works, both during and after the period of the creator's formal association with the University (unless otherwise specified, the rights of the University to use, distribute, sell or modify the materials shall not extend beyond the creator's employment by or formal association with the University);
2. the division between the creator and the University of any revenues accruing from the use of the materials;
3. the rights of the creator, the University, and/or external funding parties to be acknowledged (or to withhold acknowledgement) in the distribution or modification of the materials by the University.

G. Modifications to Agreements.

Any negotiated written agreement made in connection with the creation of educational materials, scholarly works, or artistic works may be modified at any time upon the agreement of all signatories.

H. Resolution of Disputes.

Upon prior agreement by all involved parties, disputes regarding the application of this policy may be heard by an ad hoc committee consisting of the Vice President for Academic Affairs (or their designee) and two full-time faculty members appointed by majority vote of the Adams State University Faculty Senate. This committee shall forward its recommended resolution to the President, whose decision on the matter shall be final. Use of this dispute-resolution procedure shall not preclude either party from seeking satisfaction in the courts.

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CHAPTER: Undergraduate Academic Policies: Faculty Policies

SUBJECT: Intellectual Property

Responsibility

Vice President for Academic Affairs

Authority

N/A

Related Policies

N/A

Related Stakeholders for Policy Review

N/A

History

April 12, 2012

July 12, 2012

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Attachments

N/A