

Sauk Valley Community College
February 24, 2025

Action Item 4.4

Topic: Board Policy 428.01 *Intellectual Property* – Second Reading

College Health Metric: Planning – The College conducts thoughtful, systematic planning to support future operations. Plans are updated annually or as necessary.

Presented By: Dr. David Hellmich

Presentation:

The administration continues its process of reviewing all Board policies annually. As a part of this process, Board Policy 428.01 *Intellectual Property* has been reviewed and updated with recommended edits.

Recommendation:

The administration recommends the Board approve the revisions to 428.01 *Intellectual Property* as presented for a second reading.

428.01 Intellectual Property

1. **Purpose of Policy:** Sauk Valley Community College's primary mission lies in the creation and dissemination of knowledge in works of the intellect in whatever medium they may be embodied or expressed. This public service mission creates an environment that is highly conducive to the conception and development of many forms of intellectual property. There is always the possibility that these developments may have commercial value, and the College wishes to encourage and support the development of inventions, copyrightable materials, and other intellectual property for public use. The purpose of this policy is to state for college faculty, administrators, other staff, and students (hereinafter "College Community") the nature of the responsibilities, privileges, and options available to the College Community when members of the College Community have created intellectual properties. Clear allocation of ownership and control of intellectual property rights is necessary to help avoid disputes among the College Community over many issues, such as including teaching uses, copyrights, and royalties. In the event members of the College Community take the initiative in developing intellectual property of any nature, including instructional programs or courses, it is hoped and expected that all such members of the College Community will utilize this policy as a basis to determine ownership and compensation issues which that may result from such developments. It is important to do so since the law concerning rights to the ownership and use of educational works is evolving and many issues are unclear and unresolved.
2. **Statement of Principles:** The Board recognizes the value of professional development, which that may or may not result in the creation of intellectual properties. The Board further encourages and supports such development because of its inherent benefits to the College Community. Pursuit of professional development through development of intellectual properties is valuable to the College, but such pursuit does not diminish the responsibilities or commitment faculty, administrators, and other staff members have to the college's regular instructional program. The development of intellectual properties

may, in many cases, involve questions relative to ownership of such intellectual properties between the employee or student who may have developed the property and the College ~~that who~~ employed the creator and may have provided support for the development of such intellectual properties. A process to resolve such ownership issues quickly and equitably ~~will helps~~ create a climate of understanding and trust as well as determine the ownership of corresponding payments for usage of the intellectual properties that may result in revenue, commonly referred to as royalties. The College seeks to resolve such questions by adherence to and application of this policy.

3. ~~Definition of Intellectual Properties~~: Intellectual properties may include but are not limited to inventions, software, written/graphic materials, techniques, device-like software, and processes. For exemplification purposes only, the Board provides the following list of definitions of intellectual properties in which questions about ownership or royalties may exist:
 - a. Inventions: Devices, device-like software (or middleware), discoveries, processes, methods, uses, products, or combinations of any of these, whether or not patented or patentable at any time under the Federal Patent Act (Act 35 U.S.C. Sec. 1 et seq.) as now existing or hereafter amended or supplemented.
 - b. Written/Graphic Materials: Instructional, course materials that include textbooks and syllabi, research papers and articles, creative works, literacy, graphic/visual art, dramatic, and musical materials or works, computer programs, and all other materials, published or unpublished, whether or not copyrighted or copyrightable.
 - c. Recorded Materials: Sound, visual, or audio-visual productions, including without limitation slides, films, tapes, videotapes, compact discs, laser discs, or other recordings or transcriptions, published or unpublished, whether or not copyrighted or copyrightable.
 - d. Digital and Electronic Materials: Website and online platforms that include educational websites, learning management systems (LMS) content, and Online course modules.
 - e. Software and Technological Innovations: Algorithms and code that are examples of unique programming code, algorithms, artificial intelligence models, and data analysis tools developed for research or educational purposes.
 - f. Business Innovations: Development of new educational services, business models for online learning, or tools that streamline academic processes.
 - g. Research Data and Findings: Collections of raw data generated from research, experiments, or surveys with analyzed or curated data, insights, and findings that contribute to the academic field.
 - h. Consulting and Professional Expertise: Reports, plans or strategies developed during consulting work for external organizations while affiliated with the College.
 - i. Other miscellaneous intellectual property: Any other creative works that have been created by faculty, staff, or students that does not fit into the categories above but may have value such as unpublished manuscripts, diagrams, or even unique processes developed by the College.
4. General Ownership of Intellectual Properties
 - a. Creator's Rights In Title to Intellectual Properties: As between the College and the creator, title to intellectual properties produced by faculty, administrators, employees, or students without any support from the College and produced by the creator on ~~his or her~~ their own unpaid time and at ~~his or her~~ their own expense, in the absence of other agreements, will normally belong to the creator of those properties. Intellectual property rights arising in courses approved for College

credit may belong to their individual creator but rights shall also vest in the College to the extent that every member of the College Community, including students, faculty, staff, and administrators, shall enjoy a permanent non-exclusive royalty-free license to make all traditional, customary or reasonable academic uses of the immediate content of that course. To that extent, the College shall retain the right to a copy for its own use once such a course has been taught at the College.

- b. Joint or Shared Developed Intellectual Properties: In those instances where intellectual properties are developed by a combination of faculty, administrators', employees' or students' individual efforts and with some College support in the form of stipends, facilities, software, equipment, release time or overload time, the ownership of the materials, processes or inventions developed (including copyrights or patents) will be vested in the creator or the College or both as designated by written agreement between the parties. Such properties shall normally be held in the name of the College but ownership rights shall be are shared as provided in the agreement. It is incumbent on any creator who wishes to share in intellectual property rights to secure a written agreement and understanding prior to creation of any intellectual property. In the event no such written agreement is entered into, ownership will be vested solely in the College.
 - c. College Rights In Title To Intellectual Properties: As between the College and the creator(s), the College will retain any title to any intellectual properties produced and/or developed by any College employee(s) under the concept of works-for-hire when the College has assigned the development of such intellectual property or properties to the creator(s) as part of the duties of the creator(s), whether or not extra-routine support is provided. In such event, the creator shall be is entitled to retain a copy for the creator's own use.
 - d. Intellectual Property Rights In Grant or Contract Work: Intellectual property rights in works developed or supported by grants or contracts shall be are governed according to the terms and conditions which may be contained in such grants or contracts; in the event such grants or contracts are silent as to intellectual property rights, such rights arising from grants or contracts shall be are governed and determined by policy.
 - e. Intellectual Property Rights in Courses and Materials: In instances where courses and course materials are developed by faculty, staff, or administrators while receiving college support of any kind, the courses and content will remain with full ownership of the college if the creator decides to leave the College.
5. Royalties and Revenue: The creator's rights to revenue from intellectual properties to that the creator retains title and full rights to will belong to the creator(s). The creator(s) will make arrangements independent from the College to collect these revenues directly from the agency providing them, and will be responsible for the tax-related issues associated with them. The creator(s) will also assume all copyright and/or patent costs and will indemnify the College against all infringement claims which may arise as a result of the creator's development and uses of the intellectual properties. The creator's rights to a reasonable share of revenue from intellectual properties to which the College retains title in whole or in part will be negotiated as part of the agreement in accordance with this policy relating to intellectual properties. The college's costs will be recovered as part of the college's share of revenue, unless negotiated otherwise.
6. College Revenue Collection and Distribution: In order to minimize bookkeeping questions or accounting problems or both, the Chief Financial Officer (CFO) will be the collection agent for the creator(s) and the College of all income for all intellectual

properties to which the College retains sole or shared title. Promptly following receipt of revenue, the CFO, or ~~his or her~~ designee, will disburse it according to the revenue shares provided in this Policy or pursuant to the negotiated agreement under provisions of this Policy. Each of the parties ~~shall be~~ is responsible for any payment of income or other taxes of every nature imposed upon or related to the respective portions of shared income received by the College or creator(s). The creator(s) ~~shall not~~ is not ~~be~~ entitled in any event to any part of tuition or student fees paid to the College for enrolling in courses and all such revenues will belong solely to the College. The creator(s) ~~shall have~~ has the ~~rights~~ of full disclosure of all aspects of accounting relating to revenue from a shared property, including, but not limited to, requesting an independent audit of the records of revenue and distribution.

7. Procedures for Intellectual Property Agreement

- a. Negotiating the Agreement: Prior to the time intellectual properties are developed and before College support is awarded or used for the purpose of developing, producing or marketing intellectual property, the Chief Academic Officer (CAO), or ~~his or her~~ designee, will meet with the creator(s) to negotiate the terms of the development of any intellectual properties which are intended to result, as well as the production, marketing, and the reasonable division of revenue which may result from the sale of intellectual properties. The creator(s) ~~shall~~ is be entitled to representation during this negotiation process, e.g. an attorney or a representative of the Sauk Valley Community College Faculty Association.
- b. Division of Revenue: The CAO, or ~~his or her~~ designee, and the creator(s) will consider the following conditions in arriving at a reasonable division of revenue:
 - i. The origins of the ideas upon which the intellectual properties are based;
 - ii. The expertise and investment of resources, e.g. time and money and/or equipment, involved in conceptualization and development of the intellectual properties;
 - iii. The extent to which the College has or will support the development and production of the intellectual properties, particularly concerning released time;
 - iv. Costs that may be incurred in the production, marketing, and sale of intellectual property. The parties will pay particular attention to avoid negotiating agreements in which the cost of processing and administering the agreements to the College and the creator(s) may be disproportionate to the proceeds obtained. Furthermore, the parties must include in the agreement specific information about the costs that will be incurred by the College and which must be repaid out of the college's share of revenue, the ways the cost of the copyright/ patent/licensing of the intellectual property will be shared by the parties involved, and specific terms under which revenue will be distributed between/among the parties. The parties ~~shall~~ also address the issues of responsibility for infringements upon intellectual property rights of others. The CAO, or ~~his or her~~ designee, and creator(s) may consult with experts as they deem necessary in arriving at an agreement. Each party ~~shall be~~ is solely responsible for payment of any experts each party selects unless the parties agree otherwise. To maintain consistency in negotiations, the agreements that are negotiated should be available for public information and inspection.
- c. Binding Resolution of Disputes: Unless otherwise mutually agreed, negotiations should be concluded within sixty (60) calendar days after the initial meeting. In the event a satisfactory conclusion cannot be reached, the matters at issue will be

submitted to a Resolution Committee, composed of three members: one member selected by the President of Sauk Valley Community College, one selected by the creator (which may include the President of the Sauk Valley Community College Faculty Association), and one selected by mutual agreement between the President of Sauk Valley Community College and the creator. In the event the resolution Committee cannot reach an agreement by consensus, the representative of the President of the College will make one final last best offer, the member appointed by the creator will make one final last best offer, and the third member will make a final binding selection of one of the two offers. The decision ~~shall be~~ is final and ~~shall is~~ is not ~~be~~ subject to review by any other person or body, including but not limited to any grievance process.

8. Covered Parties and the Element of Time: All intellectual properties developed subsequent to this agreement ~~shall be~~ are subject to the terms of this policy. Any intellectual properties developed prior to this agreement are exempt therefrom.

Revised: 11-27-2000, 06-28-2004

Cabinet Reviewed: 09-17-2024