

COMMUNITY COLLEGE OF RHODE ISLAND INTELLECTUAL PROPERTY POLICY

1.0 Preface.

The following defines the policy and procedures for dealing with intellectual property generated by Community College of Rhode Island (CCRI) personnel or offered to CCRI by alumni or friends. All CCRI personnel are subject to the provisions of this policy. The college recognizes the importance of the protection gained by patent, copyright, trademark, and trade secret laws. Such protection is critical if innovative research and scholarly findings and associated intellectual property, which are often fortuitous by-products of teaching and basic research, are to be made available for broad utilization and commercial application. To protect the rights of the creator, CCRI, and the public, and to be in compliance with Federal regulations, this policy defines the types of intellectual property, the steps to follow for disclosure, the methods of determining ownership, and the procedures for obtaining legal protection of intellectual property. This policy also summarizes the mechanisms for commercialization and presents methods of safeguarding the royalty income, a potentially important source of revenue for both the creator of the intellectual property and CCRI. The college will make its best efforts to prevent the unauthorized disclosure by CCRI or any of its employees or agents of any intellectual property submitted by a creator to CCRI pursuant to this policy. Furthermore, the college will make its best efforts to protect and promote any intellectual property which it agrees to commercialize pursuant to this policy.

Notice to Faculty Members: Faculty members at CCRI should be aware that the Rhode Island Board of Governors for Higher Education had established a Distance Learning Committee pursuant to the instructions of the Rhode Island General Assembly to study the area of distance learning at the state's colleges. Any policies or regulations developed by this committee and approved by RIBGHE will supersede any policies established in this Intellectual Property Policy with respect to Distance Learning.

2.0 General Policy.

2.1 Coverage of Personnel. The policy applies to all CCRI employees including, but not limited to, faculty and staff, and students (in any combination of study, research, and teaching) who are employed by or receive financial support from CCRI. The policy also applies to all students not employed or not receiving financial support, but who are using CCRI resources. Unless otherwise negotiated, official CCRI guests using CCRI resources are also governed by this policy. Hereinafter, all of the above shall be referred to as CCRI personnel.

2.2 R.I. Board of Governors for Higher Education (RIBGHE). All references contained in this policy to RIBGHE shall mean the Rhode Island Board of Governors for Higher Education as established by Chapter 59, Title 16 of the General Laws of Rhode Island

2.3 Responsible Administrator. Administrative responsibility for this policy and these procedures shall rest with the President of CCRI or his/her designee (hereinafter collectively referred to as the President). The President shall appoint an Intellectual Property Committee (IPC or Committee), which shall be responsible for reviewing all intellectual property governed under the terms of this policy, as well as all decisions regarding protection of said intellectual property. The Committee shall report to the President. The Committee shall consist of six (6) members of whom the President shall appoint three (3), and the remaining three (3) members shall be appointed by the President from the Faculty upon recommendation by the President of the CCRI Faculty Association. If the IPC is unable to resolve a matter by reason of a voting deadlock, the matter will be referred to the President who may either cast the deciding vote on the matter or refer it back to the IPC for further consideration. The President shall name one of the members of the committee to be its Chair. The member named as Chair shall retain his/her right to vote on all matters that come before the committee.

2.4 Intellectual Property. Intellectual property is defined as original ideas, objects, data, applications, processes and expressions thereof. Expressions could include written material, spoken descriptions, models, sketches, musical scores, sculptures, software code, and paintings. Such property includes, but is not limited to, inventions, goods, materials, instruments, equipment, biological organisms, chemical compositions, mask works, computer software, graphics, literary and musical works, and trademarks. The intellectual property may be in tangible or intangible form. Intellectual property in tangible form may be physically distributed. Intellectual property may be protected by one or more of the following: patent, copyright, trade secret, trademark, contract, or agreement.

2.5 Coverage of Items. The policy applies to all intellectual property discovered, made, or developed by CCRI personnel using any CCRI time, resources, facilities, or

equipment whether or not said intellectual property can be protected by applicable statute, law, or regulation.

2.6 Computer Software. *Computer software* is defined in this policy to include any and all computer *instructions* written or developed as a code for use with a computer or computer component. This includes, but is not limited to, databases, operating systems, information packages, and computer applications programs. While software is often thought of as copyright material, software can also include inventions, trademarks, or trade secrets.

2.7 Creator. The term *creator* shall be used in this policy to include inventors, authors of copyrightable material, designers of trademarks, and creators of all other types of intellectual property.

2.8 Determination of Ownership. Figure 1 is a decision tree for determining assignment of ownership of intellectual property. The RIBGHE shall own and have all rights to any inventions, trademarks, trade secrets, and copyrights discovered, created, or developed by CCRI personnel using CCRI time, resources, facilities, or equipment, except as otherwise provided in this policy. This right shall include, but not be limited to, inventions that are (a) developed in the course of or pursuant to a sponsored project or other agreement, or (b) developed under a written agreement with CCRI and with funds provided by CCRI, or (c) developed using CCRI time, resources, facilities, or equipment, or (d) offered to CCRI by any creator and accepted by the RIBGHE, or (e) copyrights in copyright material created as a work- for-hire or other material as indicated in Figure 1a. In cases of disputed ownership, the parties will work together to resolve any issues germane to ownership determination, and, if the dispute is not resolved, Section 2.16 shall prevail. To the extent that an invention, trademark, trade secret, or copyright which is to be owned by the RIBGHE pursuant to this Intellectual Property Policy stands in the name of the creator, the creator shall assign and transfer such invention, trademark, trade secret, or copyright, and all right, title and interest thereto to the RIBGHE, and the creator will further agree to execute any other documentation that the Board of Governors, or its designee, may deem advisable or necessary for the assignment and transfer of such rights to RIBGHE.

2.9 Outside Consultation. CCRI personnel involved in outside consultation cannot use the CCRI name or logo and are bound by the CCRI agreements with bargaining units in all consultant activities. Any agreement signed with a company cannot abridge or compromise Board of Governor's ownership of other intellectual property developed by CCRI personnel. For example, rights to past and future work generated by CCRI personnel covered in this policy cannot be restricted nor affected by the outside consultancy agreement or arrangement or be subject to any claims of the employer of CCRI personnel acting as a private consultant. Any outside consultation by CCRI personnel is subject to the Rhode Island Board of Governors Conflict of Interest Policy,

the Public-Private Partnership Act (R.I.G.L. § 16-59-26), and regulations adopted by the Rhode Island Board of Governors pursuant to the Public-Private Partnership Act.

2.10 Agreements with Outside Parties. The college and CCRI personnel shall not enter into any agreement with any outside party which fails to safeguard the rights of CCRI community and the public interest as outlined in this policy. All valid research, development agreements or sponsored program agreements with any outside sponsor shall be signed and approved by a designated CCRI official authorized by RIBGHE. No agreement in violation of this provision shall be binding on CCRI without its consent. CCRI personnel assigned to work under such agreement will abide by CCRI policies, procedures, and agreements. A copy of this policy shall be made available to all outside sponsors. Any agreement with an outside party is subject to the Rhode Island Board of Governors Conflict of Interest Policy, the Public-Private Partnership Act (R.I.G.L. § 16-59-26), and regulations adopted by the Rhode Island Board of Governors pursuant to the Public-Private Partnership Act.

2.11 Intellectual Property Ceded to CCRI. The college may accept ownership of intellectual property offered to RIBGHE by persons or groups outside CCRI and from CCRI personnel who hold the rights to intellectual property. In this case, the referral, review, and decision process outlined in this policy shall apply.

2.12 Execution of Intellectual Property Procedures. The Committee shall represent CCRI and work with the President and CCRI personnel in executing this policy. All meetings and deliberations concerning intellectual property are confidential and due diligence of all Committee members and staff will be exercised to protect the intellectual property.

2.13 Procedures for Disclosing Intellectual Property. All CCRI personnel who generate intellectual property must complete and sign a CCRI Intellectual Property Disclosure Statement form regarding any intellectual property owned or to be owned by RIBGHE, as indicated by this policy. The form must be submitted to the Committee for review, evaluation, and action. Such disclosure should be filed immediately with the Committee following the discovery, development, or creation of the intellectual property so that protection is not jeopardized. If the creator is in doubt as to ownership, he or she shall make the disclosure and request the Intellectual Property Committee to determine the ownership rights. Failure to disclose or otherwise comply with any of the provisions of the policy shall create a conclusive presumption of Board of Governor's ownership of the intellectual property. Upon submission of the disclosure statement, a personal presentation to the Committee will be scheduled.

2.14 Procedure for Dealing with Intellectual Property Offered to CCRI. Individuals who own the rights to intellectual property and wish to offer ownership to CCRI either as a gift or in return for help in commercializing the intellectual property will follow the same disclosure procedure. The Committee will decide within 90 days if they will accept or decline rights to the intellectual property for RIBGHE. Upon acceptance, an

agreement will be developed between the inventor(s) and CCRI for the allocation of protection and marketing costs and the division of licensing fees and royalties.

2.15 Intellectual Property Committee Review Procedure. After a personal presentation by the creator regarding the nature of an intellectual property to the Committee, the Committee shall advise the creator whether the Committee will recommend that CCRI take initial steps to evaluate, register, patent, commercialize, or otherwise protect the intellectual property. The college may, for example, use the services of a qualified intellectual property management organization or other business organization, which can aid the commercialization process. Upon the recommendation of the Committee, CCRI may decide to direct an attorney to apply for a patent or register a copyright or trademark. Agreement is sometimes reached with the creator or developers to work together in establishing a stronger relationship with one or more companies that may be interested in the intellectual property. In addition to the above, other approaches may also be taken as initial steps. A best effort attempt will be made to notify the creator of the action within 60 days of the presentation of the initial steps to be taken. Within 90 days after the initial steps have been completed, the Committee must take additional action, which may include legal protection, commercialization, or return of the intellectual property to the creator. If all parties agree, this deadline may be extended. If the Committee decides not to register, patent, or protect a disclosed intellectual property, or if it fails to act as described within the 90-day deadline outlined here, all intellectual property rights and ownership rights to the intellectual property (except for the right of CCRI to a non-exclusive use of disclosed intellectual property) and any other federal or legal obligations regarding that property will pass to the creator, who will be responsible for protecting the ownership rights. If the creator is dissatisfied with the progress, he or she may request a hearing with the Committee to create a mutually acceptable plan for obtaining protection.

2.16 Procedure for Resolution of Disputes. Should a creator not agree with a ruling of the IPC involving ownership or inventorship, the creator may appeal to CCRI Patent Counsel, who will evaluate the facts and provide both parties with an opinion within sixty (60) days. The opinion of the Patent Counsel shall be final unless disputed by either party in writing within ten (10) days from the date of receipt of the opinion. The parties shall attempt to resolve the dispute through mediation. Mediation must be completed within ninety (90) days from the date the opinion of Patent Counsel was disputed. If the mediation fails, or the dispute is not otherwise resolved, then parties may take such legal action as either may deem appropriate.

2.17 Right to Publish. Except as otherwise provided in this Section, nothing in this policy shall be construed as affecting the rights of CCRI personnel to publish once disclosure has been completed. Protecting intellectual property may require a limited period of nondisclosure in order to secure certain rights. CCRI personnel shall be required, as a condition of involvement in certain sponsored projects, to observe properly executed confidentiality and non-disclosure agreements regarding dealings with intellectual property. Further, CCRI will agree to limited and reasonable delays in publications upon recommendation of those faculty, students, and staff involved in projects requiring such delay or upon request of designated CCRI officials acting on behalf of the Committee or in implementing the terms of agreements with outside sponsors.

3.0 Inventions, Trademarks, & Trade Secrets

3.1 Invention. A broad definition of *invention* is "anything that is new." However, more specifically, an invention is: (1) a new idea for a product or device; (2) a new process, sequence, or methodology; or (3) a new use or application of a product, device, process, sequence, or methodology. An invention may also be an improvement of any of these three.

3.2 Inventor/Creator. To be the inventor or creator one must be responsible for the conception of the idea, the conception of a method for actualizing the idea, and be involved in its reduction to practice. Upon conception of an idea, the creator should record the idea in a hardbound notebook, date it, and have it witnessed by a knowledgeable but uninvolved party. This important document is key to protection. Work on the development without contributing to the conception, regardless of the skill level or amount of work, does not constitute an inventive contribution. Procedure for resolving disputed inventorship is given in Section 2.16.

3.3 Trademark. A trademark is any word, name, symbol, or any combination thereof which identifies and distinguishes goods, including a unique product, from those manufactured or sold by others and which indicates the source of the goods such as the name of a company (even if the party owning the source is unknown), and which word, name, symbol, or any combination thereof is 1) used by a person or party or 2) the subject of an *intent-to-use* application for trademark registration by a person or party having a *bona fide* intention to use such word, name, symbol or any combination thereof in commerce.

3.4 Trade Secret. A trade secret is defined as any information, including but not limited to, a formula, pattern, compilation, computer software, data, device, method, technique, process, or application that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use

and (2) is the subject of efforts that are reasonable, under existing circumstances, to maintain its secrecy.

3.5 Protection as a Trade Secret. Intellectual property is sometimes classified as a trade secret and remains so indefinitely or until the protection process is completed. Public disclosure destroys trade secret status. In order to maintain trade secret status, the creators must request non-disclosure, and all parties involved in handling the trade secret material must agree not to disclose.

3.6 Mask Works. A *mask work* is intellectual property developed for the purpose of fabricating printed circuit boards or integrated circuitry. This term includes materials, hardware, and software developed specifically for the purpose of designing and manufacturing printed circuit boards or integrated circuitry. Mask works may involve inventions, trademarks, and trade secrets.

3.7 Ownership of Inventions, Trademarks, or Trade Secrets Developed with Support of Outside Sponsors. Inventions, trademarks, or trade secrets developed exclusively by CCRI personnel working under an agreement between the CCRI and an outside sponsor-, (such as a federal or state agency or a private sector company) shall belong to RIBGHE. The Federal Government has certain rights in invention made with government support under a grant awarded by a federal agency. State and federal laws require CCRI to retain title to intellectual property developed under sponsorship with an outside organization but created by CCRI personnel. If the intellectual property is created jointly by CCRI personnel and an employee(s) of the sponsor, the property shall be owned jointly by RIBGHE and the sponsor, unless the sponsor assigns ownership to RIBGHE. Provisions for licenses are discussed in Section 5.0.

4.0 Copyright Material

4.1 Copyright. *Copyright* is defined as the ownership right a party has in written material and other expressions of an idea or ideas. As used herein, *copyright material*, means written material and other embodiments or expressions of an idea or ideas.

4.2 Author. The author or creator of a copyrightable work is the individual responsible for creation of the copyrightable material which may be recorded as an expression of an idea in writing, in computer software, a picture, a sculpture, a musical score, other tangible form, or otherwise as defined by law.

4.3 Mask Works. In some cases, mask works constitute copyright material.

4.4 Scope of Employment. For the purposes of this policy *Scope of Employment* is a term used in copyright law. The term does not have the same meaning, as does the term: normal expectations of faculty/staff scholarship. Faculty/staff expectations are defined in the collective bargaining agreements. The term *Scope of Employment* is used herein for the purpose of determining ownership in this intellectual property policy.

4.5 Work-for-Hire. *Work-for-Hire* refers to copyrightable intellectual property, which is, for the purposes of this policy, deliverable to CCRI, (a) prepared by an employee within the Scope of his or her Employment, or (b) produced as a result of a special order or commission by the CCRI. Work created pursuant to a research agreement between the CCRI and an outside party, either a private sector company or a governmental agency, is considered to be within the *scope of employment*. Lecture notes, articles, books, art and music works and other publications created by faculty members are not considered within the Scope of Employment for purposes of this policy unless there is a specific written agreement between CCRI and faculty member, which agreement provides that a specific publication will be considered a *work-for-hire*. Work-for-hire shall belong to RIBGHE under the circumstances described in Figure 1a and in the accompanying example cases. Course and program descriptions, course justifications, student learning outcomes, course syllabi, and any other curriculum materials submitted by any CCRI faculty member or staff member to the college's Curriculum Review Committee for approval of a course, degree or certificate program, or other course of study shall be considered a *work-for-hire* and within the *Scope of Employment* of any such faculty member or staff member. The copyright in such curriculum material shall belong to RIBGHE.

4.6 Scholarships and Academic Papers Copyright Ownership. The rights in copyright for scholarship and academic papers produced as part of a CCRI degree requirement shall belong to the student preparing the material. A student must, as a condition of the award of any degree, grant a royalty-free license or permission to CCRI and any outside sponsor (if appropriate) to reproduce, publicly distribute on a non-commercial basis, copies of student project reports, scholarship or academic papers which would include any software developed as a part of the student project.

4.7 Ownership of Copyright Material Developed with Support of Outside Sponsors. Copyright material developed exclusively by CCRI personnel working under an agreement between the CCRI and an outside sponsor, such as a federal or state agency or a private sector company, shall belong to RIBGHE. State and federal laws require CCRI to retain title to certain copyrights developed by CCRI personnel under sponsorship with an outside organization. If the intellectual property is created jointly by CCRI personnel and an employee(s) of the sponsor, the property shall be owned jointly by RIBGHE and the sponsor. Provisions for licenses are discussed below.

4.8 Ownership of Copyright Material Developed Under Agreement with the CCRI and CCRI Personnel. CCRI personnel may enter into an agreement with the CCRI, written and signed by the person, his or her supervisor, and the President to spend a defined portion of his or her time and other CCRI resources to create a copyrightable intellectual property. The agreement must state that the work is a work-for-hire and that copyright ownership shall belong to RIBGHE.

5.0 Commercialization of Intellectual Property.

5.1 CCRI Developments and Licensing. The college will make a reasonable and good faith effort to commercialize all intellectual properties to which CCRI has acquired rights. All activities with outside organizations, including companies, to license for use commercial applications of any RIBGHE owned intellectual property, must be undertaken by or with the explicit approval of the CCRI President, or his/her/designee, who may use the services of a qualified intellectual property management organization or any other business organization which can aid the commercialization process. The objective of the commercialization activity is to maximize the return to the creator and CCRI while making available to the public the related processes and products at reasonable prices and of appropriate quality. If after two years the creator is dissatisfied with or questions the development efforts, he/she may express in writing such dissatisfaction to the Committee. In such cases the Committee shall respond in writing within 120 days by (i) finding the complaints to be without merit, (ii) by finding the complaint to have merit and assuring the creator that corrective steps, or other recommended action, will be taken, or (iii) by recommending return of all patent rights to the creator. If the Committee fails to act within 120 days from the date of the original filing of the complaint, legal rights to the invention and any other federal or legal obligations regarding that property shall pass to the creator, except for a non-exclusive use and license for CCRI

5.2 Responsibility for Licensing. The Vice President for Business Affairs of CCRI (or his/her designee) shall act as the RIBGHE fiscal and licensing agent and shall be responsible for applying for, obtaining legal protection for, marketing, and development of any intellectual property, and for executing all agreements for the subsequent use and/or licensing of any intellectual property owned by RIBGHE or included under the provisions of this policy.

5.3 Distribution of Income. *Royalty Income* as used in this section shall mean all royalties and other payments (including, but not limited to signing fees and infringement rewards, whether in cash or in kind), received by CCRI and derived directly from the marketing of the intellectual property attributable to the creator, minus any and all legal, developmental, and marketing costs incurred in connection with such intellectual property. The creator(s) shall receive, on an annual basis, 33 1/3% of any royalties or other payments, including but not limited to recovery of damages, derived directly from the marketing of the intellectual property received by CCRI. The remaining two-thirds of the income shall be designated to be used for purposes directly benefiting CCRI as determined by the President. This income will be kept in a separate account of the CCRI Foundation for use as stated above.

5.4 License Agreements with Research Sponsors. The college may grant to the sponsor(s) in any sponsored project agreement an exclusive license (with appropriate milestone and performance criteria) or non-exclusive license to the intellectual property resulting from the sponsored project. In cases of joint ownership, the outside sponsor shall have the right of first refusal to develop and/or produce and/or market a jointly owned intellectual property subject to appropriate milestone and performance criteria.

5.5 Determination of Shared Royalty Payments. In situations where the intellectual property is the product of joint creative or development effort, the IPC shall, upon consultation with the creators, determine an equitable division of any creator's share.