**ARTICLE XXXII**

**INTELLECTUAL PROPERTY AND DISTANCE LEARNING**

* 1. Scope

This Article sets forth the rights and obligations of the parties hereto as to intellectual property rights of the University and of the members of the bargaining unit, such rights to include, but not to be limited to, rights in intellectual property that can be trademarked, copyrighted, or patented. This Article also sets forth the terms and conditions which shall pertain to courses delivered by the University in those modes which collectively have come to be called “distance learning.”

* 1. Definitions
     1. Copyright/Copyrightable

Original works of authorship, including computer programs, fixed in any tangible medium of expression, now known or later developed, from which such works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

Works of authorship include but are not limited to the following categories:

* + - 1. musical works, including any accompanying words;
      2. dramatic works, including any accompanying music;
      3. pantomimes and choreographic works;
      4. pictorial, graphic, and sculptural works;
      5. motion picture and other audiovisual works;
      6. sound recordings;
      7. architectural works; and
      8. literary works
    1. Intellectual Property

Any trademarkable, copyrightable, or patentable matter or any intellectually created tangible thing or matter, including, but not limited to:

* + - 1. books, texts, articles, monographs, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests and work papers;
      2. lectures, musical and/or dramatic compositions, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids;

156

* + - 1. video and audio tapes and cassettes;
      2. computer programs; live video and audio broadcasts;
      3. programmed instruction materials;
      4. drawings, paintings, sculptures, photographs, and other works of art.
    1. Patent/Patentable
       1. Utility inventions or discoveries which constitute any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, as such is further defined in 35 USC sections 100, 101.
       2. Ornamental designs, being new, original, and ornamental designs for an article made, as such is further defined in 35 USC section 171, et seq;
       3. Plant patents, being for the asexual reproduction of a distinct and new variety of plant, including cultivated spores, mutants, hybrids, and newly found seedlings, other than a tuber propagated plant or plant found in an uncultivated state as such is further defined in 35 USC 161, et seq.
    2. Trademark/Trademarkable

Any work, name, symbol, or device or combination thereof adopted and used by a bargaining unit member to identify their goods and distinguish them from those made, manufactured, or sold by others.

* 1. Allocation of Ownership

The parties are committed to providing an environment that supports the teaching and scholarly activities of the members of the bargaining unit. As a matter of principle, the University encourages the members of the bargaining unit, and all members of the University community, to publish without restriction their papers, books, and other forms of communication in order to share openly and fully their findings and knowledge with colleagues and the public.

This allocation of ownership provision is intended to promote and encourage excellence and innovation in teaching and scholarship by identifying and protecting the rights of the University and the bargaining unit members. A bargaining unit member openly and voluntarily sharing of their intellectual property shall not in any way lessen that bargaining unit member’s rights in such intellectual property under this Agreement.

Ownership of intellectual property created by members of the bargaining unit shall vest in the creator except under any of the following circumstances:

157

* + 1. Subordination to Other Agreements

Intellectual property that is developed in the course of or pursuant to a third-party agreement to which the University is a party shall be determined in accordance with the terms of that third-party agreement. In the absence of terms specifically assigning ownership, the intellectual property shall become the sole property of the University only if such ownership is conferred upon the University by operation of another provision of this Article, or shall become the joint property of the University only if the terms of such agreement directly or indirectly create significant University monetary obligations as to the intellectual property developed thereunder, in which event the specific division of ownership will be worked out on a case-by- case basis.

* + 1. Negotiated Agreements

The intellectual property shall belong to the University, or to the bargaining unit member and the University jointly, when such intellectual property is created by a bargaining unit member under an express agreement negotiated between the bargaining unit member and the University, which agreement specifies the intellectual property to be created thereunder, allocates ownership interests, and specifies the nature and amount of remuneration to be received by the bargaining unit member in return for the work negotiated.

* + 1. Substantial Use of University Resources

Where the substantial use of University resources occurs, the University and the bargaining unit member shall be joint owners of the intellectual property, and the creator and the University shall negotiate the allocation of specific ownership interests, amounts of remuneration, respective obligations, etc. “Substantial use” includes projects undertaken by the bargaining unit member with the benefit of substantial or unusual funds, facilities, or opportunities which the bargaining unit member would not ordinarily be entitled to have for any chosen project. Examples of such support include special funding and release time from other duties. “Substantial use” ordinarily does not include the use of office space, a desktop computer, supplies, customary secretarial and student assistance, access to libraries and other information sources, or other such support.

The symbiotic nature of the relationship between Rider University and the members of the AAUP bargaining unit produces benefits to both the University and the members. This proposition is as true with regard to scholarship as it is regarding teaching and value. Among those benefits, with respect to scholarship, are enhanced personal and institutional prestige and increased grant support. Consequently, the University wishes to encourage research and other scholarly activities and makes its facilities available to aid in the achievement of these ends, as well as the enhancement of Rider’s mission as a “Teaching University.”

University facilities to which bargaining unit members are “ordinarily entitled”, that is, which are made available in the ordinary course of members’ performance of their teaching and scholarly activities include by way of example:

1. An office, equipped as required under Article XXIV(B) of the Agreement;
2. A desktop computer in accord with Section XXIV(G) of the Agreement and the relevant policies of Rider’s Office of Information Technology;
3. Secretarial support per Section XXIV(F) of the Agreement;
4. Student assistance, such as via independent studies and other supervised individual student experiences as contemplated under Article XXVII(G) and student work study assignments and the like;
5. The University Libraries and other University-provided information sources;
6. Laboratory space and equipment normally available to a particular bargaining unit member;
7. Leaves, fellowships, and grants made available by the University which qualified faculty members may apply for and which are awarded on a competitive basis.

However, the AAUP and the University agree that there will be circumstances under which a bargaining unit member’s “substantial use” of Rider’s resources will give the University the legitimate right to participate in the management, protection, marketing, and financial rewards of specific intellectual property rights. Article XXXII(C)(3) of the Agreement acknowledges this possibility.

However, the AAUP and the University also recognize that no definition of “substantial use” can capture this concept comprehensively and for the duration of even a single, multi-year collective bargaining agreement. Therefore, this M.O.U. is intended to provide the administration and the bargaining unit members with guidance, and to be revised by mutual agreement of the parties as necessary or advisable during the term of the Agreement.

“Substantial or unusual funds, facilities, or opportunities,” as used in Article XXXII(C)(3) refers to support that is not usually made available to bargaining unit members in the ordinary course or performance of their teaching and scholarly activities. Such support includes by way of example:

1. Funding provided on a non-competitive basis to develop the intellectual property;
2. Release time provided on a non-competitive basis from other duties to work specifically on the development of the intellectual property;
3. Prosecution of a patent;
4. Development of a business plan;
5. Procurement of investment capital;
6. Production and/or marketing of a product.

Section C(3) of Article XXXII, “Substantial Use of University Resources,” is itself a “residual” provision in that Section (1) “Subordination to Other Agreements,” and Section (2), “Negotiated Agreements,” are likely to capture most situations in which the University will be entitled to participate with the bargaining unit member in the handling and rewards of a particular piece of intellectual property.

1. In the first instance, the third-party contract is likely to set out the tripartite relationship regarding any intellectual property resulting from the research.
2. In the second, the member is likely to have approached the University, or the University has approached the member, and together they will have agreed, typically in writing, on the nature and scope of the project and Rider’s support of it.

Neither of these situations implicates Article XXXII(C)(3), except by way of definitional guidance.

Section (2) is sufficiently broad to cover those occasions where a member had already created the intellectual property and is seeking the University’s support for such things as:

1. Additional research funding to further develop the intellectual property;
2. Prosecution of a patent;
3. Beta testing of a product;
4. Development of a business plan;
5. Procurement of investment capital;
6. Production and/or marketing of a product.

Ownership of the names “Rider University” and “Rider Broncos/Broncs” and their related logos are the registered trademarks and service marks of Rider University. While a member of the bargaining unit may normally identify themselves as affiliated with Rider University when engaged in personal consulting, the use of the University’s name, trademarks, and service marks may not be used in personal publicity, press releases, advertising, or product promotion without the prior written approval of the Provost.

* + 1. Obtaining Copyrights, Patents, and Trademarks

Unless otherwise expressly agreed, the University assumes no obligation for assisting or assuring the acquisition of copyrights, patents, and trademarks for intellectual property created by bargaining unit members.

* 1. Distance Learning Courses

The term “Distance Learning Course,” as used in this Agreement, refers to any course in which communication at a distance between teacher and student(s) substitutes in part or in whole for the normal face-to-face classroom contact mandated by the regular classroom schedule as approved by the appropriate APC. Such communication at a distance may be accomplished by any one (1) or more media, including but not limited to television, radio, Internet, compact disc, video or audio tapes, film, or print.

* + 1. Review and Approval of Distance Learning Courses

All aspects of distance learning courses (or modifications thereof) shall comport with all of the standard practices, procedures, and criteria which have been established for traditional in- the-classroom courses. This includes but is not limited to departmental review and recommendation of such courses to the appropriate APC which will have oversight of all such courses in order to ensure conformity with previously established traditions of course quality and relevance. The above review shall occur even when the proposed distance learning course is a section of an already existing and approved course.

* + 1. No Workload Requirement

No faculty member shall be required to develop or teach a distance learning course.

* + 1. Faculty Responsibilities

Faculty will have the same responsibility for the selection and presentation of materials and points of view in a distance learning course as they have in a traditional in-the-classroom course.

* + 1. Enrollment Maximums

Enrollment maximums for distance learning courses shall be the same as the enrollment maximums for the same or similar level in-the-classroom courses offered by that department or program, unless the Dean and department agree that a lower cap is appropriate.

* + 1. Workload Credit

A distance learning course will be credited as a separate preparation such that a faculty member teaching two (2) sections of a course, one using a traditional classroom modality and the other being taught as a distance learning course, shall be credited with two separate preparations for the first three (3) times they teach both in the same semester.

* + 1. Recording of Distance Learning Courses

Any recording of a distance learning course will occur only with the permission of the instructor and will remain the property of the instructor. Neither the instructor nor the University shall sell the recording to a third party for use outside the University’s academic curriculum.