

Understanding UNE's Student Intellectual Property (IP) Policy

UNE wants its students to be engaged, creative and innovative. UNE's Student IP Policy is intended to foster and encourage creativity and innovation. Although IP can be complicated, UNE's Student IP Policy is simple. Absent certain scenarios, which are discussed below, as a UNE student you own the IP you create.

This primer is intended to help you understand what IP is, when you might be expected to share your IP with UNE and to encourage an open dialog with UNE about your rights.

What is Intellectual Property (IP)?

The phrase "intellectual property" is used to describe various laws that create ownership interests in various types of creative works and innovations. If you have created something that is protected by an area of intellectual property law, those laws provide you with certain rights. There are four main types of intellectual property:

- Copyright
- Patent
- Trade Secret
- Trademark

Below is a short description of each. Further down there is additional information about patents and copyrights, as those, especially copyrights, are the most likely forms of IP you will create as a student.

Copyrights protect original creative works. For example, written materials, visual arts, music, and software source code are all protected as copyrights. Some things, like a basic shape or a word or a short phrase (like a tagline) are not protected by copyright, although they might be protected as a trademark.

Patents protect innovations that are new (novel), useful and non-obvious. Patents can cover a wide range of innovations. Unlike the other forms of IP, patents require formal filings with the U.S. Patent & Trademark Office (USPTO).

Trade Secrets protect any formula, pattern, compilation, program, device, method, technique, or process that: (a) has value because it is not generally known and (b) the owner uses reasonable efforts to maintain its secrecy. The secret formula to Coca-Cola is among the more famous examples of a trade secret. If you have developed something that cannot be easily discovered or “reverse engineered”, you may have developed a trade secret. To protect the trade secret you cannot disclose it to another person, unless the person has signed a Non-Disclosure Agreement.

Trademarks protect any words, names, symbols, designs, or any combination of these, used in commerce to identify and distinguish the goods and services of one party from those offered by another party. Trademarks are often referred to as brands. In order to own a trademark, you must not only develop the word, symbol, design, etc. you must actually use those items on a product or service that is “in commerce”. Filing an application to register a trademark with the USPTO can help you secure rights to a trademark, but registration is not required in the U.S. and normally the first to use the trademark “in commerce” has superior rights and can stop another party from using a “confusingly similar” trademark. So, for example, if you think of a brand name, logo or tagline for a clothing line, you generally won’t have any rights to those unless you actually start selling clothing bearing those trademarks.

Further information regarding Copyrights and Patents:

For the most part, much of what you create as a student will be protected under copyright laws. In some cases, you might even develop a “patentable” invention. Given this, the following provides a more detailed description regarding these particular types of IP

Copyrights protect original creative works. For example, written materials, visual arts, music, and even software source code are all protected as copyrights. The owner of the copyright has the exclusive right to reproduce, distribute, perform and otherwise use the work for a certain period of time. In the U.S., for any work created after 1978, the copyright lasts for the life of the copyright owner plus 70 years. The term for works created before 1978 can vary based on when the work was created and other factors. Most of the work and content you encounter and/or you create may be protected as a copyright. If a work is original to you, not copied from someone else, you own the copyright from the moment of creation. Although you can register the copyright with the U.S. Copyright Office, and that registration will add some important protections, a registration is not required.

There are three important exceptions to the general rule that you own the copyrights to the original works you create:

- Employment
- Agreement
- Joint Works

Employment: If you've been hired as an employee to create a work on behalf of an employer, the employer will own the copyright to that work. This means you cannot use the work you created without the employer's consent. For example, if you are hired as an employee to develop software for a company or to produce photographs and videos to be used in a company's social media feeds, the company, not you, owns the copyrights to the software and those photographs and videos. You cannot use those works in any way without your employer's consent. If you develop software or take photographs and videos that have nothing to do with your employer on your own time with your own computer and camera, you will own the copyright to that software and those photographs and videos. To avoid confusion, if you're hired to develop any works or content for an employer that may be protected as a copyright, you should discuss your and your employer's expectations as to who owns what.

Agreement: Aside from the employment context, another way someone else might own your copyrights is if you have agreed in writing to transfer your copyrights to another person. If, for example, you are hired as an independent contractor (not as a formal employee), a company might ask you to sign such a document. As another example, you might participate in a contest in which you are asked to create works to be used by another party. In order to participate in the contest you may be required to agree to the contest "Terms and Conditions" which may include your agreement to transfer all of your rights to the work you submit to the party running the contest. "Terms and conditions" you agree to are generally binding contracts even if you do not manually sign a document. While these scenarios and agreements are common, you should be sure to take your time and understand any document you sign or terms you have agreed to (online or otherwise).

Joint Works: If you work on a project with another person or as a group, you may all be "joint owners" of the copyrights to the complete work. For example, members of a musical group who all collaborate on a song may end up all being "joint owners" to the copyright

of the song. Whether a person is an exclusive owner or a joint owner can be complicated and depends on the specific facts of each circumstance. Often people will discuss ownership up front and commit their agreements to writing to avoid confusion later.

If you will be working with UNE as an employee (part-time or full-time) or participating in a project that is being funded or sponsored by UNE, UNE may have rights to the works you are creating as your employer, as a joint owner or as a result of an agreement. If you have any questions whether UNE may have rights to the copyrights in the works you are creating you can direct those to: [insert contact].

Patents protect innovations that are new (novel), useful and non-obvious. Patents can cover a wide range of innovations. The owner of a patent has the exclusive right to make, use, sell and import any product covered by the patent for a limited period of time, usually 20 years from when a patent application is filed with the USPTO. Unlike a copyright, a patent only exists if a formal patent application is filed with the USPTO and a patent is ultimately granted. The patent itself will describe the covered invention in a series of patent "claims". Those claims define the breadth of the patent rights the owner holds. When a patent is filed the owner is identified, so there is clarity as to who is claiming patent rights. Similar to copyrights, if you are an employee hired to innovate, you will likely be required to transfer any patent rights to the company. Even if you are not required to formally transfer your patent rights, if you create a patented invention acting within the scope of your employment, using the employer's equipment or at the employer's expense, the employer may have a "shop right" to your patent. This shop right gives the employer the right to use the patent without your permission and without payment to you. Similar to a shop right, even if you are not an employee of UNE at the time you create a patented invention, if that invention was created as part of a project being funded by UNE or that uses significant UNE resources, you may be asked to transfer or license your patent rights pursuant to a separate agreement. Filing a patent application and seeking a patent from the USPTO can be very complicated and expensive. UNE may be able to provide you with resources and funding to seek a patent. In those scenarios, UNE may ask you to provide it with rights to use the patent even if the patent will be held in your name.

Summary

Understanding whether your creativity and innovations can be protected as IP, seeking formal protection for your IP, and trying to commercialize your IP can all be complicated and expensive. UNE may be able to assist you by providing guidance, resources and funding. If UNE agrees to provide you with significant assistance, resources or funding, it may ask that you provide it with certain rights to your IP pursuant to a written agreement. Absent such an agreement and/or you being an employee of UNE, as between UNE and you, you own your IP.

If you have any questions, please contact:

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