

Ethics Act Compliance Guidance Regarding “Works” - United Academics Faculty

(The two documents upon which this guidance is based run to more than 50 pages. Summarizing laws or contracts in an effort to simplify or state something in plain english risks misstating the law or contract. Since the University cannot modify the law or contract and does not intend to do so, it is important to note that the following summary is based on Alaska Law and the Collective Bargaining Agreement (CBA) between the University of Alaska and United Academics. You are responsible for complying with the law itself. The actual terms of the CBA will govern in the event of any dispute.)

Faculty are not prohibited by the Alaska Executive Branch Ethics Act (AS 39.52. and 9 AAC 52), Regents’ Policy, or University Regulation from using University resources for research or creative activity that is consistent with their approved University workloads. While the Ethics Act generally prohibits state and University employees from using public resources to benefit personal or financial interests, faculty **may** be entitled to retain additional compensation for intellectual property that results from such work without violating the Ethics Act, Regents’ Policy, or University Regulation. This is determined by the extent, if any, of University support provided, which generally falls into one of three categories (see below), but is subject to any overriding obligations of the University.

Supported works –are works which are not specifically commissioned or sponsored by the University, but are created using funds, personnel, facilities, equipment, materials or technological information (resources) provided or arranged for by the University. If a faculty member creates a “work” in the course of supported activities, and this work may be expected to result in additional compensation from sources outside the University, the faculty member must disclose the work. Under the collective bargaining agreement between the University and United Academics, faculty members retain copyright in and receive the first \$10,000 of net proceeds from each supported work, but must share with the University net proceeds above \$10,000 for each supported work. Keep in mind that overriding agreements between the University and external funding sources may vary ownership rights.

Sponsored Works – are works that have been specifically commissioned by the University, or which are supported as a work for hire by such means as a specified course release or overload payment. Generally, sponsored works are the sole property of the University, and all proceeds are retained by the University.

Independent Works – the ideas came from the faculty member, the work is not based on information obtained during University employment which has not been disseminated to the public, and no University support, including time allocated for creative activity, has been used in the creation of the work. **This is the most risky approach under the Ethics Act since it is not University work.** At a minimum, you must disclose and receive approval for the outside activity. You may choose to submit a Notice of Potential Violation form. If you disclose all relevant facts and act in accordance with an advance determination from the MAU and University designated ethics supervisors, you will avoid liability. Copies of determinations must be provided to the State Attorney General.

The Bottom Line - if you use University resources in other than a de minimis way, or use information gained in the course of official duties, including opportunities, that has not been publicly disseminated, an independent work may be difficult or impossible. While an independent work allows you to retain all interests and proceeds, it must truly be separate from your University employment, and you should ensure that you have and use separate business facilities, including but not limited to computer, phone, address, etc., and refrain from using any University support, including time allocated to creative activity. Provided you do so, de minimis use of University resources (e.g. occasional telephone calls or emails to or from University numbers/addresses, storage of reference materials on a University computer, library use), that does not result in additional cost to the University will not transform an independent work to a supported work. Helpful websites include: http://www.alaska.edu/hr/forms/hr_ethicsforms & <http://www.law.state.ak.us/doclibrary/ethics.html>