

AN OPEN LETTER TO JMU INVENTORS by Tom Wilcox, *Inventor-In-Residence*, JMU X-Labs and 4-VA (wilcoxtm@jmu.edu)

It's come to my attention that some people imagine I have no intellectual property or copyright interest in — or creative control over — products I develop in my day-to-day activities as *Inventor-In-Residence* at JMU X-Labs. Nothing could be further from the truth.

My work on the virtual reality chemistry instructional software, *ChemCrystals-VR*, is a good example. I started work on the invention in July collaborating with John Gilje, a professor in the Chemistry Department. I've shown *ChemCrystals-VR* to several hundred people at the X-Labs Concept Visualization Studio in Lakeview Hall, including John's fourth-year chemistry class. It's my work, created solely by me under my own direction and supervision. JMU will likely (and justly) claim considerable equity interest for supporting development of my invention as it matures into a salable product. I welcome this relationship, one designed to be mutually beneficial, to encourage cooperation between creative inventors and the public institutions where we work.

I have no doubt that *ChemCrystals-VR* will become a profitable product, including intangible benefits to JMU associated with favorable publicity for innovating with a transformative technology. My long history and experience in commercial software development and publishing makes this possible, provided of course that I retain creative control of my own invention moving forward. If I allow someone to swoop in like a crow on a garden to pick the choice early fruit before it ripens, I lose control of my product, depriving me and JMU of potential profits. What's more, I could be forced to move my garden to a more favorable environment if I can't get relief from the crows.

As *Inventor-In-Residence* at JMU X-Labs, I'm free to choose whom I work with and how I accomplish my goals. My creative work is entirely self directed, a natural condition for all inventors. Like most universities, JMU tries to provide a stable work environment for employees who are by definition creative developers and inventors in their day-to-day activities. Attempting to divert or undermine such an employee's intellectual property and copyright ownership would be misguided, and contrary to *JMU Policy 1107 - Intellectual Property*, which states in part:

"Assigned duty: (Required by legislation for determining when transfers of intellectual property must be approved by the Governor) - 'Assigned duty' is narrower than 'scope of employment', and is an undertaking of a task or project as a result of a specific request or direction. A general obligation to do research, even if it results in a specific end product such as a vaccine, a published article, or a computer program, or to produce scholarly publications, is not a specific request or direction and hence is not an assigned duty. In contrast, an obligation to

develop a particular vaccine or write a particular article or produce a particular computer program is a specific request or direction and is therefore an assigned duty. At the same time, if the University has contributed time or resources to the discovery or creation of a product, it would claim an equity interest in such discoveries or creations." See the JMU Policies web page, <http://www.jmu.edu/JMUpolicy/policies/1107.shtml> for the complete text.

In other words, when a JMU employee's creative work product is not an "assigned duty" (i.e., your boss did not tell you to create it), then the employee likely retains intellectual property and copyright to such work. JMU is, however, entitled — under certain conditions — to claim an equity interest in an employee's creative work product (a stake in its potential profits). When JMU supports development of a creative work product with substantial money-equivalents above and beyond salary or wages (lab or studio space, equipment and supplies, travel expenses, publishing costs, etc.), JMU may rightly expect compensation for their investment. But JMU does not automatically own an employee's creative output. If that were true, employee ownership of intellectual property and copyright would never happen. No artist or writer, no researcher or inventor, nobody would own their creative output at JMU. Thankfully, that is not the case.

Tom Wilcox, December 21, 2015