

## Report on Section 5 of the Tatweer Misr / NJIT Agreement

Nov. 26, 2021

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At the request of the Faculty Senate, the CRSCAA<sup>1</sup> reviewed the Section 5 of Egypt Branch NJIT Campus agreement. A subcommittee consisting of three members of the CRSCAA was formed to perform a deeper analysis and to produce a report on its findings. This report was discussed by the full committee and subsequently submitted to the Faculty Senate for further consideration.

Substantial problems for NJIT faculty and students are outlined below.

- 1) The agreement only names two Parties, i.e., Tatweer Misr (TM) and NJIT, so there are no rights established for anyone else, including NJIT faculty. Section 5.1 states that all Intellectual Property (IP) belongs to one or another of the Parties, including any developed by a Party's employees and personnel during the term of the agreement. We believe that this contradicts NJIT policy where faculty who create courses retain ownership of their intellectual property. The only exception is if the faculty members are paid explicitly to develop a course, then it is "work for hire" which can be owned by NJIT.
- 2) Section 5.2 further states that the other Party or Branch may use the IP, and "in particular, any teaching materials" "supplied by or produced on behalf of NJIT" which seems to violate the faculty ownership of their developed materials.
- 3) Section 5.3 is confusing as it refers to "any research, innovations, and new teaching materials developed or produced" by Branch employees would be owned by TM or the Branch. Are NJIT faculty who work in Branch considered Branch employees. If so, this clause is problematic.
- 4) Section 5.4 stipulates that any IP "developed jointly by employees" of both Parties shall be jointly owned. But this violates many NJIT and US rules. If there is federal support for NJIT faculty, then the IP is owned by NJIT (per the Bayh Dole Act<sup>2</sup>), and if the faculty member does work independently from NJIT (without substantial support from NJIT), then it may be owned by them alone. The clause in Section 5.4 further states that IP "developed by students at the Branch shall also be jointly owned by both Parties", which seems to violate their rights as well. NJIT has clarified that Student Innovations are owned by the students except where they receive substantial NJIT or Federal Government support. The clause indicates that student innovators "will share in any net revenues resulting from commercialization" without being more specific. NJIT has well-defined rules about inventors sharing in the licensing of technology that apply to faculty and student inventors of NJIT intellectual property.
- 5) Section 5.5 is concerned with "In-Country Personnel"<sup>3</sup> which may not apply to NJIT faculty. But this should be clarified. Does this category include NJIT faculty who work in the NJIT Egypt Branch? It is not clear what is meant by a "proposed publication" related to the Agreement, and if this applies to faculty who teach at the Egypt campus.

"In-Country Personnel members agree to furnish to NJIT copies of any proposed publication related to this Agreement at least thirty (30) days in advance of the submission to permit NJIT to: (a) make written comments on said publication (which shall not be binding); (b) object in writing because there is patentable subject matter which need protection; or (c) because the publication contains an inadvertent disclosure

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<sup>1</sup> Committee on Research, Scholarship and Creative Academic Activity

<sup>2</sup> "The Bayh–Dole Act authorizes the Department of Commerce to create standard patent rights clauses to be included in federal funding agreements with nonprofits, including universities, and small businesses."  
([https://en.wikipedia.org/wiki/Bayh%E2%80%93Dole\\_Act](https://en.wikipedia.org/wiki/Bayh%E2%80%93Dole_Act))

<sup>3</sup> Defined in Section 19 as "non-NJIT employees" consisting of administrative support staff.

of solely owned Confidential information belonging to NJIT. NJIT shall provide its commentary or objections within thirty (30) days of receiving a proposed publication. In the event that NJIT makes a timely objection to a proposed publication due to patentable subject matter contained within the same, the In-Country Personnel member shall refrain from making such publication for a maximum of one hundred twenty (120) days from the date of receipt of such objection in order for NJIT or TM to file US, Egyptian and/or foreign patent applications.”

6) Section 5.10 refers to infringement but only for the two Parties. There is a line about "infringe the rights of a third party" which could refer to faculty and/or students but this is unclear.

Overall, this subcommittee suggests that the Faculty Senate engage an attorney to review Section 5 of the Agreement.