



NORTHWESTERN STATE UNIVERSITY OF LOUISIANA
Intellectual Property Policy

Approved September 18, 2012



NORTHWESTERN STATE UNIVERSITY OF LOUISIANA

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NORTHWESTERN STATE UNIVERSITY OF LOUISIANA

Intellectual Property Policy

*As developed by the Northwestern State University of Louisiana Intellectual Property Committee
September 18, 2012*

Objectives

Consistent with the policies of the University of Louisiana System, Northwestern State University of Louisiana's Intellectual Property Policy employs the following objectives:

1. To encourage research and scholarship as creative academic endeavors while recognizing that commercially valuable intellectual properties may result from such endeavors;
2. To delineate procedures to encourage creators to report discoveries with broad commercial potential and public benefit and to assist them, while at the same time safeguarding the interests of all concerned parties;
3. To make intellectual property developed in the course of academic research available to the public under conditions that will promote its effective and timely use and development;
4. To optimize the environment and incentives for research and scholarly activity and for the creation of new knowledge;
5. To ensure that the educational mission of the University is reinforced.

Purpose

This policy is intended to support faculty, staff, and students in identifying and protecting intellectual property, defining the rights and responsibilities of all involved, administering intellectual property matters, and establishing support offices to provide the required assistance. It also stipulates how such income generated should be distributed to the creators or developers and to the University.

Northwestern State University of Louisiana recognizes that research and scholarship should be encouraged without regard to potential gain from licensing fees, royalties, or other such income; however, the University also recognizes that patentable inventions and discoveries may arise from faculty, staff, and

student research. The policies governing the administration of such inventions should provide adequate recognition and incentive to inventors and at the same time ensure that the University will share in the rights pertaining to inventions in which it has equity.

Intellectual Property Definitions

A. Computer Software shall include one or more computer programs existing in any form or any associated operational procedures, manuals, or other documentation, whether protectable or protected by patent or copyright.

B. Creator shall be defined as an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" shall include, but not be limited to, faculty, professional staff, administrative and support staff, and students. "Creator" shall also include the definition of "inventor" as used in the U.S. patent law and the definition of "author" as used in the U.S. Copyright Act.

C. Institution Resources Usually and Customarily Provided shall include such support as office space, library facilities, ordinary access to computers and networks, or salary and shall be described in this policy as either "incidental" or "significant." The phrase does not include use of students or employees as support staff to develop the work, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the institution unless approved as an exception.

D. Intellectual Property shall be defined as inventions, discoveries, knowhow, show-how, processes, unique materials, copyrightable works, original data, and other creative or artistic works that have value. Intellectual property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

E. Inventor shall include anyone who creates inventions patentable.

F. Inventions Patentable shall include any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.

G. Net Income shall be defined as those funds raised from the commercialization of applicable intellectual property that remain after the

University and the Creator(s) have been reimbursed for resources expended in the creation, procuring, maintaining, and marketing of the intellectual property.

H. Scholarly Works shall include all intellectual properties not covered in Technical Works that are of an artistic, scholarly, instructional, or entertainment nature.

I. System shall refer to the University of Louisiana System, unless otherwise indicated.

J. Technical Works shall include intellectual properties that are of a scientific, engineering, or technical nature such as patentable or unpatentable inventions (including biological materials), computer software.

K. Traditional Academic Copyrightable Works shall be defined as a subset of copyrightable works created independently and at the creator's initiative for traditional academic purposes. Examples include class notes (in whatever form, e.g., handouts, internet posting); books, theses and dissertations; articles; materials produced for any course regardless of media; non-fiction, fiction, and poems; musical works; dramatic works including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; or other works of artistic imagination that are not created as an institutional initiative. Regarding websites, the author of each web page is responsible for the content of that page and is expected to abide by System and university policies as well as local, state, and federal laws.

L. University shall refer to Northwestern State University of Louisiana, unless otherwise indicated.

RIGHTS TO OWNERSHIP

A. Institutional Ownership

1. Institutions may assert ownership in Intellectual Property of all types (including, but not limited to, any invention, discovery, trade secret, technology, scientific or technological development, computer software, and course materials) regardless of whether the property is subject to protection under patent, trademark, copyright, or other laws, except as stipulated below in Section B.

2. Institutions may assert their interest in Intellectual Property related to the creator's academic or professional field, regardless of the medium of expression.

3. Institutions shall have ownership of all Intellectual Property created by persons under the conditions stated below:

- a. if Intellectual Property is created by an employee within the specific scope of employment; or
- b. if Intellectual Property is commissioned by the institution pursuant to a signed contract; or
- c. if Intellectual Property is created by a person who was hired specifically, or is required as part of his or her job responsibilities, to produce it; or
- d. if Intellectual Property fits within one of the nine categories of works considered “works for hire” under copyright law¹; or
- e. if Intellectual Property is created under the terms of a sponsored project where the terms of the sponsored project require that the Intellectual Property be in the name of the institution.

B. Individual Ownership

1. Traditional Academic Copyrightable works shall be owned by their creators, not the institution, subject to the rights and limitations of use pursuant to Section D and E and to the right of the institution to recover the value of any significant institutional resource contributions to such works.
2. In addition to traditional academic copyrightable work created by professional, faculty, researcher, or student creators in their field of expertise, a creator shall own Intellectual Property under the following conditions:
 - a. if it is unrelated to the creator’s job responsibilities and the creator made no more than incidental use of institution resources; or
 - b. if it is Intellectual Property that has been released to the creator in accordance with institution policy.
3. Institution facilities or resources shall NOT be used:
 - a. to create, develop, or commercialize Intellectual Properties unrelated to an individual’s employment responsibilities; or

¹ Section 101 of the copyright law defines a “work made for hire” as: (1) a work prepared by an employee within the scope of his or her employment: or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. Source: United States Copyright Office, Circular 9: “Works Made for Hire Under the 1976 Copyright Act,” September 1998.

b. to develop or commercialize Intellectual Properties further that have been released to a creator except when approved by the institution and when the institution retains an interest under the terms of the release.

4. The University shall have no ownership, use, or intellectual property rights in any work developed and created by the Creator prior to his/her employment at the University. For works developed and created in part prior to employment at the University, the University may only assert an interest in the portion of the work completed while employed at the University, provided that the Intellectual Property Policy otherwise gives the University an ownership interest in that portion of the work.

C. Joint Ownership

1. Joint ownership may occur under certain circumstances such as when scholarly works involve the services of other institutional employees (e.g. development of multi-media courseware).

2. The institution and faculty member may be joint owners of the final product if a faculty member works independently but incorporates work done as work for hire by institution employees and/or contractors.

3. In the case of Traditional Academic Copyrightable work that involves significant institutional resource contributions, the institution shall reserve the right to secure rights (including but not limited to joint ownership), for example, to use the work and to recover its investment, in a written contract with the Creator. If a project involves the use of significant institutional resources, the Creator and the institution shall agree before the project begins on the use of facilities, allocation of rights to use the work, and recovery of expenses and/or sharing of benefits from commercialization of the work.

D. Continuity of Institution Rights

1. With respect to Intellectual Property arising in connection with all courses created within the institution, regardless of delivery format, the institution shall retain a permanent non-exclusive, royalty-free license to make all traditional, customary or reasonable educational uses of the content of such courses.

2. This license shall be presumed to come into existence automatically by virtue of the approval of a course to be taught at any institution within the System.

3. This license shall include the right of the institution to offer the course, or to develop and offer derivative courses of instruction in both conventional and non-conventional settings (including courses intended for use in internet distance education projects), whether at the institution or elsewhere.

4. This license shall continue to be available to the institution even if the faculty member should leave the institution.

E. Recognition of Creator's Interests

In recognition of the Creator's desire to ensure the intellectual integrity of his or her work, the institution will give consideration to the views of the Creator as to the use and disposition of Intellectual Property rights when it takes title to a copyrightable work under this policy. When the institution owns a copyright under this policy, the Creator will be permitted to use the work for his or her own non-commercial purpose.

Royalty Income and Proceeds Distribution

In the event that royalties are generated by intellectual property rights assigned or licensed to the institution, an appropriate share of such royalties shall be paid to the creator. The institution may recover its costs before the following conditions apply. The creator's share shall be determined by the following:

A. In cases where the institution or creator, as the case may be, assign such intellectual property rights to a research corporation under contract to an institution or to the System, the share of royalties to be paid to the creator shall be governed by the terms of the contract between the institution or System and the research corporation.

B. In cases where the intellectual property is covered by a contractual agreement with a sponsoring agency, the financial arrangements shall be in accordance with that contractual agreement as negotiated between the institution and the contracting agency.

C. In cases of sponsorship by federal agencies, compliance with the appropriate federal regulations shall be effected in the ultimate agreement.

D. In cases where the institution retains ownership of an intellectual property from a creator or creators, and/or expends funds to develop and market the intellectual property, any royalties generated will be used first to cover the expenses of filing, procuring, maintaining, and marketing the intellectual property.

E. Net royalties on intellectual property available to institutions shall be used for research, development, and other scholarly activities and allocated one hundred percent to the institution where the intellectual property originated.

F. In instances where the institution chooses not to retain ownership of the intellectual property, the creator shall obtain permission from the institution's President, or his or her designee, before associating the institution's name, logo, etc., with the intellectual property.

G. The System Board may approve exceptions to the established royalty distribution in extraordinary circumstances.

H. In cases where the University exerts ownership, the distribution of monetary proceeds from applicable intellectual property shall be distributed as follows:

I. For all net income:

1. The Creator shall receive 40%.

2. The University shall receive 60%, and the creator and the University may work together to best distribute these funds.

Management of Intellectual Property

A. Acknowledgement of Institutional Authority

The President of Northwestern State University of Louisiana has the ultimate authority for the stewardship of intellectual property.

B. Intellectual Property Committee

The Intellectual Property Committee shall have the following responsibilities:

1. Advise Administration regarding ULS Policy, and advise the Provost on the implementation of those policies, and the status and conduct of the University's technology transfer efforts.

2. Serve as advocate to the University's personnel for the institution's technology transfer efforts.

3. Recommend to the Provost the equitable distribution of income from the development and marketing of those intellectual property rights in which the University has a vested interest.

4. Serve as the University's Intellectual Property Advocate (IPA).
5. Encourage research and scholarly activities.
6. Review and recommend to the Provost changes in procedure.
7. Give input on the resolution of questions of intellectual property ownership.
8. Make such recommendations as are deemed appropriate to encourage disclosures and ensure prompt and effective handling, evaluation, and management of intellectual property opportunities while protecting the interests of the creator, the University, the System, and the public.
9. Create and make available current intellectual property resources for the University.

C. Intellectual Property Committee Membership and Selection

The committee shall consist of seven voting members and one non-voting member. The membership shall consist of one faculty member from each of the following:

1. College of Education and Human Development
2. College of Arts, Letters, Graduate Studies and Research
3. Provost or designee
4. College of Nursing and Allied Health
5. College of Science, Technology and Business
6. At-large Member
7. Faculty Senate Representative
8. Office of Research and Sponsored Programs (non-voting member)

The members from the respective Colleges shall be appointed by the Dean of each college. The At-large member shall be appointed by the University President. The Faculty Senate shall appoint the Faculty Senate representative. The ORSP representative shall be appointed by the ORSP Director.

D. Terms and Initial Appointments

The membership term for all positions on the Intellectual Property Committee shall be three years, which may be renewed for subsequent terms.

E. Intellectual Property Committee Procedures

1. All decisions shall be made by a majority vote of the members present, provided that a quorum is present. Quorum for the Intellectual Property Committee shall be a majority of the voting members.
2. Applications to the Intellectual Property Committee shall be submitted to the Office of Research and Sponsored Programs.
3. An application must be submitted by the Creator to the Intellectual Property Committee prior to the commencement of any revenue-generating project, or if a bona fide dispute arises as to the ownership, use, or intellectual property rights of any work covered by this policy.
4. Committee members shall maintain confidentiality of the specific issues brought before it. Failure to respect that confidentiality shall result in immediate dismissal from the Committee.
5. By a majority vote, the Committee shall elect its chair each year, with the option of renewing the same chair.
6. The Committee shall meet at least once each fall and spring semester, unless the committee has no applications or business to approve or discuss.
7. Committee members must recuse themselves for votes on any intellectual property applications that the member has filed or in which the member has a direct interest.
8. The Committee shall attach the following disclaimer to all policy recommendations that it makes:

“The above recommendation by the Intellectual Property Committee represents our decision based on the information available at the time the decision was made. Any changes in the information, regardless of the recommendation, should be reported to the IP Committee. We reserve the right to change our decision based on any new information.”
9. The applicant shall have the right to appeal any adverse decision to the University President within 60 days of the Intellectual Property Committee’s decision. The President’s decision is final.