

INTELLECTUAL PROPERTY POLICY Pacific University

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The creation, and use, of intellectual property is at the core of the academic experience at Pacific University. The scholarly contributions of faculty, staff and students to the University community enrich our common knowledge and foster our shared spirit of innovation. Often, these intellectual contributions also hold the potential to enrich the greater academic community, if not society at large, and the University recognizes the importance of contributing to a global foundation of knowledge. As such, the University encourages all faculty, staff and students to share the knowledge that they create, whether as individuals or as representatives of Pacific University. In order to encourage this continued growth and dissemination of knowledge and intellectual capital, faculty, staff and students are afforded certain rights to the use of their intellectual property. These rights are intended to protect the creators of intellectual property, and to recognize the contributions of the University, the individual and outside partners to the process of creation.

I. PATENTS

The patent policy of the University establishes guidelines for inventions, improvements, and discoveries resulting from the work of University faculty, administrators, staff, students, research assistants, research associates, visiting scholars, and anyone employed by the University. This policy applies to all inventions, improvements and discoveries, whether patentable or not, which are conceived or reduced to practice through research and development supported by University-owned or administered funds, equipment, facilities, materials, or services. The policy covers three different categories of inventions:

1. *Discoveries or inventions that are subject to the terms of sponsored projects or other agreements between the University and a third party.* These inventions shall be disposed of in accordance with the terms of the applicable agreement. Most agreements will provide that the University will own the inventions and will grant certain license rights to the sponsor.
2. *Discoveries or inventions that involve the use of funds, materials, or facilities administered by the University but that do not involve University obligations to a third party.* These inventions shall be the property of the University.
3. *Discoveries or inventions that do not involve either University obligations to a third party or the use of funds, materials, or facilities administered by the University.* These inventions shall be the property of the inventor.

Any discovery or invention covered under this policy must be disclosed promptly to the Provost by means of an Invention Disclosure Form that is available from the Provost's office. After this form is submitted, the University or its designate will make an evaluation in order to decide whether to apply for a patent. The University will notify the inventor in writing in a timely manner of its final decision. If it fails to do so within six

months of receiving a properly executed disclosure, or if it decides not to pursue a patent application, the invention will become the property of the inventor subject to the rights of any outside sponsor, if applicable.

Inventors wishing to request an exception to this policy or to challenge a patent decision by the University may appeal to the University Provost. The Provost will appoint an ad hoc committee of three members mutually acceptable to the inventor and the Provost, including at least one faculty member and one member of the administration. The committee will prepare a report of its findings and make a recommendation to the Provost. The decision of the University Provost, which is to be explained in writing, will be final.

When inventions are the property of the University, and to recognize the inventor's meritorious services and to encourage research, the University will share the proceeds from patents with the inventor. The inventor or inventors will receive a net royalty to be distributed as follows:

- Net royalties between \$0.00-\$ 100,000: 50% of the net royalties will be distributed to the inventor(s) and 50% will be retained by the University
- Net royalties between \$101,000 and \$200,000: 45% of the net royalties will be distributed to the inventor(s) and 55% will be retained by the University
- Net royalties over \$201,000: 40% of the net royalties will be distributed to the inventor(s), and 60% will be retained by the University.

Net royalties are defined as the total proceeds the University receives from marketing and selling the invention less expenses incurred by the University, including patent and/or litigation costs, consulting and professional fees, commissions paid to others, travel expenses, telephone and reproduction costs, and any other identifiable expenses. The University's share will be maintained in separate accounts dedicated to the support of research. Forty percent of the university's share will go to a restricted account within the sponsoring college which the College Dean may use to support research activities.

II. COPYRIGHT OWNERSHIP

A. Sole Ownership

Copyright is the ownership and control of the intellectual property in original works of authorship which are subject to United States copyright law (U.S.C. Title 17). When any University employee (faculty or staff) or student is the creator of a copyrightable work, all rights in copyright shall remain with the creator *except* in the following circumstances:

1. The work is a work-for-hire by the University. A work-for-hire is defined as a work prepared by an employee within the scope of his or her employment. The University shall own all rights in a work-for-hire unless the University Provost has relinquished them in writing. Traditional Works of Scholarship and Instructional Works (both as defined in the appendix to this document) shall not be included in this category. Typically, a faculty member's work (inclusive of Traditional Works of Scholarship and Instructional Works) belongs to the faculty member and does not fit the work for hire description.

2. The work has been developed in the course of a project sponsored or commissioned by the University. For the purposes of this policy, a “sponsored” or “commissioned” project undertaken by a University employee (faculty or staff) or student shall be considered to be any project for which the University has provided Exceptional Support (defined in the appendix). Student coursework called for by course syllabi or degree requirements shall not be considered “commissioned” or “sponsored” work.

3. The work has been developed in the course of or pursuant to an agreement between the University and a third party. The terms of the applicable third party agreement shall govern the disposition of rights in copyright. Externally funded projects (for which the University receives funding from external sources) fall under this category.

4. The work is covered by other terms specified in a written agreement between the creator and the University. When the work has been developed with monetary support from the University, but is not covered by points 1 and 2 above, the University may require a written agreement specifying the disposition of rights in copyright.

For all copyrightable works covered in Sections II.A.1-II.A.4 above, any University employee (faculty or staff) or student who is the creator of the work in question may not enter into any agreement with a third party that would assign rights to the third party which are held by the University by virtue of this policy.

B. Individual-Institutional Shared Ownership

Rights in copyrightable works may be owned in part by the University and in part by one or more employee (faculty or staff) or student.

The provisions of this section apply only to the joint ownership of works between one or more employee (faculty or staff) or student and the University. This section does not apply to joint ownership of copyrightable works between individual members of the University community or between individual members of the University community and external third parties.

Joint Ownership. Joint ownership and shared rights must be contractually agreed to before completion of the work. Occasions where joint ownership may be appropriate include, but are not limited to, instances where the University has provided Exceptional Support but wishes to grant shared ownership to the faculty, staff or student creator(s) of the work. Such exceptions should be noted in the contract completed prior to the creative process. In most cases, University ownership of a property will be shared with the writer(s) or creator(s), unless an individual was expressly employed to create a certain product (as in the case of a work-for-hire).

Royalties/Profits. Division of royalties or other profits from the work must also be specified in the same contract; if no contract exists, royalties or other profits will be decided at the discretion of an arbitrator or civil court, as appropriate.

C. Use of Student Work

As noted in Section II.A above, students own the copyright in works that they create during the course of their enrollment at the University, with the exception of works addressed in II.A.1-II.A.4. Faculty or staff who wish to reproduce, distribute or otherwise re-use works in which a student holds the copyright must obtain permission from the student copyright owner(s) prior to such use. This should not be interpreted as limiting in any way the use of copyrighted works by employees (faculty and staff) of the University as allowed by Sections 107, 108 and 110 (Title 17 U.S.C.).

D. Assignment of Rights to the University

Individuals may wish to assign copyright to the University where that right would normally reside with the individual. The term ‘assignment’ formally means the transfer of copyright ownership and attendant rights. University employees (faculty or staff) or students may elect to assign this right for the purposes of facilitating commercial development of a work. In this case, the University accepts the responsibilities and rewards associated with this asset. Rights may be assigned wholly or in part.

E. Release of Copyright by the University

The University may decide to release its interest in ownership rights to the creator of any intellectual property if this will be an advantage to all parties concerned. This may happen, for example, to support and encourage an individual faculty member to retain a relationship with the University. This relationship should be sanctioned and approved through a written agreement with the Provost’s office.

III. APPEALS

Any creator who wishes to request an exception to this policy or to challenge an intellectual property decision, except in the case of royalties/profits, by the University may appeal to the University Provost. The Provost will appoint an ad hoc committee of three members mutually acceptable to the creator and the Provost, including at least one faculty member and one member of the administration. The committee will prepare a report of its findings and make a recommendation to the Provost. The decision of the University Provost, which is to be explained in writing, will be final.

APPENDIX: DEFINITIONS

Traditional Works of Scholarship: The term “Traditional Works of Scholarship” refers to any copyrightable work, regardless of its form, other than patentable intellectual property, which is created by University faculty, staff or students, and which has not been the subject of Exceptional Support. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, and non-patentable software.

Instructional Works: The term “Instructional Works” refers to any copyrightable work that is authored by an identifiable University faculty member or instructor primarily for the instruction of students in a traditional, online or hybrid course of instruction. Such works include, but are not limited to, course syllabi, lecture notes, lecture slides, visual or multimedia aids, websites, or other works integral to the pedagogical purpose of a specific University course.

Exceptional Support: The term “Exceptional Support” refers to financial or other support for research and teaching activities beyond that which the student or employee should reasonably presume to receive in the course of employment or degree completion. **No support may be deemed Exceptional Support in the absence of a written agreement between the University and the creators that specifies ownership of copyright in all resulting works and the allocation of associated rights.**

I. Exceptional Support *does not* include:

- (a) sabbatical funding;
- (b) the award of competitive internal research or teaching grants and fellowships;
- (c) ordinary library services;
- (d) clerical or administrative support;
- (e) office or laboratory supplies and equipment;
- (f) funding for endowed chairs; or
- (g) ordinary use of University computers, servers and software platforms.

II. Specifically related to ‘online instruction’ (defined as instruction that is distributed to students through the Internet), Exceptional Support *does not* include:

- (a) ordinary use of University servers and software platforms;
- (b) basic instruction in web composing;
- (c) basic orientation to the operation of online instructional techniques and processes;
- (d) occasional technical troubleshooting assistance; and
- (e) consultation with relevant University offices with respect to the Creator’s rights under this Policy.

Source Material:

Portions of this policy have been adopted from the following resources:

University of Texas Copyright Policy

<http://www.utsystem.edu/OGC/IntellectualProperty/whowns.htm>

Indiana University Intellectual Property Policy

www.indiana.edu/~ufc/docs/policies/IPPUUpdated.pdf

Purdue University Policy on Intellectual Property

http://www.purdue.edu/policies/pages/teach_res_outreach/viii.4.1.htm

Brigham Young University Intellectual Property Policy

<http://ipsinfo.byu.edu/ippolicy.htm>