

# APPENDIX F

## INTELLECTUAL PROPERTY POLICY

### Copyright Policy

The purpose of this policy is to stimulate intellectual development in and out of the classroom through support of open and free exchange of ideas. In this spirit, the Whitworth University copyright policy is intended to encourage all members of the community to publish their papers, books and other works in order to share their knowledge. Whitworth (also referred to herein as the “University”) adheres to the academic tradition that creators of works own the copyrights resulting from their scholarly, pedagogical, and creative activities.

#### I. Application

This Copyright Policy applies to all faculty (including those temporarily appointed), staff, and students and applies to all copyrightable and copyrighted work created on or after [*applicable date*]. Furthermore, this policy is applicable to all intellectual property rights related thereto, unless such work is also potentially patentable, in which case the Patent Policy applies and controls such work.

#### II. Copyright Ownership

##### A. Creator Owns the Copyright

Individuals engaged in scholarly endeavors produce a variety of copyrightable materials they may wish to protect from unauthorized use. Examples of these include:

- articles,
- monographs,
- books,
- bibliographies,
- lecture notes and handouts,
- musical compositions and recordings,
- artwork,
- photographs,
- films,
- audio visual works,
- mask works,
- course development in any media, and
- computer programs.

##### 1. Work Created by Faculty or Staff

When a member of the faculty or staff authors a copyrightable work, the individual owns the copyright in the work (unless Sections IIB, IIC or IID below apply). Individual ownership of the copyright is appropriate even though the University may provide

support such as facilities, clerical support, materials, and equipment such as an office computer.

## **2. Work Specifically Created for Teaching, Administration or Other University Activities**

It is understood that the University may use without charge any copyrighted work developed for the specific purpose of making it available for use by persons, other than the author, in teaching, administration or other University activities. Examples of such work include curricular materials created by a faculty member to use in sections of a course taught by several department faculty or a computer program developed to improve an office procedure. These materials shall be available to the University perpetually and free of charge, even if the individual who developed the materials has left the University.

## **3. Work Created by Students**

Generally, students own the copyright in the works they create, including their contributions to collaborative projects, unless Sections IIC or IID below apply, or the student signed a written agreement regarding copyright. Faculty and staff must obtain a written agreement to be bound by this Intellectual Property Policy from each student who is to be involved in projects where Sections IIC or IID apply. Even in cases where section IIC or IID do not apply, faculty and staff are encouraged to obtain a written agreement from each student before involving students in scholarly research or other projects that may result in works the faculty or staff would want to use or publish.

## **B. Rights of Ownership are Determined by a Contract**

Ownership of the copyrights in works created through projects or programs funded by an external agency, such as a grant or contract, will be determined by the terms of agreement with the external party. An agreement concerning ownership must be signed by the University, the external agency and the individuals involved in creating such works if ownership is not included in the terms and conditions of the grant or contract agreement.

Collaborative projects and research can sometimes lead to misunderstandings when different individuals own rights in the results of collaborative efforts. In these cases, a written agreement regarding copyright must be signed before work begins.

## **C. University Owns the Copyright in Directed and Commissioned Works**

The University retains ownership of the copyright in works specifically directed or commissioned by the University or produced by an individual (or group) as a specific job requirement.

Examples of works that fall under this category are:

- the alumni magazine or other University publications,
- computer software developed by technical staff, or
- the work of a faculty member on special assignment to write the history of the University while receiving full salary.

Excluded from this category are materials created by faculty in connection with their teaching, research, or other scholarly activities, even though teaching and engaging in scholarly activities are considered part of their job, unless the works are specifically commissioned by the University. This category also does not include works created by staff outside the scope of their employment.

Under certain circumstances, the University may grant copyright to one or more individuals or may agree to joint ownership of the copyright. This decision should be made prior to undertaking the work and should be documented in writing. If no written agreement exists, the general rule of this section applies.

#### **D. University Owns Copyright in Administrative Works**

The University retains ownership of all copyrights in works created in the course of an administrative assignment, such as internal studies and plans or a report for a University committee.

The University may grant its copyright in an administrative work to one or more individuals or may agree to joint ownership. If an individual wishes to own a copyright for work falling into this category, a request should be made in writing to the provost, prior to undertaking the work. The arrangement, if approved, must be made in writing for it to be valid.

### **III. Distribution of Income from Royalties on Copyright Material**

#### **A. Copyright Belongs to an Individual or Group of Individuals**

If the copyright is owned by an individual, that individual is entitled to 100% of the royalties derived from such copyright unless Sections IIB, IIC or IID apply. If the copyright is owned jointly by one or more individuals, a written agreement on division of royalties should be signed.

#### **B. Copyright Belongs to the University or to the University and Others Jointly**

If the University owns the copyright, all royalties derived from such copyright belong to the University; unless a special agreement has been executed in advance. If the copyright is owned jointly by the University and one or more individuals, a written agreement on division of royalties should be signed ahead of time. If no written agreement has been executed, royalties will be divided equally.

#### **C. Work Resulting from External Funding**

If the royalties result from a project funded by an external agency, an agreement on division of the royalties must be signed before the funding is accepted.

### **IV. Further Assurance**

As may be necessary to give full effect to the terms and intent of this Intellectual Property Policy, the University, the faculty and the staff, as well as any students involved in scholarly research or other projects in which Sections IIC and IID apply, will execute written agreements referencing this Intellectual Property Policy and agree to execute other applicable agreements and documents.

#### **V. Administration of Copyright Policy**

The provost or his/her designee shall adopt policies and procedures to implement this policy. In the case of disputes regarding copyright ownership, the provost shall mediate a solution.

#### **VI. Amendment**

The University may amend this Copyright Policy from time to time as it deems necessary, subject to applicable statutory and contractual restraints.

## Patent Policy

The purpose of this policy is to provide guidelines for establishing the ownership of patentable Inventions and equal distribution of income received from the sale or licensing of those Inventions. The objective of this policy is to facilitate the Invention, transfer, and application of new technology which may benefit the general public. At the same time, this policy serves to protect the interests of the inventor and the University. The University seeks to assist its faculty and staff in properly disclosing their patentable Inventions, in complying with applicable laws and agreements, and in gaining the protection available under United States and foreign laws governing patents.

**Invention** means any and all ideas, processes, methods, inventions, innovations, improvements, discoveries, developments, new uses, machines, technology concepts, know-how, techniques, designs, articles of manufacture, programs, trade secrets, compositions of matter, formulations, compounds, synthesis, discoveries, other proprietary information, whether or not patentable that have been or are created, discovered, acquired, conceived or reduced to practice.

Patentable Invention is any new or useful process, machine, manufacture, composition of matter, variety of plant, isolated and purified strand of an organism's genome, or any new and useful improvement thereof. A patentable Invention occurs when someone has mentally developed an idea that is (i) useful, (ii) novel, (iii) nonobvious, and (iv) exists in enough enabling detail that someone of ordinary skill in the area of science could use the Invention for its stated purpose. The date of Invention is the point when all four criteria (i - iv above) have been met. The enabling concept must be present in order for a patentable invention to be complete.

### I. **Applicability**

This policy applies to all patentable Inventions conceived, discovered, developed and/or first reduced to practice by full-time, part-time or visiting faculty; staff; students; or any other persons performing research or engaging in work at the University where Inventions may be created or discovered as part of such person's employment or enrollment at the University.

In the event a work or Invention is both copyrightable and patentable, the terms of this Patent Policy will control.

### II. **Ownership**

A. **Faculty/Staff:** Ownership of Inventions conceived, discovered, developed and/or reduced to practice by faculty, staff or any other person performing research or engaging in work or study at the University where such Invention is created or discovered during the course of their employment or with use of University resources, personnel or facilities will reside with the University. University personnel undertaking such activities agree to, and do hereby, assign and transfer to the University any and all Inventions, whether or not patentable, conceived, discovered, developed and/or reduced to practice during the course of their employment or with use of University resources, personnel or facilities.

However, the University acknowledges and agrees that the above assignment does not apply to an Invention conceived and developed on the Employee's own time and that was conceived and developed using no equipment, supplies, facilities, or trade secret information of the University, unless the Invention:

1. Relates directly to the business of the University, or to the University's actual or demonstrably anticipated research or development; or
2. Results from any work performed by the employee for the University.

B. **Student:** Any student Invention conceived, discovered, developed and/or reduced to practice in the course of employment by the University, for an assigned work project, or when the student participates in faculty-student research projects shall be property of the University. Students agree to, and do hereby, assign and transfer to the University any and all Inventions, whether or not patentable, conceived, discovered, developed and/or reduced to practice during the course of their employment, participation in an assigned work project, or faculty-student research project or with use of University resources, personnel or faculties.

However, the University acknowledges and agrees the above assignment does not apply to an Invention conceived and developed on the student's own time and that was conceived and developed using no equipment, supplies, facilities, or trade secret information of the University, unless the Invention:

1. Relates directly to the business of the University, or to the University's actual or demonstrably anticipated research or development; or
2. Results from any work performed by the student for the University.

Any and all students employed by the University or participate in an assigned work project or in faculty-student research projects shall execute an agreement that requires them to be bound by the terms of this Intellectual Property Policy. Royalties from licensing of any student Invention will be shared with the student on the same basis that royalties are shared with faculty or staff as outlined below.

C. **External Funding:** Inventions conceived, discovered, developed and/or reduced to practice through a sponsored grant or contract will follow prevailing language in the grant award notice or associated contract. In the absence of special provisions, this Intellectual Property Policy applies. Generally, the University is assigned rights to intellectual property in federally-sponsored research; however, the government retains the option to claim ownership under certain circumstances. In the event the government does not exercise its option and regardless of ownership, the government retains a non-exclusive, non-transferable, irrevocable, royalty-free, worldwide license to the Invention produced with government funds.

### III. **Procedures for Reporting, Protecting and Commercializing an Invention:**

- A. "Covered Person" in this policy is a faculty member, staff member or student who is employed by the University, or participates in an assigned work project or in faculty-student research projects. When a Covered Person conceives, discovers, creates and/or reduces to practice an Invention that in the judgment of the Covered Person meets all four criteria in the definition of patentable Invention above, a report of patentable Invention must be made promptly to the provost. The report should be made on the Invention Disclosure Form, a copy of which is attached hereto. Based on the Invention disclosure, a decision on whether or not to file a patent application can be made. Such a report should be made prior to any dissemination or publication that would allow someone skilled in the field to use it. In order to protect the patentability of the Invention, it is important that publications, conference abstracts or presentations made prior to filing a patent refrain from making enough detail available to others to enable duplication of the Invention.
  - B. Within thirty (30) days of receipt of an Invention Disclosure Form, the Invention should be evaluated by the Intellectual Property Committee.
  - C. The Intellectual Property Committee shall have the sole right to determine the disposition of Inventions in which the University has proprietary interest. A decision regarding the exercise of this right will be transmitted in writing to the inventor within ninety (90) days of the date of disclosure of the Invention to the Intellectual Property Committee.
    - A. If the Intellectual Property Committee decides to pursue a patent, it may recommend the University alone, or with the assistance of an external organization such as a technology transfer company, make applications for patent. Title to any and all such patent applications and resulting patents shall be held by the University.
    - B. Each Covered Person agrees to sign and provide any and all documents and provide any assistance reasonably necessary to obtain any patent protection or other protection the University may seek for any applicable Invention.
    - C. The Intellectual Property Committee may decide to enter into agreements with the inventor(s) of an Invention or any other third party for the purpose of commercializing an Invention. Such agreements may include, among other things, licensing the Invention, assigning the Invention, or taking equity in a spin-off business that intends to commercialize the Invention.
    - D. If the Committee decides not to patent an Invention, or not to commercialize a patented Invention, the University will release to the inventor(s) its interest in the Invention in writing. However, the University will get a perpetual, royalty free license to use such released Invention for internal, research or non-commercial purposes.
- IV. **Management of Costs Associated with Inventions and Distribution of Income**

A. **Expenses:** Expenses associated with commercializing and pursuing patent protection for University-owned Inventions will be charged to a University Intellectual Property account for that specific Invention. Expenses may include, but are not limited to, legal fees, patent filing fees, licensing agent fees, development fees, production fees, and other out-of-pocket expenses.

B. **Revenues:** Any and all University revenues derived from a University-owned Invention will first be allocated to the University to recover all expenses incurred by the University in relation to that Invention. Once University expenses are recovered for a University-owned Invention, the net income received by the University derived from that Invention will be allocated as follows unless such Invention is covered by Section IV B below:

Net Income	Inventor	Department	School	University
Up to \$10,000	75%	10%	5%	10%
Next \$90,000	50%	10%	5%	35%
Next \$900,000	30%	5%	5%	60%
Over \$1 Million	20%	0%	0%	80%

C. **Directed or Commissioned Inventions Research:** Net income received that is derived from University-owned Inventions developed during research that is specifically directed or commissioned by the University or produced by an individual (or group) as a specific job requirement are normally divided as follows: seventy-five percent (75%) to the University and twenty-five percent (25%) to the inventor.

D. **Multiple Inventors:** In the event of multiple inventors, the inventors will be expected to agree among themselves on the fractional distribution of each inventor's share of royalties. The inventors shall sign a written agreement specifying the fractional distribution of their share of royalties.

E. **Multiple Departments/Schools:** In the event multiple departments or schools are involved in the creation, discovery, development or reduction to practice of an Invention, the departments and schools will be expected to agree among themselves on the fractional distribution of each department's or school's share of any royalties. The applicable departments and schools shall sign a written agreement specifying the fractional distribution of their share of royalties.

F. **Separate Agreement to Invent or Patent:** In the event the University and the inventor(s) pursue an Invention or patent pursuant to an express written agreement between them, the provision of the written agreement regarding division of royalties shall control.

G. **Departure/Termination of Inventor:** The departure from the University or termination of employment with the University will not affect the distribution of royalties, and each



inventor's share will continue after such departure and termination pursuant to the terms herein.

**V. Intellectual Property Usage**

- A. Any faculty or staff engaged in consulting work or in business is responsible for ensuring that (1) clauses in the individual's agreements are not in conflict with this policy nor the University's commitments or agreements with third parties; and (2) the University's rights and the inventor's obligations to the University are in no way abrogated or limited by the terms of such agreements without the express written consent of the University.
- B. Whitworth personnel will not use any information defined as confidential or proprietary by a non-Whitworth employer in the course of his/her Whitworth responsibilities.
- C. In the case of intellectual property arising from a federal grant, the usage terms of the federal agreement and any federal regulations shall prevail, before university policy is applied.

**VI. Dispute Resolution**

In the event of any dispute regarding a decision of the Committee under this policy (including without limitation, the ownership of an Invention or the allocation of the inventor's share of the royalties), the provost shall have the final decision concerning the University's position in the matter. This method of resolution also applies to disputes among inventors in the case of multiple inventors.

**VII. Amendment**

The University may amend this Patent Policy from time to time as it deems necessary, subject to applicable statutory and contractual restraints.