

Appendix B

INTELLECTUAL PROPERTY RIGHTS POLICY

I. INTRODUCTION

Loyola University New Orleans ("Loyola" or "University") is committed to providing an atmosphere conducive to scholarship, research, and creative activity. Faculty, staff, and students are encouraged to engage in the scholarly pursuit of knowledge, artistic production, and applied research. The results of such pursuits on the part of faculty, staff, and students may lead to the development of intellectual property that can be patented, copyrighted, or otherwise has commercial value. It is the purpose of this policy to inform all members of the Loyola community of their rights and responsibilities whenever the results of their research or creative endeavors are patentable, copyrightable, or commercially marketable. The University recognizes the need to balance a number of diverse interests in such matters; thus, this policy reflects its commitment to (a) encourage, support, and motivate students, faculty, and staff in the creation of new knowledge and new applications of existing knowledge; and (b) safeguard the current and potential financial assets of the University.

We believe that the public interest is best served through an intellectual environment that encourages and rewards creative efforts and innovations, and provides the University and its learning community with reasonable access to, and use of, intellectual property, the creation of which the University has provided assistance.

The Provost is responsible for the interpretation and implementation of the provisions contained in this policy.

II. COVERAGE

This policy applies to all full-time and part-time Loyola faculty and staff; graduate and undergraduate students, working with or without monetary compensation on any project under the direction and control of the University; and anyone else using University facilities and/or assets, or conducting activities under the supervision of University personnel. In other words, compliance with this policy is a condition of employment for every Loyola employee and a condition of enrollment and attendance for every Loyola student.

This policy covers all intellectual property, including but not limited to anything that is patentable, copyrightable, or otherwise marketable. Examples include, but are not limited to, inventions, books, articles, study guides, syllabi, workbooks or manuals, bibliographies, instructional packages, tests, video or audio productions, films, charts, digital materials, graphic materials, photographic or similar visual materials, multi-media materials, three-dimensional materials, exhibits, and digital files and software.

III. CONFLICTING PROVISIONS

If any portion of this policy conflicts with a signed agreement between the University and a creator (an inventor or any other person who assists in the creation of intellectual property) or between the University and an external funding agency or other entity such as another university with a collaborative research agreement with Loyola, the terms of the signed agreement will prevail.

IV. COPYRIGHT USE AND OWNERSHIP

Loyola is committed to complying with all applicable laws regarding copyright. The University supports (1) the responsible, good faith exercise of fair use rights, as codified in federal copyright laws¹, by faculty, staff, and students in furtherance of their academic pursuits (teaching, learning, mentoring, research, creative endeavors and service activities); and (2) copyright ownership by faculty, staff, or students of creative, non-directed works, as well as works not commissioned by the University; and (3) University ownership of directed employment-related works (as defined in Section B below).

A. COPYRIGHT USE

The University will:

1. Inform and educate the University community about fair use and the application of the fair use factors as set forth in the Copyright Act of 1976 (17 U.S.C. §107) and as interpreted by applicable case law. The fair use statute reads:

“The fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include (a) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (b) The nature of the copyrighted work; (c) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (d) The effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

None of the factors is determinative or defined by statute, and all are subject to the individual interpretation of users, and of the courts.

2. Make available resources concerning copyright laws in general and the application of fair use in specific situations.

¹ U.S. Copyright Law (Title 17, US Code Section 101)

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3. Provide reasonable guidance to faculty, staff, and students to assist in making fair use determinations.

Members of the campus community are encouraged to become as knowledgeable as possible on the subjects of copyright and fair use, as these legal principles apply to their work. Loyola does not accept legal responsibility for copyright infringement by individual members of the community. Individuals who willfully or negligently disregard university policy and guidelines do so at their own risk and assume all liability.

The University provides duplication services. Many members of the faculty, staff, and student body duplicate and transform print and media resources in the course of their work and study. Although Loyola encourages all members of its community to engage in a wide variety of activities related to education, it does not support illegal duplication in any form, for any purpose. Thus, Loyola employees and students must conduct their educational activities within the bounds of copyright law.

Faculty and staff are expected to adhere to copyright policy and guidelines in the use of copyrighted materials, including duplication and transformation of teaching materials. When permission to copy or use is necessary, the user must obtain the necessary authorization before material can be reproduced or used. Since this is often a complex and time-consuming process, faculty and staff should allow adequate time for processing permission requests.

Prohibitions and Areas of Caution

In accordance with University policy and copyright law, Loyola offices and service centers reserve the right to refuse to copy materials that may be deemed to violate copyright law. University employees and students shall abide by copyright law and University policy in utilizing walk-up copiers, computers and other devices which copy print, media, or digital materials, and assume all responsibility for complying with copyright law. Employees and students who take materials to off-campus vendors for reproduction assume all responsibility and liability for copyright infringement.

Federal copyright law provides that copyright arises when the work is created in a fixed tangible form of expression. Copyright protection does not depend on the display of any copyright notice or other formalities. As a result, it is necessary to assume that copyright laws protect all works. Although use of some works may be permitted under fair use or because they are in the public domain, establishing fair use is difficult in many instances, and works assumed to be in the public domain may not be (i.e., they may involve complicated issues regarding the year of creation).

University policy prohibits faculty and staff from benefiting personally by selling educational materials directly to the Loyola community.

B. COPYRIGHT OWNERSHIP

With respect to determining ownership of copyright, the University's policy addresses works by category of copyrightable work (including traditional or non-directed works, directed works, and sponsored or externally contracted works) and by category of author (i.e., faculty, staff, independent contractor or student). Ownership of copyrighted material hinges on which categories of work and author pertain to the work at hand. Where a copyrighted work is also patentable, the terms of Section V will apply to it, notwithstanding any inconsistencies with this or other sections of this policy.

Unless otherwise specified, the following works are owned by the creator:

- Traditional Works or Non-Directed Works
- Works by Independent Contractors
- Works by Students

The following works are owned by the University:²

- Directed Works
- Works by Staff

1. Works by Faculty

- a. Traditional Works or Non-Directed Works:** A "traditional work or non-directed work" is a pedagogical, scholarly, literary, or other artistic work created or originated by a faculty member or other employee and not specifically funded or created at the direction of the University. Such works may include but are not limited to books, articles, poems, study guides, syllabi, lecture notes, workbooks or manuals, bibliographies, instructional packages, tests, video or audio productions, films, charts, digital materials, graphic materials, photographic or similar visual materials, multi-media materials, distance learning materials, musical scores, three-dimensional materials, exhibits, webpages, digital files, software, or other works of the kind that have historically been deemed in academic communities to be the property of their creator.

Ownership: The creator of the traditional or non-directed work is the owner. If federal copyright law deems any such work as a "work made for hire" and vests ownership to the University, then the University assigns all ownership rights to the work's creator. If the University is to be involved in commercializing a traditional work or non-directed work, the work's creator may assign the work to the University under an Assignment Agreement. The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of the University and a mechanism for the sharing of commercial proceeds. In cases of ownership by the

² Ownership of sponsored or externally contracted works is governed by the contract.

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creator of a traditional work, the University shall be granted a perpetual, non-exclusive, nontransferable, license for its own educational, promotional, research and creative works (hereinafter referred to as "the University License").

With respect to faculty materials produced for online instruction, copyright ownership is treated no differently than faculty materials produced for the classroom. That is, faculty members own the copyright for those materials they create for online use. Alternatively, the University and faculty may enter into written work-for-hire agreements relating to materials produced at the direction of the University for online use. Through these agreements, the parties may agree to vest copyright in either the University or the faculty, and provide for related licenses.

Regarding any materials a faculty member uses for online instruction that he or she has *not* created, fair use guidelines should be applied and permission from the creator may be necessary.

- b. Traditional Works or Non-Directed Works Involving Exceptional Use of University Resources:** "Exceptional use of University resources" means University support of traditional works with resources of a degree or nature not routinely made available to faculty or employees in a given area.

Ownership: Ownership rights should be negotiated between the creator and the University prior to, or within a reasonable time, of the commitment of University resources. However, upon agreement by the Provost, the University may release or transfer its rights to the work's creator, subject to (a) the University License, and/or (b) the University's right to require reimbursement and/or a share of any income. The parties may also negotiate for joint ownership of such works, with the approval of the Provost.

- c. Directed Works:** "Directed works" include works that are specifically funded or created at the direction of the University (including, but not limited to, commissioned work authored by faculty or employees).

Ownership: Ownership belongs to the University, but can be negotiated. For works owned by the University, the work's creator, where practical, may be granted a license to use the work. The University may release or transfer ownership to the work's creator under a written agreement negotiated between the creator and the University, subject to (a) the University License, and/or (b) the University's right to require reimbursement and/or a share of any income. The parties may also negotiate for joint ownership of such works, with the approval of the Provost.

- d. **Sponsored or Externally Contracted Works:** A "sponsored or externally contracted work" is any type of copyrighted work developed using funds supplied under a contract, grant, or cooperative agreement between the University and a third-party sponsor. All agreements covering sponsored or externally contracted works must be executed by an appropriate official, as per University Contract Administration Policy.

Ownership. Ownership of a sponsored or externally contracted work will be determined by the contract. For an agreement that expressly requires copyright ownership by the University, the University may release or transfer its rights to the creator subject to (a) the University License, and/or (b) the University's right to require reimbursement and/or a share of any income. The creator and the University may negotiate for joint ownership of such works, through the appropriate University official or body as specified in the University Contract Administration Policy.

For an agreement that does not expressly require copyright ownership by the University or a third party, the creator of the work shall own the work. In cases of ownership by the creator, the University shall be granted a non-exclusive, nontransferable license for its own educational, promotional, research and creative works.

2. Works by Staff

- a. **Commissioned works:** Most works by staff members are considered to be "commissioned works." A "commissioned work" is hereby defined to be:

- A work prepared by an employee within the scope of his or her employment; or
- A work specially ordered or commissioned for use as a contribution to a collective work (e.g., as a part of a motion picture, or as a translation of a part of a book) if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Ownership: A commissioned work made by staff shall be owned by the University. However, in special cases, the University may enter into an agreement in advance that the employee shall own the copyright. In addition, the Provost may waive University ownership.

- b. **Sponsored or Externally Contracted Works:** The terms described in Section B.1.d. apply to staff as well as faculty, with following distinction: For an agreement that does not expressly require copyright ownership by

the University or a third party, the creator of the work shall own the work unless it is a commissioned work, which shall be owned by the University.

3. Works by Independent Contractors

Ownership of these works vests originally in the independent contractor.

Ownership: Works by independent contractors shall be owned in accordance with the contract under which the work was created. The contract should oblige the contractor to transfer the copyright to the University after creation.

4. Works by Students

Ownership: The University respects the intellectual property rights of its students and seeks to promote their creative and entrepreneurial activities. The Policy therefore recognizes that students own the copyright to all works they create as part of their academic endeavors. These protected works include, but are not limited to, papers, presentations, computer programs, theses, musical works, photographs, film and video projects, graphic design, and other artistic works.

The Policy's broad protection of student copyright ownership is subject to the following narrow exceptions:

- a. **Sponsored or Externally Contracted Works:** Copyright ownership in student works created under a sponsored agreement or external contract shall be determined by the terms of the agreement.
- b. **Commissioned Work:** Works created by students within the scope of employment at Loyola are "commissioned works" that are owned by the University or the hiring party (e.g., a faculty member hiring a research assistant).
- c. **Student Classroom and Laboratory Notes:** Student class and lab notes may be used non-commercially and only for personal educational purposes. Commercial or other unauthorized uses of such works may constitute unlawful copyright infringement of a faculty or staff members intellectual property rights.

University License to Student Works: This policy reflects the University's commitment to education and research. This policy therefore requires students to grant the University a non-exclusive license to use students' academic works for non-profit, educational, research, and promotional purposes. This license does not allow the University to commercially exploit the work. It ensures, for instance, that faculty can share the student works (such as prior projects or papers) with future students to further their education. Promotional uses are limited to promoting the University, such as celebrating student successes on the University website. This

license is also subject to the student's privacy rights under federal law.

Questions Regarding Intellectual Property Rights: Questions and disputes about intellectual property rights are reviewed by the university's Intellectual Property Policy and Rights Committee and the administration under the terms of the Policy. Students agree to be governed by the Policy as a condition of enrollment to the university.

V. PATENT OWNERSHIP AND INVENTION DISCLOSURE

Here and elsewhere in this document, "invention" means any art, process, method, technique, machine, manufacture, design, software, or composition of matter, or any new and useful improvement thereof; any discovery; or any novel variety of plant that is patentable under United States or foreign law. For the purpose of this policy, "reduced to practice" means demonstrated to work for the intended purpose.

Every invention or part thereof that is conceived, developed, or first reduced to practice under either of the following conditions shall be the property of the university:

- During normal or assigned activities related to the inventor's employment or student responsibilities—including teaching, performing University service, pursuing coursework, or directing or conducting research; or
- With the aid of University facilities or assets, including equipment, material, personnel, or any other resource available to the inventor as a direct result of the inventor's affiliation with the University, and which would not be available to a non-University individual on the same basis.

As a condition of employment or enrollment, all Loyola employees and students assign ownership of all so-described inventions or parts thereof to Loyola. For these inventions, the University shall share licensing revenues with inventors according to Section VI of this policy. All other inventions are "Inventions Made on Own Time." (See below.)

All inventions made in full or part while the inventor is a Loyola employee or student must be disclosed to Loyola. This requirement extends to Inventions Made on Own Time.

Patent Application

Patents on University-owned inventions may be applied for in any country by the University or through its authorized agent(s) or assignee(s). The University shall exercise its rights of ownership of such patent(s), with or without financial gain, with due regard for the public interest, as well as the interests of inventors and sponsors concerned. However, nothing in this policy shall render the University liable to any inventor, sponsor, successor or assignee for any loss or damage related to any failure to file or prosecute a patent application. (Refer to the Procedures document.)

Inventions Made on Own Time

Inventions or discoveries made by University employees or students entirely on their personal time and not involving the use of University facilities or assets are the property of the inventor except in case of conflict with any applicable agreement between the University and the federal or state government or agency thereof. For purposes of this provision, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, University service, or direction or conduct of research on University premises or utilizing University facilities or assets. The term "University facilities or assets" shall mean any facility or asset, including equipment, resources and material, available to the inventor as a direct result of the inventor's affiliation with the University, and which would not be available to a non-University individual on the same basis.

Loyola employees or students who claim that inventions are made on personal time have the responsibility to demonstrate that inventions so claimed are invented on personal time. All such inventions shall be disclosed in accordance with the University's disclosure procedures applicable to inventions made on University time or with the use of University facilities or assets, and shall demonstrate that only personal time was utilized. In each instance so demonstrated to conform to the definition of personal time, the University shall acknowledge in writing that the invention is the sole property of the inventor in accordance with the waiver provision below.

If the inventor chooses, inventions or discoveries made on personal time and utilizing the inventor's own facilities and materials may be assigned to the University. Under this arrangement, the procedures will be the same as for inventions or discoveries made by University employees or students on University time and/or with the use of University facilities and assets.

Waiver and Release of University Rights

Pursuant to these policies and procedures, Loyola University New Orleans, after consultation with the inventor, shall waive its rights to patents, if any, to be waived in favor of the inventor if the University determines that no University facilities, time, or assets were used in the development of the discovery or invention, that it was made on personal time, and that such waiver would not conflict with any pertinent agreement between the University and a sponsoring agency or agencies.

Pursuant to these policies and procedures and after consultation with the inventor, the University may release and waive its rights to the invention in favor of the inventor if, for example, the University determines that the invention is clearly one that is non-patentable or that does not warrant further evaluation as to patentability, or if the invention has been returned to the University after negative evaluation by the University's agent(s).

VI. SHARING ROYALTIES OR OTHER INCOME

Royalties and other income from work subject to copyright or patent held by the University will first be used to reimburse documented expenses in the following order³:

- Documented out-of-pocket costs paid by the creator.
- Direct costs paid by the University in conjunction with processing of patent applications, marketing or licensing intellectual property, or related legal costs.
- Costs associated with the use of equipment, materials, and staff services of any of the various campus units, including department or college that assisted in the development of the materials. Costs will be determined from the normal fee schedule of the campus unit providing the support, funds, supplies, or services.

After all direct and indirect expenditures are reimbursed, then any remaining royalties and other income will be disbursed as follows:

Distribution of Royalties for Intellectual Property Owned by University

	<i>Creator</i>	<i>College</i>	<i>Provost's Office</i>	<i>General Fund</i>
The first \$5,000	100%			
The portion between \$5,001 - \$50,000	75%	20%	5%	
The portion between \$50,001 - \$100,000	60%	25%	10%	5%
The portion over \$100,000	50%	15%	10%	25%

If the creator does not report to a college dean, then the administrative unit with which the creator is principally associated will receive this share of the royalties.

In the case of multiple creators, the creators will determine among themselves the allocation of their share of the royalties, preferably when the research or creative work is first undertaken. If they cannot agree, the entire creator's share shall be deposited into a University account until such time as the creators agree on a written distribution plan or a dispute resolution mechanism to resolve the issue.

³ Distribution of Royalties does not apply to works made for hire.

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The royalties given to the college or administrative unit and to the Provost's Office should be used directly or indirectly to encourage and support further research and creative endeavors.

If an infringement suit or claim of patent invalidity is brought against the University during the life of a patent, payment of the income distribution attributable to that patent may, at the University's discretion, be suspended pending final resolution of the dispute. Similarly, if there is a legal challenge to the validity of a copyright, payment of royalties may, at the University's discretion, be suspended pending final resolution of the challenge.

VII. INTELLECTUAL PROPERTY POLICY AND RIGHTS COMMITTEE

The Intellectual Property Policy and Rights Committee ("the Committee") will be composed of rotating and permanent members. The former shall consist of three faculty members elected by the Faculty Senate, and a dean appointed by the Provost. The permanent members are the Director of Grants and Sponsored Programs, a representative of Business and Finance (appointed by the Vice President for Business and Finance), Director of Government and Legal Affairs, and the Provost, who will serve as a non-voting member and chair. Director of Government and Legal Affairs or designee will be a permanent non-voting member. At the time of initial appointment or election, each non-permanent member shall be designated as serving a one-, two-, or three-year term, staggered so that the term of one faculty committee member will expire each year. After the first appointment subsequent members shall serve staggered three-year terms, commencing July 1 and terminating on June 30. Committee members may serve one additional three-year term consecutively. The Committee may also appoint additional faculty, staff or students on an ad hoc, non-voting basis with observer status.

The Committee shall monitor and review technological and legislative changes affecting this policy and shall report to relevant faculty and administrative bodies when such changes affect existing policies. The Committee shall serve as a forum for the receipt and discussion of proposals to change existing University policy and/or to provide recommendations for contract negotiations.

The Intellectual Property Policy and Rights Committee will receive and consider disputes over ownership, and its attendant rights, of intellectual property. The committee shall make a recommendation to the Provost as to whether the University or any other party has rights to the invention or other creation, and, if so, the basis and extent of those rights. The Committee shall also make recommendations to the Provost on competing faculty, staff, or student claims to ownership when the parties cannot reach an agreement on their own. The Committee will review the merits of patent-pending inventions and other creations and make recommendations to the Provost for their management.

The Provost shall decide all such disputes. Decisions by the Provost may be appealed in writing to the President, who has final authority concerning University policies on intellectual property.

The committee has the authority to develop, in consultation with the Provost, procedures for the implementation of this policy.

Appendix A

Work for Hire Acknowledgment

The Policy contains two provisions that do not apply if the individual who created the property was required or hired specifically to create it, but there may be times when it is unclear to either the employee, the employer or both, whether an employee was required or hired to create intellectual property. The purpose of this acknowledgment is to help identify individuals who have been required or hired to create intellectual property, discuss the application of the Rules with them, and record that they understand how the Rules will apply.

There are two circumstances likely to cause confusion:

1. Professional, faculty, researcher, or student employees required or hired specifically to create the kinds of works they would normally own (scholarly, educational, artistic, musical, literary, or architectural works).
2. Any employee required or hired specifically to create the kinds of works for which royalty-sharing incentives are usually provided (inventions, discoveries, trade secrets, trade and service marks, and software).

The University may discuss and execute an acknowledgment with these two types of employees and any other employees in similar circumstances where confusion may be likely.

Sample Work for Hire Acknowledgement

I am being required/hired to create works embodying intellectual property. The ownership of and benefit from such intellectual property is governed by the University's Intellectual Property policy regarding intellectual property, which I have read and understand.

I understand that any intellectual property I will create that is within the scope of my employment is a work for hire and the University will own such intellectual property pursuant to the Policy. Further, since I am being hired specifically to create intellectual property, the royalty-sharing provisions of the Intellectual Property Policy shall not apply to my works and the University will retain all proceeds from any commercialization of the works I create.

Signature: _____

Printed Name: _____

Title: _____

Date: _____