

# INTELLECTUAL PROPERTY RIGHTS POLICY

## I. INTRODUCTION

Loyola University New Orleans is committed to providing an atmosphere conducive to scholarship, research, and creative activity. Students, faculty, and staff are encouraged to engage in the scholarly pursuit of knowledge, artistic production, and applied research. Although not the original intent, the results of such pursuits on the part of students, faculty, and staff may lead to the development of intellectual property that may be patented, copyrighted, or otherwise have commercial value. It is the purpose of this intellectual property rights 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 by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for the college or university and its learning community's reasonable access to, and use of, the intellectual property for whose creation the college or university has provided assistance.

The intellectual property rights policies of Loyola University New Orleans, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee of the University, including student employees, and of the conditions of enrollment and attendance by every student at the University.

The Provost is responsible for the interpretation and implementation of the provisions contained in this policy and deciding disputes with appeal to the Intellectual Property Rights Committee.

## II. COVERAGE

This policy applies to all full-time and part-time Loyola University New Orleans faculty, staff, and administrators and includes also graduate and undergraduate students, working with or without monetary compensation on any project under the direction and control of the University, and anyone using University facilities and/or assets or conducting activities under the supervision of University personnel. Contracts and subcontracts will generally include language that determines the ownership of intellectual property that is developed by those working under the terms of the contract or subcontract. This is the practice for those hired as independent contractors.

This policy covers all intellectual property, including but not limited to anything that is patentable, copyrightable, or otherwise marketable. Such property includes, but is not limited to,

inventions, books, articles, study guides, syllabi, workbooks or manuals, bibliographies, instructional packages, tests, video or audio recordings, films, slides, transparencies, charts, other graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, and computer software.

### **III. CONFLICTING PROVISIONS**

If any portion of this policy conflicts with any agreement signed by the University, the provisions of the agreement will prevail. If any portion of this policy conflicts with a signed agreement between the University and a creator (or a person who assists in the creation of intellectual property) or between the University and an external funding agency, the terms of the signed agreement will prevail.

### **IV. COPYRIGHT USE AND OWNERSHIP**

Loyola University New Orleans is committed to complying with all applicable laws regarding copyright. The University, as an institution devoted to the creation, discovery, and dissemination of knowledge, supports (1) the responsible, good faith exercise of full fair use rights, as codified in U. S. Copyright Law (Title 17, U S Code Sect. 101, et seq.) by faculty, librarians, and staff in furtherance of their teaching, research and creative activities, and service activities; (2) copyright ownership by faculty, staff or students of creative, non-directed works and University ownership of directed employment-related works; and (3) protection of ownership rights for creators of works that require a different ownership model.

#### **A. COPYRIGHT USE**

In order to achieve these ends, 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 U. S. Copyright Law (Title 17, U S Code Sect. 101, et seq.) and as interpreted by applicable case law. The fair use factors generally include:
  - a. The character and purpose of the proposed use.
  - b. The nature of the work to be used.
  - c. The amount and substantiality of the portion to be used.
  - d. The effect on the market or potential market for the work.

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

2. Make available resources concerning copyright laws in general and the application of fair use in specific situations.
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 regarding copyright and fair use as those legal principles apply to their discipline. Loyola University New Orleans 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.

Loyola University New Orleans Central Reproduction operates to provide duplication and printing services for the University community. Although Loyola University New Orleans encourages its faculty and staff to engage in a wide variety of activities related to education, it respects the legal right to intellectual and creative property in all media. Such educational activities must therefore be performed within the bounds of copyright law. The University does not support illegal duplication in any form. Central Reproduction shall only provide copying and enhancement services in strict compliance with copyright law and in accordance with the qualifications that follow.

### **Procedures Governing Use of Copyrighted Materials For Teaching**

Faculty and staff are expected to adhere to copyright policy and guidelines in the use, including duplication and printing, of teaching materials, including course packets sold to students and classroom handouts. When permission to copy or use is necessary, the user must obtain written permission from the copyright holder before material can be reproduced or used. Since this is often a complex and time-consuming process, sometimes taking up to eight weeks or more, faculty and staff should allow adequate time for processing permission requests.

#### *Course packets sold to students*

Where materials used in course packs are under copyright and therefore require copyright clearance and/or royalties, the University recommends that faculty work with College Bookstores of America (CBA) in developing custom educational materials.

Only where materials used in course packs are not under copyright or for other reasons do not require copyright clearance and/or royalties may faculty request work from Loyola University Central Reproduction in developing custom educational materials.

#### *Classroom handouts not sold to students*

The term “classroom handout” here refers to all material given to students, regardless of length, and not sold by either CBA or Loyola University New Orleans Central Reproduction. Where such material is under copyright, Loyola University New Orleans Central Reproduction will reproduce it for classroom use only if the request is accompanied by written permission from the copyright holder(s), unless that material

unquestionably meets the tests of brevity, spontaneity, and cumulative effect defined in “Guidelines for Classroom Copying in Not-For-Profit Educational Universities.” [See link.] The University recommends that individual faculty or departments contact directly the Copyright Clearance Center to obtain permission to reproduce copyrighted material. Each copy must include notice of copyright as appropriate.

## **Prohibitions and Areas of Caution**

In accordance with University policy and copyright law, Loyola University New Orleans Central Reproduction reserves the right to refuse to copy copyrighted materials that may be deemed to exceed fair use or otherwise violate copyright law. University employees and students shall abide by copyright law and University policy in utilizing walk-up copiers, and assume all responsibility for compliance with copyright law. Employees and students who take materials to off-campus vendors for reproduction assume all responsibility and liability for compliance with copyright law.

The United States Copyright Act provides that copyright arises upon creation of original works of authorship and copyright does not depend on display of any copyright notice. Moreover, works distributed after March 1, 1989, do not require copyright notice as a condition to bringing an action for infringement. 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, the user should keep in mind the difficulty in establishing fair use in many instances, and that works assumed to be in the public domain may involve complicated issues regarding the year of creation and/or derivative or collective work rights.

The use of copyrighted materials in course packs cannot fall under Fair Use Guidelines for Classroom Copying because of the systematic copying from term to term, and the commercial sale of course packs. University policy does not permit educational materials to be sold for personal gain directly by faculty/staff.

## **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 subject matter, including software, hinges on which category of work and which category of author pertains to the work at issue.

### **Copyrightable Works**

#### **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 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 and articles, films, cassettes, software, works of art, textbooks, manuscripts, scholarly and commercial works, lecture notes, faculty specific course syllabi, distance learning materials not falling into one of the other categories of this policy, works of art or design, musical scores, poems, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator. Since activities in the University are too diverse and are evolving too rapidly to permit a statement of a University-wide general policy which can be mechanically and unambiguously applied to every possible situation that might arise, ownership of any work not described above may be negotiated by the faculty member and the University.

**Ownership:** The creator of the work is the owner, unless it is a directed work, a sponsored work requiring University ownership, or a commissioned work described in a written agreement between the work's creator and the University. (See section 2. below, for the definition of "Commissioned Work"; under the Copyright Act the University is deemed the "Author" of a commissioned work as a work made for hire.) 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 with the Author. In cases of ownership by the creator of a traditional work, the University, where practical, shall be granted a non-exclusive, nontransferable, fully paid up license for its own educational or research use (hereinafter referred to as "the University License").

- 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 is negotiable. 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 is negotiable. 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 other arrangement between the University and third parties, including sponsored research agreements.

**Ownership.** For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the University, the creator of the work must disclose the work to the University. Provided there is no conflict with a sponsored agreement, the University may release or transfer its rights to the work's creator under an 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 appropriate University official or body.

For a sponsored or externally contracted work created under 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, subject to disclosure to the University where required by University policy. In case of ownership by the work's creator, the University, if practical, shall be assigned the University License.

## 2. **Works by Staff**

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

- a. A work prepared by an employee within the scope of his or her employment; or
- b. 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.

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

### 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**

"Student works" are papers, computer programs, theses, artistic and musical works, and other creative works made by students.

**Ownership:** The student, with the following exceptions, generally holds copyright to works the student creates as part of his/her academic endeavors at Loyola University New Orleans

- a. **Sponsored or Externally Contracted Works:** Copyright ownership in works created by students under a sponsored agreement or external contract shall be the same as provided for faculty or non-faculty sponsored or externally contracted works. If a student has been hired by Loyola University New Orleans to work on a sponsored agreement, this provision shall control over section b. below.
- b. **Commissioned work:** Works created by students in the course of employment at Loyola University New Orleans are "commissioned works" and copyright ownership is the same as provided for staff in section IV.B.2 above.
- c. **Classroom, laboratory, and other academic materials generated by students in the instructional process:** Student class and lab notes may be "derivative works" within the meaning of copyright law, in which case they may be used non-commercially and only for personal educational purposes. Commercial use of such works may constitute unlawful copyright infringement. Exceptions may be granted by the Copyright Committee in the case of notes that are derived from University-owned works, or may be granted by the individual copyright owner of works on which the student notes are based.

As a condition of enrollment, Loyola University New Orleans retains a non-exclusive, perpetual, royalty-free, world-wide license to use all student works generated in the course of academic work at Loyola University New Orleans for non-profit educational or research purposes (including reproduction, distribution,

the making of derivative works, public performance and public display). This University right is subject to the student's privacy rights under federal law.

## **V. PATENT OWNERSHIP**

With the exception of "Inventions Made on Own Time," hereinafter defined, every invention or discovery or part thereof that results from research or other activities carried out at Loyola University New Orleans or that is developed with the aid of the University's facilities, staff, or assets or through funds administered by the University, shall be the property of the University and, as a condition of employment or enrollment and attendance, shall be assigned by the University inventor to Loyola University New Orleans in accordance with these policies.

### **Patent Application**

Patents on inventions made by University employees or students may be applied for in any country by the University or through an 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 or sponsor or his/her successor or assign for any loss or damage related to any failure to timely file or prosecute a patent application.

### **Inventions Made on Own Time**

Inventions or discoveries made by University personnel 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, resource 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.

Personnel 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 personnel 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 cause 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, the University, after consultation with the inventor, may in its discretion and upon such terms as it deems appropriate, cause its rights to the discovery or invention, if any, to be released and waived in favor of the inventor if the University determines that the discovery or invention is clearly one that is non-patentable, that it does not warrant further evaluation as to patentability, or if the discovery or invention has been returned to the University after negative evaluation by the University's agent(s).

## **VI. SHARING ROYALTIES OR OTHER INCOME**

### **Ownership Retained by the Creator**

Neither the University nor any of its faculty or staff should benefit financially from the sale of materials that are developed solely for sale to Loyola University New Orleans students (e.g., course packs).

It is understood that royalties will accrue from materials that are developed for and sold to purchasers that include but are not limited to Loyola University New Orleans students. However, University faculty and staff may not retain that portion of the royalties from the sale of these materials to Loyola University New Orleans students if either of the following conditions is met:

1. Students purchased the materials in conjunction with a course taught by the faculty or staff member who will earn the royalties, or
2. The faculty or staff who will earn the royalties was involved in selecting the materials that students are expected to purchase.

Royalties accruing from the sale of materials to Loyola University New Orleans students under these conditions will be paid to the office of the dean of the appropriate faculty or staff according to the Provost's determination based on information from the University bookstore and the creator. These funds should be used directly or indirectly to encourage and support more research and creative endeavors within the college of which the creator is a member.

## Ownership Retained by the University

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 order:

1. Documented out-of-pocket costs paid by the creator. Normal salary, even that provided by sabbatical, need not be repaid.
2. Direct costs paid by the University in conjunction with processing of patent or copyright applications, marketing or licensing the intellectual property, or related legal costs.
3. 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</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%

This table shows the distribution of royalties only in those cases in which the University owns the intellectual property rights and royalties will be shared with the creator. If the creator does not report to a college dean, then the administrative unit most 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.

The royalties given to the college or administrative unit and to the Provost 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 will be composed of three faculty members (elected by the Faculty Senate), a college dean/library dean (appointed by the Provost), a representative from Business and Finance (appointed by the Vice President for Business and Finance), and one additional member (appointed by the Provost), with the Provost serving as a non-voting member and chair. At the time of initial appointment or election, each member shall be designated as serving an one-, two-, or three-year term, staggered so that the term of one faculty committee member and one administration 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 students or staff personnel on an ad hoc basis on a non-voting basis with observer status.

The Committee shall monitor and review technological and legislative changes affecting intellectual property 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 decide disputes over ownership, and its attendant rights, of intellectual property. The committee shall make an initial determination of 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 resolve competing faculty claims to ownership when the parties cannot reach an agreement on their own. The Committee will review the merits of inventions and other creations and make recommendations for their management.

Decisions of the Committee may be appealed in writing to the President, who has final authority concerning University policies on intellectual property.