



Policy Owner: Academic Affairs

Policy #: AA-A01-0001

Policy Title: Intellectual Property Policy

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## Intellectual Property Policy

### I. **Purposes and Objectives**

The purpose of this policy is to encourage flexibility for the Plymouth State University (University) community toward the dissemination of research results, the creation and development of Intellectual Property (IP) for the public benefit, and the recognition of the creators of such IP. Specifically it will:

1. Encourage the creation, development, and management of IP in the best interest of the Creator(s), University, external research sponsors, if any, and the public;
2. Provide for protection of IP through legal mechanisms such as Patents, Copyrights, and Trademarks;
3. Ensure that monetary and/or other benefits derived from IP are equitably distributed to the Creator(s) (*see Sect. III. 3.*), University, and other parties as appropriate;
4. Address ownership issues related to IP developed at or on behalf of the University.

### II. **Application of Policy**

This policy applies to all members of the University community (Covered Individuals) including, but not limited to, University employees (including administrators, faculty and staff), students, and non-University personnel in the course of their University responsibilities and/or use of University resources not available to the general public, including funds, effort, facilities, and equipment.

### III. **Definitions**

1. **Copyright** and **Copyrightable Works** mean "original works of authorship" fixed in a tangible medium, including artistic works, course and teaching materials, and scholarly and academic works, and the legal mechanism to protect such works. Among other rights, Copyright prohibits copying or reproducing the work or any substantial part of the work without permission.
2. **Covered Individual** is any faculty member, staff member, student, visiting scholar, or any other person at the University involved in carrying out the University's mission at or under the auspices of the University.

3. Creator(s) means any inventor, developer, or author, of IP covered by this policy, including faculty, staff, and students of the University.
4. Creator-Owned Intellectual Property means IP owned by the Creator(s) and includes IP unrelated to a Creator's University employment responsibilities or field of study and that is developed on their own time and without Significant Use of University Resources (*see Sect. III. 12.*). Traditional Scholarly Works, including pedagogical, scholarly, or artistic works by University faculty, staff or students, are also considered Creator-Owned IP (e.g. books, course materials, compositions, visual arts, dramatic works, and refereed materials) unless created as a Work for Hire, as Sponsor-Supported IP, or as assigned in the scope and description of employment (*see Sect. IV. Principles of IP Ownership*).
5. Intellectual Property (IP) means any intangible products of creative efforts, including works that may be protected by a Patent, Copyright, or Trademark, as well as other tangible research property. IP includes but is not limited to artworks, literature, musical processes, new or improved devices, electrical circuits, databases, software, and innovative uses of existing inventions.
6. Intellectual Property Advisory Committee (IPAC) means a University committee whose purpose is to assess and advise the Creator(s) and University on issues concerning IP development, ownership, disclosure, applications, and technology transfer/commercialization. The IPAC typically includes the Director of Research & Innovation, Director of Research Administration, Chair of the Faculty Welfare Committee, and two other permanent members of the University faculty or staff. The Provost shall appoint the members of the IPAC to serve two-year terms from the date of appointment; there are no term limits. Meetings of the IPAC shall require a quorum of a majority of members.
7. Intellectual Property Officer (IPO) means the IPAC member appointed by the Provost with the responsibility of overseeing and administering the University's IP program in accordance with this policy and for administering Patents, Copyrights and Trademarks related to Creator-, University-, and Sponsor-Supported IP.
8. IP Disclosure Form means a form completed by Creator to disclose Intellectual Property to the IPO. Completion of the IP Disclosure Form by the Creator is required for University-Owned IP and voluntary for Creator-Owned Intellectual Property. The IPO maintains the IP Disclosure Form.
9. Net Income means the amount of money received by University from licensing following deduction of expenses associated with the University-Owned Intellectual Property.
10. Patent means a grant by the US Patent and Trademark Office of exclusive right for an invention, including discovery of a process, machine, manufacture or composition of matter, for a limited time. Generally, three conditions should be met for the granting of a patent: the invention or discovery should be novel, useful, and non-obvious.
11. Public Disclosure means verbal or printed disclosure of IP which includes abstracts, manuscripts, conference presentations, and, in certain instances, seminars and grant proposals, funded or unfunded. Public Disclosure may jeopardize the ability to secure a Patent on the IP.

12. Significant Use of University Resources means use or provision of support, facilities, or services, including staff or administrative assistance not available to the general public. Examples include special resources, use of laboratory, studio space, and/or specialized college-owned equipment, or special financial assistance. The IPAC shall make the final decision on whether Significant Use of University Resources was used.
13. Sponsor-Supported Intellectual Property means IP created under a grant, contract, or sponsored research agreement with an external agency or entity, unless otherwise specified in an agreement.
14. Trademark means, and as recognized by Federal and state laws, any word, name, symbol, or device adopted and used by an individual or a corporation to distinguish its goods or services from the goods or services of others.
15. Traditional Scholarly Works means pedagogical, scholarly, or artistic works created by Covered Individuals. Examples include books, course materials, compositions, visual arts, dramatic works, software, and referred materials, as well as student theses, dissertations, papers, and journal articles.
16. University-Owned Intellectual Property means:
  - a. IP, including Works for Hire, that is specifically commissioned by the University or that an employee is assigned to create in the course and scope of their employment at the University;
  - b. IP created with Significant Use of University Resources including funds, effort, facilities, and equipment;
  - c. IP assigned to the University through contractual agreement;
  - d. Sponsor-Supported IP that is designated as University-Owned IP in the applicable grant, contract, or sponsored research agreement or for which ownership has not been specifically designated, unless otherwise specified by agreement;
  - e. IP that would otherwise be designated as Creator-Owned IP but that the University pursues IP protection and/or marketing, unless otherwise specified by agreement.
17. Voluntary Disclosure means verbal or printed disclosure of Creator-Owned IP by the Creator to the University in order to petition the University for assistance with protection and/or marketing of the IP.
18. Work for Hire means the work is prepared by an employee specifically hired or required to create it, is commissioned by the University pursuant to a signed contract, or it fits within one of the categories considered Work for Hire under copyright law, 17 U.S.C §101 et seq. In Work for Hire situations, it is intended that the University and employee sign a contract which addresses the ownership of IP before the project begins. Generally, the University will not claim ownership rights when the IP is embodied in Traditional Scholarly Works, even though the work may have been prepared within the scope of employment and University resources were used. This exception does not apply when the work (a) is created by someone who was specifically hired or required to create it, (b) was specifically commissioned by the University, or (c) is otherwise addressed by another section of this policy or in a separate contract. Traditional

Scholarly Works are generally not considered Work for Hire.

#### **IV. Principles of IP Ownership**

1. For the avoidance of doubt, the University does not claim ownership of Traditional Scholarly Works *unless that work constitutes a Work for Hire or is otherwise described in Sect. IV.3.*
2. Traditional Scholarly Works are owned by the Creator(s) who is free to exercise their Copyright, including registration, and to receive any revenues that may result therefrom.
3. It is the policy of the University that all rights in Copyrightable Works shall remain with the Creator(s) unless:
  - i) The Copyrightable Work is created pursuant to the terms of a University agreement with an external party and the agreement specifies ownership in the resultant works;
  - ii) The Copyrightable Work is created as a Work for Hire. Works of faculty are assumed not to be Work for Hire unless agreements with the involved faculty explicitly designate specific works as such; or
  - iii) The Copyrightable Work is also patentable and/or is associated with a University Trademark. The University reserves the right to pursue multiple forms of legal protection concomitantly if available. Computer software and/or its embodiments, for example, may be protectable by Copyright, Patent, and/or Trademark.
3. Traditional Scholarly Works of students created in the course of their education, such as theses, dissertations, papers and journal articles shall be considered Creator-Owned Intellectual Property.
4. Ownership of Sponsor-Supported IP, including Copyrightable Works, is determined in accordance with the terms of the grant, contract, or sponsored research agreement. In the absence of contract terms that specifically designate ownership, Sponsor-Supported IP is owned by the University.
5. Notwithstanding any other section herein, Copyrightable Works that are teaching materials developed by a Covered Individual specifically for the University shall be considered Traditional Scholarly Works, provided, that the University shall have a non-exclusive, royalty-free, and perpetual license to use any such teaching materials for research or instruction purposes.

#### **V. Consulting Agreements**

The University encourages faculty to develop research relationships through the University as opposed to pursuing independent consulting arrangements. University employees must ensure that the terms of their consulting agreements with third parties do not conflict with their duties to the University. Specifically, the scope of any such consulting services and the ownership of any resulting IP should be consistent with the faculty member's duties to the University and must be disclosed to avoid conflict of interest (*see Sect. 2.11 Financial Conflict of Interest of the PSU Faculty Handbook, 5/2/18*). The University will not negotiate any independent consulting agreements on behalf of a faculty member. Any questions regarding the University's policies may be directed to the IPO.

## **VI. Disclosure**

### **1. Required Disclosure to the University**

- a. Covered Individuals must promptly report any University-Owned or Sponsor-Owned IP to the IPO. The IP Disclosure Form for such reporting may be obtained from the IPO.

### **2. Voluntary Disclosure to the University**

- a. A Creator is not required to disclose IP that clearly constitutes Creator-Owned IP but must make disclosure if there is any question about ownership.
- b. Creator-Owned IP must be disclosed to the IPO if the Creator intends to request University resources for activities such as legal protection of the IP, marketing assistance, and other related efforts.

### **3. Public Disclosure**

A Public Disclosure of IP (e.g. conference presentation) before the filing of a patent application may restrict the ability to obtain a Patent for the IP. Covered Individuals should not publicly disclose IP before discussing this matter with the IPO. Disclosure to the IPO does not constitute Public Disclosure.

## **VII. Commercialization**

Upon receipt of an IP Disclosure Form, the IPO will discuss the IP with the Creator and brief the IPAC. The IPAC will decide whether to pursue a Patent or other legal protection for the IP. The IPAC will consult with any previously retained IP or commercialization-related consultants and decide whether, and how, to pursue commercialization of the IP, including as appropriate, by researching the market, developing a business plan, negotiating terms of licenses and distributing royalties in accordance with this policy.

## **VIII. Royalties**

Net Income received by the University for commercialization of University-Owned IP will be distributed as follows:

- 50% as direct payment to the Creator(s); and
- 50% to the University for support of research and scholarly activity.

## **IX. Appeals**

Upon request in writing by the Creator, the Provost shall consider an appeal of a determination made under this policy. In discussions with the Creator and IPO, the Provost shall resolve any dispute raised under this policy. The decision by the Provost regarding any dispute shall be final.

*Effective date: May 1, 2019*