



Intellectual Property Policy

Policy Statement

The purpose of this policy is: (1) to encourage the creation, development, and management of Intellectual Property, Patents, copyrights, and trademarks in the best interest of the public, the creator(s), Plymouth State University (PSU), and the research sponsor, if any; (2) to provide for protection of Intellectual Property through Patents, copyrights, and trademarks, (3) to ensure that monetary and other benefits derived from Intellectual Property, Patents, copyrights, and trademarks are equitably distributed to the Creator(s), PSU and other parties as appropriate; and (4) to address ownership issues related to Intellectual Property developed at or on behalf of PSU.

Application of Policy

This policy applies to all PSU employees.

Definitions and Policies:

1. **Creator.** "Creator" means any member of the PSU faculty or staff, and any other persons employed by PSU, whether on a full-time or a part-time basis; visiting faculty and researchers; and any other persons, including students, who create or discover intellectual Property while employed by PSU or while using PSU facilities, resources or equipment. Intellectual Property can be created by one or more individuals, each of whom, to be considered a Creator, must have conceived of an essential element or provided creative input into the conception of the Intellectual Property.
2. **Creator-Owned Intellectual Property.** "Creator-Owned Intellectual Property" means Intellectual Property owned by the Creator. Creator-Owned Intellectual Property includes Intellectual Property unrelated to a Creator's employment responsibilities or field of study at PSU and that is developed on his or her own time without significant use of PSU facilities, resources or equipment. Intellectual Property created with the use of an office, library, or desktop computer are examples of facilities and equipment that are not considered significant. Unless created as a Work Made for Hire, as Sponsor-Supported Intellectual Property, or as assigned in the course and scope of employment, pedagogical, scholarly or artistic works by PSU faculty, staff or students are also included as Creator-Owned Intellectual Property (examples books, course materials, compositions, visual arts, dramatic works, and refereed materials). Creator-Owned Intellectual Property also includes works of students created in the course of their education, such as theses, dissertations, papers and journal articles unless otherwise

- designated in another PSU Policy.
3. Intellectual Property. “Intellectual Property” means any new and useful process, scientific or technological development, technology, machine, composition of matter, life form, article of manufacture, software, tangible property, research data, or any work that is subject to protection by patents, copyrights, trademarks, or trade secrets. It includes such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique and innovative uses of existing inventions. Intellectual Property may or may not be patentable, copyrightable or subject to a trademark.
 4. Intellectual Property Advisory Committee (IPAC). “Intellectual Property Advisory Committee (IPAC)” means a PSU committee chaired by the Vice Provost for Research and Engagement, the Chair of the Faculty Welfare Committee, the Director of the Enterprise Center at Plymouth, and with three other permanent members drawn from the PSU staff and faculty, who may have experience in the topical areas of the patent disclosures. The Provost shall appoint the members of the IPAC. Members of the IPAC shall serve a two-year term from the date of appointment with a maximum of two consecutive terms. All permanent members of the IPAC will have full voting rights on a disclosure or application submitted to the IPAC. Meetings of the IPAC shall require a quorum of at least three members.
 5. Intellectual Property Officer. The “Intellectual Property Officer” means the individual appointed by the Provost with the responsibility of overseeing and administering the PSU Intellectual Property program in accordance with this policy and for administering Patents, copyrights and trademarks related to University-Owned Intellectual Property and Sponsor-Supported Intellectual Property. Currently, the Intellectual Property Officer is the Vice Provost for Research & Engagement.
 6. Office of Research and Engagement. The Office of Research and Engagement means the Office of the Vice Provost for Research and Engagement, including the Office of Sponsored Programs.
 7. Patent. “U.S. Patent,” as defined by the US PTO, means a grant which gives the owner of an invention that is covered by the Patent the right to exclude all others from making, using, or selling the invention in the United States. In the United States, a Patent provides that exclusive right for up to twenty years. To qualify for U.S. Patent protection as an invention, Intellectual Property must be deemed new, useful, and non-obvious to one skilled in the art, and must not have been in public use or on sale in the United States or described in a printed Publication as defined below, anywhere in the world for more than one year prior to the filing date of the U.S. Patent application. Patent rights in many foreign countries can be lost if there has been any disclosure of the invention, verbal or written, anywhere in the world prior to filing the foreign Patent application. However, if the U.S. Patent application has been filed prior to any disclosure, some foreign countries allow Patent applications to be filed within one year of the U.S. filing date even if there has been an intervening Publication.
 8. Patentable Intellectual Property. “Patentable Intellectual Property” means Intellectual Property for which a Patent may be obtained.
 9. Publication. “Publication” means a public disclosure of Intellectual Property,

which may be verbal or printed. Printed Publications include abstracts and, in certain instances, grant proposals, funded or unfunded. A public disclosure is a non-privileged communication to someone other than those with a professional need to know within PSU. The issuance of a Publication may jeopardize the ability to secure a Patent in the U.S. or in foreign countries. Questions surrounding the implications of Publication can be addressed by the Vice Provost for Research and Engagement.

10. Sponsor-Supported Intellectual Property. “Sponsor-Supported Intellectual Property” means Intellectual Property created under a grant or sponsored research agreement with an external agency or entity. Ownership of Sponsor-Supported Intellectual Property is determined in accordance with the terms of the grant or sponsored research agreement. In the absence of contract terms that specifically designate ownership Sponsor-Supported Intellectual Property is owned by PSU.
11. University-Owned Intellectual Property. “University-Owned Intellectual Property” means Intellectual Property owned by PSU. University-Owned Intellectual Property includes Works Made for Hire that are commissioned by PSU or that a Creator is assigned to create in the course and scope of her/his employment with PSU; Intellectual Property created with significant use of PSU facilities, resources or equipment; Intellectual Property assigned to PSU; and Sponsor-Supported Intellectual Property that is designated as university owned in the applicable grant or sponsored research agreement or for which ownership has not been specifically designated. Intellectual Property that would otherwise be designated as Creator-Owned Intellectual Property shall be considered to be University-Owned Intellectual Property if the University pays for Patent, copyright or trademark protection with the consent of the Creator.
12. Voluntary Disclosures. “A voluntary disclosure is “creator-owned intellectual property” in which the creator petitions the Vice Provost for Research and Engagement and IPAC for assistance with prosecution and marketing of the intellectual property. If agreeable to all parties, “creator-owned intellectual property” would become “university-owned intellectual property.”
13. Work Made for Hire. “Work Made for Hire” means: (1) a work prepared by an employee within the scope of his/her employment; or (2) a work specially ordered or commissioned if the parties expressly agree in a written contract that the work shall be considered a Work Made for Hire.

Procedures and Responsibilities

1. PSU employees and Creators will actively participate in the protection of Sponsor-Supported and University-Owned Intellectual Property. Until notification has been provided to the Office of Research and Engagement and permission has been granted, PSU employees and Creators will avoid Publication of Intellectual Property that may constitute Sponsor-Supported or University-Owned Intellectual Property. The University has the option of declining the patenting of any technologies that have been publicly disclosed in seminars, published papers, master’s theses, dissertation defenses or elsewhere prior to any patent office filing.

Responsible Party: PSU employees and Creator

2. When University-Owned Intellectual Property or Sponsor-Supported Intellectual Property is created, the Creator must complete and submit an Intellectual Property Disclosure Form to the Office of Research & Engagement. The Intellectual Property Disclosure Form is available on the Vice Provost for Research and Engagement website (link provided below). A Creator is not required to disclose Intellectual Property that clearly constitutes Creator-Owned Intellectual Property, but must make a disclosure if there is any question about ownership. The Creator shall retain perpetual irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Creator

3. The Office of Research and Engagement shall review a submitted disclosure for completeness and suitability for protection by Patent, copyright, or trademark and suitability for further development or commercialization. If Intellectual Property is determined to deserve further consideration, the Creator's disclosure shall be forwarded to the IPAC.

Responsible Party: Office of Research and Engagement

4. The IPAC shall review referred disclosures and make recommendations to the Intellectual Property Officer regarding suitability of Intellectual Property for Patent, copyright or trademark protection and what marketing, licensing or other commercialization efforts should be taken. Recommendations may also be made regarding placing Intellectual Property on hold, sending it back to the Creator for further development or releasing it to Creator.

Responsible Party: IPAC

5. The Vice Provost for Research and Engagement determines whether Patent, copyright or trademark protection shall be pursued for Intellectual Property. The Vice Provost for Research and Engagement also administers and makes decisions regarding marketing, licensing or commercialization of Intellectual Property. With the approval of the Provost, Intellectual Property may be released to the Creator, but PSU shall retain a perpetual, irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Vice Provost for Research and Engagement

6. As requested by the Office of Research and Engagement, the IPAC, or the Vice Provost for Research and Engagement throughout the review process, the Creator shall make adjustments to the submitted disclosure; provide information as required to determine the potential marketability of Intellectual Property and suitability for Patent, copyright or trademark protection; complete paperwork necessary to obtain protection of Intellectual Property; make assignments as necessary to pursue Patents or clarify ownership of University-Owned Intellectual Property and Sponsor-Supported Intellectual Property; provide responses to office actions and assist in the marketing, licensing or commercialization of Intellectual

Property. The Creator must assign to PSU any interest in a patent equivalent to the property interest that the Intellectual Property Officer determines to belong to PSU under this policy.

Responsible Party: Creator

7. For Patentable Intellectual Property, if it is determined that a Patent application should be prosecuted, the prosecution shall be carried out by the Intellectual Property Officer and the Office of Research and Engagement in a diligent manner and without expense of any kind to the Creator. If the Patent application is discontinued, the Vice Provost for Research and Engagement shall issue a letter notifying the Creator that ownership of all commercial Patent rights revert to the Creator(s), however, PSU shall retain a perpetual, irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Vice Provost for Research and Engagement and Office of Research and Engagement

8. The IPAC shall review ongoing and pending Patents referred by the Intellectual Property Officer and make recommendations regarding the continuation of Patent protection, marketing, licensing or other commercialization efforts for University-Owned Intellectual Property.

Responsible Party: IPAC

9. Net revenues earned on any Patents, trademarks, copyrights related to University-Owned Intellectual Property will be distributed by the Office of Research and Engagement as described below after all expenses associated with the particular University-Owned Intellectual Property have been recovered by PSU and payments have been made to any third party as required under any licensing, commercialization or sponsored research agreement. Net revenues received by PSU will be distributed as follows:
 - a. 50% as direct payment to the Creator(s); and
 - b. 50% for support of research and scholarly activity at PSU

If a Creator dies, the Creator's share of net revenues will be distributed to the Creator's heirs. If a Creator leaves PSU, the Creator is still entitled to receive his/her share of net revenues. In the event of multiple Creators of Intellectual Property, all named Creators shall receive an equal share, with the total distribution made to all Creators being equal to the net revenues to be received by the Creator under this policy, unless the Intellectual Property Officer is provided with an Intellectual Property disclosure signed by all Creators specifying the percentage each Creator is entitled to receive. However, the revenue splitting requirement in this policy shall not apply to University-Owned Intellectual Property that are Works Made for Hire or that are subject to an alternate revenue splitting arrangement in a contract entered

into between the Creator(s) and PSU. A Creator of University-Owned Intellectual Property may agree to a full waiver or reduction of his/her share of net revenues as provided in this policy in exchange for equity participation in a business entity that has an agreement with PSU regarding the University-Owned Intellectual Property.

Responsible Party: Vice Provost for Research and Engagement and Provost

10. Upon request in writing by the Creator, the Provost shall consider an appeal of a determination made under this policy. The Provost shall resolve any dispute regarding protection and commercialization of University-Owned Intellectual Property. The decision by the Provost regarding any dispute shall be final.

Responsible Party: Vice Provost for Research and Engagement and the Provost

11. The creator of intellectual property will receive credit for her or his contribution to patents, copyrighted material, and other intellectual property. When appropriate, the name of the faculty creator(s) will be listed with the intellectual property, even when the intellectual property is owned by Plymouth State University.

Responsible Party: Vice Provost for Research and Engagement and the Provost

Reference and Cross References

Forms and Tools

Intellectual Property Disclosure Form is available on the PSU Office of Research and Engagement Website.