

Lewis University

# Intellectual Property Rights and Responsibilities

## **I. Introduction**

Lewis University is committed to providing an environment that supports the learning, teaching, scholarship and creative activity of its faculty, students, and staff. With this understanding, the Intellectual Property Rights Policy is intended to support the university's academic mission by:

- Encouraging creativity, excellence, and innovation in teaching, scholarship, research, and creative activity by identifying and protecting the intellectual property rights of faculty, staff, students, and the University.
- Acknowledging and preserving the traditional property rights of scholars, creative artists, and researchers with respect to products of their intellectual and creative endeavors, e.g., books, articles, manuscripts, plays, writings, musical scores, and works of art.
- Increasing the likelihood that creative and scholarly works, ideas, and inventions produced at Lewis University will be used to advance the state of knowledge and contribute to the public good.
- Assuring compliance with the provisions of agreements with external sponsors.
- Guiding policy and process for the use of intellectual property that has been developed for commercial as well as scientific and scholarly value so that the Creator(s)\* and the University share any net profits.

*\*For the purposes of this document, a "Creator" shall refer to any University personnel who create Patentable Intellectual Property, Copyrightable Intellectual Property, or any other intellectual property.*

### **Who is covered under this policy**

For purposes of this policy, University personnel refers to University faculty, administrators, office and technical staff, students, visitors, contractors, consultants and all others whose primary work affiliation is with the University, whether compensated by the University or not. As a condition of affiliation with the University, all University personnel are bound by all University policies, including this one.

### **What is covered under this policy**

All intellectual property produced using University resources by University personnel (defined above) is covered by this policy. Intellectual property shall include, for example and without limitation: inventions, creative works, patentable subject matter, copyrightable materials, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, trademarks, trade secrets and other intellectual property. For purposes of this policy, Patentable Intellectual Property and copyrightable intellectual property shall be defined as follows:

- “Patentable Intellectual Property” shall include, without limitation (despite the fact that these may not benefit from patent protection), all inventions, discoveries, trade secrets and all other subject matter that is patentable under US law or foreign law (whether or not produced in the US) as well as all software that is excluded from “Copyrightable Intellectual Property” (whether or not patentable under US law).
- “Copyrightable Intellectual Property” shall include, without limitation, all creative works, electronic or paper documents, software, multimedia or audiovisual materials, photographs, and any other materials that may be copyrightable under US law or foreign law (whether or not produced in the US). Copyrightable material shall include educational or research software, but shall not include software other than educational or research software.

## **II. Patentable Intellectual Property**

Responsibility for Disclosure: University personnel, who alone or in association with others create Patentable Intellectual Property, must disclose the Patentable Intellectual Property to the University. Such disclosure shall be made when it can be reasonably concluded that Patentable Intellectual Property has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the Patentable Intellectual Property for the Creator and the University. Disclosure allows the University to determine if protection is warranted and, if not, the parties will consider an agreement about the disposition of the intellectual property and the return of rights to the Creator. In cases where the University elects to retain rights to the intellectual property, the Office of the Provost Office may make available certain legal and technical assistance to protect and commercially develop intellectual property.

Determination of Rights to Patentable Subject Matter: The Creator of Patentable Intellectual Property shall retain his/her rights, and the University shall not assert ownership rights, in cases where the Creator can demonstrate that result from research or other works were conducted on the Creator’s own time and without use of University resources. Resources may include, but are not limited to, University funds, space, personnel and facilities. In such cases, the University undertakes no responsibility with respect to such intellectual property. However, at the option of the Creator, such intellectual property may be assigned to the University to be administered by the University.

It is the policy of the University that, to the fullest extent allowed by law, the University will shall retain ownership of any inventions conceived or actually reduced to practice under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any agreement which allocates rights to the University.
- Development utilized University resources (e.g., facilities, equipment, funding).

- The Creator was assigned, directed, or specifically funded by the University to develop the Patentable Intellectual Property.
- Intellectual property was developed by a faculty member and is analogous to their pursuit of research and scholarship performed on behalf of the University.
- Intellectual property was developed by administrators or staff in the course of employment duties.

### **III. Copyrightable Intellectual Property**

Responsibility for Disclosure: The tradition of academic institutions is to give faculty members the right to retain ownership of their Copyrightable Intellectual Property. This policy protects that traditional right. Creators are not obligated to disclose the creation of copyrightable material, even when the product might have commercial value, unless the material was developed under one of the qualifying conditions listed in the next section in which the Creator is responsible for timely disclosure. However, faculty members are encouraged to disclose any copyrightable material that has commercial value to the extent that they may wish University assistance in copyright registration and marketing in exchange for revenue sharing with the University. All disclosures should be made to the Office of the Provost.

Determination of Rights: Except as set for below, the Creator of Copyrightable Intellectual Property shall retain his/her rights, and the University shall not assert ownership rights. However, Creators will be expected to grant non-exclusive, royalty-free, perpetual licenses to the University for copyrightable material that is developed for University courses or curriculum, so that the University's continued use of such material for educational purposes would not be jeopardized. The University may, at its discretion, assert ownership rights to Copyrightable Intellectual Property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any agreement which allocates rights to the University.
- The material was developed with extraordinary or substantially more use of University resources than would normally be provided for the Creator's employment duties. This might occur as disproportionate use of staff time, networks, equipment, or direct funding (See Appendix).
- Intellectual Property was developed by administrators or staff in the course of employment duties.
- A faculty member was assigned, directed, or specifically funded by the University to develop the material, or the University has negotiated an understanding or formal contract with the Creator.

### **IV. Intellectual Property Developed Under Sponsored Research**

Ownership of Copyrightable Intellectual Property and Patentable Intellectual Property developed pursuant to an agreement with a sponsor will be governed by the provisions of that agreement.

- a. Government Sponsored Agreements: The University shall comply with all applicable regulations and requirements of any governmental body sponsoring work at the University. To the fullest extent allowed under such governmental parameters, the University will retain ownership of Patentable Intellectual Property conceived or actually reduced to practice in the performance of work sponsored by any governmental unit.
- b. Private, Industrial, Foundation and Other Sponsored Agreements: In most cases, the University shall retain ownership of all Patentable Intellectual Property conceived or actually reduced to practice in the performance of work sponsored by any non-governmental sponsor. In cases where the acceptance of a sponsored agreement does not require ownership of intellectual property conceived or actually reduced to practice in the performance of work by the University, or the benefit from the level of funding for proposed research and/or other consideration from the sponsor, licensee or other party outweighs the potential value of ownership by the University, ownership may be determined in accordance with the terms of the sponsored research agreement, as deemed appropriate by the Office of the Provost and as applicable by all laws and regulations governing intellectual property rights for institutions of higher education.
- c. University Sponsored Research: Patentable Intellectual Property involving the use of University funds, space, personnel and facilities administered by the University, but without any University obligations to others in connection with such support, are the property of the University.
- d. Special Agreements: Since the University aims to encourage creativity, it reserves the right to allow some flexibility in applying this policy on a case by case basis. In such cases, ownership of materials developed pursuant to a special agreement between the University and the Creator will be governed by the provisions of any such agreement.

## **V. Disclosure and Administration of Intellectual Property**

The Office of the Provost will be responsible for day-to-day management of all University intellectual property issues, and shall be empowered to negotiate the University's rights under these policies. Intellectual property required to be disclosed under Sections II, III, and IV shall be disclosed to the Office of the Provost by completing and submitting an Invention Disclosure Form (attached). This Office will create ad hoc committees utilizing internal and external disciplinary experts and legal counsel to complete a review of the patentability and marketability

of the intellectual property. The Office shall also set up and manage individual expense and income accounts for intellectual property that is vested in the University under this policy.

## **VI. Creator Guarantee**

For all Patentable Intellectual Property or Copyrightable Intellectual Property for which the University retains or asserts ownership, the Creator(s) warrants that the Creator(s) is not aware of any third-party patent or copyright infringement (unless the University is advised otherwise) and agrees to cooperate with the University and take all actions necessary to perfect title to Patentable Intellectual Property and/or Copyrightable Intellectual Property to the University. By virtue of continued employment at Lewis University or by participation in research using University resources, the Creator agrees to assign and does hereby assign all rights and title to the University to any Patentable Intellectual Property, as well as any continuation or divisional applications related to said Patentable Intellectual Property. The Creator also agrees to assign to the University the rights and perfect title to any derivative works to the Copyrightable Intellectual Property, as applicable.

## **VII. Income Distribution**

For any work in which the University asserts ownership interest under this policy, the University and the Creator(s) will share any annual net revenue (revenues less recovery of all legal and other costs involved in protecting the intellectual property rights of the work, licensing costs, and other directly related administrative costs) in the following percentages, unless different contractual agreements have been reached in relation to particular works:

<b>Net Revenue</b>	<b>Creator(s)</b>	<b>Office of the Provost</b>
<\$5,000	100%	0%
\$5,000-\$24,999	75%	25%
\$25,000-\$100,000	60%	40%
>\$100,000	50%	50%
>\$250,000	40%	60%

If a work involves more than one employee as Creator, the Creators will divide their share equally unless they provide the University with an alternative revenue distribution agreed upon by them.

The University may postpone the distribution of net income when future expenses relating to the applicable technology, such as patent prosecution costs, or an infringement suit, are reasonably anticipated.

### **VIII. Conflict Resolution**

Administration of this policy shall be the responsibility of the Provost. Questions should be directed to the Provost regarding the application, interpretation or implementation of the policy, or regarding disagreement among Creators concerning assignment of rights or sharing of royalties. Disagreement with any determination made by the Provost will be reviewed by the University Faculty Affairs Committee who will provide a recommendation to the Provost. If accommodation cannot be reached, the issue may be directed to the President of the University or his designee for a final determination. If the disagreement concerns students' assignment of rights or sharing of royalties, the faculty member, staff or administrator responsible for the project will review the issue and provide a recommendation to the Provost. If accommodation cannot be reached, the issue may be directed to the President of the University or his designee for a final determination

### **IX. Use of Lewis University Name, Seal or Insignia**

The Lewis University name, seal or insignia may not be used:

- In conjunction with any private or commercial enterprise
- In tandem with the advertisement of any product
- By an individual or group promoting itself.
- In a confusing or deceitful manner
- In any manner not authorized by the University.

Use of the University name, seal, or insignia on letterhead and business cards is standardized and regulated by the Marketing Department.

Any questions regarding the use of the University name, seal or insignia in circumstances other than the ones listed above should be referred to the Director of Marketing.

### **X. Changes to the Intellectual Property Policy**

The University reserves the right to change this policy from time to time. Proposed changes will be developed by the Provost, in consultation with appropriate representatives or committees of the University faculties, College Deans, the Executive Vice-President and the University Faculty Affairs Committee (UFAC). Substantive revisions to this policy will be submitted by the President to the Board of Trustees for approval.

**Approved by Lewis University Board of Trustees October 22, 2012.**

## **Intellectual Property Appendix**

### **Refer to Intellectual Property Policy**

### **III Copyrightable Intellectual Property**

**1. *What are Extraordinary University Resources?***

Extraordinary University Resources are financial or other support for research and teaching activities that exceeds the norm for a faculty member or student's research or for teaching and traditional works of scholarship in his or her field or department.

**2. *What are not considered Extraordinary University Resources?***

Sabbatical funding, the award of competitive internal research or teaching grants, ordinary library services, normal clerical or administrative support, office or laboratory supplies and equipment, funding for endowed chairs

**3. *What are Traditional Works of Scholarship?***

Traditional Works of Scholarship are copyrighted scholarly and creative works regardless of their form, other than patentable intellectual property, which are created by academic faculty or students, and which have not been the subject of Exceptional University Resources or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, non-patentable software, syllabi, and instructional materials.