

#### **4.9.10 Intellectual Property Policy**

Intellectual property broadly describes creations of the mind, including creative works, inventions, discoveries, and designs. It includes original ideas that have been expressed in such a way that can allow others to recreate the work(s). Intellectual property rights provide a creator with the ability to exclude others from capitalizing on their creations.

Lourdes University is committed to encouraging creative activity and the prompt and open dissemination of ideas and inventions by recognizing and rewarding individual members of the Lourdes community for their creations. This policy upholds Lourdes University's academic and service missions by establishing a framework for who holds intellectual property rights in works created at or in association with the University.

##### **4.9.10.1 Definitions**

- a. "Copyright" refers to the property right in an original work of authorship fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform, and display the work. Copyright protection begins at the moment a work is fixed in a tangible medium. Subject to the limitations set forth in the Copyright Act of 1976 (as amended), an individual or entity who holds copyright ownership has the exclusive right to make copies, create derivative works, distribute works, display and perform works publicly, and give others permission to exercise these rights.
- b. "Patent" refers to the exclusive right to make, use, or sell an invention. The inventor or patent holder is granted the right to exclude others from making, using, or selling the relevant invention for a specified time period.
- c. "Invention" refers to any patentable or potentially patentable idea, process, discovery, or know-how and any associated/supporting technology required for application or development of the idea, process, discovery, etc.
- d. "Scholarly works" refers to works authored by faculty within the scope of their employment as part of or in connection with their teaching, research, or scholarship that are not created as an institutional initiative. Examples of scholarly works include lecture notes, course outlines, and class tests.
- e. "Significant contribution" requires the use of University resources to a degree/nature not typically available to all faculty. For example, extended IT support or providing a faculty member with his or her own dedicated lab space would constitute a "significant contribution" on the part of the University. Ordinary use of computers, library resources, or lab space that is available to all department members does not constitute a "significant contribution" on the part of the University.
- f. "Individual Project Agreement" refers to an agreement executed between the creator(s) of a copyrightable or patentable work and the University that explicitly established intellectual property rights in the work.
- g. "Inventor" refers to a person who individually or jointly with others makes an invention.
- h. "Faculty" refers to full-time, part-time, clinical, and adjunct faculty members.

- i. “Staff” refers all employees of the University other than faculty.
- j. “Student” refers to any person enrolled at Lourdes University, either full-time or part-time.
- k. “University Community” refers to the aggregate group of Students, Faculty, and Staff of Lourdes University.
- l. “Independent Contractors” refers to individuals retained by the University to provide goods or services.

#### **4.9.10.2 Copyrights**

Under federal law, Lourdes University holds the copyright to works authored by its employees when the employees are acting within the scope of their employment unless the copyright ownership has been transferred legally to another party by written assignment or other process of law. This is known as the “work for hire” doctrine.

In keeping with longstanding academic custom and notwithstanding this legal default, Lourdes University strives to recognize faculty ownership of copyright for scholarly works that are created as course materials or created independently by faculty and at their own initiative for academic purposes.

As such, the University hereby transfers any copyright ownership it holds in scholarly works to the faculty who authored those works, subject to the following conditions and exceptions:

- a. Conditions: The University retains a nonexclusive, royalty-free, perpetual license to use the scholarly works for educational purposes.
- b. Exceptions: The University does not transfer to faculty its copyright ownership in scholarly works:
  1. When doing so would put the University in violation of or in conflict with a relevant law or contract;
  2. That are developed in the course of assigned duties or administrative assignments not connected with traditional scholarship, teaching, research, or artistic endeavors;
  3. In circumstances where University involvement in the creation/development of the copyrightable work is more than incidental and/or in which the University makes a significant contribution as defined under this policy in section 4.9.10.1.
  4. When such rights are or have been transferred to the University in writing;
  5. Produced under contract with a third party if the University makes a significant contribution as defined under this policy in section 4.9.10.1;
  6. Created for Web-Enhanced Course Development unless the faculty expressly forfeits in the relevant contract the compensation to which s/he would be entitled in exchange for copyright ownership of the relevant work.

**Staff-authored Works:** The University retains copyright ownership in all works authored by staff within the scope of their employment. Under this policy, administrative faculty are considered staff when they are fulfilling their administrative roles and faculty when they are carrying out their duties as regular faculty members.

**Student-authored Works:** University students hold the copyright in works they author unless they have authored the works as employees or co-authors or transferred their copyright in writing to the University or elsewhere. When a student co-authors a work with another member of the University community, all parties should contemplate copyright ownership prior to the commencement of the relevant project and execute an agreement explicitly establishing copyright ownership.

**Collaborative and Joint Works:** When University community members collaborate with each other and/or non-University third parties, the result is often “joint work.” Holding copyright jointly for joint work, however, is not automatic, and all parties are encouraged to determine and describe in writing the disposition of copyright prior to authoring the work.

**Responsibilities:** Faculty members who create copyrightable work in which the University may have an interest under this policy are required to make reasonably prompt written disclosure of the work to the Office of the Provost and to execute the agreements necessary to perfect legal rights in the University and enable the University to file for copyright registration, when appropriate. This disclosure to the Office of the Provost should be made at the time when legal protection for the creation is contemplated, and it must be made before the work is sold, used for profit, or disclosed to the public.

#### **4.9.10.2.1. Commercialization of Copyrightable Works**

For all copyrightable work subject to University ownership under this policy, it is within the sole discretion of the University to determine whether to seek additional copyright protection and whether to pursue commercialization of such copyrightable works. Each creator of a copyrightable work shall share in the net proceeds received by the University from commercializing the copyrightable work unless the creator(s) are:

Independent Contractors: To the extent Independent Contractors are hired by the University to produce or contribute to any copyrightable works, they shall generally be required generally execute a relevant Individual Project Agreement transferring copyright ownership to the University as a condition of their partnership with the University prior to any relevant work commencing;

Members of the staff or administration (unless specifically included in an Individual Project Agreement);

Faculty employed by the University on a “work for hire” basis or authors of work specifically commissioned by the University by explicit, prior agreement in which the parties express their intent regarding copyright ownership of works created.

Subject to these exceptions, revenue from the commercialization of University owned copyrightable works will be distributed in the following manner after the University recovers its direct expenses, including, but not limited to, costs associated with filing the copyright, use of

University resources, outside consultants, and/or other relevant resources not available at the University from the gross proceeds prior to distributing the remaining net proceeds in accordance

with the following schedule:

<b>Net Proceeds</b>	<b>Creator</b>	<b>Department</b>	<b>College</b>	<b>University</b>
The first \$5,000	100%			
\$5,001-50,000	75%	10%	10%	5%
\$50,001+	50%	10%	10%	30%

#### **4.9.10.2.2. Using Copyrighted Material**

The Copyright Act of 1976 (as amended) does permit certain limited copying of copyrighted works for educational or research purposes without permission of the copyright owner under the doctrine of “fair use.” Members of the University community must conform to the “fair use” standards delineated in the Copyright Act and Lourdes University’s Fair Use policy. Please refer to 2.13 of the Employee Handbook, Volume II, for more information.

#### **4.9.10.3. Patents**

Patentable inventions or discoveries may result from educational activities performed by members of the University community. Lourdes is committed to disclosing and utilizing ideas and discoveries for the greatest possible public good and to protect the rights of the University faculty, staff, and student body, as well as those of the institution itself.

This policy shall apply to any invention or discovery by a University community member who made the invention or discovery either (1) within the normal field of his or her activity or employment responsibilities with the University or (2) to which the University made a “significant contribution” as defined under this policy.

**Ownership:** The University owns all inventions and discoveries created at or in association with the University and the exclusive right to assign, license, or otherwise transfer rights in such inventions/discoveries, subject to the following exceptions:

- a. The University has contributed nothing substantial or essential (as, for example, funds, space, materials, or facilities) to the conception or development of the invention or discovery, and the invention or discovery is outside the scope of the inventor's normal field of employment responsibility or activity with the University;
- b. The University has entered into an agreement for a project related to the invention or discovery with a third party, in which case the terms of that agreement will govern the disposition of patents and licenses.

**Responsibilities:** Any inventor making an invention or discovery subject to this policy shall report it promptly in writing and in reasonable detail to the Office of the Provost prior to any public disclosure.

Members of the University community who enter into consulting or other agreements with parties outside of the University must ensure that such agreements contain no requirement to assign, license, or otherwise transfer rights in any inventions and discoveries in which the University may have an interest.

Members of the University community must notify the Office of the Provost of any patents or inventions arising from external consulting agreements.

#### **4.9.10.3.1 Patent Protection**

Following disclosure of an invention or discovery by the inventor to the University, the University shall make reasonable efforts to determine the potential patentability and commercial value of the invention. When, in the judgment of the University, there appears to be basis for proceeding, the University shall apply for a patent at no expense to the inventor, in which case the University owns the invention and any patent obtained. The University will pursue appropriate contractual arrangements for development of commercial use of the invention if the University applies for a patent, and the inventor shall cooperate and participate in obtaining patent protection, including signatures on appropriate documents.

Revenue from the commercialization of University owned patentable works will be distributed in the following manner (as a percentage of net proceeds) after the University recovers its direct expenses, including, but not limited to, costs associated obtaining the patent, use of University resources, outside consultants, and/or other relevant resources not available at the University:

<b>Net Proceeds</b>	<b>Creator</b>	<b>Department</b>	<b>College</b>	<b>University</b>
The first \$5,000	100%			
\$5,001-50,000	75%	10%	10%	5%
\$50,001+	50%	10%	10%	30%

If the University does not file a patent application, the University will so notify the inventor within six (6) months from full disclosure of the discovery to the University, and the University will release its rights in the invention or discovery to the inventor, who may decide to seek a patent or to continue prosecution at his or her own expense.

If the University terminates an application for a patent after initiating the application process, the University will so notify the Inventor, and the University will release its rights in the invention or discovery to the inventor, subject to the inventor agreeing to reimburse the University for any direct expenses incurred by the University in obtaining, maintaining, or marketing the patent before its release to the Inventor. Release of these rights will be perfected in a mutually agreeable written agreement that will explicitly address the terms of the ownership transfer.

If the Inventor declines to accept the patent, the University, at its discretion, may abandon the property at no cost to the Inventor.

#### **4.9.10.4. Policy Interpretation & Dispute Resolution**

The Office of the Provost is responsible for the administration of this policy.

Where there is disagreement regarding intellectual property ownership rights or the retention of rights by the University, members of the University community should make every attempt to resolve disputes under this policy informally with the assistance of the Provost and/or the General Counsel (for legal clarification). If informal procedures and consultation do not provide resolution, the matter must be addressed through the Grievance Policies outlined in 4.13 and 5.7 of the Employment Handbooks for faculty and staff, respectively; and the Grievance Policies set forth in the Academic Catalog for students.