

370 INTELLECTUAL PROPERTY POLICY

Policy 37 was included in the 2001 University Handbook revision and was substantially amended by the ISU Board of Trustees on May 7, 2010.

Preamble

With the University commitment to scholarship, research, creative and other academic and service activities, it is expected that faculty, staff, and students will produce new written works, inventions, works of fine and performance art, discoveries, new or improved products or processes, ornamental designs, compositions of matter, multimedia materials, new varieties of plants, and many other expressions of learning, research, and scholarly activity. These works may involve rights of ownership, needs for protection, rewards from ownership, and responsibilities during development that affect all individuals involved and the University as a legal entity.

370.1 Framework of Rights and Responsibilities. This intellectual property policy defines the framework for the rights and responsibilities of artists, authors, inventors, researchers and the University.

370.1.1 Guiding Principles. Guiding and underlying principles:

- A. The University recognizes and supports the right of any individual within the University community to create original works.
- B. The University seeks to encourage the discovery and development of new and derivative works and dissemination of new knowledge as incumbent in its academic mission to serve the public good.
- C. The University realizes that the development of new works and the rights, benefits, and responsibilities in these works arises from a wide variety of endeavors.
- D. The University recognizes and supports the concept that ownership and benefit from intellectual property is often not an all-or-nothing situation and will work to develop practices that provide appropriate benefits to all contributors.

370.2 Categories of Intellectual Property Under this Policy. The following categories of works are covered by this policy.

370.2.1 Traditional Works. Traditional works are academic and scholarly works, other than those commissioned or sponsored by the University, which reflect research and/or creativity and within the University are considered as evidence of professional advancement or accomplishment. Such works typically include scholarly and research publications, journal articles, books, monographs, textbooks, plays, poems, music compositions, and other works of art.

370.2.1.1 Ownership. Unless the development or production of these works involved the significant use of University resources (as defined in section 370.2.4), they are considered to be the property of the author(s) who would hold all copyright ownership and accrue all responsibility for compliance with copyright law and regulation. For some of these works, documentation of copyright compliance assurance may be requested by the academic or administrative unit of the author(s).

370.2.2 Patents and Trade Secrets. The University recognizes that inventions and discoveries may result from the normal and typical activities of University employees and students through use of University facilities, equipment, funds and other resources. It is the intention of the University to pursue and administer rights in such inventions to bring benefits to the public as quickly as possible while protecting the rights of ownership.

370.2.2.1 Rights of University. Except as otherwise executed in writing, all rights to all inventions, discoveries, and other patentable or trade secret works that are conceived, disclosed, or reduced to practice by ISU employees in the context of their employment; students in an employment relationship with the University; or any person including ISU employees and students who use University resources including, but not limited to, facilities, equipment, funds, personnel, or funds under the jurisdiction of the University, shall be assigned to and controlled by Indiana State University.

370.2.3 Works for Hire, University-Commissioned Works, and University-Sponsored Works. Works for hire are defined as those works prepared for the University as part of an employee's typical position duties. University-commissioned works are written materials in any format and works of art developed or produced by an employee with financial help of the University and/or with released time specifically assigned to the work.

370.2.3.1 Financial Help of University. Financial help of the University exists when the employee receives student assignment or allocation of student wages, supplies and commodities, equipment, contractual services, travel funds or support, personnel services, etc. For these works, all patents, copyrights, patent rights, discoveries, and/or other intellectual property rights will be assigned to the University.

370.2.3.2 University — Sponsored Works. University-sponsored works are academic, instructional, and scholarly works developed or produced by an employee with financial help of the University as defined above and/or with released time specifically assigned to the work. Such works typically include syllabi, course study guides, course packs, and supplemental instructional materials in any format.

370.2.3.2.1 Assignment of Rights. For these works, the right to reproduce, distribute, make derivative works, and conduct

public performances or displays of the work will be assigned to the University unless it waives this right in a written agreement with the author(s).

370.2.4 Works Involving the Significant Use of University Resources. The University will have an interest in copyright ownership for works developed by employees who use significant University resources in the design, development, and/or production of the materials.

370.2.4.1 Definition of Significant University Resources. Significant University resources are defined as those not typically available to employees for the development or production of traditional works. Examples of such significant resources would include: the assignment of additional teaching or graduate assistants, use of studios or other specialized production facilities and personnel, use of multimedia labs and associated personnel, clerical support that exceeds what is typical, the purchase of additional supplies or equipment, the allocation of specific additional travel or other funds, the assignment of additional space or facilities, etc. Resources typically available and not considered significant use of additional University resources include use of an employee's office, studio and/or laboratory and the facilities therein, use of the library, normal use of the University computer network and other facilities, normal use of the University phone system (not to include unusual long distance charges), and internal grants awarded by the University Research Committee and the Arts Endowment Committee.

370.2.4.2 Rights. In works involving significant use of University resources, the right to reproduce, distribute, make derivative works, and conduct public performances or displays of the work, are appropriately shared by the author(s) and the University to the benefit of each. This assignment of rights will be specified in agreements signed by both parties that derive from and pertain specifically to each situation under consideration. The agreements will be prepared by the intellectual property officer under the direction of the Provost and Vice President for Academic Affairs and will be administered through the appropriate academic or administrative unit.

370.2.5 Works Sponsored by External Sources. Typically, intellectual property rights for works developed with funds provided by external sponsors (through grants, contracts, etc.) will be specified by grant agreements, contracts, and/or other documents. In the absence of any such agreement and in cases where it is clear that intellectual property may develop as part of the work of the sponsored project, the intellectual property officer will prepare an intellectual property agreement for signature by all parties.

370.2.5.1 Absence of Agreement. If an agreement is not in place and intellectual property issues arise, all parties including the intellectual property officer and the project participants with claims to the intellectual property in

question will meet and develop an agreement. In matters where no agreement exists and no intellectual property was anticipated, the University will be assumed to have an interest in the work as it is typically the grantee in sponsored program situations.

370.3 Revenue Distribution. Monetary proceeds from the licensing, transfer, or commercialization of intellectual property under this policy shall be distributed as follows, unless legal requirements or contractual agreements require otherwise.

370.3.1 Creator Employee. The creator(s) (or heirs, successors, and assigns) shall receive 35% of net revenues arising from intellectual properties. The creator's share shall be divided equally among joint creators, unless otherwise agreed in writing.

370.3.2 Laboratory. The laboratory, or other applicable ongoing research, teaching, or service project entity in which the intellectual property originated, shall receive 15% of net revenues for the period during which the entity continues to function and the creator(s) remain associated with the University. If the intellectual property did not originate through such an entity, or if the creator(s) cease to be associated with the University, this portion shall be assigned to the originating administrative unit (department, center, etc.). If the laboratory or other project entity cease to exist while the creator(s) remains at the University, this portion shall be assigned to an account in support of research managed by the creator(s) and supervised by the originating administrative unit. In the case of multiple creators, this full share shall continue to be allocated undiminished so long as a single faculty creator remains at the University; this includes creators holding emeritus status who continue to maintain a University research, teaching, or service project, subject to annual approval by the relevant dean and the President.

370.3.3 Department. Campus units that have been involved in the development of the intellectual property, such as departments in which the creator holds FTE appointment, centers initiating or managing project contracts and grants, and the relevant schools, shall share 15% of net revenues.

370.3.4 University. The University shall receive 35% of net revenues to support further intellectual property creations and protection. These funds shall be administered by the Office of the Provost and Vice President for Academic Affairs.

370.4 Implementation.

370.4.1 Disclosure by Employee. When any person named above determines that a development has copyright, patent or trade secret potential, he/she must, in writing, promptly and fully disclose the creation to the intellectual property officer. The University will, considering all parties and contractual obligations involved, determine the best course of action. This may include:

370.4.1.1 Determination That Intellectual Property has Sufficient Potential and Value. A determination that the intellectual property

has potential and value in the marketplace. The University would pursue and fund the execution of the appropriate protections. Upon completion of protection, the University will attempt to market, license, or otherwise derive compensation or consideration for the value of the patent. Royalties, commissions, and any other compensation or consideration for the intellectual property will be divided between the creator(s) and the University in accordance with section 370.3.

- 370.4.1.2 Determination That Intellectual Property Has Sufficient Potential But Insufficient Value.** Determination that the property has commercial potential but does not have sufficient value to warrant expenditure of protection costs. In this case, intellectual property rights will be relinquished to the creator(s).
- 370.4.1.3 Determination That Intellectual Property Does Not Have Sufficient Potential or Value.** A determination that the property does not have commercial potential. In this case, ownership and assignment rights will be relinquished to the creator(s).
- 370.4.1.4 Determination that University Does Not Have Intellectual Property Rights.** A determination that the University does not have intellectual property rights to the creation, but may be able to share in some benefit, i.e., a discovery made as part of a sponsored project where the sponsor holds ownership rights but recognizes the contributions of the participants. In this case, the University will negotiate with the appropriate parties to derive the best benefit for the University and the creator(s). Royalties, commissions, and any other compensation or consideration for the patent or trade secret will be divided between the creator(s) and the University in accordance with section 370.3.
- 370.4.1.5 Other Appropriate Action.** Some other appropriate course of action as dictated by the situation.

370.5 Policy Administration.

370.5.1 Intellectual Property Officer. The intellectual property officer is the University's administrative designee on intellectual property matters. The intellectual property officer will make judgments and recommendations on matters of copyright, trademark, patent, trade secret, and other intellectual property issues and will implement policy and conduct administrative actions on these matters. The officer will also conduct training and provide advice and information on these matters. The intellectual property officer will conduct these activities through and for the Provost and Vice President for Academic Affairs Office.

370.5.1.1 Final Authority. The final University authority will rest with the Provost and Vice President for Academic Affairs.

370.5.1.2 Assistance with Promotion and Marketing. In cases of technology transfer where the University holds some interest in ownership of materials and commercial value is anticipated, the intellectual property officer or other designated parties may assist with the promotion, marketing, licensing, and other activities pertinent to deriving compensation or other consideration from the work(s). The utilization of University resources will be accounted for in the distribution of proceeds between the author(s) and the University.

370.5.2 Intellectual Property Advisory Committee. An Intellectual Property Advisory Committee will be appointed by the Provost and Vice President for Academic Affairs to assist the intellectual property officer. This committee will advise the officer on intellectual property matters of policy and implementation.

370.5.2.1 Membership. The committee will be comprised of the University Counsel, a representative of Cunningham Memorial Library, a representative of the Division of Lifelong Learning, one (1) of the academic deans, and three (3) members of the teaching faculty with knowledge of intellectual property issues to be selected from a list of at least six (6) faculty members nominated by the University Faculty Senate.

370.6 Employee Compliance with Copyright Law. All University employees have the individual responsibility to understand and abide by copyright law in the development of materials, in teaching, and in all University activities. Each employee must insure that his/her activities in no way infringe on the copyright or other proprietary rights of others, and that the materials used and developed at ISU contain nothing unlawful, unethical, or libelous, and do not constitute any violation of any right of privacy. University employees must respect the rights of others.

370.6.1 Assessment of Materials. Each employee should be able to accurately assess and classify all materials used in or under development for University activities, into one of the following categories:

- A. The employee holds legal copyright to all materials in use and/or under development;
- B. The employee has obtained all required permissions, licenses, or releases from holders of such rights; or
- C. The employee has determined after careful study that the intended use is covered by an exemption to copyright law or is considered “Fair Use”.

370.6.2 Support, Information, Training, and Guidance. The University accepts the responsibility, through the intellectual property officer, to provide support, information, training, and guidance to employees who are involved in the development and use of intellectual property.

370.7 Works of Students. Students purely academic work, including work completed for class assignments, theses, and dissertations, are considered the original work of the student-author(s) and, as such, the author(s) accrue any rights in ownership, except in the following cases:

- A. The student(s) was (were) performing in an employment relationship with the University for the development of the materials in question, in which case ownership resides with the University; or
- B. The work was developed by a student or students specifically as part of a university employee's formal project. This may include research publications, project work, scholarly papers, work on sponsored projects, etc. In these cases, ownership will be determined using the procedures appropriate to the University employee(s) involved.

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