



Intellectual Property Policy

Brigham Young University faculty, administrative, staff, and student personnel are regularly involved in scholarly activities. While the primary focus of such efforts is the advancement of the central purposes of the university, the products of scholarship often have wider application. These products, or Intellectual Property (see definition below), may be of benefit to the individual Developer(s) (see definition below) and the university. This policy is intended to (1) support faculty, staff, and students in identifying, protecting, and administering Intellectual Property matters, (2) define the rights and responsibilities of all involved, and (3) stipulate how generated income is distributed to the Developer(s) and to the university.

This Intellectual Property Policy defines the principles that govern Intellectual Property matters at Brigham Young University. As educational and research endeavors evolve, the procedural application of this policy may change. Current and specific procedures are addressed in the Intellectual Property Procedures.

The captions and headings of this Intellectual Property Policy are for ease of reference and shall not be deemed to define or limit the scope of any of the language, interpretation, terms, or conditions contained herein or in the accompanying Intellectual Property Procedures. As used herein, all words in any gender shall be deemed to include the masculine, feminine or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require. Administrative reporting lines across campus use unit-specific titles, therefore substitute terms, such as “director” for “dean,” and “supervisor” for “chair,” may be used interchangeably as appropriate in this policy.

The university reserves the right to update or change this policy from time to time as circumstances warrant.

PERSONS SUBJECT TO THIS POLICY

All administrative, faculty, staff, and student employees are defined as “University Personnel” and are subject to all provisions of this policy and the Intellectual Property Procedures. The rights of students not employed by the university may be subject to certain provisions of this policy as discussed below. This policy also applies to off-campus individuals and entities who seek to make use of university resources or Intellectual Property.

To the extent there are any inconsistencies between this Intellectual Property Policy and the university’s Intellectual Property Procedures, the Intellectual Property Policy will govern.

TYPES OF INTELLECTUAL PROPERTY

“Intellectual Property” means any and all inventions, patents, trade secrets, know-how, technology, confidential information, ideas, protocols, original works of authorship, copyrights,



designs, trademarks, and service marks, and any and all rights, applications, and registrations relating to them.

For purposes of this policy, Intellectual Property is divided into two categories, “Technical Works” and “Creative Works.” Technical Works include Intellectual Property that is generally of a scientific, engineering, or technical nature. Creative Works include all Intellectual Property not covered in Technical Works and generally include works that are of an artistic, literary, dramatic, musical, scholarly, instructional, assessment, or entertainment nature.

OWNERSHIP

Pursuant to law and university policy, any work (whether a Technical Work or a Creative Work) prepared by University Personnel within the scope of their employment, without an express agreement specifying otherwise, is work for hire owned by the university. The Technical and Creative Works anticipated in this paragraph and owned by the university broadly include all Intellectual Property, or parts thereof, (a) conceived, developed, reduced to practice, or created by University Personnel within the scope of employment at the university; on the university’s time; or with the aid, assistance, or substantial use of any of the university’s property, equipment, facilities, supplies, resources, or Intellectual Property; (b) resulting from any work, services, or duties performed by University Personnel for the university; or (c) related to the current or demonstrably anticipated business, research, or development of the university. In accordance herewith, the university claims ownership of all Intellectual Property and related rights created by University Personnel pursuant to this paragraph, and University Personnel agree to assign and do hereby assign all right, title, and interest in any Intellectual Property, including future Intellectual Property, as described herein.

The university retains ownership rights to all Technical Works, but will relinquish ownership rights to the Developer(s) of academic Creative Works when “nominal” use of university resources is involved in the production of the Intellectual Property. The use of university resources is considered nominal when it is not substantial. See Intellectual Property Procedures.

The university claims ownership in the resulting Intellectual Property in all university-commissioned works in the absence of express written provisions stating otherwise, including but not limited to (a) works commissioned by the university to an individual who is not an employee of the university and (b) works commissioned by the university to an individual who is an employee where the work to be created falls outside of that person’s scope of employment.

Any dispute regarding ownership will be subject to the Dispute Resolution section below and the corresponding provisions of the Intellectual Property Procedures.

**OWNERSHIP OF INTELLECTUAL PROPERTY OF NON-EMPLOYEE STUDENTS**

Students (a “student” is a person enrolled in BYU courses for credit) who independently develop Intellectual Property arising out of their participation in programs of study at the university will retain the ownership rights (subject to the license described in the next paragraph) to such property when the Intellectual Property does not result from their employment at BYU or where there is no written agreement to the contrary.

Consistent with the common law doctrine of “shop rights,” when any person not employed by the university either (a) engages in research or development of Intellectual Property under the supervision and direction of a faculty member in connection with a program or activity subject to this policy or (b) uses substantial university resources in connection with a research program or activity, the university retains the right to claim, as a condition of the student being allowed to participate in the project or use university resources, a non-exclusive, perpetual, royalty-free, paid-up, irrevocable license to exploit, use, and sublicense the resulting Intellectual Property.

MISCELLANEOUS OWNERSHIP ISSUES

University Personnel may either act as a paid consultant to or participate in sponsored research for the same company but may not perform both at the same time. Exceptions may be granted in rare situations when an appropriate management plan is approved by the department chair and college dean and written approval is obtained from the associate academic vice president—research and graduate studies.

Consulting activities must be carried out consistent with the university’s [Conflict of Interest and Conflict of Time Commitment Policy](#) and this policy. Activities must be administered as sponsored research projects when there is a substantial use of university resources or when BYU students are employed by the university in connection with such activities. The university does not assert ownership to works produced as a result of consulting except in cases where use of university resources, including university-owned Intellectual Property, occurs to support the consulting activity.

In all consulting arrangements, University Personnel act as independent consultants and are not authorized to engage or obligate the university as a party to any contract. The university is neither liable nor responsible for any consulting arrangements, including any related performance issues, utilization of third party property, observations, or consequent damages. The name of the university shall not be used in the consulting services, in any advertising, or in any other way.

In a consulting agreement, University Personnel should not obligate the use of, divulge, or transfer any Intellectual Property in which the university may claim an ownership interest. The scope of such consulting endeavors must be communicated to the appropriate department chair and college dean to obtain written approval prior to commencing any contractual effort.



University Personnel who receive title from the university to Intellectual Property pursuant to this policy, as a condition of employment, shall grant back and hereby do grant back to the university a perpetual, royalty-free, paid-up, irrevocable non-exclusive license to use the Intellectual Property for internal, noncommercial purposes, and the university may at its sole discretion sublicense such Intellectual Property to The Church of Jesus Christ of Latter-day Saints on similar terms.

DEVELOPERS

“Developers” are individuals or groups of individuals who make a significant original, creative contribution to the conception or reduction to practice of Intellectual Property. Others who are directed in the performance of their work or merely following the instruction of others are not Developers. Accordingly, Developers typically will not include administrative and staff employees, research associates, post docs, research technicians, and students.

Notwithstanding anything herein to the contrary, administrative and staff personnel, who in the scope of their employment develop Intellectual Property, usually will not receive a share of revenues resulting from the commercialization of such Intellectual Property. Support areas (non-academic units), however, may elect to handle internally the commercialization and revenue sharing of Intellectual Property developed by administrative and staff personnel in the scope of their employment, provided that the support areas must receive approvals from (1) the associate academic vice president—research and graduate studies and (2) the line vice president.

MANAGEMENT OF INTELLECTUAL PROPERTY

The Technology Transfer Office and the Creative Works Office have the primary responsibility of assisting University Personnel in managing Intellectual Property within the university, including the development, protection, acquisition, and commercialization of Intellectual Property. The BYU Office of Licensing and Trademark Administration oversees the management of university trademarks, service marks, logos, names, seals, and indicia (see [University Trademark Protection and Licensing Services Policy](#)). University entities should not separately manage university-owned Intellectual Property or establish organizations or companies to do so without express written approval from their appropriate line vice president. University Personnel may not use university resources, facilities, or work time to engage in commercial activities, businesses, or “start-up” companies.

ADMINISTRATIVE PROCESSES

It is the responsibility of deans and chairs to ensure that university resources—including faculty time—are used appropriately.

The following general disclosure policies have been established to facilitate cooperation between University Personnel and the Technology Transfer Office and Creative Works Office.



Disclosure

Full and proper academic disclosure consists of four parts:

1. Within 120 days following commencement of employment at BYU, University Personnel should disclose in writing, in sufficient detail to identify clearly, all Intellectual Property invented, authored, made, or conceived by the individual, alone or with others, prior to the employment or association with the university. The Intellectual Property Policy will not apply to any Intellectual Property so disclosed.
2. Prior to any public use or disclosure of Intellectual Property, all related Technical Works and those Creative Works involving substantial use of university resources, and for which there is an intent or potential for commercialization, should be disclosed to the Technology Transfer Office or the Creative Works Office, respectively. Upon disclosure, the Technology Transfer Office or the Creative Works Office will make an initial determination in a timely manner to either pursue Intellectual Property protection and/or commercialization or release the rights to the Developer(s).
3. An important aspect of disclosure is the determination of who constitutes a developer and what their respective contribution have been to the intellectual property being disclosed. This should be agreed upon prior to any attempts at commercialization.
4. All Developers of works that may fall under university ownership shall fully disclose to the university any financial and/or other relationships, including federal funding, that might affect or encumber the transfer of Intellectual Property to any off-campus individual or entity.

Intellectual Property disclosed to the Technology Transfer Office or Creative Works Office will be governed by the Intellectual Property Policy and Intellectual Property Procedures that are in effect at the time of the earliest disclosure.

Approval of Transfer Agreements

Any proposed transfer of Intellectual Property from the university will be reviewed by the chair, dean, director of the Technology Transfer Office or Creative Works Office, Office of the General Counsel, and associate academic vice president—research and graduate studies. The final decision concerning transfer will be made by the associate academic vice president—research and graduate studies.

INCOME DISTRIBUTION

When revenues derived from university-owned Intellectual Property are received and administered by the Technology Transfer Office or Creative Works Office, the net income



available for distribution will consist of total revenue received from a given Intellectual Property minus direct costs incurred in the process of developing, marketing, perfecting, transferring, and protecting university rights to the Intellectual Property, together with interest costs. An accurate accounting of all such costs and deductions shall be made available to the Developer(s).

Unless otherwise agreed upon in writing by the parties, and approved as discussed below, the net income (gross income minus university expenses) from university-owned Intellectual Property will be distributed as follows:

Developer(s) (other than principal stock holders of the commercialization of a technology) – 45%

College(s) of the Developer(s) – 27.5%

Technology Transfer or Creative Works Office – 27.5%

Examples of university expenses to be reimbursed from gross income include legal costs, patentability studies, filing of patents, litigation in connection with a patent, university or church derived funding (e.g., development funding through a university support unit such as the Center for Teaching and Learning). IPS staff salaries or wages are not included in these reimbursable costs.

Exceptions to Standard Income Distribution

Any exceptions to the standard income distribution described above must have appropriate prior written approval by the college dean or equivalent supervisor, the associate academic vice president—research and graduate studies or line vice president, and the Technology Transfer Office, Creative Works Office, or Copyright Licensing Office, as applicable. Any income distribution due to a Developer will be paid to the Developer's estate in the event the Developer is deceased.

Occasionally a Developer may become a principal equity owner of a company that licenses university Intellectual Property. In such cases, the developer will forfeit his or her distribution outlined above. For purposes of this policy and the Intellectual Property Procedures, a principal equity owner is one who controls ten percent or more equity in the company.

On rare occasions, there may be compelling reasons to allow University Personnel to participate as a voting member of a company board; provided that (i) the company has not raised more than \$3,000,000 and (ii) non-accredited investors are not involved. Consistent with the university's conflict of interest policies, any such participation requires full disclosure to and prior written approval from the dean, the associate academic vice president—research and graduate studies, and the Technology Transfer Office, Creative Works Office, or Copyright Licensing Office, as applicable.



Prior to distribution, Developer(s) may elect to designate all or a portion of their allocated income to fund their scholarly activities but may not pay themselves salary or consulting fees from such funds. If this election is made, the Developer's contributions will be matched as provided in the Intellectual Property Procedures.

In the event that a Developer(s) elects to designate all or a portion of their allocated income (as specified in an Income Distribution Agreement) to fund their scholarly activities (including equipment and supplies purchases; student, post-doctoral, and assistant wages or support; and research-related travel, the Developer's contributions will be matched. The college(s) and the Intellectual Property Services office, respectively, will contribute matching funds to the Developer's research account or the university, in the ratio of 27.5 to 17.5 (or 61:39) up to a maximum combined match of forty-five percent. (Thus, ten percent will be reserved for Technology Transfer or Creative Works office support.)

Administrative Review and Discretion

When the university receives more than \$1,000,000 in total income from any single Intellectual Property in any calendar year, an administrative review of this source of income will be initiated by the academic vice president and the administrative vice president. The administrative review may result in an alternative distribution of the university's portion of the income, but the distribution to the Developer(s) will not be affected.

University Ownership of Equity

If the university receives equity in a company as a condition for a license or an assignment of Intellectual Property, then BYU will be the holder of such equity and any income BYU receives from such equity will be distributed pursuant to the income distribution described above. Such equity will not be distributed to the Developer(s).

Multiple Developers

If there are multiple Developers, the "principal Developer" is the individual who exerted greatest control over the development of Intellectual Property (e.g., by obtaining funding, hiring employees, and directing the research). The principal Developer will devise an appropriate and equitable formula, based on respective contributions, to share the Developer's portion of the distributed income among the multiple Developers. The Technology Transfer Office, Creative Works Office, or Copyright Licensing Office will prepare and circulate an "Income Distribution Agreement" to the Developers, the chair, and the dean (or equivalent supervisor(s)) for approval before distribution of income. When appropriate, such agreements may need to be periodically reviewed by the chair for current applicability (e.g., when major changes in personnel or efforts occur or because of subsequent research contributions). The chair, or equivalent supervisor, will submit recommendations for any changes in distribution to the Technology Transfer Office, Creative Works Office, Copyright Licensing Office, or the line vice president, as applicable.

**Department as Developer**

If a university unit, such as an academic department, fully sponsors the development of Intellectual Property, the unit shall be considered the Developer and will receive the Developer's portion of the distributed income.

Additional Compensation to University Personnel

Income distributed to the college or to faculty research accounts must be used in accordance with university policies and cannot be used to pay bonuses or other types of compensation to University Personnel over and above that approved by the job classification. Likewise, the Developer's share taken as personal income may not be used to compensate University Personnel for work performed within the scope of their employment.

Tax Liability

Each Developer should consult a tax advisor to understand his or her individual tax consequences and reporting obligations related to any distribution under the Intellectual Property Policy.

Distribution Schedule

Income distributions will be made according to the schedule provided in the Intellectual Property Procedures.

DISPUTE RESOLUTION

Any dispute with respect to this policy involving the Developer(s), departments, colleges, the Technology Transfer Office, or the Creative Works Office that cannot be settled through informal discussions or mediation (if agreed to by the parties), including but not limited to any dispute regarding income distribution, shall be submitted to the associate academic vice president—research and graduate studies for resolution. Dispute resolution shall proceed in accordance with this policy and the Intellectual Property Procedures. The claim of a Developer(s) relating to Intellectual Property will be deemed waived unless the Developer(s) submit such claim to the associate academic vice president—research and graduate studies no later than five years from the date of the event that gave rise to the claim.

[Approved 17 Jun 2019; Prior Version 16 Oct 2000]

IMPLEMENTING PROCEDURES:

[https://avp.byu.edu/files/%20Intellectual%20Property%20Procedures 2019-06-17%20FINAL 0.pdf](https://avp.byu.edu/files/%20Intellectual%20Property%20Procedures%202019-06-17%20FINAL%200.pdf)

APPLICABILITY: This policy applies to all administrative, faculty, staff, and student employees of the university.

RESPONSIBLE UNIVERSITY OFFICER: Academic Vice President



RESPONSIBLE UNIVERSITY OFFICE: Office of the Associate Academic Vice President—Research and Graduate Studies

RELATED UNIVERSITY POLICIES:

- [Conflict of Interest and Conflict of Time Commitment Policy](#)
- [Faculty Professional Activities in Addition to Regular Assignment Policy](#)
- [Guidelines for Selecting and Teaching Literary and Visual Materials at BYU Policy](#)
- [University Trademark Protection and Licensing Services Policy](#)