



## 1. INTRODUCTION

The University of Notre Dame, as an institution of higher learning, aims to share existing knowledge with its students and to engage in research and scholarly activities. The products of scholarly research efforts often have far-reaching social benefits and commercial potential. Protection of the intellectual property developed by the University creates a societal benefit by allowing the results of research to be known and used. This policy governs the protection and administration of intellectual property arising from University Work, as defined herein.

## 2. POLICY STATEMENT

The University of Notre Dame, subject to the rights of government and other sponsors as well as any exceptions contained in this policy, owns all intellectual property arising from University Work. Creators of intellectual property have an obligation to disclose intellectual property arising from University Work in the manner prescribed within this policy. In consideration of employment with the University or by otherwise engaging in University Work as described in this Intellectual Property Policy, Creators automatically assign to the University all intellectual property rights arising from such University Work, and agree to assist the University in legally protecting that intellectual property. The University owns or retains an interest in, as applicable, any portions, modifications, extensions, derivations, improvements, or translations of intellectual property as it would in the original work. The University and the Creator share in any royalty income resulting from the intellectual property as described in this policy.

### 2.1. Patents

The University owns all rights to all patentable inventions arising from University Work. The University will normally make an initial decision whether to pursue a patent or other legal protection within six months of the initial disclosure of such potential invention to the University by the Creator.<sup>1</sup> If the University elects to pursue a patent or other legal protection, all costs shall be borne by the University or by a sponsor or licensee.

### 2.2. Copyrights

The University owns all copyrightable materials (including computer programs, software, or multi-media productions) that are works made for hire under copyright law or that are developed pursuant to University Work unless otherwise provided in this policy. Consistent with long-standing academic tradition, the University does not normally claim ownership of

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<sup>1</sup> See Section 6.3 for further discussion of the University's decision to pursue legal protection of intellectual property.

works such as textbooks, articles, papers, scholarly monographs, or artistic works. Creators therefore retain copyright in such works, unless such works are created under a grant or sponsored program that specifies ownership rights in some entity other than the Creator, such works are the subject of a contract modifying ownership rights, or rights in such works are otherwise addressed in this policy.

### **2.3. Educational Materials**

Educational materials produced in the normal course of the University's educational mission will generally be owned by the Creators of the materials. Certain circumstances, however, may give rise to ownership by the University, e.g., Educational Materials that are works made for hire, such as those produced by non-faculty employees within the specific scope of their employment with the University. Because all possible circumstances cannot be envisioned in this policy, the Office of the Vice President for Research will evaluate, or if it deems necessary identify another appropriate office of the University (taking into account the University's Delegation of Authority among any other relevant factors) to evaluate each particular situation to determine ownership interests and who may have the right to use the Educational Materials. The University intends for this evaluation of ownership interests and rights to use Educational Materials to take place prior to production of the materials, consistent with this policy.

#### **2.3.1 Educational Materials Developed as Works Made for Hire**

The University owns all Educational Materials (including computer programs, software, mobile apps, games, or multi-media productions) that are works made for hire under copyright law, unless otherwise specified in this policy, or that are required to be assigned to the University by contract terms with third parties or by the terms of a grant or sponsored program under which the University is a recipient.

#### **2.3.2 Educational Materials Developed on the Initiative of the Creator with less than Substantial Use of University Facilities and Resources**

This category includes a faculty member developing learning materials, whether printed, video, digital or in another format, to supplement a new or existing Notre Dame course, with incidental or less than substantial use of University-provided facilities or resources. In this situation, the Educational Materials would be owned by the Creator. As such, the Educational Materials could be used by the Creator outside the context of the University course, consistent with the University's Conflict of Interest and Conflict of Commitment policies. For any such use, the Creator is not allowed to use the University's name in conjunction with the Educational Materials without the specific written permission of the University. If the Creator of these types of Educational Materials seeks to distribute or share the Materials through University-provided platforms or channels, they may do so after reaching a written agreement with the Office of Research or the Office of the Provost, as applicable.

#### **2.3.3 Educational Materials Developed on the Initiative of the Creator with a Substantial use of University Facilities and Resources**

Educational Materials that require greater than incidental use of University-provided facilities or resources, such as extensive video production, custom software development, course development with third-party vendors, and the like, making substantial use of University resources are owned by the University. The Creator maintains ownership of the underlying creative content of the materials while the University owns the tangible works developed. Creators of this type of Educational Materials grant to University a paid-up, royalty-free, nonexclusive license for the use, reproduction, and creation of derivative works of the underlying creative content for the University's purposes. The tangible Educational Materials owned by the University may be used by the Creator while still employed by the University, consistent with the University's Conflict of Interest, Conflict of Commitment policies. When the University engages Creators to use these types of Educational Materials within a partnership, consortium, or other arrangement for external distribution, entered into by the University, the rights and responsibilities of both the University and the Creator shall be governed by a written agreement. This written agreement will address issues such as compensation for production of the materials, sharing of any potential revenues resulting from commercial distribution of the Educational Materials, the relationship of the assignment to other duties, the use of the Educational Materials on an ongoing basis by the University and the Creator's involvement in such use, and any other relevant issues related to the production of the Educational Materials. For any other use of these Educational Materials outside the University, however, specific written permission of the University is required.

#### **2.3.4 Educational Materials Commissioned for Production by the University**

Educational Materials commissioned for production at the initiative of the University, or with learning outcomes and creative content authored or designed by the University, are works made for hire, and as such are owned by the University. When the production of such a commissioned work is anticipated, a written agreement will be entered into in advance of production between the University and the Creator, acknowledging University's ownership rights in the Educational Materials. This written agreement will address issues such as compensation for production of the materials, sharing of any potential revenues resulting from commercial distribution of the Educational Materials, the relationship of the assignment to other duties, and any other relevant issues related to the production of the Educational Materials. Commissioned Educational Materials may be used by the Creator outside the University only with specific written permission of the University.

#### **2.3.5 Educational Materials Funded by an External Sponsor**

Ownership of externally funded Educational Materials will be governed by the terms of the sponsor's agreement with the University. In the absence of specific ownership terms for Educational Materials in the sponsorship agreement, Educational Materials developed through external funding will be treated as though commissioned for production by the University.

#### **2.3.6 Changes to Educational Materials**

The owner of Educational Materials has the right to change or make derivative works of his or her Educational Materials. Educational Materials owned by the University may only be changed, and derivative works of University-owned Educational Materials may only be made, with the written permission of the University.

## **2.4 Other Intellectual Property**

The University owns all other forms of intellectual property arising from University Work, including trade secrets, trademarks, and know-how (unless the know-how is related to intellectual property not otherwise owned by the University.) The University also owns or retains an interest in any portions, modifications, extensions or translations of intellectual property as it would the original work, Educational Materials or invention, consistent with the treatment of derivative works under copyright law.

## **2.5 Waivers**

The University may grant a waiver of any provision of this policy on a case-by-case basis. All waivers must be approved in writing and signed by the Vice President for Research or designee, consistent with the University's delegation of authority. Any decision to grant a waiver should take into account the best interests of the University and the facts of the particular situation involved. This paragraph shall not relieve the University of its obligations under this policy. Any waiver granted pursuant to this paragraph will apply only to obligations imposed on the Creator, unless otherwise agreed to by the Creator.

## **2.6 Amendments**

The University reserves the right to amend this policy at any time. Royalty distributions due to University employees with respect to intellectual property matters are established by the policy in effect at the time that the University enters into any license agreement or other contractual arrangement concerning exploitation of the intellectual property.

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## **3. SCOPE**

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This policy applies to faculty, staff, students and others who make use of University facilities, equipment, or other resources or who receive funds from the University in the form of salary, wages, stipend, or other support, but not including undergraduate financial aid.

The University will ordinarily waive its rights to intellectual property created by student Creators in the course of their academic course of study (other than University Work) where the use of University facilities, equipment or other resources has been properly authorized, except when:

- Faculty or staff involvement is substantial,
- The work is part of a larger University work or specifically commissioned by the University,
- The use of facilities, equipment, or other resources is in excess of the norm for educational purposes, or
- The intellectual property resulted from a student's employment with, or other related compensation by, the University
- An employee(s) of the University is also a Creator of the intellectual property, or

- The United States of America or other external sponsor has rights in the intellectual property.

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#### 4. DEFINITIONS

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**Creator** Any inventor, developer, or author, of intellectual property covered by this policy, including faculty, students, and staff of the University.

**Educational Materials** The content and associated tools and technologies for delivery of content, including materials developed for traditional “face-to-face” classroom courses, as well as other delivery methods such as Internet web-based delivery or other distance learning media. For the purposes of this policy, Educational Materials do not normally include works such as textbooks, articles, papers, scholarly monographs, industrial graphics, architectural designs, compositions, and literary or artistic works produced in the normal course of academic scholarship.

**Intellectual Property** Intellectual property refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

**Net Royalty** Revenue arising from the licensing of the University’s Intellectual Property, less the University’s costs and expenses associated with the legal protection, commercialization, or internal development of the Intellectual Property.

**Substantial Use** The utilization of University facilities, equipment, personnel (including graduate students), or other resources beyond that which is normally provided to carry out one’s assigned duties. Normal use of assigned office space, office equipment, library resources, or administrative staff would not be considered “substantial use.”

**University Work** Any research or development activity which is undertaken in connection with an externally funded project, or which derives from the scholarship, duties, and responsibilities for which a person is employed by or otherwise compensated by the University, or which is conducted with Substantial Use of University facilities or resources, consistent with the University’s Conflict of Commitment Policy.

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#### 5. RESPONSIBILITIES

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##### 5.1 Office of the Vice President for Research

The Office of the Vice President for Research is responsible for intellectual property protection. Where actions or decisions in this policy are to be taken by the University, this Office, with advice from the Committee on Intellectual Property and the Office of General Counsel where

appropriate, will have ultimate responsibility. The Office of Technology Transfer (OTT) reviews all intellectual property disclosures and administers all aspects of the intellectual property process. Under the guidance of the Vice President for Research, OTT is assigned the sole role for dealing with third parties with respect to disposition of intellectual property rights including licensing and deal negotiation, consistent with the University's delegation of authority.

## **5.2 University Committee on Intellectual Property**

The University Committee on Intellectual Property advises the Vice President for Research on intellectual property matters generally and the disposition of rights in those intellectual properties referred to the committee. At the request of the Vice President for Research, the committee will be available to assist in mediating disputes on matters related to intellectual property developed by members of the University.

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## **6. PROCEDURES**

### **6.1 Disclosure**

Creators have a duty to communicate, in a timely manner, all creations of intellectual property covered by this policy to the OTT. They are also required to cooperate fully in steps necessary to protect the University's rights. The failure to confirm these obligations in no way diminishes or extinguishes the rights of the University. Creators shall disclose modifications, extensions, derivations, improvements, or translations of previously identified works, educational materials, or inventions to the University, and such disclosures will be administered according to this policy. Disclosure of modifications, extensions, derivations, improvements, or translations to the University is required regardless of any previous or pending University decision to assign rights or interests to the creator in the case of an underlying work or invention.

### **6.2 Review**

Upon receipt of the Intellectual Property disclosure, the OTT will ensure that the ownership rights are properly defined. OTT may use any resources necessary to perform an adequate review of the intellectual property. Once the scope of the University's ownership interest has been defined, the invention will be evaluated on the basis of protectability, including patentability, and commercial feasibility.

The Creators will be informed in writing of the action the University intends to pursue with respect to the intellectual property; this communication will normally take place within six months of the disclosure of the intellectual property to the OTT. The OTT will advise the Creators in writing if it needs more than six months to properly evaluate the intellectual property. The University may, at any time, elect not to pursue legal protection or commercialization, at which time all University rights to the intellectual property may be released by the University, in its discretion, to the Creator(s) of the intellectual property at their request, subject to any restrictions imposed by grant, sponsor, or other requirement.

### **6.3 Assignment of Ownership Rights**

In consideration of Creator's employment with the University and ongoing ability to engage in University Work, Creators of intellectual property assign all intellectual property rights resulting from University Work to the University upon their employment in accordance with the provisions of this policy and also as required by law. Creators agree to cooperate in the execution of any documents required by the University to record and perfect the assignment of such rights to the University. University-owned intellectual property rights may be assigned, licensed, or otherwise transferred to a third party only by an authorized representative with the written consent of the University. The University may, at any time and in its sole discretion, elect not to pursue a patent or other legal protection or commercialization activities. Under the authority of the Vice President of Research, the OTT may either 1) release the ownership rights to the Creator(s) (or research sponsor) where applicable, or 2) define ownership rights of the University subject to any restrictions imposed by grant, sponsor or other requirements.

## **6.4 Licensing Negotiations**

Based on the University's assessment of any commercial interest in the intellectual property, the University may negotiate with one or more potential licensees. The University may accept equity as consideration for a license transaction for University-owned technology.

All decisions as to licensing or other disposition of intellectual property owned by the University, and liquidation of any consideration received by the University for such licensing, are at the sole discretion of the University, consistent with the University's delegation of authority.

### **6.4.1 Equity Agreements**

When equity is acquired as part of a licensing agreement, the OTT will normally follow these guidelines:

1. Without the prior approval of the Vice President of Research, the University will acquire no greater than 10% of the ownership of a company.
2. The University will normally not accept a position on the board of directors of companies in which the University takes an equity position, but may accept and exercise observer rights on such boards.
3. The University will normally define the liquidating event upon acquisition of the equity interest

## **6.5 Management and Royalty Distributions**

### **6.5.1 Intellectual Property Expenses**

If the University decides to pursue legal protection for intellectual property, the University will normally bear the costs associated with such protection. The University must be reimbursed for those costs before revenues are distributed to Creators under this policy. The University will maintain appropriate accounts for documenting the expenses and revenues associated with intellectual property.

### **6.5.2 Collaboration Agreements**

In cases in which the University’s rights and interests in intellectual property are shared with other institutions, organizations, or program collaborators, or when such entities agree to contribute to the evaluation, development, or exploitation of the intellectual property, the University may elect to enter into separate agreements to establish means by which the intellectual property rights will be protected and royalties will be distributed among the parties. Distribution of royalties to University employees will be governed by this policy. Royalties distributed to third parties (those not affiliated with the University) shall not be considered part of net royalty income under this plan.

**6.5.3 Royalty Distributions**

Any royalty income received by the University from intellectual property covered under this policy is first used to reimburse the University for expenses associated with the intellectual property. Any distribution of royalties, or other distributable funds paid pursuant to this policy constitute supplemental income to the recipient, who bears all tax consequences.

Funds or other consideration provided by external sponsors to the University to support the performance of University Work are not royalties and do not constitute income to the University on which royalty distributions may be computed.

Net Royalty will be distributed as follows:

Net Revenues	Creator(s) Share	University General Fund
Up to and including \$100,000	50%	50%
Over \$100,000	25%	75%

1. Income and expenses will be computed on a cumulative basis. At the end of each fiscal year, the undistributed cumulative net income will be distributed according to the above schedule.
2. In the case of multiple University Creators, the Creators’ share will be divided among the co-Creators as they mutually agree at the time of disclosure of the intellectual property to the University. This agreement shall be in writing, signed by all Creators involved, and submitted to the University. Should the Creators not mutually agree on a division, the University will make the final decision on division after consultation with all parties involved. If several intellectual properties are licensed under a single licensing agreement, the University will determine the share of net income to be assigned to each intellectual property.
3. For the purposes of royalty income only, all intellectual property, such as disclosures, patents, copyrights, marks, licenses, and similar matters related to a single technology and improvements and extensions thereon, shall be grouped together. For example, if two license agreements should result from a single technology, the Creator would receive 50% of the first \$100,000 of net

income from both licenses combined rather than 50% of the first \$100,000 from each of the licenses. In cases of doubt, the University shall determine which matters shall be grouped into a single technology.

4. In considering the distribution of the University's share of any revenues, the University will take into account the research needs of the originating department and college as well as University costs in maintaining technology programs.

## 6.6 Equity Liquidation

In licensing transactions in which the University has taken an equity interest in the licensee company, proceeds of the liquidation of license-related equity will be distributed as a Net Royalty according to the schedule of Section 6.5.3.

## 7. POLICY ENFORCEMENT

Enforcement	<p>Failure to comply with this policy may result in disciplinary action in accordance with University codes of conduct or policies. Sanctions may include one or more of the following:</p> <ul style="list-style-type: none"> <li>• suspension or termination of access to University facilities and resources;</li> <li>• disciplinary action up to and including termination of employment;</li> <li>• student discipline in accordance with applicable University policy.</li> </ul>
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## 8. RELATED DOCUMENTS

Policy or Document	Web Address
Conflict of Interest Policy	<a href="http://policy.nd.edu/policy_files/ConflictofInterestPolicy.pdf">http://policy.nd.edu/policy_files/ConflictofInterestPolicy.pdf</a>
Conflict of Commitments Policy	<a href="http://policy.nd.edu/policy_files/ConflictofCommitmentPolicy.pdf">http://policy.nd.edu/policy_files/ConflictofCommitmentPolicy.pdf</a>
Ethical Conduct Policy	<a href="http://policy.nd.edu/policy_files/EthicalConductPolicy.pdf">http://policy.nd.edu/policy_files/EthicalConductPolicy.pdf</a>

## 9. CONTACTS

Subject	Office or Position	Telephone Number	Office Email or URL
Policy Clarification	Office of Technology Transfer	(574) 631-4551	<a href="mailto:OTT@nd.edu">OTT@nd.edu</a>
Web Address for this Policy		<a href="http://policy.nd.edu/policy_files/IntellectualPropertyPolicy.pdf">http://policy.nd.edu/policy_files/IntellectualPropertyPolicy.pdf</a>	

