

Loyola University Maryland
Policies and Procedures for Intellectual Property

Revised January 2019

Introduction

In the course of fulfilling the University's educational mission of inspiring students to learn, lead, and serve in a diverse and changing world, Loyola University Maryland (hereafter the University) faculty, staff, administrators, and students may develop Intellectual Property through their scholarship and other employment-related activities. The University has an interest in protecting this Intellectual Property for several reasons. Through promoting the disclosure, dissemination, and utilization of Intellectual Property, the University ensures the greatest benefit for faculty, staff, and administrators, our students, the broader academic community, and the public at large. Creation, development, and dissemination of Intellectual Property provides professional benefits to the individuals involved, contributes to the life of the University, and may provide monetary benefits to the Inventors and Authors and, subsequently, the University. With this in mind, the University seeks to reward, encourage, and support the creation and use of Intellectual Property by members of the University community while upholding obligations to external sponsors that may fund specific scholarly endeavors.

The advent of new forms of digital pedagogy presents opportunities and challenges as regards the development and protection of Intellectual Property. In the University's latest strategic plan (The Ignatian Compass: 2017-2022), the University has committed itself to digital pedagogy innovation by "infusing digital pedagogy across the undergraduate and graduate curricula, expanding online and hybrid course offerings, executive education, and graduate programs." A list of "Frequently Asked Questions" applying this Policy to online courses is attached.

Scope

This policy establishes the rights, responsibilities, principles, and processes to guide decision-making related to Intellectual Property. It covers all forms of Intellectual Property created by faculty, staff, administrators, and students at or under the auspices of the University, including but not limited to Intellectual Property covered by patents and copyrights. Further, when persons outside of the University collaborate in the development of Intellectual Property, the terms of this policy shall be applicable only to the contribution to the Intellectual Property made by Members of the Loyola Community.

Compliance with University Policies

All Employees must comply with the University's policy on outside employment prior to providing services to another institution that may result in the development of Intellectual Property.

All Members of the Loyola Community must adhere to the University's policy on Copyright Permissions including with respect to making derivative works.

Definitions

Author is the term used for the creator of the original expression in a work of authorship that is subject to copyright protection. The author is also the owner of copyright unless there is a written assignment of the copyright to another person, such as a publisher, or in cases of works made for hire (see below).

Employee is any individual employed by Loyola University Maryland, including any faculty member, administrator, staff member, or student employee.

Intellectual Property refers broadly to patents, copyrights, trademarks, and (according to some definitions) trade secrets, in addition to the underlying subject matter that is controlled by the owner of these property rights established by statute (namely, inventions, works of authorship, and identifiers that distinguish goods and services in the marketplace). Intellectual Property may include inventions, new processes, written compositions, computer software, new chemical compounds, music, other artistic creations, digital content such as involved in the delivery of online courses, or new forms of plants or animals.

Invention is any new or useful process or discovery, method, technique, machine, device, manufacture, software, or other improvement thereof. Inventions are novel, useful, and arise from the intellectual pursuits of an individual or individuals.

Inventor is an individual who makes an independent inventive contribution to the development of an Invention. An Inventor formulates "a definite and permanent idea of the complete and operative intention as it is thereafter to be applied in practice." Individuals, including students, who carry out the independent idea conceived of by someone else or test a concept are not Inventors. However, anyone, including a student, who makes an independent innovative contribution to an Invention must be recognized as a co-Inventor.

Member of the Loyola Community means any Employee or enrolled student of Loyola University Maryland.

Principal Inventor is an Inventor who oversees the creation of an Invention by a group of Inventors.

Sponsored Project is an externally funded activity governed by a formal written agreement between the University and the sponsor. Sponsored project agreements typically include grants, contracts, cooperative agreements, or letters of agreement.

Substantial Contribution is a contribution of the University's resources above and beyond what is ordinarily available to Employees to carry out their normal assigned duties or, in the case of students who are not employees of the University, one's normal academic activities. Normal use of assigned office space, office equipment, library resources, laboratory space and supplies, technology support or administrative staff would not be considered a Substantial Contribution.

Work for Hire is a work of authorship prepared by an Employee within the scope of employment or a certain type of work that is specially ordered or commissioned in accordance with a written agreement that goes beyond the scope of normally assigned duties.

Copyright

1. **Ownership of Material Subject to Copyright Protection**

- a. In keeping with the longstanding tradition of faculty ownership of scholarly writings, creative works, and other materials that are potentially subject to copyright protection, and subject to the exceptions in subsections i) and ii) below, the University disclaims ownership of works of authorship by faculty members. The University retains the non-exclusive right to use scholarly materials owned by the faculty— including but not limited to departmental websites, course descriptions, course syllabi, course assignments, digital academic presentations, and course examinations – for internal educational and administrative purposes without payment of any royalties or other fees.
- i. **Sponsored Project:** When copyrightable material is created by a faculty member utilizing funding from a Sponsored Project agreement, the terms of that agreement will supersede this general policy with regard to ownership.
- ii. **Certain works developed specifically for the use of the University:** When a faculty member is assigned, outside of their normal academic responsibilities and where additional compensation is provided, a specific task with a defined outcome that includes copyrightable material, said work shall be considered a

Work for Hire and shall be owned by the University. In the case of a Work for Hire that is distance education (online) courseware, the faculty member shall have a right of first refusal to deliver the course in a similar format for a period of five years beginning in the academic year after the course is first offered in an online format.

- b. With the following exceptions, any work created in the course of one's duties by an Employee who is not a faculty member will be considered a Work for Hire and wholly owned by the University:
 - i. Sponsored Project: If copyrightable material is created through a Sponsored Project, the terms of the Sponsored Project agreement will supersede this Policy.
 - ii. Scholarly writings – including articles, contributions to edited volumes, and books – that are authored by a non-faculty Employee will be wholly owned by the Employee.
- c. A work created by a student other than in the course of employment by the University is owned by the student, subject to the terms of any applicable Sponsored Project agreement. In addition, works created by students through the University's Innovation Center or similar settings will be governed by the terms of an agreement between the University and the student.
- d. Members of the Loyola Community who own copyrights to works have the right to license or assign their works to others with or without payment of fees or royalties.

2. Distribution of Income/Royalties/Licensing Fees

In the absence of a written agreement providing for the distribution of income from a copyrightable work, including a Sponsored Project agreement, income shall be distributed as follows:

- a. Income from works that are solely owned by the Author will accrue and belong to the Author.

- b. Income from all works owned by the University will accrue and belong to the University; however, any revenue from the sale, distribution or licensing of online courses will be distributed according to the following schedule:

Author(s)	50%
Office of Digital Teaching and Learning	10%
Dean's Office of the Author's School	20%
University General Fund	20%

Patents

1. Ownership of Inventions

- a. Unless the University has entered into a Sponsored Project agreement to the contrary, the University asserts its ownership of all Inventions made or conceived by a Member of the Loyola Community where the University has provided a Substantial Contribution. If the University has not provided a Substantial Contribution, the Invention shall be owned by the Inventor(s), subject to the terms of any applicable Sponsored Project agreement.
- b. Patents from Inventions owned by the Inventor should be administered so as to not involve the name, facilities, or resources of the University. Time spent in administering such patents should conform to University policies on outside activities by an Employee, if applicable. Inventors may request to assign Inventor-owned patents to the University for administration in accordance with these Policies and Procedures. Employees should not patent Inventions that are in the specific area of their work in Loyola research programs or in a work area assigned to them without obtaining permission from the Vice President who oversees their Division.

At the request of the University, a Member of the Loyola Community who has developed an Invention that is owned by the University shall be required to execute any papers necessary for making application for patents in the United States and abroad and assigning of such patent applications or patents to the University or its designee.

2. Publication and Patent Rights

Because patents exclude others from using inventive methods or materials for a defined period of time, they provide opportunities for Inventions to be commercialized. Commercialization provides opportunities for the general public to benefit from the Invention and remuneration to accrue to the Inventor(s) and other interested parties. Because of the potential value inherent in a patent, establishing ownership is a legally defined process that requires Inventors to adhere to specific steps.

To protect an Invention's potential value as it is being developed, Inventors are advised to:

- a. Establish the date of Invention through maintaining bound notebooks recording the development of the Invention on signed and dated numbered pages that are witnessed. Signed and dated entries also should be maintained if further efforts are made to reduce the Invention to practice.
- b. At least 45 days prior to publication, disclose the Invention as required in Section 3 below so as to ensure that its patentability is not compromised. (Inventors should note that describing an Invention in a federal grant application constitutes publication and compromises patentability if the grant is awarded because funded applications are publicly available through the Freedom of Information Act. With this in mind, when submitting a grant application Inventors should identify any section of an application that contains confidential and/or proprietary information in order to protect an Invention.)
- c. Obtain Non-Disclosure agreements before discussing an Invention with any individual, including students, potential commercial partners, and others. All Non-Disclosure agreements must be retained by the Inventor in a secure place and provided to the University upon request.

3. Disclosure of Inventions

Any Inventor who creates an Invention during the course of or related to his/her University activities must disclose the Invention to the University on the Loyola University Maryland Invention Disclosure Form (Appendix 1). When more than one Inventor participated in the creation of an Invention, the Principal Inventor must identify all co-Inventors and identify the share in the Invention assigned to each co-Inventor. The Disclosure Form must be delivered to the Office of Research and Sponsored Programs, which will forward copies to the Vice President for Academic Affairs. If any of the Inventor(s) are faculty members, the Office of Research and Sponsored Programs also will forward the Disclosure Form to the appropriate Dean(s). If any of the Inventor(s) are non-faculty Employee(s), the Office of Research and

Sponsored Programs also will forward the Disclosure Form to the Vice President overseeing the Inventor(s) Division(s), if other than the Academic Division.

If a Sponsored Project agreement supported the creation of the Invention, the Director of the Office of Research and Sponsored Programs will be responsible for complying with any reporting requirements and ensuring that reporting deadlines are met.

4. Determination of Substantial Contribution

If the Inventor or Principal Inventor is a faculty member, the Dean to whom the Inventor or Principal Inventor, as applicable, reports will determine whether the University has provided a Substantial Contribution to the Invention. In instances where the Inventor or Principal Inventor is a student, the Dean to whom the student's academic advisor reports will determine whether the University has provided a Substantial Contribution to the Invention. In all other cases, the Vice President of the Inventor's Division will determine whether the University has provided a Substantial Contribution. The Inventor or Principal Inventor, as applicable, will be informed in writing of the decision made.

For all Inventions owned by the University, signatures of the Inventor(s) will constitute agreement to the percentage share identified on the Disclosure Form and will be used as the basis for determining the proportional share of any potential proceeds accruing to each co-Inventor with the sum total equivalent to the Inventor's share as delineated in Section 6 below. The percentage share is binding throughout the life of the patent unless all parties sign an amendment to the Disclosure Form altering the percentage shares to be received by each co-Inventor.

Inventors also must disclose any potential conflicts of interest and execute all assignments, contracts, waivers, disclosures, or other legal documents necessary to vest in the University the rights to any Invention in which it retains an interest. Moreover, these obligations are binding even if an Inventor or co-Inventor leaves the University.

Inventors may not enter into any patent or assignment agreement on any Invention in which the University may hold an interest without prior authorization from the Vice President overseeing their Division.

5. Determination to Pursue a Patent

Obtaining a patent for an Invention is a costly and time-consuming process. Once a patent has been obtained, the owner also must expend significant effort to license or otherwise commercialize an Invention as well as to protect a patent from any claims that may arise.

Because of this, the University must be prudent when determining whether or not to pursue a patent for an Invention.

Once ownership by the University has been established, if the Inventor or Principal Inventor, as applicable, is a faculty member, the Dean overseeing the area will convene an *ad hoc* committee so that a recommendation can be made as to whether or not the University should pursue a patent. If the Inventor or Principal Inventor, as applicable, is a student, then the Dean to whom the student's academic advisor reports will convene the *ad hoc* committee. In all other cases, the Vice President who oversees the Division will assume the Dean's role as described in this and the next paragraph. It is anticipated that the *ad hoc* committee may include several faculty members or other Members of the Loyola Community who have the necessary expertise to provide an independent evaluation of the Invention. In addition to information provided by the Inventor(s), it is anticipated that the *ad hoc* committee may rely upon information provided by other sources qualified to evaluate an Invention including outside consultants, friends of the University with expertise in the area of the Invention, and technology development firms. The Director of the Office of Research and Sponsored Programs will be responsible for helping to facilitate this process.

The *ad hoc* committee will play an advisory role, making a recommendation to the Dean or Vice President, as applicable, as to whether to pursue the University's interest in the Invention. Subsequently, the Dean or Vice President, as applicable, will confer with the Vice President for Academic Affairs. Final decision-making authority will rest with the Vice President for Academic Affairs.

If an initial decision is made to pursue an Invention, the Vice President for Academic Affairs may ask the Director of the Office of Research and Sponsored Programs to help to identify an organization or individuals with expertise in patenting and commercializing technology. The University may choose to assign its ownership rights to a commercial venture or other interest that has the resources to patent and commercialize the Invention as well as to protect the Intellectual Property from any legal challenges.

If a decision is made not to pursue the Invention, the University will relinquish its ownership to the Inventor(s) who may then choose to pursue a patent utilizing their own resources in accordance with the guidelines set forth in Paragraph 1 above; however, the Inventor(s) will be required to provide the University with a non-exclusive, royalty-free license to utilize said Invention.

In either case, the University will notify the Inventor or Principal Inventor, as applicable, of its decision regarding whether or not to pursue the Invention within four months of the date the Disclosure Form is received by the Office of Research and Sponsored Programs.

If the University decides to pursue an Invention, the University shall move expeditiously to apply for a patent or enter into an assignment agreement with an interested party to patent and commercialize the Invention. If no application has been filed or assignment agreement negotiated within six months of the date of the ownership decision, the Inventor(s) may request in writing that the University relinquish its ownership so that the Inventor(s) can act to protect the value of the Invention. The University will deliver a final decision in writing to the Inventor(s) within three weeks of the date of this request.

6. Distribution of Financial Benefit and Expense

The expenses of any patent application or proceeding for an Invention owned by the University will be paid by the University or its assignee. The University reserves the right to enter into a written agreement with a party of its own choosing or an Inventor(s) to share the costs of a patent application and proceedings.

Prior to the distribution of any royalties or other income, all direct expenses related to prosecuting and maintaining a patent and commercializing the Invention, including attorney's fees, shall be reimbursed to the University from receipts related to the Invention. Upon request, the University will provide a list of these expenses to the Inventor(s).

The resulting net income will be distributed according to the following schedule:

Inventor(s)	50%
Office of Technology Support	10%
University General Fund	40%

If the Inventor or Principal Inventor, as applicable, is a faculty member, 10% of the net income will be redirected from the General Fund to the academic Department of which the Principal Inventor is or was a member. Use of the Department's share may only be used to support future research endeavors.

Disputes

A dispute concerning application of any aspect of this policy must be submitted in writing to the Associate Vice President for Human Resources with a copy to the Vice President for Academic Affairs (VPAA). The dispute will be reviewed by an ad hoc committee appointed by the VPAA. The committee will consist of three members mutually acceptable to the Author or Inventor and

the VPAA, including at least one faculty member and one administrator. The committee will prepare a report of its findings and make a recommendation to the VPAA, whose decision, explained in writing and reported to the Author or Inventor, is final. The Author or Inventor will be provided an opportunity to present information to the committee at a specially convened meeting.

Review

A periodic review of this policy is necessary for the purposes of maintaining currency and relevance. The goals of this review will be to continue to protect the intellectual and financial interests of all parties, to ensure that the spirit of fairness, collegiality, and academic integrity is promulgated, and to fairly adjudicate the ever changing nature of digital innovation. To accomplish this review, the Faculty Affairs Committee will convene from time to time an ad-hoc IP Policy committee with representation from each academic division (business, education, humanities, natural sciences or social science). This ad-hoc committee will be expected to provide recommendations to the Faculty Affairs Committee, should they foresee the need for revisions or extensions to the IP policy then in effect. The Faculty Affairs Committee will move the recommended policy revisions or extensions through the University shared governance process, as required.