

Intellectual Property Management

Academics and Research – Research

EWU Policy 302-04

Authority: EWU Board of Trustees

Effective December 3, 2013

Proponent: Provost

Purpose: This policy establishes university standards and regulations relative to intellectual property.

History: This policy was adopted by the EWU Board of Trustees on December 3, 2013 and supersedes EWU policy 302-04, Patents, Copyrights and Royalties, dated July 13, 2012 which was a republication of UGS Policy 435-040 et seq, Patents, Copyrights and Royalties, dated June 23, 2006. This publication includes housekeeping changes to section 4-4 of Dec 10, 2014.

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CHAPTER 1 – INTRODUCTION

1-1. Scope

This policy applies to intellectual property which are developed using Eastern Washington University equipment, supplies, facilities, employee time, or trade secret information, or which relate directly to the university's business, research or development.

1-2. Applicability

This policy applies to all university employees. For the purpose of this policy, "employee" is defined as any person receiving compensation from the university. The uncompensated activities of students in furtherance of their educations shall not be considered service that benefits the university within the meaning of this policy. Section 3-7 provides additional information on student rights regarding intellectual property.

1-3. Definitions

- a. Intellectual property includes potentially patentable inventions or discoveries, trade secrets, and copyrightable works.
- b. An invention is a new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.
- c. A patent is a grant giving the owner the right to exclude others from making, using, or selling the

invention in the jurisdiction where issued. This right may be assigned to the employer by the inventor as a condition of employment, or for other reasons, but the patent application must be filed in the name of the inventor.

d. Technology Transfer is the transfer of intellectual property rights between the university and companies or other entities outside the university. Such intellectual property rights may consist of patents, copyrights, trademarks, and trade secrets.

1-4. Applicable Law

a. Federal law governs the creation of intellectual property. The United States Constitution, Article III, Section 8, gives to Congress, in order "to promote the progress of science and the useful arts, "the power to grant, for limited periods of time, to authors and inventors, the exclusive right to their respective writings and discoveries." The Copyright Act, in Title 17 of the United States Code, sets out the requirements by which an author of literary, artistic, and similar works may obtain copyright protection, and provides that in the case of a "work made for hire," the employer is the author for copyright purposes. 17 U.S.C. § 201(b). The Patent Act, in Title 35 of the United States Code, sets out the requirements by which inventors of new and useful processes, machines, manufactures, or compositions of matter may obtain patent protection

b. Consistent with the Ethics Law, this policy authorizes university employees, under defined circumstances, to retain ownership to certain intellectual property created with university resources. Additionally, this policy authorizes university employees to receive royalty payments from commercialization of certain university-owned intellectual property that they created.

CHAPTER 2 – ADMINISTRATION OF POLICY

2-1. Technology Manager

The president shall designate an EWU administrator with the title and responsibilities of Technology Manager. The Technology Manager is responsible for administering this policy.

2-2- Intellectual Property Committee (IPC)

a. Purpose. The IPC serves as an advisory committee to the president on all university patent and copyright matters.

b. IPC shall have the following powers and duties:

- (1) To interpret and apply this policy, in compliance with applicable state law and regulations.
- (2) To evaluate inventions for patentability, scientific merit and economic feasibility, and where desirable to seek expert advice to assist it in making such determinations.
- (3) To decide on the category into which an invention or original work falls for the purposes of determining who has or shares the equity therein.
- (4) To determine the patent or related rights or equities of the university and other interested parties in an invention.
- (5) To assign inventions to outside organizations for the evaluation and patenting.
- (6) To license intellectual property to outside organizations under appropriate licenses for commercialization, open source licenses, such as the GNU General Public Licenses, or other types of agreements considered to be in the best interests of the university and public good.
- (7) To release patent rights to the inventor in the absence of overriding obligations to outside sponsors of research, in cases where it is deemed equitable or appropriate to do so, subject to the written approval of the president or designee.
- (8) To submit its decisions on patent and copyright matters to the university president or designee.

(9) To provide assistance and advice to faculty and other research personnel concerning all aspects related to the patenting of inventions and the copyright in original works.

(10) To ensure an effective system of patent and copyright administration by means of an ongoing review of applicable policies and procedures and to make reports and recommendations to the president thereon.

(11) To determine if the university has an interest.

(12) All matters coming before the committee regarding specific property shall be held confidentially by all members of the committee.

c. Membership: The composition and tenure of the IPC shall be:

- (1) Four faculty including one member from the university library with staggered two- to three-year terms, appointed by the university president, and with nominations submitted by the Eastern Washington University Academic Senate.
 - (2) One student for a one-year term, appointed by the ASEWU.
 - (3) One member of the Academic Deans, appointed by the president, to serve a two-year term; the vice provost responsible for research; the Executive Director of the Office of Grant and Research Development; the Technology Manager (if different from the vice provost responsible for research); and one representative from the Extended Campus.
 - (4) The Technology Manager chairs the committee.
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CHAPTER 3 - OWNERSHIP RIGHTS

3-1. Research Developed Intellectual Property

a. Research Supported by University Funds

Intellectual property resulting from research supported by university funds, developed using university facilities, and/or developed as part of the faculty workload, is the property of Eastern Washington University. Employees are entitled to receive a share of royalties per the royalty schedule in section 4-7.

b. Research Supported by an Outside Agency

Intellectual property resulting from research supported by an outside agency, either wholly or in part, is governed by the provisions of the agreement with the sponsoring agency. In the absence of such provisions, the intellectual property will be considered as derived from state or university supported research. Additional information on ownership interests in inventions that were developed as a result of sponsored research are provided in section 4-2.

c. Personal or Private Research

The university does not claim ownership rights in intellectual property clearly resulting from personal or private research and developed by a person, without cost or expense to, or use of facilities, equipment or staff of the university. Intellectual property may be voluntarily offered by the employee to the university for the possible securing of a copyright or patent, and for subsequent developing, processing and exploitation under university aegis. If agreed to by the Intellectual Property Committee, the inventor shall assign rights to EWU and will thereafter receive a percentage of the net profits generated by the invention as negotiated with the university and specified in the agreement with the university.

3-2. Commissioned Works

The university shall own copyrightable works that have been commissioned by the university. University-commissioned works consist of those that result from a specific sponsorship by the university, to include:

a. Works expressly commissioned through written contract with the university. Such works are frequently referred to as “works made for hire” in

legal documents. The term “commissioned work” is used in this policy to describe a copyrightable work prepared under a written agreement between the university and the creator when (i) the creator is not a university employee or (ii) the creator is a university employee but the work to be performed and any associated compensation falls outside the normal scope of the creator’s university employment. Contracts for commissioned work will specify that the work is a “work-made-for-hire.” As a work-made-for-hire, the university for which the work was prepared is the author and owner, unless the contract contains written language to the contrary.

b. Production under a Grant. In the case of production of materials under a grant administered by the university, the assignment of right and royalties shall be accomplished under the terms of the grant. If the sponsor makes no provision for the division or assignment of rights and royalties, then this is a university commissioned material.

c. Works created pursuant to the terms of a university agreement with an external party.

d. Works created as a specific requirement of employment or assignment with the university that may be specified, for example, in a written job description or an employment agreement. Such specification may define the full scope or content of the employee’s university employment duties comprehensively or may be limited to the terms applicable to a single copyrightable work. Absent such prior written specification, ownership will vest with the university in those cases where the university provides the motivation for the preparation of the work, the topic or content of which is determined by the creator’s employment duties and/or when the work is prepared at the university’s expense.

e. Commissioned works that are also patentable. The university reserves the right to pursue multiple forms of legal protection concomitantly, if available. Computer software, for example, can be protected by copyright, patent, trade secret, and trademark.

f. On-line courses initiated by the university.

3-3. Intellectual Property Developed during Leave of Absence

The university does not claim ownership rights in intellectual property developed by university

employees while on leave of absence unless university resources or facilities were used in developing the intellectual property and/or unless there is a prior written agreement so specifying. If any university resources or facilities were used in the development of the intellectual property, the provisions of section 3-1 apply. If no university resources or facilities were used and in the absence of a prior written agreement, the rights to intellectual property resulting from such leaves reside with the originator.

3-4. Intellectual Property developed through the Faculty Grants for Research and Creative Activity Program

The university does not claim ownership rights in intellectual property developed as a result of intramural funding under the Faculty Grants for Research and Creative Activity program unless university resources or facilities were used in developing the intellectual property. If any university resources or facilities were used in the development of the intellectual property, the provisions of section 3-1 apply. Acceptance of and compensation from a Faculty Grant does not create a university commission for intellectual property that may result, unless there is a prior written agreement so specifying. In the absence of such an agreement, the rights to intellectual property resulting from a Faculty Grant reside with the originator.

3-5. Traditional Academic Works

The university does not claim ownership rights to "traditional academic works". They are created independently and at the creator's initiative for traditional academic purposes. Examples include class notes, books, theses and dissertations, educational software (also known as courseware or lessonware), articles, non-fiction, fiction, poems, musical works, dramatic works including accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, scripts and screenplays or other works of artistic imagination that are not created as an institutional initiative.

3-6. Multiple Originating Persons

If more than one person is involved in the development or production of materials covered in these policy statements, it shall be the responsibility of the individuals and not of the university to

determine their share of proportion of rights and obligations in agreements or policy administration.

3-7. Rights of Students

Except in the case of commissioned works (see section 3-2), and subject to any restrictions imposed by outside sponsoring or funding organizations, a student of the university who writes or produces any work shall have exclusive rights to the work.

A student's exclusive rights extend to works prepared as part of the requirements for a university degree; however, the university retains the following rights:

a. The original data (including software) of an investigation for a graduate thesis or dissertation are the property of the student but the student's major department may retain copies.

b. The university shall have, as a condition of the degree award, the royalty-free right to retain, use and distribute a limited number of copies of the thesis, together with the right to require its publication for archival use.

3-8. Relinquishing University Rights

The university will relinquish all of its rights to the inventor in the following cases:

a. If the invention is judged by the Intellectual Property Committee to be the result of personal or private research; or

b. If the university decides not to secure a patent for an invention which is a result of personal or private research but has been submitted to the Intellectual Property Committee voluntarily by the inventor for patenting and commercialization under university auspices as hereafter noted.

c. If the university determines that it is not in its best economic interest to pursue a patent on an invention, the rights will be released to the sponsoring agency (if such action is required by grant or contract agreement), or to the inventor.

In all cases of waiver of rights, the university shall relinquish its rights to the inventor by written waiver signed by the university president or designee.

CHAPTER 4 – PATENTS

4-1. Ownership Interests in Developments Made Prior to Employment at EWU

For the protection of the employee's interests, each employee shall disclose to the Office of Grant and Research Development, at the time of employment, all inventions or trade secrets developed or being developed by the employee, for the purpose of establishing ownership rights to developments made prior to employment by the university.

4-2. Additional Rules for Sponsored Research

Under the federal patent and trademark legislation of 1980 (35 USC 200 et seq.), the university has the right of first refusal to title in inventions made in the performance of federal grants and contracts. The university will assert title to and attempt to license inventions made with federal government funds so that the congressional purpose of fostering the development of industry in the United States will be furthered.

Where research has been sponsored, ownership and licensing of inventions shall be negotiated between the sponsor and the university or its agent where appropriate.

The proprietary rights of the university and of the university's employees shall be subject to the terms and conditions of the agreement between the sponsor and the university.

The university will strive to protect the financial interests of all and ensure that the university retains the traditions of self-governance and academic freedom. The university, on behalf of its constituent colleges or departments, will not accept grants or enter into agreements for the support of instruction or research that confer upon an external party the power to censor, unduly delay or exercise veto power over either the content of instruction or the publication of research. Publication of research findings may be temporarily delayed by agreement for mutual benefit in order to protect invention rights or permit the research sponsor to review the proposed publication for the sole purpose of identifying proprietary information furnished by or belonging to the sponsor.

In multilateral situations, the university normally retains ownership of property developed under sponsorship agreements and will negotiate rights to

license the property. Agreements between inventors and outside sponsors shall be considered for approval on a case-by-case basis.

4-3. Additional Rules for User Agreements, Materials Transfer Agreements, and Other Agreements

Where research has been conducted under the terms of a non-monetary agreement where EWU received a benefit such as the ability to use facilities that are not the property of the university or employ materials that are the proprietary property of an outside entity or organization, the rights of the university and of the university's employees shall be subject to the terms and conditions of the agreement between the university and the entity or organization providing such benefits.

4-4. Procedures

This section describes the procedures for identifying and for determining ownership interests in potentially patentable inventions. The university's process for evaluating an invention is shown in Appendix A, EWU Intellectual Property Disclosure Decision Flow Chart.

a. Identification / Disclosure

University employees, all non-employees who use university research facilities, and those who receive grant or contract funds through the university shall promptly disclose all potentially patentable inventions and/or discoveries to the Office of Grant and Research Development.

The originator initiates this process by filing an Intellectual Property Disclosure Form with the Office of Grant and Research Development. The Intellectual Property Disclosure Form must be submitted at the earliest opportunity--prior to disclosure of the potentially-patentable invention or discovery to a third party.

b. IPC Review

The Office of Grant and Research Development shall forward the Intellectual Property Disclosure Form to the IPC. The IPC will review the form and any associated materials. The IPC may collaborate with the originator's immediate supervisor, department chair, and/or dean for the purpose of identifying and validating factors related to determining ownership interests.

Committee members shall take adequate steps to assure and preserve the confidentiality of all invention disclosure documents.

The IPC shall invite the originator to any committee meetings that will include consideration of the originator's case.

c. IPC Determination

The IPC shall determine whether the potentially patentable property is owned by the university, by the employee, jointly by the university and the employee, or by an outside sponsor. The IPC shall endeavor to make a determination within ninety (90) days of the initiation of the Intellectual Property Disclosure Form. If the IPC has not made a determination within the 90-day period, it shall notify interested parties of the delay and of an expected time frame for making a determination.

Patentable inventions not subject to a sponsorship agreement or university ownership under other provisions of this policy may be determined by the IPC to be the employee's property. If the employee is determined as the owner, the university will, on demand from the employee, issue a written waiver of the university's rights.

The committee may determine that the employee is a partial owner of the intellectual property with the university in cases where it would be unfair to determine that the property is wholly owned by either the university or the employee. In such cases the committee shall establish percentages of respective ownership.

If the committee deems it to be in the best interests of the university to release its rights to invention, it may do so, as described in section 3-8.

The committee may place conditions on the release (including a lump sum payment, a portion of the royalties or other consideration) to compensate for the use of facilities and materials.

d. Notification and Appeal

Within five days of the IPC's ownership determination, the committee shall notify the originator of the determination. The originator shall have thirty (30) days from the date of the mailing of the notice to appeal the committee's decision to the university president or designee. The president or designee shall make a final decision on the appeal.

4-5. Duty to Assign and Cooperate

After the determination by the IPC and exhaustion of the employee's right of internal appeal, the employee shall execute documents of assignment to convey to the university all of the employee's interest in the invention determined to be owned by the university and assist in obtaining, protecting and maintaining patent rights.

4-6. Publication and Disclosure to Third Parties

Premature publication, public use or disclosure of an invention can sometimes jeopardize the rights of the employee, the university or its assignee to secure patent protection. Therefore, unless the IPC has issued a waiver of university rights, the employee shall not promote or engage in any publicity or disclosure concerning the invention until patent applications have been filed.

Once an invention is identified as potentially patentable, all publicity, public reports, interviews, news releases, speeches, public disclosures or public demonstrations of the invention shall have prior clearance in writing from the university or the Technology Manager.

This section is not applicable to sponsorship agreements that impose different obligations on disclosure.

4-7. Management of Patents

University patents shall be assigned to and managed by the university. Under certain conditions, a patent may be assigned to and managed by a designated Technology Transfer Agency if it is determined that it is in the best interest of the university. The Technology Manager shall provide guidance regarding the use of a Technology Transfer Agency. The Technology Manager shall maintain a listing of available Technology Transfer Agencies.

4-8. Royalties

Net royalty income is defined as gross income from licensing fees and other compensation resulting from the marketing of intellectual property, less expenses. Expenses include, but are not limited to, university direct and indirect costs, and costs associated with use of a Technology Transfer Agency.

Net royalty income shall be distributed according to the following schedule:

Cumulative Net Income	Inventor	GRD*	College/ School
\$1-\$5,000	100%	0%	0%
Above \$5,000	1/3	1/3	1/3

*Grant & Research Development

In the case of multiple inventors, the cumulative net royalty income shall be distributed equally among them unless their initial disclosure specified an unequal distribution.

CHAPTER 5 – COPYRIGHTS

5-1. Types of Copyrightable Materials

The following materials are subject to copyright and, when commissioned by the university, are subject to the scope and provisions of this policy:

- a. Books, articles, texts, bibliographies, study guides, manuals, syllabi, theses and dissertations, and similar printed materials.
- b. University sponsored or assisted periodicals.
- c. Unpublished lectures, musical or dramatic compositions and scripts or screenplays.
- d. Maps and similar representations.
- e. Photographs, drawings, art reproductions and other works of art, or scientific or technical illustrations.
- f. Films, filmstrips, charts, transparencies and other visual aids.
- g. Video and audio recordings.
- h. Live video or audio broadcasts.
- i. Programmed instruction materials.
- j. Computer programs.
- k. Online learning objects, computer –aided instruction materials, and websites.
- l. Other materials that may become copyrightable under the revisions of the copyright law. Brochures issued by the Copyright Office of the Library of Congress provide additional guidance.

5-2. Dedication of Copyrightable Works

The author or creator of a copyrightable work may obtain a copyright or dedicate the work to the public at their discretion--subject to any restrictions imposed by sponsoring or funding agencies not under university control.

5-3. University Uses of Traditional Academic Works

a. Royalties and Copyrights. For academic works, the rights to royalties and copyrights shall reside with the originating faculty or staff member for the purposes of any net income that subsequently may be derived from the materials, but the university shall retain the right to the use of such materials in its own programs or in any cooperative educational programs in which it is engaged.

b. Sales of Materials Published or Duplicated. Materials published or duplicated at university expense may not be sold to students registered in university programs, except on a basis of recovering the actual cost of production and through procedures approved by the university.

c. University Rights In Traditional Academic Works. Traditional academic copyrightable works created with the use of university resources over and above those usually and customarily provided shall be owned by the creators but licensed to the university. The minimum terms of such license shall grant the university the right to use the original work in its internally administered programs of teaching research, and public service on a perpetual, royalty-free, non-exclusive basis. The university may retain more than the minimum license rights when justified by the circumstances of development.

5-4. University Uses of Certain Copyrightable Materials

Ownership and use of locally-developed education materials (e.g. audio, video, and visual media; computer applications, programs, and systems) shall be governed by the following guidelines.

a. When university materials are employed, the university retains joint ownership and rights for use of the materials in its educational and administrative programs, unless an agreement to the contrary has been made with the originator.

b. The originator may request revision or withdrawal of materials on the basis that its

substantive content is in error or outdated and, therefore, is educationally invalid. The administering officer shall provide the originator an opportunity for revisions of the material if, in the administering officer's judgment, full withdrawal from use is not required for educational validity. The university may withdraw university commissioned materials from use at any time, even though rights and royalties may be shared with the originator.

Any loaning, copying, transcribing or other use of copyrightable materials should always be accomplished in a manner that protects the rights and interests of the originators, and charges should be made and income shared when appropriate to do so. In order to accomplish this objective, the university will not permit any copying, transcribing or other use of copyrightable materials unless the user executes an agreement with the university that accords the originator(s) all revenues the user receives, for its use of such university copyrightable materials, to the extent that such revenues exceed the cost of such use. Copyrightable materials produced in university facilities which are loaned or otherwise made available for use shall be accompanied by a protective statement indicating that all rights are reserved and written permission must be obtained to duplicate the work in part or in its entirety.

5-5. Use of University Facilities to Produce Salable Materials

It is not the intention of the university to compete with private enterprise (see EWU Policy 202-03, Commercial Activities of the University). Use of university facilities to produce salable materials should have a clearly discernible educational purpose or benefit related to the university's announced programs.

Commercial Means. Members of the university community who intend to produce materials for commercial purposes shall contract with a private publisher, manufacturer or distributor for such services.

5-6. Disposition

The president or his/her designee has final responsibility for the determination of the disposition of university copyrights. The president or designee may direct any university copyright be (a) retained and used for and by the university, or (b) released to the originator, or (c) released to an involved

sponsor, or (d) related jointly to a sponsor and originator.

University-owned works should be protected by copyright notice in the name of Eastern Washington University. Such copyright notice shall be composed and affixed in accordance with the United States Copyright Law.

5-7. Copyright Revenues

The university may pursue the generation of revenue from university owned copyrights. Revenue sharing and distribution shall be governed by section 4-7, Royalties, of this policy.

5-8. Originator Obligation

The originator(s) of a university-owned copyright is obligated to produce all information and submittals necessary for registrations and the defense of the copyright, and all examples of the work.

5-9. Compliance with the Copyright Act

University units that administer activities involving any usage regulated by the Copyright Act are responsible for knowing applicable regulations, monitoring their continuing evolution, and conducting programs in full compliance with applicable laws and regulations. All university faculty, staff, and students will comply with federal law, regulations and guidelines and university guidelines for use of copyrighted materials. The university will notify faculty, staff and students of the uses permitted by the TEACH Act and the Guidelines on Educational Uses of Copyrighted Works.

5-10. Trademarks

A trademark is a specific name, term, logo, design or symbol that is used to identify the source, product, producer, or distributor of goods or services.

a. Ownership. The university shall own all trademarks associated with the university, its name, its activities, and its slogans.

b. Disposition. The university shall register and manage the use and application of its trademarks.

c. Protection and Promotion. The university or its designated agent shall assume full responsibility for the protection and promotion of university trademarks. University Marketing and Communications is the point of contact for matters concerning the use of trademarks.