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Brigham Young University Intellectual Property Policy

Brigham Young University faculty, administrative, staff, and student personnel are regularly involved in scholarly activities that include teaching, research, and other creative activities. Although the primary focus of such efforts is the advancement of the central purposes of the university, the products of scholarship often have implications for wider and differing applications. Thus, these products—intellectual properties—may be of benefit to the individuals involved as well as to the university. This policy is intended to support faculty, staff, and students in identifying, protecting, and administering intellectual property matters; defining the rights and responsibilities of all involved; and establishing support offices to provide the required assistance. It also stipulates how income generated should be distributed to the developers and to the university. All administrators, faculty, staff, and employed students are defined as *university personnel*. Administrative title substitutions, such as *director* for *dean* and *supervisor* for *chair*, will apply in appropriate sections of this policy statement.

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I. TYPES OF INTELLECTUAL PROPERTY

Intellectual properties are divided into two categories: *technical works* and *creative works*. Technical works include intellectual properties that are generally of a scientific, engineering, or technical nature—such as patentable or unpatentable inventions, devices, machines, processes, methods, and compositions; computer software; and university collections. Creative works include all intellectual properties not covered in technical works that are of an artistic, scholarly, instructional, assessment, or entertainment nature. Examples of creative works might include creative productions, such as works of art or design; musical scores; books, poems, and other types of scholarly or creative writings; films; video and audio recordings; and instructional materials, such as textbooks and multimedia programs. All computer software is included in technical works except that which is clearly developed for entertainment or for instructional purposes, e.g., electronic textbooks and textbook supplements, classroom and self-study tutorials.

Creative works do not include those productions of drama, music, athletics, and similar events that are managed by appropriate academic departments, colleges, or academic support units and are expressly approved by the President's Council as not being subject to this policy. Traditional academic publications that are produced as a normal outcome of scholarly work and have only minor commercial possibilities are not included except under specific and unusual circumstances. These publications would include professional papers published in scholarly journals, monographs of an academic nature, scholarly books of limited use, or supplementary texts and similar materials. Likewise, juried artistic creations or performances that are the academic, noncommercial equivalents of such scholarly publications are not included.



II. MANAGEMENT OF INTELLECTUAL PROPERTY

The business aspects of commercializing intellectual properties and the management of copyright issues for the university are the responsibility of Intellectual Property Services, which includes the Technology Transfer Office, the Creative Works Office, and the Copyright Management Office. These units report to the academic vice president through the associate academic vice president for research. The director of each office has the responsibility of working closely with faculty, other university employees, and academic administrators in managing intellectual properties within the university, including their development, protection, acquisition, and commercialization.

The directors are also to work closely with existing department, college, and university offices and programs, as well as the Council on Research and Creative Activities, to effect the appropriate academic and financial returns for the developer(s) and the university, while properly protecting the interests of all parties. This management includes educating university personnel, soliciting and reviewing disclosures, obtaining intellectual property protection, licensing and marketing the properties, monitoring licensee performance, and collecting and distributing revenues. Where appropriate, the directors will assist the Office of Research and Creative Activities in negotiating intellectual property aspects of sponsored research contracts.

University personnel may consult for commercial entities, and the university solicits industry-sponsored research contracts and collaborates closely with companies when transferring a technology or creative work to the private sector; however, the university does not generally engage in product manufacturing, company support functions, customer service, technology maintenance, or work for hire for the private sector. In general, it is not appropriate for academic units to produce, market, or sell products or to establish organizations or companies to do so.

Instead, the Technology Transfer and Creative Works Offices have the responsibility to license or sell the technology or work; or they may sell university-developed products to end users when sales and support do not interfere with the normal activities of campus personnel, and when the sale is consistent with the educational mission of the university. However, if a commercial activity such as manufacturing products, selling products to end users or distributors, and/or providing customer support other than through Intellectual Property Services is deemed consistent with the educational mission and academic programs of the university, an approved "Enterprise Center" may be authorized (see section V.C).

Both the Technology Transfer Office and the Creative Works Office may use their allotted portions of the net income received to employ individuals to fulfill specific functions, such as licensing specialists, clerical support personnel, or media specialists to assist with producing and distributing products. (Expenses such as mailing, copying, and other support consistent with marketing the product will be deducted from income generated before distributions are made pursuant to this policy.)

The University Copyright Management Office is the university's primary resource on fair use and other copyright issues related to university publications and library collections and services, digital reformatting, in-licensing, distance education, and course packet creation. This office develops and advises the university community regarding copyright policy, coordinates with the university Office of General Counsel regarding related legal issues, and assists the Creative Works Office, the Center for Instructional Design, and university personnel in their efforts to create, protect, and market instructional courseware and similar products.

It is the responsibility of deans, chairs, and faculty, in harmony with the guidelines that follow, to act so that university resources—including faculty time—are used appropriately, and to work with Intellectual Property Services to promote proper fulfillment of the objectives of this policy.



III. COUNCIL ON RESEARCH AND CREATIVE ACTIVITIES

The Council on Research and Creative Activities will advise and coordinate activities with Intellectual Property Services and review current procedures and practices to make recommendations for policy development. The council has responsibility for resolving conflicts of interest that involve intellectual properties or any commercial involvement or consulting arrangements of university personnel. The council is also responsible for dispute resolution (see section X).

The council is chaired by a faculty member and includes at-large faculty members, with ex-officio members from the Office of Research and Creative Activities and from Intellectual Property Services (see the Electronic Handbook). The council may also empanel advisory subcommittees composed of faculty members and/or administrative personnel with particular background or experience to assist in investigating and resolving conflicts.



IV. OWNERSHIP

IV.A. Substantial Use of University Resources

IV.B. Nominal Use of University Resources

IV.C. Repayment of University Support Funds

IV.D. Consulting and Intellectual Properties

IV.E. Student Ownership of Intellectual Properties

IV.F. Assignment of Intellectual Properties to the University

IV.G. Release of University Ownership

IV.H. University Use of Technologies and Properties Created by University Personnel

Pursuant to law and university policy, and without an express agreement specifying otherwise, any work (whether a technical work or a creative work) prepared by university personnel within the scope of their employment is work for hire owned by the university. When works are commissioned to an individual who is not an employee of the university or when the commissioned individual is an employee but the work to be created falls outside that person's scope of employment, the university will proceed with a written agreement, signed by the university and the individual, stating that the resulting intellectual property is owned by the university and assigning to the university all intellectual property rights to the work held by the individual.

The university retains ownership rights to all technical works but relinquishes ownership rights to the developer(s) of creative works when "nominal" use of university resources are involved in the production of the intellectual property. When "substantial"

university resources are used in the production of creative works, however, the university will retain its ownership position, and income from the project will be shared with the developers. The conditions that differentiate between nominal and substantial use of university resources are discussed below (see sections IV.A and IV.B). Decisions based upon the extent of the utilization of university resources are to be negotiated with developers by the deans, in consultation with the appropriate Intellectual Property Services support office and within these general guidelines prior to approval by the academic vice president's office.



IV.A. Substantial Use of University Resources

Substantial use of university resources in generating creative works is defined as use of university facilities, equipment, personnel, and one's time in excess of that needed to fulfill the required activity of one's appointment at BYU (see, for example, Expectations of a Faculty Appointment). Substantial use of resources results when the creation of the work requires use of university resources beyond those allocated to the faculty in support of their academic work within their respective department or college. Such usage may occur as a result of actions of the university personnel involved or when specific assignments are given to university personnel or where contracts or other obligations are involved. The university will retain title to all creative works that make substantial use of university resources.

The following examples generally define such use when they are applied, singly or in combination, in support of a revenue-producing work. Although it is the responsibility of the dean or equivalent supervisor to evaluate situations and determine if substantial use of resources has occurred, faculty members or other employees have an obligation to notify their supervisor and dean when they believe that their work involves more than nominal use. The following are examples of criteria for establishment of substantial use:

1. Extended use of time and energy by the developer(s) in creating or promoting the work that results in reducing the levels of teaching, scholarship, or citizenship activities, so that anticipated performance in these areas is at a level significantly less than normal.
1. Substantial use of university facilities such as laboratories, studios, equipment, production facilities, or specialized computing resources.
1. University funding in support of the work's creation.
1. Release time to develop or complete a work.
1. Paid professional development leave to develop or complete a work.
1. Direct assignment or commission from the university to undertake a creative project as a part of the developer's regular appointment.
1. Substantial use of funding from gifts to the university to support creation of the works involved.
1. Production of the work under specific terms of a sponsored research grant or contract.
1. Substantial subvention by the university in the publication of a scholarly book or creative work.
1. Use of specifically designated university funds or extensive use of the services of a support unit financed by the university (e.g., Center for Instructional Design) for production of a creative work.
1. Use of university computers and servers for Web-based activities such as a distance-learning course.



IV.B. Nominal Use of University Resources

Nominal use of university resources is use that is within the required activity of one's appointment at BYU (see, for example, Expectations of a Faculty Appointment). University personnel may make such nominal use of university resources and devote office time in carrying out a range of professional activities, some of which may involve income-generating projects. The university relinquishes (to the developers) ownership of creative works and its rights to any income generated as long as university resources are used in this nominal fashion, and the time involvement of the developer(s) of the project does not compromise their core responsibilities in teaching, scholarly work, and university citizenship.

The following examples generally define such use:

1. Minimal use of time and energy by the developer(s) in creating or promoting the creative work while maintaining assigned levels of teaching, scholarship, and citizenship activities, so that anticipated performance in these areas is at the expected level.
 1. Student employees or technicians may not be used to do income-producing work or make up the slack in a faculty member's assignment so he or she can do income-producing work.
 2. Developers may not receive additional released time to develop a work, other than that assigned to normal faculty scholarship.
1. Minimal use of university resources in the ordinary support of the developer's teaching, scholarly, and service activities.
 1. Use of photocopying equipment, long distance telephone costs, postage, faxes, etc., specifically for a creative work may not exceed incidental use.
 2. Office supplies or software may not be purchased specifically for a creative work.
 3. Secretarial help, such as typing manuscripts, may not be used to generate income-producing products. Incidental help, such as formatting tables, is allowed.
 4. Course or instructional materials may not be generated with the use of support units financed by the university (e.g., the Center for Instructional Design). Courses or instructional materials generated in the normal course of teaching, without such support, are allowed.
 5. Works may not be funded by outside grants or gifts nor produced under a sponsored research grant or contract.



IV.C. Repayment of University Support Funds

In certain situations of substantial use of university funds and other resources, it may be more appropriate for the developer(s) to repay such funds to the university and thus fall under the nominal rather than substantial use provisions of this policy. The dean, in consultation with the developer(s) and the appropriate Intellectual Property Services office, will determine the appropriate level of repayment.



IV.D. Consulting and Intellectual Properties

University personnel who plan to engage in off-campus consulting, research, or product development within the scope of their professional expertise, and in which university personnel or a third party may claim an ownership interest, must communicate the scope of such off-campus endeavors to their department chair and dean and obtain written approval prior to commencing the endeavors. The form "Approval for Professional Activities in Addition to Regular University Assignments, B: Consulting" (which should be completed for all consulting activities) is for this purpose. If university personnel are to be engaged as consultants or otherwise employed by a company that is either anticipating or has executed a license agreement with the university, or the proposed work is not independent of the university personnel's campus endeavors, the consulting or other agreement shall be submitted to the appropriate Intellectual Property Services office for review prior to its execution.

The university does not assert ownership to works produced by those involved with consulting except in cases where substantial use of university resources occurs to support the consulting activity. In such cases there should be prior negotiation between the consultant and the chair and dean to determine disposition of the intellectual property. Generally, activities are more properly carried out as sponsored projects when there is a substantial use of university resources, and they must be sponsored projects when students are employed.



IV.E. Student Ownership of Intellectual Properties

Students who independently develop intellectual property arising out of their participation in programs of study at the university will retain the ownership rights to such property when the intellectual property does not result from their employment at BYU and when the use of university facilities is nominal. Students using substantial university resources or those employed by the university will be treated in the same manner as similarly situated university personnel. However, any student not employed by the university but engaging 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 shall have no ownership interest in the resulting property but may be eligible to participate in the income distribution (see section VI). Faculty using such volunteer, nonemployed students in their scholarly work projects should have the students sign a "Student Assignment of Ownership and Nondisclosure Agreement" form, available from Intellectual Property Services.



IV.F. Assignment of Intellectual Properties to the University

Students, university personnel, or individuals not affiliated with the university who own intellectual property may elect to voluntarily disclose and submit their properties to the Technology Transfer or Creative Works Offices for the purpose of facilitating commercial development. In the event that either of the offices agrees to accept management of the property, the property shall be assigned to BYU and the assignor shall be entitled to the same distribution of revenues and other rights and responsibilities as the academic developers of university-owned property, as specified in this policy.



IV.G. Release of University Ownership

The university may, at its sole discretion, determine to release to the developer(s) its ownership rights to any intellectual property upon such conditions as the university deems beneficial and fair to all parties. Upon the recommendation of Intellectual Property Services, the transfer of rights must be approved and secured by an assignment agreement.



IV.H. University Use of Technologies and Properties Created by University Personnel

University personnel who have received and retained title (copyright or patent) to an intellectual property, or students who utilize university resources but retain ownership of an intellectual property pursuant to this policy, shall, as a condition of employment and/or such use, grant to the university a royalty-free, paid-up license to use the property for internal, noncommercial purposes. The university may, at its sole discretion, sublicense the property to The Church of Jesus Christ of Latter-day Saints.



V. ADMINISTRATIVE PROCESSES

V.A. Disclosure

V.B. Approval of Transfer Agreements

V.C. Enterprise Centers

V.A. Disclosure

Prior to public disclosure such as a presentation or submission for publication, the developer(s) of technical or creative works shall disclose to their chair and dean any such property or work that has potential for commercial development. All technical works and those creative works involving substantial use of university resources shall also be disclosed to the Technology

Transfer Office or the Creative Works Office, respectively. Ownership of creative works will be negotiated with the developer(s) by the dean in consultation with the Creative Works Office. Upon disclosure, Intellectual Property Services will make a determination within 30 days to either pursue intellectual property protection and/or commercialization or release the rights to the developer(s) (see section IV. G). Intellectual Property Services will work closely with the developer(s) and the department and college to develop a plan to manage the intellectual property.

All developers of works that may fall under university ownership shall fully disclose to the university any financial and/or other relationships they have that might affect or encumber the transfer of intellectual property to any off-campus individual or entity. Examples of such required disclosures are consulting agreements, publisher agreements, distribution and sales agreements, stock equity arrangements, employment outside the university (including director status), sponsored research agreements, or use of gifts to the university.

Prior to or in conjunction with disclosure of university-owned intellectual property, the developer(s) shall obtain from all students working on its development the signed standard form "Student Assignment of Ownership and Nondisclosure Agreement." The developer(s) shall also sign the standard form "Assignment and Royalty Agreement" with the university. These forms will be kept in the Intellectual Property Services offices.



V.B. Approval of Transfer Agreements

Any proposed transfer of intellectual property from the university will be reviewed by the developer(s), chair, dean, director of Technology Transfer or Creative Works, Office of General Counsel, associate academic vice president for research, and the administrative vice president. The final decision concerning transfer will be made by the administrative vice president's office.



V.C. Enterprise Centers

If a commercial activity such as manufacturing products, selling products or services to end users or distributors, and/or providing customer support other than through Intellectual Property Services is deemed consistent with the educational mission and academic programs of the university, an enterprise center may be authorized by petition through the chair and dean to the associate academic vice president for research. The proposal shall identify a center director and shall detail the involvement of university personnel, facilities and equipment requirements, operation plans, and justification of the program within the academic mission of the university. The proposal shall also contain a detailed description of the types of expenses that will be charged against the income of the enterprise center. At the conclusion of each fiscal year the center shall submit an annual report to the dean and Intellectual Property Services. The report shall contain a summary of the center's operations, plans for the coming year, and an accounting of the center's financial affairs.

All expenses and an appropriate operating reserve for the coming year shall be approved by the dean, and the remaining funds shall be transferred to Intellectual Property Services for distribution (see section VI.A.1). University personnel will not receive any personal distribution of income, and supplemental research compensation for university personnel will not be permitted in the operating expenses of the center. The charter of each center must be renewed annually by the dean, who may consult with the associate academic vice president for research.



VI. DISTRIBUTIONS

VI.A. Academic Developers

VI.A.1. Intellectual Property Developed by Departments

VI.A.2. Income Distribution Among Multiple Academic Developers

VI.A.3. Developers in Support Areas (Nonacademic Units)

VI.B. Income Distribution

VI.B.1 Example

VI.B.2. Compensation for University Personnel

VI.C. Schedule

VI.D. Equity Position

VI.E. University Scholarly Support Fund

VI.F. Administrative Discretion

VI.A. Academic Developers

Developers are individuals or groups of individuals who make a significant original, creative contribution to the conception and/or commercialization of a technology or work. Others who are directed in the performance of their work, utilizing the skills expected of their position, are not developers. Academic developers include professorial, professional, and research faculty; administrative and staff employees working in academic units under the direction of faculty, such as research associates, postdoctoral fellows, and research technicians; students; and individuals who may not be employed by the university but who have assigned rights to the university.



VI.A.1. Intellectual Property Developed by Departments

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



VI.A.2. Income Distribution Among Multiple Academic Developers

If there are multiple developers, the developers will devise an appropriate formula to share the developer's portion of the distributed income. An "Income Distribution Agreement" must be signed by the developers and the distribution approved by

the chair and dean. Such agreements should be reviewed by the chair for current applicability every three years or when major changes in personnel or efforts occur. The chair will submit recommendations for any changes in distribution to Intellectual Property Services for approval.



VI.A.3. Developers in Support Areas (Nonacademic Units)

Intellectual property or creative works developed by administrative and staff personnel in fulfillment of employment objectives usually will not result in technology revenue sharing with the developer(s). All net income derived from such works shall be distributed equally between the Technology Transfer Office or the Creative Works Office and the University Scholarly Support Fund (described under VI.E). Independent creative efforts beyond usual employment expectations that result in the development of intellectual property may be approved for revenue sharing with the developer(s) when approved in advance by supervisors and the administrative vice president (with appeal rights to the Human Resource Committee).



VI.B. Income Distribution

All revenues derived from university-owned intellectual property or creative works will be received and administered by the Technology Transfer and Creative Works Offices. Costs incurred in the process of perfecting, transferring, and protecting university rights to the property or works will be paid by the university and, together with interest costs, will first be deducted from the gross income available for distribution. An accurate accounting of all such costs shall be made available to the developer(s) upon request. The net income (gross income minus university expenses) from university-owned intellectual properties will be distributed to academic developers and to developers in support areas as follows:

1. Developer(s)—45%
2. College(s) of the developer(s)—27.5%
3. Technology Transfer or Creative Works Office—27.5%

Academic faculty developers may designate all or a portion of their allocated income to fund their scholarly activities (including equipment and supplies purchases; student, postdoctoral, and assistant wages or support; and research-related travel). If this election is made, the college(s) will contribute to the developer's research fund an amount equal to one-half of the designated portion, not to exceed the full amount of the college distribution. In addition, the applicable Technology Transfer or Creative Works office will contribute to the developer's research fund an amount equal to the college contribution, not to exceed 17.5% of the total distribution.



VI.B.1 Example

An example of how the allocation formula works for funds received from university-owned intellectual properties developed by faculty follows:

Professors Smith and Jones participated in a research program that resulted in an invention that was patented through the Technology Transfer Office at a cost to the university of \$13,000. Professors Smith and Jones, with the approval of the department chair and the dean, executed an 80%/20%, respectively, income-sharing agreement. The patent was licensed to XYZ, Inc. for an initial license fee of \$15,000 and a 5% royalty. The royalty revenues received from XYZ, Inc. during the initial calendar quarter were \$8,000.

Funds to be distributed at the end of the quarter were as follows:

Total Revenues (\$15,000 +\$8,000)	\$23,000
Reimburse Legal Fees	<u>13,000</u>
Available for Distribution	\$10,000
Distribution to Developers (45% of \$10,000=\$4,500)	
To Smith (80% of \$4,500)	\$3,600
To Jones (20% of \$4,500)	900
Distribution to College of Smith and Jones (27.5% of \$10,000)	2,750
Technology Transfer Office (27.5% of \$10,000)	<u>2,750</u>
	\$10,000

However, Professor Smith elected to transfer \$1,500 into a research account, which was matched by his college and the Technology Transfer Office. Therefore, the following distribution was actually made:

To Smith (\$3,600 - \$1,500 to research account)	\$ 2,100
To Jones	900
To Smith's Research Account (\$1,500 +\$750 from college +\$750 from Technology Transfer)	3,000
To College of Smith and Jones (\$2,750 - \$750)	2,000
To Technology Transfer Office (\$2,750 - \$750)	<u>2,000</u>
	\$10,000



VI.B.2. Compensation for University Personnel

Revenue distributed to the college or to faculty research accounts from Intellectual Property Services 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.



VI.C. Schedule

Net income distributions will be made quarterly when the accumulated total exceeds \$1,000, or annually if less than \$1,000.



VI.D. Equity Position

The university and/or developer(s) may, in appropriate circumstances, take equity positions in companies licensed to market BYU's intellectual property. The appropriate Intellectual Property Services office will negotiate with the developer(s), as a part of the final plan for disposition of the property, the income distribution from royalties relative to the developer's involvement, including equity, consulting, or other relationships with the company. Such income distribution will be negotiated only upon full disclosure of all relationships between the developer(s) and the licensing company and in such a manner that the developer(s) normally will obtain financial benefits from their overall relationship with the licensing company and the university approximately equivalent to that which they otherwise would have received from participation only in income sharing. If a developer is a principal in a company that licenses the developer's technology or creative work, the developer will not participate in the distribution of any funds or equity received by the university under the license agreement.

If the developer does not receive a share of the distributed income because of the developer's involvement with the licensing company or because the developer is part of an enterprise center (see section V.C), the income will be distributed equally between Intellectual Property Services and the college(s) (or Scholarly Support Fund if the center is a nonacademic unit (see section VI.A.3).



VI.E. University Scholarly Support Fund

Revenue distributed to Intellectual Property Services will first be used to support its operations, including expenditures for personnel as described previously, office supplies, travel, unrecovered patent costs, etc. After the close of each fiscal year, the directors of the Technology Transfer Office, the Creative Works Office, and the associate academic vice president for research will determine the amount of excess funds available. All excess funds will be transferred to the University Scholarly Support Fund. This fund will be used at the discretion of the associate academic vice president for research, working under the direction of the academic vice president, to encourage new scholarly projects and to assist scholarly activity in areas where funding is less available or where commercial success has not yet been achieved. Examples of the use of the fund include initial funding for establishing interdisciplinary and intradisciplinary research centers; funding technology transfer and creative works development projects; funding special creative work projects, such as art exhibits, lectures, performances, demonstrations, films, videos, etc.; providing seed money for promising but unfunded projects that could lead to later grants and contracts; paying for short-term key staff and student support on projects; bridging gaps or unexpected problems in funding existing projects; funding travel (especially international) related to a project; supporting needs related to publishing scholarly papers or books, monographs, creative books, etc.; and subsidizing conferences or workshops related to research and creative work.



VI.F. Administrative Discretion

When total income, before distribution, exceeds \$1,000,000 from any single intellectual property in any fiscal year, an administrative review of this source of income will be activated. The academic vice president and the administrative vice president shall have discretion to evaluate the allocation of the funds in excess of this threshold to the college(s) and to Intellectual Property Services. They may require an alternative distribution within the university of this portion of the income, such as a larger distribution to the Scholarly Support Fund. The distribution to the developer(s) will not be affected.



VII. PUBLICATION AND DISCLOSURE

Early peer-reviewed publication of results is a major objective of academic research. However, the developer(s) of technical works must defer all public disclosure and publication of patentable discoveries, including software, that are suitable for commercial development until evaluation by the Technology Transfer Office in order to preserve intellectual property rights. In some instances the university may require the developer(s) to defer such disclosure for a period of up to 90 days after informing the Technology Transfer Office, during which time the Technology Transfer Office may take appropriate action to protect the rights of the developer(s) and the university in the discovery.



VIII. REQUIRED TEXTS AND INSTRUCTIONAL MATERIALS

Required texts and instructional materials prepared by BYU faculty members for use in BYU courses should be provided royalty-free to students, whether sold through the Bookstore or by an external source. Exceptions are textbooks or other instructional materials that are appropriately peer-reviewed, published, and distributed nationally by a major publishing company external to BYU, and have total sales to customers external to BYU that exceed sales to BYU students.



IX. UNIVERSITY-COMMISSIONED COURSE DEVELOPMENT

University courses include entire courses or portions of courses, including instructional materials in electronic or traditional media, that are commissioned by the university or developed within the scope of an individual's employment at the university with substantial use of university resources. These materials will usually be developed by the Center for Instructional Design and will be owned and administered by the university even though a college or department may have originated the course concept and participated in its development. Academic departments may elect to compensate faculty developers through reduced

faculty load, supplemental compensation, or a combination thereof. These developers shall not receive any additional compensation (e.g., royalty distributions) unless these courses are licensed through the Creative Works Office. The Creative Works Office will have responsibility for licensing university courses to entities outside BYU and the Church Educational System and for distributing the licensing revenues and royalties received (see section VI). The 55% of the distribution normally allocated to the university and the college will be divided, in proportion to their contributions, among the university units that participated creatively or financially in developing of the work.

University courses developed for and offered by the Division of Continuing Education prior to the adoption of this policy that continue to be offered will be administered under the preexisting policies and procedures, and developers will be compensated under their original agreements. Revisions of existing university courses will be governed by the preceding paragraph of this policy.

The Division of Continuing Education may pay a fee to developers for services such as grading papers, assignments, and examinations on any appropriate course. Students who wish to enroll in Web Internet courses as part of their paid tuition must use Semester-Online courses. All courses taken through Independent Study, including those taken by matriculated BYU students, require Independent Study tuition payment.



X. DISPUTE RESOLUTION

Any dispute involving the developer(s), a department, a college, or Intellectual Property Services that cannot be settled through informal discussions or mediation shall be submitted to the Council on Research and Creative Activities. The council then will appoint a subcommittee to investigate the dispute and make a recommendation for resolution to the associate academic vice president for research, who will make the final determination in consultation with the academic vice president. Council members or administrators who are directly involved with the property in question should withdraw from the process at such times as necessary to avoid conflicts of interest.



XI. CREATIVE WORKS OWNERSHIP EXAMPLES

Below are examples that may be used as guides in implementing the policy as applied to Creative Works intellectual property.

Case one: A faculty member in the College of Humanities writes a royalty-producing book of poems. Some of the work is done during the week as part of his scholarly activity and some is done on weekends. The faculty member teaches at a level the department chair feels is appropriate, serves on a college committee, and is involved in other citizenship activities. Furthermore, he makes no substantial use of university resources apart from his office, computer, and the library.

Disposition: The faculty member consults with the chair and dean and they decide that nominal use of university resources is involved. The faculty member owns the intellectual property and all royalty income and is responsible for negotiating and administering the contract with the publisher.

Case two: A faculty member is granted a half-time teaching load winter semester to prepare for publication materials she developed in connection with a course she teaches; the university also pays her a salary for spring term to work full-time on the project. One student assistant paid by the university helps edit the book while another verifies sources and notes. This arrangement permits her to write the book over the winter, spring, and summer so that she is prepared to return to full-time classroom work in the fall.

Disposition: The faculty member, dean, and chair jointly determine that the support provided the faculty member exceeds the nominal level in the department, thus the university may assert ownership or seek repayment of costs. In this case, the dean and faculty member agree that repayment of certain costs is the appropriate way to deal with the situation. Once the costs have been determined, in consultation with the Creative Works Office, and repaid by the faculty member, the property is treated under the terms for nominal use of resources (IV.B).

Case three: A faculty member in the Visual Arts Department arranges for a leave of absence, without pay but with full benefits, so that he can complete a series of watercolor paintings featuring the scenic country of southern Utah. All work is done off campus using no university facilities.

Disposition: The payment of benefits would not ordinarily be considered as a substantial source of university support. Since the leave of absence has no other university support, the creative work belongs to the faculty member, and no income resulting from the sale of the paintings is shared with the university.

Case four: Several faculty members working under the direction of the Music Department produce a concert that is shown nationally on PBS and sold on compact discs and videotapes through the Creative Works Office. The project is funded by the university and produced on campus with university equipment.

Disposition: Substantial university resources were used; therefore, the intellectual property is owned by the university, and the licensing is administered by the Creative Works Office. The faculty members producing the compact discs and video tapes share 45% of the royalty income, with 55% going to the university. The university portion is distributed equally between the College of Fine Arts and Communications and the Creative Works Office.

Case five: A faculty member in the Zoology Department is released from teaching and assigned full-time to the research and writing of a textbook to be used in all sections of a required survey course. The author relies on materials developed by all the faculty members presently teaching the course and is given substantial amounts of student and secretarial help. By agreement, any royalties received from the sale of the textbook outside the university will go to support the research and writing of all departmental faculty.

Disposition: Since substantial university support is involved, as determined by the faculty members, in consultation with the department chair and the dean, the university owns the rights to the book, and the BYU Intellectual Property Policy, section VI.A, will apply. Royalties received from the sale of the textbook outside the university will be distributed according to the formula described in the policy. The policy specifies that if the developer puts his or her share of the income into a research account, the university will match the contribution. Since all agreed to have the income support work in the department, 90% of the total goes to the College of Biology and Agriculture and 10% goes to the Creative Works Office.

Case six: A faculty member is asked to work on a writing project for the Church. Financial support is provided to support the work, and the faculty member is granted a leave of absence to do the work but remains in her office to do so. She is provided with supplemental research compensation to bring the work to completion in a specified time period.

Disposition: The university owns the work but assigns it to the Church per the terms of the contract. Since the Church is the only end user, no distribution of income to the faculty member occurs.

