

## **APPENDIX F**

### **OTTERBEIN UNIVERSITY INTELLECTUAL PROPERTY POLICY**

Approved by the Board of Trustees  
May 18, 2013

# Otterbein University Intellectual Property Policy

## Table of Contents

<b>I. Introduction</b>	<b>1</b>
A. Preamble	1
B. Definition of Terms	1
C. Scope of Policy	2
D. Institutional Use of Intellectual Property in the Category of Traditional Academic Works	2
<b>II. Ownership of Intellectual Property</b>	<b>3</b>
A. Copyright Policy for Intellectual Property	3
B. Patent Policy for Intellectual Property	4
C. Voluntary Transfers of Ownership	6
D. Outside Consultants and Independent Contractors	6
<b>III. Division of Income for Intellectual Property with Potential Commercial Value</b>	<b>6</b>
A. Net Income Division	6
B. Net Income Division When There is More Than One Creator	7
<b>IV. Students</b>	<b>7</b>
A. Intellectual Property Produced by Students	7
B. Recording Classroom Instruction	8
<b>V. Procedural Matters for Intellectual Property with Potential Commercial Value</b>	<b>9</b>
A. Disclosure	9
B. Use of University Name and Logo	9
C. Conflict Resolution	10
D. Application of Policy	10
E. Implementation	11
F. Notification	11
G. Effective Date	11

# I. Introduction

## A. Preamble

1. Otterbein University (“the University”) is committed to providing an environment that supports the research and teaching activities of its faculty, students and staff. The University supports an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, at the same time balancing the need to provide the University with the means to continue support of such efforts and innovation and also retaining for the University and its learning communities reasonable access to, and use of, the intellectual property for whose creation the University has provided assistance.

2. This Intellectual Property Policy (“the Policy”) is intended to promote and encourage excellence and innovation in scholarly research and teaching by identifying and protecting the rights of the University, its faculty, staff, and students. The University encourages the development, production, and dissemination of intellectual property by its faculty members and strives to maintain an environment which continues to support such efforts.

## B. Definition of Terms

1. In general, when the words “copyrights” and “patents” are used in this Policy, those words are meant to refer to the rights, privileges and protections afforded by U.S. laws and international treaties for those two categories of intellectual property.

2. Under pertinent federal statutes, **Copyrights** refer to the rights that protect all original Works of authorship fixed in any tangible medium of expression

3. **Patent** shall be understood to mean that bundle of rights that protect Inventions or discoveries which constitute any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof and any other Inventions or discoveries for which U.S. patents may be issued.

4. The term “**Works**” or “**Work**” shall refer to all intellectual property that constitutes original works of authorship fixed in a tangible medium of expression. The term “**Invention**” shall be used to refer to all new and useful inventions or discoveries, or new and useful improvements of the same.

5. **Overlaps Between Copyright and Patent:** Some materials created at the University are both patentable and copyrightable (e.g., a copyrightable Work that embodies a patentable Invention). Many Works may be patentable. For the Work that is both copyrightable and patentable, the Patent Policy of the University shall govern intellectual property rights in the Work.

**6. Substantial Use** is the use of resources other than those "ordinarily available" (described in II. B) to most or all faculty members, such as, release time from regularly assigned duties; direct investment by the University of funds or staff, or the purchase of special equipment for the project; use of multimedia production personnel and facilities; or extraordinary use of computing resources.

**7. Institutional Works or Work** include Works whose authorship cannot be attributed to one or a discrete number of authors but rather result from simultaneous or sequential contributions over time by multiple faculty and students.

**8. Work for Hire** is Work created by any employee within the scope of University employment or by faculty members pursuant to a specific direction or assigned duty (other than the teaching of courses) from the University or any of its units.

### **C. Scope of Policy**

1. This Policy creates an organizational framework and procedures to best support and promulgate Intellectual Property created at the University.

2. In general, an employer is considered to own all of the Intellectual Property created by its employees within the scope of their employment. However, in the college and university context, a different tradition has developed. Historically, universities have viewed traditional academic works, such as scholarly research or the development of course materials, as the property of the creator. This Policy affirms this tradition except as noted under Substantial Use, etc..

3. The University supports research and teaching through the provision of resources. When this resource provision is substantial, as described under Section II A-b "Substantial Use of University Resources," then the University is entitled to a share of any financial rewards derived from that Intellectual Property.

4. Works that are functional and concern the operation of the University, such as admissions materials, campus web pages, or drafted policy, are considered the Intellectual Property of the University.

### **D. Institutional Use of Intellectual Property in the Category of Traditional Academic Work**

1. All Intellectual Property developed by faculty members and students for use in the classroom generally remains the property of the creator. Notwithstanding such ownership, the University shall have a perpetual, royalty-free right to use, copy, distribute, display, publicly perform or make derivative works of such Works for the University's instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies.

2. Many faculty, staff and students experience high costs and practical inconvenience in obtaining permission to use material for research and teaching which is the subject of intellectual property protection. Faculty members are therefore required to seek from publishers and other persons to whom faculty members assign rights in their intellectual property, a non-exclusive, perpetual, royalty-free license for their own non-commercial research and teaching and, where possible, for anyone within the University to use that intellectual property for non-commercial research and teaching. The University shall work to develop standard license terms and shall otherwise, to the extent possible, assist faculty members in securing such licenses.

## **II. Ownership of Intellectual Property**

### **A. Copyright Policy**

The university exerts ownership over the copyrights for Works with potential commercial value in the categories noted below. If the University does decide to develop a Work for commercial use, then any income received through the commercialization of this Work will be shared with the creator(s) as indicated under the Division of Income for Intellectual Property with Potential Commercial Value section.

- a. External Grants and Contracts: Otterbein University honors copyrights that are stipulated in the terms or conditions of an external grant or contract, which includes sponsored research or other types of agreements. Copyright ownership of all material that is developed in the course of or pursuant to a sponsored research or other agreement to which the University is a party shall be determined in accordance with the terms of the sponsored research or other agreement. In absence of terms specifically assigning ownership, the copyright shall become the property of the University if the terms of such agreement directly or indirectly create any obligation on the part of the University or if ownership is conferred upon the university by operation of another provision of the policy.
  - i. If no such terms or conditions exist, then property rights default to the faculty, staff or administrative employee or student, except where subject to the exceptions outlined in this policy (substantial use, institutional Works, etc.). Otterbein will be granted royalty-free, non-exclusive, and irrevocable license to use and reproduce any intellectual property produced under the grant or contract for internal, non-commercial purposes.

- b. Substantial Use of University Resources: Ownership of Works which are developed with the "Substantial Use" of University resources shall reside in the University.
- i. In most cases, determinations of "Substantial Use of University Resources," shall be made at the time that those substantial resources are requested and approved by the Chief Academic Officer or other appropriate Vice President. Ordinarily, this determination shall be specified in writing in advance of the allocation of those resources.
  - ii. As of the date of this Policy, "ordinarily available" resources include office space and personal office equipment, office computer workstations, library and other general use information resources, including incidental consultation and support from university personnel, and the means of network access to such resources. Incidental involvement of students receiving funding from the University is also excluded from the definition of "Substantial Use." For purposes of this policy, "Release time" is a period of time separate from sabbatical leave that is negotiated with the University for the purpose of research or scholarship.
  - iii. As the institutional mission evolves, the concept of Substantial Use of University Resources may need to be updated by the Board of Trustees, and such revised definition may be incorporated as an Addendum to this Policy.
- c. Institutional Works: The University shall retain ownership of Works created as Institutional Works. For example, software tools developed and improved over time by multiple faculty and students where authorship is not appropriately attributed to a single or defined group of authors would constitute an Institutional Work. The mere fact that multiple individuals have contributed to the creation of a Work shall not cause the Work to constitute an Institutional Work.
- d. Work for Hire: The copyright of material that is created by any employee within the scope of University employment, such as Works that are functional as referenced under "Scope of Policy" I.C.4) or by faculty members pursuant to a specific direction or assigned duty (other than the teaching of courses) from the University or any of its units shall be the property of the University. (e.g., if the University expressly directs a faculty member to create a specified Work or if the Work is created as a specific requirement of employment or as an assigned institutional duty, such as may have been included in a written job description or an employment agreement).

- e. Regardless of ownership as determined above, Otterbein will be granted royalty-free, non-exclusive, and irrevocable license to use and reproduce any intellectual property for non-commercial purposes.

## **B. Patent Policy**

1. Otterbein University is committed to a liberal arts and professional education for its students. While not the primary goal of the University, through the development of courses or the pursuit of research, patentable Inventions may result in part or wholly due to the assistance of Otterbein in the form of funds or facilities. This policy establishes guidelines for the determination of ownership and, where applicable, the division of income. At heart, this policy recognizes the importance of protecting the inventor's creative endeavors, while at the same time recognizing the institutional commitment and support when applicable.
  - a. Contractual Agreements: Inventions that arise out of research funded under contract from government, philanthropic, industrial, or other organizations or entity shall be subject to the terms of the applicable grant or contract. Further, the ownership of an Invention that is developed in the course of, pursuant to, or related to an agreement to which the University is a party shall be determined in accordance with the terms of the agreement. In those situations when ownership is not assigned, the ownership of the Invention shall become the property of the University if the terms of such agreement directly or indirectly create an obligation on the part of the University or if ownership is conferred upon the University by operation of another provision of the Otterbein Patent Policy.
  - b. Independent Work: Inventions that do not rely on a Substantial Use of University Resources and are largely conducted during the inventor's own time remain the property of the inventor and may be commercialized at the inventor's expense. Please see the definition of "Substantial Use of University Resource" under the COPYRIGHT POLICY. However, in some cases, the inventor may decide, in agreement with Otterbein, to have the Invention managed by the University. In this situation, Otterbein Patent Policy dictates the division of income.
  - c. Inventions Created with Substantial Use of University Resources: Inventions that rely on University support through Substantial Use of University Resources are considered property of the University. Please see the definition of "Substantial Use of University Resource" under the COPYRIGHT POLICY in Section IIA-b. The inventors of such Inventions are required to assign all rights to the University subject to a perpetual royalty free license for the inventors to use for their own non-commercial research and/or teaching.

2. If the University does not wish to develop this property through the patent process and commercial development, then the property rights may be returned to the inventor, upon request and for good cause shown.
  - a. The inventor shall then be responsible for the patent application and registration if he or she decides to seek patent protection for the Invention. The University shall relinquish all claims to income resulting from such a patent. This determination will be made by the Chief Academic Officer within ninety days of the University's notification of the Work.
3. If the University does decide to develop this property and patent the Invention, the University and the inventor shall be jointly responsible for the development and costs of the patent application and registration, and any income received through the commercialization of the Invention will be shared with the inventor as indicated under the Division of Income section.
4. Regardless of ownership as determined above, Otterbein will be granted royalty-free, non-exclusive, and irrevocable license to use and reproduce any intellectual property for non-commercial purposes.

### **C. Voluntary Transfers of Ownership**

1. The creator(s) of intellectual property may voluntarily transfer the intellectual property rights to a Work and/or Invention, in whole or in part, to the University. Such transfer shall be in the form of a written agreement signed by the creator(s) and the Chief Academic Officer on behalf of the University.
2. Should a Work and/or Invention become the property of the University, then the original creator(s) and/or inventor(s) has an obligation to promptly assign all rights related to the Work and/or Invention to the University subject to a non-exclusive, perpetual, royalty-free license for his or her own non-commercial research and teaching even when he or she leaves the University.
3. If the University does not wish to develop a Work and/or Invention, then the intellectual property rights may be returned to the creator(s). This determination will be made by the Chief Academic Officer (Provost/Vice President for Academic Affairs) within ninety days of the University's notification about the Work and/or Invention.

### **D. Outside Consultants and Independent Contractors**

As it is the University's policy that the University retain ownership of a Work and/or Invention that have potential commercial value, are supported by a specific allocation of University funds or that are created for a specific University purpose, the University generally shall require that any agreement for the payment of fees to outside consultants and independent contractors shall include an assignment by the consultant or other



participant to the University of any ownership interest, including any copyright or patent interest, in the resulting Works and/or Inventions.

### III. Division of Income for Intellectual Property with Potential Commercial Value

#### A. Net Income Division

If the University does decide to develop an intellectual property (Work or Invention) with potential commercial value, any income received through the commercialization of this Work and/or Invention will be shared with the creator(s). All accumulated net income, minus any administrative or related expenses incurred by the University and by the producer, will be shared with the producer in the following manner:

	First \$5,000	5,000-15,000	Above 15,000
Producer	100%	70%	50%
Producer's Department & School	0%	20%	30%
University	0%	10%	20%

#### B. Net Income Division When There is More than One Creator

1. **Producer and Co-Producer** refers to the creators of intellectual property with potential commercial value which is owned by the University.
2. Co-producers will share their portion equally unless otherwise agreed.
3. The producer's share will continue even should the producer leave the University.
4. The division of the share of income retained by the producer's department and school will be determined by the dean from the appropriate school in consultation with the chair from the inventor's department.
5. In cases where the University has an ownership right in a copyright or patent, this policy does not preclude the possibility of a separately negotiated agreement between the interested parties.

## **IV. Students**

### **A. Intellectual Property Produced by Students**

1. As outlined under the section “Institutional Use of Intellectual Property in the category of Traditional Academic Work,” the University makes no claim to work created for use in the classroom.
2. The University makes no claim to copyright ownership of an intellectual property generated by students working on their own and not making Substantial Use of University Resources.
3. Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.
4. If substantial resources are requested and agreed to by the University, then the ownership of Works developed through Substantial Use of University Resources is owned by the University, unless a separate contract is negotiated.
5. Students who are hired in a staff role or position will be governed by this policy as it pertains to staff members for purposes of this policy only.
6. Students employed by faculty to work on a project in a general support role will not have ownership rights in any of the intellectual property that may be produced.
7. Students working collaboratively with faculty on projects that result in intellectual property may be granted the same rights and obligations of intellectual property ownership as would another faculty employee working collaboratively on the project. Students and faculty should establish these rights at the outset of their collaboration.
8. Every effort should be made to recognize the contribution of students when working collaboratively with faculty and other staff or administrative employees, whether in independent scholarly and creative work, or as paid or credit-earning assistants or collaborators.
9. Students may also be subject to rules and restrictions of their departments and/or programs of study which are not inconsistent with this Policy. For example, students who copyright their theses or dissertations must grant the University rights to reproduce and distribute copies of their Works in accordance with the policies of the University.

### **B. Recording Classroom Instruction**

1. The conventional means for recording classroom instruction and discussion has been written note taking. The University and faculty encourage written note-taking, and

consider notes taken for the purpose of the student's personal learning to be the student's intellectual property. Student retain intellectual property rights for purposes of their own learning but are subject to the restrictions in 2 (below).

2. If the student chooses to disseminate to a third party outside the University or profit from their written notes or course materials in any fixed tangible medium of expression, then the instructor's written permission is required. Similarly, if a student decides to record a class using any medium other than writing, the faculty permission is also required. This agreement between the faculty and the student should be established at the onset of class.
3. As part of an institutionally approved accommodation under the Americans with Disabilities Act, the approved students have license to record classes and to use recordings for purposes of their own learning, only.

## **IV. Procedural Matters Concerning Intellectual Property with Potential Commercial Value**

### **A. Disclosure**

1. All faculty, staff and students shall disclose in writing to the Chief Academic Officer on a timely basis all potential intellectual property with potential commercial value conceived or first reduced to practice in whole or in part in the course of their University responsibilities or with the Substantial Use of University Resources. Where the intellectual property that is or may be developed in pursuant to an agreement to which the University is a party, the disclosure requirement may be modified or determined in accordance with the terms of the agreement.
2. If there is reasonable doubt regarding ownership, the University will have ninety days after receiving the written disclosure to make a determination of ownership. If no response is forthcoming, then Producers may consider the intellectual property their individual property and pursue commercialization at their own expense. All faculty, staff, and students have a duty to disclose to the Chief Academic Officer on a timely basis any intellectual property with potential commercial value emanating from subject matter of a licensed patent held by a third party.
3. If an intellectual property is developed with Substantial Use of University Resources and is deemed at the time of development to not have potential commercial value, resulting in the University voluntarily transferring ownership to the Producer, yet is subsequently developed for commercial purposes, then the Producer must disclose that fact to the University at that later point. If the university voluntarily transferred all of the ownership, the university may not claim ownership at this later date.

4. If the University has maintained ownership over any portion of that property, the creator must disclose to and arrange for any sharing of commercial value with the University at any future date.

## **B. Use of University Name and Logo**

The University does have a claim to intellectual property that reflects on the identity of the University and suggests endorsement by the University, including use of the University name and logo. Members of the Otterbein community may present themselves as affiliated with the University but may not in any way imply or infer that the University endorses a product without a written agreement of endorsement. The University trademark, logo and name may not be disseminated beyond the University for purposes that go beyond one's routine Work or for products sold for profit, without permission

## **C. Conflict Resolution**

1. Any disputed issues related to intellectual property, including the interpretation of the Otterbein University Intellectual Property Policy shall be reviewed and determined by the Intellectual Property Committee. Any subsequent amendments of this Policy shall also be reviewed by this Committee.
2. The Intellectual Property Committee is an administrative committee that is constituted annually. Membership shall consist of one elected faculty representative of each school and the Library (elections to be held at the start of the academic year) the Director of Sponsored Programs and an elected student representative. Each year, the members of the Committee shall elect a Chair.
3. The complainant must submit a letter with reasonable details to the Intellectual Property Committee explaining the issue to be resolved. The Intellectual Property Committee will review the dispute and advise the parties of its decision within 90 days of receipt of the letter. At that time the Committee shall also notify the President of their decision. The Intellectual Property Committee may summon relevant parties to the dispute, however, only members of the Committee and participants in the dispute are to attend and participate in these hearings.
4. Any dispute, controversy, claim or other matter arising under, out of or relating to this Policy that is not resolved through this internal campus conflict resolution process shall be submitted to the President for reconsideration. The President's decision is final and will be conveyed to the Committee, the parties involved in the dispute and the Board of Trustees.
5. Should a dispute arise related to intellectual property, then either party may seek injunctive relief at the Ohio court to halt the use of the disputed material until the outcome of the dispute is settled. This injunctive relief is in addition, but not in substitution, to any other relief to which a party seeks.

## **D. Application of Policy**

1. This Policy shall not apply to existing written agreements between the University and/or faculty members and any external organization or individual, concerning the development, legal protection, or commercialization of specific intellectual property, and entered into prior to the date on which this Policy is adopted by the Board of Trustees.
2. If an existing written agreement is renewed, revised, or amended after the date on which this Policy is adopted by the Board of Trustees, reasonable attempts shall be made to conform such agreement to the requirements of this Policy as of the date on which it is renewed, revised, or amended.

## **E. Implementation**

1. The policies set forth above constitute an understanding that is binding on the University, and on its faculty and staff or administrative employees, students, and others as a condition of their participating in University research programs or their use of University resources. The University may require formal copyright or patent assignments or agreements to implement the policy as appropriate, but the absence of such executed assignments or agreements shall not invalidate the applicability of this Policy.
2. Any proposed changes to this Policy will be addressed to the Chief Academic Officer. The Chief Academic Officer may designate an individual or task force to review these proposals. If the changes are procedural but not interpretive, then any change will be put into effect within a reasonable time after notification of University faculty staff and students. Any interpretive changes or changes to the intent of this policy must be approved by the Board of Trustees.

## **F. Notification**

The University shall inform all persons subject to this Policy of its terms as soon as efficiently possible after its adoption and at regular intervals thereafter. The University is committed to an open and considered discussion of this Policy, so all members of the community understand how the Intellectual Property they produce are governed by this Policy.

## **G. Effective Date**

This Policy shall take effect immediately upon its adoption by the Board of Trustees, May 18, 2013.

.....