

MARY BALDWIN UNIVERSITY POLICY ON INTELLECTUAL PROPERTY

Mary Baldwin University (“the University”) strongly encourages the production of creative and scholarly works by members of its community. The purpose of this policy is to encourage and support such research and scholarship; to help faculty, staff, and students identify and protect Intellectual Property; and to set forth mechanisms and guidelines for defining certain rights, interests, and responsibilities associated with Intellectual Property.

1. **Application of Policy**

The policy applies to works created by all classifications of faculty, staff, and students of the University, works created on behalf of the University by non-employees such as consultants and independent contractors, and works created by students enrolled elsewhere while performing internships/externships at the University and using University facilities or resources. Throughout this policy, those to whom the policy applies shall be referred to as “covered individuals” or “the covered author” or “the covered creator.”

2. **Identification of Intellectual Property (“Intellectual Property”)**

Intellectual property shall consist of the following:

- (a) Copyrightable Intellectual Property including, without limitation, creative works of text (such as manuscripts, manuals, books, and articles); videos and motion pictures; music (such as sound recordings, lyrics, and scores); images (such as print, photographs, electronic, and art); and educational or research computer software (such as programs, databases, web pages, and courseware).

Examples of Copyrightable Intellectual Property include, without limitation: a course syllabus on a faculty web page; a photograph taken by a student for photography class; a scholarly article contributed by a faculty member to a journal; a computer program that translates Spanish poetry into English; a CD-ROM simulated chemistry lab developed collaboratively by a faculty member and student intern from another school.

- (b) Patentable Intellectual Property including, without limitation, inventions, discoveries, and know-how (such as processes, machines, manufactures, or compositions of matter); devices; and certain software.

Examples of Patentable Intellectual Property include, without limitation: chemicals; cell lines; systems for detecting levels of chemicals in substances; computer programs that perform manufacturing functions.

3. **Ownership and Use**

(a) **General Rule.** The University acknowledges that one of its primary missions is the production of original works by its faculty, staff, and students, non-employee consultants and independent contractors, and others using its facilities and resources and affirms that this policy aims to encourage such activity. Accordingly, it is the general policy of the University that Intellectual Property shall be the property of the covered author/covered creator. However, the University may claim an interest in Intellectual Property developed under circumstances set forth below.

(b) **Patentable Intellectual Property**

Responsibility for Disclosure of Patentable Intellectual Property: Publication of the idea embodied in Patentable Intellectual Property bars the filing of a patent application in every country in the world except the United States, and starts a one-year clock running on the right to file a patent application in the United States. Therefore, the University requires covered individuals who, alone or in association with other persons or entities, create or intend to create patentable subject matter with any use of University time or other resources to disclose the invention or other patentable subject matter to and obtain prior authorization from the Provost or designee when it can be reasonably concluded that a patentable subject matter will be created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for action to protect rights to the Intellectual Property of the covered creator and the University. Covered individuals are encouraged to seek the advice of the Provost (or his/her designee) in determining whether the subject matter is patentable or whether the University desires to pursue patenting the matter.

Determination of Rights to Patentable Subject Matter: Except as set forth below, the covered creator of Patentable Intellectual Property shall retain his/her rights in the work and the University will not assert ownership rights. In consideration of the foregoing, however, each covered creator will be required to grant a non-exclusive, royalty-free, perpetual license to the University for the use of the given Patentable Intellectual Property in teaching, scholarship, or

research in support of the University's educational mission. The University will assert ownership rights to Patentable Intellectual Property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any third party agreement that allocates rights to the University.
- The covered creator was assigned, directed, or specifically funded by the University to develop the material.
- Development required substantial use of University resources. "Substantial use" for purposes of this policy means the use of University resources, including funds, facilities, office and/or lab equipment, and/or administrative and technical support significantly in excess of those resources ordinarily available to the covered creator. Examples include, without limitation, significant release time from regularly assigned duties; direct investment by the University of significant funds or staff time, or the purchase of special equipment for the project; extraordinary use of computing resources; or significant contribution by staff or students directly or indirectly in the development of the project.
- Material was developed in the course of employment duties by covered non-faculty University employees, including student employees, and constitutes a work for hire under United States Copyright laws.

Under the circumstances identified above, the covered creator will be deemed to have assigned any and all Intellectual Property Rights he/she may have in the work to the University, unless the covered creator and the University enter into a written agreement that alters the terms of this policy.

(c) **Copyrightable Intellectual Property**

Determination of Rights to Copyrightable Intellectual Property:

Except as set forth below, the covered creator of Copyrightable Intellectual Property shall retain his/her rights, and the University will not assert ownership rights in the work unless a written agreement with the covered creator provides otherwise. In consideration of the foregoing, however, covered creators will be required to grant a non-exclusive, royalty-free, perpetual license to the University for Copyrightable Intellectual Property that has been developed for the use of the given Copyrightable Intellectual Property in teaching, scholarship, or research in support of the University's educational

mission. All disclosures of copyrightable works should be made by the covered creator to the Provost. The University may assert ownership rights to Copyrightable Intellectual Property developed under the following circumstances:

- Development was funded by an externally sponsored research program or by any third party agreement that allocates rights to the University.
- The covered creator was assigned, directed, or specifically funded by the University to develop the material.
- Development required substantial use of University resources. "Substantial use" for purposes of this policy means the use of University resources, including funds, facilities, office and/or lab equipment, and/or administrative and technical support significantly in excess of those resources ordinarily available to the covered creator. Examples include, without limitation, significant release time from regularly assigned duties; direct investment by the University of significant funds or staff time, or the purchase of special equipment for the project; extraordinary use of computing resources; or significant contribution by staff or students directly or indirectly in the development of the project.
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Under the circumstances identified above, the covered creator will be deemed to have assigned any and all Intellectual Property Rights he/she may have in the work to the University, unless the covered creator and the University enter into a written agreement that alters the terms of this policy.

(d) **Intellectual Property Developed Under Sponsored Research Agreements**

Ownership of Intellectual Property developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement. Sponsored research programs funded by private sponsors will generally provide for the University to retain title to all intellectual property that arises in the course of the research program with the sponsor retaining an option to acquire commercialization rights through a separate license agreement. Government and nonprofit sponsors generally allow rights to

intellectual property that arise from the research program to vest in the College, subject to certain retained rights held by the federal government.

(e) **Agreements Regarding Intellectual Property**

Due to the overriding principle underlying this Intellectual Property Policy--the encouragement of creativity and inventiveness, the University reserves the right, to be exercised in its sole discretion, to negotiate a separate written agreement with a covered creator that alters the terms of this policy. Ownership and use of materials developed pursuant to such separate agreement between the University and a covered creator/author will be governed by that agreement. The Provost will be responsible for the negotiation of such agreements.

The Provost is responsible for reviewing contracts between the University and independent contractors or other non-employee consultants to ensure that the University's ownership interest in any Intellectual Property will be protected, and that works from these third parties are commissioned on a work-for-hire basis. Examples include, without limitation: curriculum and course materials; computer software; architectural or engineering drawings or designs; and artistic works commissioned by the University.

(f) **Special Rules Applying to Students**

The University makes no claim to ownership of Copyrightable Intellectual Property created by students working independently in a student capacity and not within the scope of an employment or intern/extern relationship with the University or with one of its employees, and not making substantial use of University resources as defined in 3(b) and (c) in this policy.

Students working as employees on a project governed by a contract or agreement to which the University is a party will be bound by the terms of that contract or agreement.

Students who are employed to perform specific tasks that contribute to the creation of Copyrightable or Patentable Intellectual Property will, absent specific agreement to the contrary, have no rights to ownership of the Intellectual Property or any part thereof, regardless of the source of funds from which the student is paid. The student will be deemed to have assigned any interest in its contribution to the work to the University or other owner of the remaining portion of the work.

If a student's contribution to a work is not addressed above, a student performing work for, and compensated by the University is subject to the provisions governing staff and other non-faculty employees, and his/her work constitutes a work for hire under United States Copyright laws.

As a condition of matriculation, the University reserves the right to make copies of student papers and theses for academic or archival purposes.

A student enrolled in a course may take class notes for personal use, but the student may not disseminate notes or video or audio recordings that he/she makes in class for commercial purposes unless approved by the Provost.

4. Administration

Provost: The Policy on Intellectual Property shall be administered and interpreted by the Provost.

Intellectual Property Adjudication Committee: In the event that a dispute arises regarding the application of this policy, the Provost will appoint a three person ad hoc Intellectual Property Adjudication Committee ("the Committee") to adjudicate the dispute. The Committee will consist of one member chosen by the Provost, one member chosen by the covered individual(s) involved in the dispute, and the third member chosen by the first two appointees. Committee members will be employees of the College who, in the judgment of the Provost, possess sufficient background and experience to adjudicate the dispute. The Committee will establish its own procedures, subject to Provost approval, and issue a written decision, which will be the final decision of the University.

Dispute Resolution: If any party is not satisfied with the decision of the Intellectual Property Adjudication Committee, that party may submit the matter to binding arbitration, to take place on the University campus, according to the then current rules of the American Arbitration Association. The parties will agree on a single arbitrator who has expertise in the field of higher education and intellectual property.

Changes to Policy and Policy Questions: The University reserves the right to change this policy from time to time. Proposed changes will normally be developed by the Provost, in consultation with appropriate representatives or committees of the faculty, staff, or students. The

President has sole authority to approve changes to this policy. Questions about this policy should be directed to the Provost.

5. Royalties

All revenues derived from a transfer of rights and/or title to Intellectual Property in which the creator claims an interest will be received and administered by the Office of the Provost. Costs incurred by the University in the process of perfecting, transferring, and protecting University rights in the subject Intellectual Property will first be deducted from the gross income available by the Provost before distribution. An accurate accounting of all such costs shall be made available by the Provost to the covered author/creator upon request. The distribution of net proceeds (income less all costs incurred by the University including fees of an agency engaged to provide patent administration services) received from University-owned Intellectual Property will be shared equally between the covered creator/author and the University absent agreement otherwise.

6. Use of University name and marks

The University owns or has a proprietary interest in any trademark, service mark, or other distinguishing mark (collectively, "marks") that represents or identifies the University, its programs, or its services. Unauthorized use of such marks is prohibited.

Individuals or entities shall not use the University name or marks in any manner that implies University endorsement of or responsibility for particular activities, products, or publications, for commercial purposes, or to promote themselves, without the express prior written permission of the Provost.

EFFECTIVE: April 7, 2006 (approved by vote of the Board of Trustees)