

Intellectual Property Policy

I. Introduction

Marywood University's faculty, staff, administration, and students are regularly involved in activities that carry out the mission and core values of the University. Inventions or other forms of protectable intellectual property often result from these activities and efforts. Often these activities and efforts are carried out, in whole or in part, with funds or facilities of the University. This Intellectual Property Policy has been established to recognize and support the activities of the faculty, administration, staff and students in identifying, protecting, and administering Intellectual Property matters, defining the rights and responsibilities of all involved, and promoting the advancement of the University through innovation and scholarly work.

II. Definitions

Copyrights. A copyright is a form of protection granted under federal copyright law to authors of “original works of authorship.” Original works of authorship include literary works (including computer programs), scholarly works, dramatic works (including any accompanying music), musical works (including any accompanying words), pantomimes and choreographic works, pictorial, graphic, and sculptural works, motion pictures and other audiovisual works, sound recordings, and artistic and other forms of intellectual works. Copyright holders may restrict use by others of the copyrighted work, in a number of ways defined by the copyright law.

Covered Individuals. Any person employed by Marywood University in any capacity and all students enrolled in Marywood University at any time while the person is engaged in the work in question.

Exempted Scholarly Works. Exempted Scholarly Works are those scholarly works to which the University waives and releases any ownership or copyright it may have in favor of the Covered Individual who authored those works. Scholarly Works are considered exempted from this Policy unless such Scholarly Works are subject to contractual restrictions, are created utilizing Significant Use of University Resources, or are developed at the direction of Marywood University with University funds or resources. In those instances the Scholarly Works must be disclosed to the Vice President for Academic Affairs.

Intellectual Property. Intellectual Property is a type of intangible personal property recognized by law. It includes Copyrights, Trademarks, Trade Secrets, and Patents, any item or material that may be eligible for protection under Copyright, Trademark, Trade Secret or Patent law, and any other creation that might normally be developed on a proprietary basis.

Patents. A patent is a grant by the government, acting through a Patent Office, of a property right to an inventor of any new, useful and non-obvious process, machine, manufacture, or composition of matter, or any new, useful and non-obvious improvement thereof. A patent gives the inventor the right to exclude others from making, using, selling or importing the invention for a certain number of years.

Scholarly Works. Scholarly works are works authored by Covered Individuals as part of, or in conjunction with, their responsibilities, if any, in teaching, research, or scholarship. Common examples of Scholarly Works include: lecture notes, case examples, course materials, syllabi,

textbooks, class notes, works of fiction and nonfiction, novels, journal articles, research proposals, scholarly papers, student theses and student doctoral research, poems, lyrics, musical compositions and recordings, choreographic works, dramatic works and performances, architectural drawings, software, visual works of art, and other artistic creations, among other, regardless of the medium in which those works are fixed or disseminated.

Significant Use of University Resources. Marywood University resources are to be used solely for University purposes and not for personal gain or personal commercial advantage, nor for any other non-University purposes. Significant use exists when resources are provided beyond the customary professional, technological and technical support supplied by the University and extended to Covered Individuals for development of a project or program. Therefore, if Marywood University resources were the enabling factor or substantially contributed to the creation of a work or invention, then such use constitutes *Significant Use of University Resources*. By way of illustration, if participation of students directly, or indirectly through use and feedback, substantively influences development of such works, then such participation constitutes *Significant Use of University Resources*. Some examples of *Significant Uses of University Resources* include, but are not limited to, the following: use of research funding to create the Intellectual Property; assistance of support staff in creating the Intellectual Property and use of University facilities to create the Intellectual Property. By way of further explanation, *Significant Use of University Resources* excludes incidental or minimal use of University resources, such as University facilities, that are available without charge to the public, or use of resources or facilities where fees for such use (excluding tuition) have been paid. If the creator of Intellectual Property makes significant use of the services or facilities of the University to create any work, including Scholarly Works, he or she should disclose the work to the Vice President for Academic Affairs.

Trademarks. A trademark is a word, symbol, design, phrase or combination thereof, used to identify and distinguish the source or sponsor of goods. A service mark is a word, symbol, design, phrase or combination thereof, used to identify and distinguish the source or sponsor of services. Trade dress is the characteristic of the visual appearance of a product or its packaging (or even the design of a building) that signify the source of the product to consumers. For the purposes of this Policy, “Trademarks” shall include trademarks, service marks and trade dress.

Trade Secrets. A trade secret is confidential commercial information, such as a formula. For a trade secret to be protectable, it has to be kept secret.

Work for Hire. Work for Hire, as defined in the United States Copyright Act, 17 U.S.C. Section 101, refers to (1) a "work prepared by an employee within the course and scope of his or her employment"; or (2) a work that has been specifically commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

III. Policy

A. Applicability

Marywood University's Intellectual Property Policy applies to all Covered Individuals including persons employed by the University in any capacity, all

students enrolled in the University, as well as all Intellectual Property produced or developed by Marywood faculty, administration, staff, and students.

B. Ownership and Determination of Rights to Intellectual Property

The general policy of Marywood University is that Intellectual Property is the property of the creator. However, except for Exempted Scholarly Works, the University reserves the right to affirm ownership to any Intellectual Property created under any of the following circumstances:

- 1) Development was funded as part of an externally sponsored research program under an agreement which allocates rights to the University.
- 2) Marywood University assigned a Covered Individual to develop the material, and the University has negotiated an understanding or formal contract with the individual concerning the Intellectual Property associated with the developed material.
- 3) The material was developed by Covered Individuals in the course of employment duties and constitutes a Work for Hire.
- 4) The material was developed with *Significant Use of University Resources*.

C. Disclosure of Intellectual Property

- Except for Exempted Scholarly Works, Covered Individuals shall promptly disclose all Intellectual Property, including inventions, to the Vice President for Academic Affairs. Delay in disclosing such Intellectual Property may compromise the ability to secure Intellectual Property rights or registrations.
- If a Covered Individual is uncertain as to whether an invention, formula, design, creation or the like constitutes Intellectual Property, then such person should consult promptly with the Vice President for Academic Affairs.

D. Use of Intellectual Property

- Marywood University will retain a non-exclusive, royalty-free, perpetual license to the University for Intellectual Property that is developed for University courses or curriculum, including Exempted Scholarly Works, so that the University's continued use of such material for educational purposes at the University will not be jeopardized. All Covered Individuals will execute any documents necessary to perfect such licenses.
- While Marywood University encourages members of the Marywood Community to utilize and develop their intellectual, moral and aesthetic capabilities, it is expected that such individuals will comply with federal and state Intellectual Property laws.

E. Intellectual Property Developed Under Sponsored Research Agreements

Ownership of Intellectual Property developed following an agreement with any sponsor, whether it is an external or an internal sponsor, will be governed by the provisions of that agreement. Marywood University will retain a non-exclusive right, for example, to all research reported in manuscripts funded in whole or in part by National Institute of Health (NIH) funding, so as to ensure compliance with the NIH Public Access Policy.

F. Consulting

The disposition of Intellectual Property that results from activities of Covered Individuals while engaged in the service of, or at the direction of a firm or institution other than the University, without *Significant Use of University Resources*, and while abiding by University policies on outside activities, is presumed to be owned by the outside firm or institution as specified in the parties' agreement. However, the University is concerned about the possible imposition of non-compete clauses that may hinder Covered Individuals from pursuing the University's mission, or prevent Covered Individuals from participating in University-sponsored research-and-development projects. At all times, Covered Individuals should be in compliance with the University's policies on outside activities.

G. Specific Provisions Relating to Trademarks, Copyrights and Patents

Trademarks/Service Marks

Covered Individuals may use Marywood University's names, logos, and/or other marks where necessary in order to identify themselves on matters of official University business. Marywood University names, logos, and other marks shall not be used by individuals or entities in a manner that implies University endorsement, sponsorship or responsibility for particular activities, products, or publications involved, or by any individual or group promoting itself, without the express written permission of the President of the University.

Copyrights

Copyrightable material created by a Covered Individual pursuant to Section IIIB (1) - (4) shall be the property of the University. However, in the case of software, digital resources, collection(s) of information, or other audiovisual educational materials, the University may elect to share ownership with the individual developer. In such cases, formal agreements between the University and the Covered Individual will be created.

Students will own all copyrights in, and to, their student thesis, research reports and dissertations, except in cases where such theses, research reports or dissertations were created with Significant Use of University Resources. Under these circumstances, the University shall retain ownership and the student shall assign any rights in the work to the University where necessary to perfect the University's ownership interest. Notwithstanding the foregoing, a student is permitted to register his or her research paper and/or dissertation with UMI Dissertation Publishing. A student's dissertation cannot be registered with the

U.S. Patent and Trademark Office or U.S. Copyright Office without the written consent of the University.

Where copyright ownership is retained by the student, the University will be granted a perpetual, royalty-free, non-exclusive license and consent to reproduce and publically distribute the thesis, dissertation and/or research report for institutional promotion and marketing, education and instruction, and entries into appropriate competitions with the written consent of the student.

Patents

This section of the policy provides a general overview of a very complex and technical area of the law. An inventor should consult with the Vice President for Academic Affairs or another person designated by Marywood concerning patent rights.

(a) Establishment of the Inventor Commitment

In circumstances when the results of research should be investigated for patentability, a request for such investigation should be submitted to the Office of the Vice President for Academic Affairs. Further, a Covered Individual must report promptly any inventions or inventive concepts in which he or she is involved to the Office of the Vice President for Academic Affairs. All Covered Individuals shall cooperate in the disclosure, patenting, development, and licensing of any inventions with which he or she is involved and in which the University has an interest. Covered Individuals shall agree to assign to the University, to a patent development agency designated by the University, or to a sponsoring agency (if required under agreements governing the research activity), any and all inventions in which the University has an interest under this Policy. In addition, Covered Individuals shall agree to execute such documents of assignment of patents and patent applications as are necessary at the time a patent application is forwarded to the United States Patent and Trademark Office (or any international or foreign patent office) and to do all that is reasonably necessary to assist assignees in the patent prosecution and registration process.

(b) Patent Development and Prosecution

If Marywood University determines that it has no interest in an invention, decides to forego the patenting of an invention, or fails to file a patent application within six months from the date of submission of the patent disclosure to the University, it shall formally waive its rights to the invention. Thereafter, only as a service, and not as an obligation, the University may provide assistance to an inventor in pursuing a patent. The inventor is advised to obtain his or her own legal counsel to seek a patent in the event the University does not pursue one.

On the recommendation of the Vice President for Academic Affairs, the Office of Research and Sponsored Programs may transmit the invention disclosure to a

patent development organization or outside counsel, as appropriate, in order to obtain an evaluation of the invention. Contacts between the inventor and patent development organizations are coordinated by the Office of Research and Sponsored Programs. This Office will transmit invention disclosures to the Federal Government where the terms of the grant or contract so provide, and will be cognizant of any special requirements of granting or contracting agencies.

When it is determined by the Vice President for Academic Affairs that an invention in which the University has an interest under this Policy requires development beyond the capability or proper function of the University, the University may secure such development through appropriate agreements with outside agencies. If an invention has been developed to the point of practical commercial application, the inventor and the University may determine that it is in their best interests for the University to be responsible for patent prosecution, application and management. In such cases, the cost of patent application and related activities leading to active licensed production shall be paid from University funds and this cost shall be reimbursed to the University from any income or royalties obtained or derived from the patent before distribution of proceeds to anyone other than the University.

The Office of Research and Sponsored Programs will make recommendations relative to committing the University to the grant of exclusive licenses as a condition of sponsorship for particular research projects.

(c) Income-Sharing Arrangements

To recognize creativity and to encourage the prompt disclosure of inventions, the University's policy with regard to distribution of royalty income is as follows:

NET ROYALTY INCOME	INVENTOR	UNIVERSITY
\$0 to \$10,000	100%	0%
More than \$10,000	50%	50%

Royalty payments related to inventions developed with the assistance of Federal funds will be subject to any limitations on the division of royalties imposed by the funding agency.

In the event the University pays any costs associated with obtaining the patent, the royalty shall be paid to the inventor only after reimbursement is made to the University for costs it incurred.

IV. Administration/Grievance Procedure

This policy and its implementation may require interpretation and review. Any Covered Individual dissatisfied with the implementation of any procedure or process under this Policy is urged to seek a satisfactory settlement by contacting directly the party (parties) involved. If that approach is unsuccessful, any grievance regarding the interpretation of this Policy or any dispute about a specific decision will be resolved by the Vice President for Academic Affairs. In the event that a party does not accept the decision of the Vice President for Academic Affairs with regard to the dispute, the aggrieved party can submit an appeal, in writing, to the Vice President

for Academic Affairs no later than five business days after the date of the Vice President for Academic Affairs decision. The aggrieved party's appeal shall state in detail the reasons for the appeal and identify the person(s) or body against whom the grievance or appeal is directed, and may propose a settlement of the issue.

Upon receipt of the appeal, the Vice President for Academic Affairs shall provide notification of the appeal to the Executive Committee for the Senate to which the aggrieved party belongs, or, in the case of a student aggrieved party, the Dean of Students. The Executive Committee for the Senate or the Dean of Students, as the case may be, shall then appoint an Ad Hoc Committee and designate a chair. The committee will consist of five individuals, which shall be comprised of the following: (1) department chair or supervisor; (2) dean or director; (3) one of three vice-presidents from business affairs, student life or advancement; and (4) two individuals representing the aggrieved individual's peers.

The Ad Hoc Committee has the right to retain independent legal counsel at the University's expense. The University will determine the budgetary limitation.

In considering the grievance or appeal, the Ad Hoc Committee will take the following steps:

1. The Ad Hoc Committee will request from the parties involved written statements describing the basis for the dispute and the parties' positions.
2. At any point, the Ad Hoc Committee may request in writing additional information or seek interviews with individuals possessing relevant information.
3. The Ad Hoc Committee may hold a hearing on the matter and consider any additional evidence presented by parties.
4. Within thirty days from the close of evidence or date of hearing, unless circumstances require a shorter period of time, the Ad Hoc Committee shall report its findings, rationale and recommendation to the President of the University.
5. The President shall review the matter and recommendation of the Ad Hoc Committee and make a final decision. The President's decision shall be served on the aggrieved person within a reasonable period of time.

Specific Hearing Procedures

1. The aggrieved person will have the opportunity to present his/her case to the Ad Hoc Committee.
2. The Ad Hoc Committee, as part of its review of the case, may conduct pre-hearing meetings with any involved persons, individually or together.
3. The burden of proof is the responsibility of the aggrieved person and must derive from a preponderance of the evidence in the record considered as a whole.
4. Service of notice of the hearing, to the aggrieved person and to the person(s) at issue in the appeal, will be made by the Ad Hoc Committee at least ten calendar days prior to the hearing.

5. A list of witnesses who will appear in person for both parties must be submitted to the Ad Hoc Committee at least five days before the formal hearing. The Ad Hoc Committee will immediately inform both parties of the witnesses scheduled to attend the hearing. The committee does not have the power to require a witness to give testimony.
6. An audio recording of the hearing will be made available to the parties at no cost.
7. Cross-examination of all witnesses is the right of both parties.
8. The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.

Related Policies

- 4.308.1 Academic Freedom
- 4.308.3 Professional Ethics
- 4.308.4 The Teaching Responsibility
- 4.308.5 The Librarianship Responsibility
- 4.450.1 Academic Honesty

History of Policy - Intellectual Property Policy

04/29/11 – Approved by the President of the University as recommended by the Policy Committee of the University.

**MARYWOOD UNIVERSITY
POLICIES AND PROCEDURES MANUAL**

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