Brigham Young University- Idaho Intellectual Property Policy

The purposes of the University are best served when there exists an intellectual environment where creative efforts and innovations can be encouraged and rewarded, while retaining for the University access to, and use of, the intellectual properties that the University has provided assistance in developing.

**Intellectual Property shall consist of the following:**

(a) Any and all copyrightable material produced from creative or scholarly activity, such as text (manuscripts, manuals, books, and articles); videos and motion pictures; music (sound recordings, lyrics, and scores); images (print, photographs, electronic, and art); and computer software (programs, databases, web pages, and courseware);

(b) Any and all patentable works such as patents (processes, machines, manufactures, or compositions of matter); devices; and software excluded from copyrighted materials;

(c) Any and all trademarked materials, such as words, names, symbols or logos, domain names, trade dress, and slogans or any combination of words which has been adopted by the University to identify itself and to distinguish itself and its sponsorship from others;

**Ownership of Intellectual Property**

Except as described below, any intellectual property created, made, or originated by any member of the campus community shall be the sole and exclusive property of the author, creator, or inventor except as he or she may voluntarily choose to transfer such property, in full, or in part.

Creators of any Intellectual Property using University resources shall be deemed to have granted the University a non-exclusive, non-transferable, royalty-free license to use the Intellectual Property for the University’s own educational or administrative purposes unless such a license will impede scholarly publication or similar activities. When entering into publishing agreements, BYU-Idaho authors should, whenever possible, reserve certain rights to the University by including the following provision: “the author retains the right to make copies of the work available for the internal distribution by Brigham Young University-Idaho.”

The University shall own the intellectual property rights associated with any work in any of the following three (3) circumstances:

• **Work for Hire:** The college or University expressly directs a member of the campus community to create a specified work, or the work is created as a specific requirement of employment or as an assigned institutional duty or is included in a written job description or an employment agreement.

• **Assignment:** The Creator has voluntarily transferred the copyright, in whole or in part, to the University.

• **Collaborative Work:** The University can exercise ownership under this clause when it has contributed services or facilities to the production of intellectual properties that go beyond what is traditionally provided to employees in the course of employment or as an assigned institutional duty. This shall be determined initially by the chair or director of the department in which the creator has principally been involved or from which he or she has received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty or staff in that department. Thus, any intellectual property,
created by a member of the campus community, which falls into this category, must be disclosed by the creator to his or her supervisor, department chair, or dean.

In the case of a Collaborative Work or Work for Hire, Academic departments, through the Academic Office, may elect to compensate faculty developers for creation of intellectual property through reduced faculty load, supplemental compensation, or a combination thereof. These developers shall not receive any additional compensation (e.g., royalty distributions). In accordance with academic custom, the University will acknowledge the creators of the intellectual property unless the creators request otherwise. The University grants the creators of the materials a fee-free irrevocable non-exclusive license to use the intellectual property for teaching or research at any other university or educational institution, but not for any commercial use by the author outside another university or educational institution without written authorization of BYU-Idaho.

Textbooks or materials such as handouts or course packets developed by a faculty member with nominal use of university resources are subject to a maximum royalty of 15% of the price of the book or materials. The University prefers that such textbooks or materials be sold/purchased through the University Store. Exceptions are textbooks or other instructional materials that are appropriately peer-reviewed, published, and distributed nationally by a major publishing company external to BYU-I, and have total sales to customers external to BYU-I that exceed sales to BYU-I students.

Modification of the ownership and/or usage rights by agreement with respect to Collaborative Works or Works for Hire

It is anticipated that the relevant parties may on occasion wish to modify the allocation of ownership and usage rights provided by the policy with respect to specific intellectual properties, particularly in cases involving Collaborative Works or Works for Hire. The burden of seeking and obtaining such an agreement will rest with the party seeking the modification; if the relevant parties are unable to reach agreement, the allocation of ownership and usage rights provided by the policy will remain in effect.

An agreement to modify the ownership of any intellectual property may be initiated by any party, though normally agreements to modify the policy for Works for Hire or Collaborative Works will be initiated by the relevant campus community member(s). Such agreements will frequently be made as part of larger agreements, such as an underlying agreement to conduct sponsored research or other programs, but they also may be made independently. Pursuant to general University policy, any such agreement that involves the University or its interests (including agreements to conduct externally sponsored research or other programs under the aegis of the University) must be approved by the President’s Executive Group. Such agreements may contain any terms acceptable to the parties, but should allocate the respective rights and obligations of the parties in a manner that is reasonable under the circumstances.

Distribution of Any Funds Generated

Funds received by the University from the sale of intellectual property owned by the University shall be allocated and expended as determined solely by the University.

Funds received by the Creator from the sale of intellectual property owned by the Creator shall be allocated and expended as determined solely by the Creator.
Ownership Scenarios

Below are examples that may be used as guides in implementing the policy as applied to 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 owns the intellectual property. The university requests a non-exclusive, royalty-free, perpetual license to use the Intellectual Property for internal instructional, educational and administrative purposes.

**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 University owns the intellectual property in all teaching and learning materials created or developed at or for the University as a Work for Hire, unless otherwise agreed by the University in a specific instance. Academic deans and 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). In accordance with academic custom, the University will acknowledge the authors of these works unless the authors request otherwise.

The University grants the author of these materials a fee-free irrevocable non-exclusive license to use that intellectual property for teaching or research at another university or educational institution, but not for any commercial use by the author outside another university or educational institution without written authorization of BYU-Idaho.

**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 faculty member owns the copyright for the paintings. The creator may grant the University a non-exclusive, royalty-free, perpetual license to use the Intellectual Property for internal instructional, educational and administrative purposes. (If it had been a paid leave, the University would request a non-exclusive license to use the IP.)

**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 DVDs through the department. The project is funded by the University and produced on campus with University equipment.
Disposition: The default position in this category is University ownership of the intellectual property in the works created. This would be considered a collaborative work. The University can exercise ownership under this clause when it has contributed services or facilities to the production of the work that go beyond what is traditionally provided to employees generally in the course of employment or as an assigned institutional duty. However, with appropriate administrative approvals, the University may transfer the intellectual property rights to the creator in a written agreement. Even though the rights will transfer, the University will retain the non-exclusive grant/license to use the work.

Case five: A faculty member in the Biology 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 foundations 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.

Disposition: The University owns the intellectual property in all teaching and learning materials created or developed at or for the University as a Work for Hire, unless otherwise agreed by the University in a specific instance. Academic deans and 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). In accordance with academic custom, the University will acknowledge the authors of these works unless the authors request otherwise.

The University grants the author of these materials a fee-free irrevocable non-exclusive license to use that intellectual property for teaching or research at another university or educational institution, but not for any commercial use by the author outside another university or educational institution without written authorization of BYU-Idaho.

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 default position in this category is University ownership of the intellectual property in the works created. This would be considered a collaborative work. The University can exercise ownership under this clause when it has contributed services or facilities to the production of the work that go beyond what is traditionally provided to employees generally in the course of employment or as an assigned institutional duty. However, with appropriate administrative approvals, the University may transfer the intellectual property rights to the creator in a written agreement. Even though the rights will transfer, the University will retain the non-exclusive grant/license to use the work. There would probably be a release of ownership assigning rights to Intellectual Reserve of the Church, but all such arrangements are to be agreed in advance.

Case seven: A faculty member develops a multimedia animation in connection with a course she teaches. Some work is done as part of her regular scholarly activities while some is done off campus. She also relies on using facilities and the technical and design help of student employees. She would like to be able to commercialize the animation.

Disposition: The default position in this category is University ownership of the intellectual property in the works created. This would be considered a collaborative work. The University can exercise ownership under this clause
when it has contributed services or facilities to the production of the work that go beyond what is traditionally provided to employees generally in the course of employment or as an assigned institutional duty. However, with appropriate administrative approvals, the University may transfer the intellectual property rights to the creator in a written agreement. Even though the rights will transfer, the University will retain the non-exclusive grant/license to use the work.

If the work is released back to the author and it is commercialized:

1. The author must reimburse the University for the exceptional resources used; or
2. Share income from the commercialization with the University
3. A final option is joint ownership of the work between the University and the author. "In such case, either party will be allowed to use and exploit the work without accounting to the other, unless otherwise agreed in writing."

Case eight: An employee is paid to travel to Europe with an academic group to take pictures of historic locations and buildings. The created photos would have application in several different departments’ learning materials.

Disposition: The default position in this category is University ownership of the intellectual property in the works created. This would be considered a collaborative work. The University can exercise ownership under this clause when it has contributed services or facilities to the production of the work that go beyond what is traditionally provided to employees generally in the course of employment or as an assigned institutional duty. However, with appropriate administrative approvals, the University may transfer the intellectual property rights to the creator in a written agreement. Even though the rights will transfer, the University will retain the non-exclusive grant/license to use the work.

If the work is released back to the author and it is commercialized:

1. The author must reimburse the University for the exceptional resources used; or
2. Share income from the commercialization with the University
3. A final option is joint ownership of the work between the University and the author. "In such case, either party will be allowed to use and exploit the work without accounting to the other, unless otherwise agreed in writing."

Case nine: A faculty member in the Chemistry department writes an application for mobile devices to teach students the Periodic Table of Elements. 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 assigned committees, and is involved in other citizenship activities. Furthermore, he makes no substantial use of University resources apart from his office and computer.

Disposition: The faculty member owns the intellectual property. The university requests a non-exclusive, royalty-free, perpetual license to use the Intellectual Property for internal instructional, educational and administrative purposes
**Case ten:** A faculty member in the College of Physical Science and Engineering at BYU-Idaho develops a device and process for enhancing water decontamination. Some of the work on the discovery and the initial prototype were developed during the week as part of his scholarly activity and some was done on weekends. The faculty member used his own resources in developing the latest and marketable prototype and now would like to license the technology. The faculty member teaches at a level the department chair feels is appropriate, serves on assigned committees. Furthermore, he made no substantial use of University resources that were not already available to those in the same department.

**Disposition:** The faculty member owns the intellectual property. But the University requests a non-exclusive, royalty-free, perpetual license to use the Intellectual Property for internal instructional, educational and administrative purposes.

**Case eleven:** A faculty member develops an interactive simulation program to be used in connection with a course she teaches. Some work is done as part of her regular scholarly activities while some is done off campus. She also relies on using University facilities and the technical and design help of student employees. She would like to be able to commercialize the software package.

**Disposition:** The default position in this category is University ownership of the intellectual property in the works created. This would be considered a collaborative work. The University can exercise ownership under this clause when it has contributed services or facilities to the production of the work that go beyond what is traditionally provided to employees generally in the course of employment or as an assigned institutional duty. However, with appropriate administrative approvals, the University may transfer the intellectual property rights to the creator in a written agreement. Even though the rights will transfer, the University will retain the non-exclusive grant/license to use the work.

If the work is released back to the creator and it is commercialized:

1. The creator must reimburse the University for the exceptional resources used; or

2. Share income from the commercialization with the University.

3. A final option is joint ownership of the work between the University and the author. "In such case, either party will be allowed to use and exploit the work without accounting to the other, unless otherwise agreed in writing."