

Approval Date: July 16, 2018

Approved by: President's Council

## **I. PURPOSE**

BYU-Idaho is a teaching-oriented institution that serves a unique role within the Church Educational System. As such, "effective teaching and advising are the primary responsibilities of its faculty, who are committed to academic excellence." [President Gordon B. Hinckley, June 21, 2000]. It is expected that University Personnel will devote the majority of their time and efforts to teaching, mentoring, and serving students. The creation of intellectual property should be incidental to the fulfillment of this charge. Any intellectual property created by University Personnel should reflect the unique role of BYU-Idaho and have as its primary purpose the advancement of the University's mission to develop disciples of Jesus Christ and provide a quality education to as many students as possible.

Consistent with these principles, this policy is designed to i) protect the intellectual property rights of the University and its personnel, ii) define the rights and responsibilities of all involved in the creation of intellectual property at the University, iii) support faculty, staff, and students in identifying, protecting, and administering intellectual property matters, and iv) ensure responsible stewardship of sacred resources.

## **II. SCOPE**

As used in this policy, "Intellectual Property" means any and all inventions, patents, trade secrets, know-how, technology, confidential information, ideas, protocols, designs, trademarks and service marks, and original works of authorship, including but not limited to works of a scientific, technical, engineering, mathematical, artistic, literary, dramatic, musical, scholarly, instructional, assessment or entertainment nature, and any and all rights, applications and registrations relating to them.

This Intellectual Property Policy applies to all University faculty, staff, administrators, full or part-time employees, independent contractors, student employees, and volunteers ("University Personnel") and any other individuals or entities who seek to make use of University resources or intellectual property.

No exception to this policy shall be valid unless requested in advance and agreed to in writing as outlined in section III(E).

## **III. POLICY**

### **A. General Statement**

Pursuant to law and University policy, the University owns and controls all Intellectual Property created by University Personnel: i) within the course and scope of their employment, ii) as a work for hire, or iii) with substantial use of University Resources, unless the University enters into a specific written agreement that provides otherwise. Accordingly, as a condition of employment, University Personnel do assign all right, title, and interest in any such works, including future works, to the University, as described herein. The University generally claims

no ownership rights in other works created by University Personnel in full compliance with this and all other applicable University policies and procedures.

## B. Ownership in Intellectual Property

For purposes of this Policy, all Intellectual Property created by University Personnel falls into one of three categories: University Works, Personal Works, or Commissioned Works.

**University Work(s):** Any Intellectual Property created by University Personnel: i) within the course and scope of employment, or ii) as a work for hire, or iii) with substantial use of University Resources. The University owns and controls “University Works” in their entirety.

**Personal Work(s):** Any Intellectual Property created by University Personnel: i) outside the course and scope of their employment, *and* ii) without the substantial use of University Resources, *and* iii) in accordance/compliance with all other applicable University policies and procedures. University Personnel own and control “Personal Works” in their entirety.

University Personnel who choose to commercialize Personal Works are encouraged to seek from publishers and other persons to whom they assign rights a non-exclusive, royalty-free use license for the University. The Intellectual Property Office can assist in such negotiations.

**Commissioned Work(s):** Intellectual Property commissioned by and created pursuant to a written agreement with the University or University Personnel, The Church of Jesus Christ of Latter-day Saints (“the Church”), or other third party. Ownership rights in Commissioned Works are allocated through and governed by the terms of the written agreement. When the Church commissions a work from the University, that work is also subject to the terms and conditions of the Master Services Agreement between BYU-Idaho and the Church.

In summary, the default allocation of rights under this policy is as follows: i) the University owns and controls “University Works” in their entirety; ii) University Personnel own and control “Personal Works” in their entirety; iii) Ownership rights in Commissioned Works are allocated through and governed by the terms of the written agreement. Any exception to this default allocation of rights must be made in writing and agreed to by all parties. In the absence of a written agreement, the default allocation of rights will govern. Likewise, in the event that there is an unresolvable dispute over the meaning or validity of a written agreement, the default allocation of rights will govern.

## C. Use of University Resources

For purposes of this policy, “use of University Resources” is defined as the use of University property, facilities, equipment, personnel, or one’s work time required of one’s appointment at BYU-Idaho. This includes, but is not limited to, use of university funding, paid leave or release time, university laboratories, classrooms, and other on or off-campus facilities, special or departmental equipment, access to classes and students including the use of teaching assistants or other University Personnel, and time spent in fulfillment of or in conjunction with one’s work responsibilities and obligations.

Whether an employee’s use of University Resources is “substantial” is determined by the employee’s chair and dean, managing director, or equivalent, in consultation with the

Intellectual Property Office. Use of paid leave always constitutes “substantial” use of University Resources. Incidental use of office space, personal computers, office equipment and supplies may not constitute “substantial” use of University Resources.

University Personnel who wish to obtain rights to works created while on paid leave, or otherwise owned by the University, must follow the process for seeking an exception to the default allocation of rights outlined in Section III(E).

D. Ownership of Intellectual Property of Non-Employee Students

A “student” is any person enrolled in a BYU-Idaho course for credit. Students who independently develop Intellectual Property arising out of their participation in programs of study at the university will retain the ownership rights, subject to the license described in the next paragraph, to such property when the Intellectual Property does not result from their employment at BYU-Idaho and when there is no written agreement to the contrary.

Consistent with the common law doctrine of “shop rights,” when a student not employed by the university either (a) engages 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 or (b) makes substantial use of university resources in connection with a research program or activity, the university retains the right to claim, as a condition of the student being allowed to participate in the project or use university resources, a non-exclusive, perpetual, royalty-free, paid-up, irrevocable license to exploit, use, and sublicense the resulting Intellectual Property

E. Exceptions to Default Allocation of Rights

It is anticipated that University Personnel may, on occasion, desire to obtain rights in University Works which they create so that they may publish, sell or otherwise commercialize those Works. All requests to obtain rights must be made in advance of undertaking significant effort on the Work. Any modification or exception to the default allocation of rights under this policy must be agreed upon in writing and obtained through the exception process outlined below. The burden of seeking and obtaining the written agreement will rest with the party seeking the exception; if the relevant parties are unable to reach a mutually acceptable written agreement, the default allocation of rights in this policy will remain in effect.

Exception Process

University Personnel seeking an exception to the default allocation of rights under this policy must follow these steps:

1. Obtain approval for the proposed exception from their dean, managing director, or equivalent.
2. Propose the exception to the Intellectual Property Office in writing.
3. Complete a Conflict of Interest disclosure and take steps to comply with any other applicable university policy requirements.

After steps 1-3 have been completed, the Intellectual Property Office will draft a Memorandum of Understanding outlining the proposed terms and rights modifications for approval. Upon approval, the Intellectual Property Office and the Office of the General Counsel will negotiate and prepare a final written agreement to be executed by the party seeking the modification and

the University Resources Vice President. Unless and until a final written agreement has been signed by all parties, the default allocation of rights under this policy shall remain effective.

Additionally, the University may modify or release its Intellectual Property rights to another party when, as determined by the University in its sole discretion, the modification does not: (i) create an unmanageable conflict of interest, (ii) violate any legal obligations of or to the University, (iii) limit appropriate University or CES uses of the Intellectual Property, (iv) have significant commercial or public value that may be best maintained by the University, or (v) otherwise conflict with University or CES policies, goals and principles. Any modification of University rights is contingent on the understanding and agreement that no further effort on, or development of, the work(s) at issue will be made using University Resources without a specific written agreement.

#### F. Use of Personal Works in Course Materials

University Personnel who desire to use *their own* Personal Works as *required* course materials in a course which they teach, oversee, or otherwise have responsibility for—especially when students are required to purchase those materials—must receive approval from their department chair and dean. The chair and dean, in consultation with the University Intellectual Property Office, will determine whether such use is permissible. The University may make approval contingent upon granting the University a non-exclusive, royalty-free license to use and reproduce the work for non-commercial purposes. And the University may, at its sole discretion, sublicense such Intellectual Property to the Church of Jesus Christ of Latter-day Saints on similar terms. This approval process helps mitigate conflicts of interest, maintain the highest quality education at the lowest possible cost, and ensure responsible stewardship of the sacred tithing and tuition dollars that fund the University.

#### G. Disclosure upon Employment

Within a reasonable period of time (not more than 90 days) following commencement of employment at BYU-Idaho, University Personnel should disclose to Human Resources in writing, in sufficient detail to identify clearly, all Intellectual Property invented, authored, made, or conceived by the individual, alone or with others, prior to employment or association with the University. The default allocation of ownership rights under this policy will not apply to any Intellectual Property so disclosed.

For purposes of equitable implementation, current University Personnel employed as of the effective date of this policy should, within 90 days of their next contract, or by April 1, 2019, whichever is later, disclose to Human Resources in writing all Intellectual Property created prior to employment or association with the University. The default allocation of ownership rights under this policy will not apply to any Intellectual Property so disclosed.

#### H. Policy Administration and Dispute Resolution

The Intellectual Property Office, under the direction of the University Resources Vice President, shall be responsible for administering the Intellectual Property Policy and for resolving related disputes. The University Resources Vice President shall make final decisions regarding any disputes that cannot be settled through informal discussions or mediation.

As educational and research endeavors evolve, the procedural application of this policy may change. Current and specific procedures are addressed in the Intellectual Property Procedures document, available here: \_\_\_\_\_ . To the extent there are any inconsistencies between this Intellectual Property Policy and the University’s Intellectual Property Procedures, this Policy will prevail and govern. The University reserves the right to update or change this Policy from time to time.