

**Section C**

**Intellectual Property Policy**

# Butler University

## Intellectual Property Policy

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### A. Purpose

The purpose of this policy is to establish general guidelines for the determination of ownership of patent, trademark, and copyright rights created or developed by employees (both faculty and staff) of Butler University (the "University") within the scope of their employment and created or developed by students of the University while engaged in certain activities with the University. As used in this policy, the term "employees" means both faculty and staff, including both permanent and temporary faculty and staff and adjunct instructors. The term "faculty" includes both full-time faculty and part-time faculty. The term "staff" means employees of the University, including part-time faculty. The term "Creator" refers to any inventor, developer, author, or creator of intellectual property covered by this policy. A Creator may be faculty, staff, and other persons employed by the University, whether full-time or part-time; visiting faculty and researchers; and any other persons, including students, who create or discover applicable intellectual property covered by this policy.

This policy has as its primary purpose the protection of Creators' rights in their creative efforts and the recognition of their ownership interests except when the University has established its superior interest in ownership according to the following guidelines. As explained in greater detail, the ownership of the various rights is dependent upon the specific type of intellectual property. Since the University has a fiduciary responsibility for the appropriate use of University funds, unless otherwise provided for under this policy, all intellectual property rights associated with copyrightable works and patentable inventions that make "substantial use" of University resources belong to the University. For Inventions and Software, as such terms are defined herein, "substantial use" means that the Creator: (1) made use of University facilities, equipment, funds, or other resources (including the use of student resources); (2) received funds from the University in the form of salary, wages, stipend, or other support, but not including financial aid; (3) was involved in a research or development activity undertaken in connection with an externally funded product; or (4) performed under the duties and responsibilities for which the Creator is compensated by the University. With regard to item (1), the following do not constitute "substantial use": (a) normal use of an office, personal computer, and/or secretarial services provided by the University; (b) use of library services, unless the library was required to incur extraordinary expense; and (c) payment for sabbatical. However, all Inventions and Software created by staff within the scope of employment or relating to their job responsibilities or assignments, are considered to involve "substantial use" by virtue of the staff's salary and other compensation and benefits paid to the staff by the University.

For works that are copyrightable, "substantial use" means that the Copyrightable Work was: (1) funded as a part of an externally sponsored research program under an agreement which allocates rights to the University; (2) produced as a result of an assignment, direction, or specific funding by the University; (3) developed by a staff member of the University; or (4) developed with extraordinary or substantially more use of University resources than would normally be provided for the Creator's employment duties, such as when a disproportionate amount of staff time, networks, equipment, or direct funding is used by the Creator in the development of the Copyrightable Work. For students that work with one or more employees (faculty and/or staff) of the University, with or without compensation by the University or an external source, if the work of the employee(s) is(are) considered "substantial use", then the work performed by the student shall be considered as involving "substantial use" of University resources under this policy.

## **1. Courseware**

The University shall have limited ownership or control rights for courseware as specified below:

a. Self-initiated courseware. When faculty develop courseware without specific direction by the University, unless otherwise agreed, the ownership of the courseware shall remain with the Creators. Normally, no royalty, rent or other consideration shall be paid to the Creator when that courseware is used for instruction at the University and such courseware shall not be used or modified without the consent of the Creator(s). The courseware shall not be sold, leased, rented or otherwise used in a manner that competes in a substantial way with the for-credit offering of the University unless that transaction has received the prior written approval of the Provost or Vice President of Finance. Should approval be granted to offer the course outside of the University, the Creator shall reimburse the University for substantial use of University resources from revenues derived from the transaction offering the course.

b. University-directed courseware. When the University specifically directs the creation of courseware by assigning one or more employees or students to develop the courseware and supplies them with materials and time to develop the courseware, the resulting courseware belongs to the University and the University shall have the right to revise it and decide who will utilize the courseware in instruction. The University may, at its discretion, specifically agree to share revenues and control rights with the employee.

c. Reporting the development of courseware. Colleges shall develop procedures for reporting the development of courseware to the appropriate dean of the college.

## **2. Scholarly and Artistic Works**

Notwithstanding the "work-for-hire" principle, the ownership of textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, and like works created by faculty shall reside with the Creator(s) and any revenue derived from their work shall belong to the Creator(s) unless such work was created with "substantial use" as applicable to copyrightable works. Except for textbooks published by an entity other than the University, the University shall have royalty-free use of the work within the University, unless otherwise agreed in writing between the Creator(s) and the University.

## **3. Manuscripts for Academic Journals**

a. Notwithstanding the "work-for-hire" principle, the ownership of manuscripts for publication in academic journals created by faculty shall reside with the Creator(s) and any revenue derived from their works shall belong to the Creator(s) unless such manuscript was created with "substantial use" as applicable to copyrightable works.

b. If the manuscript is to be published, the Creator(s) shall request the right, from the publisher, to provide the University with a royalty-free right to use the manuscript within the University in its teaching, research, and service programs, but not for external distribution, and, if successful, the Creator(s) shall grant such right to the University. The refusal of any publisher to agree to this requirement shall be reported to the University prior to execution of an agreement with the publisher.

c. Upon the establishment of national governmental or nonprofit entities whose purpose is to maintain in an electronically accessible manner a publicly available copy of academic manuscripts, the University will review each entity and upon determination that providing the manuscripts will not jeopardize the publication of articles or infringe on academic freedom, require the Creator(s) to provide to the appropriate entity a limited license for the use of each manuscript.

## **4. Software**

a. Except for software produced for use as self-initiated courseware, all software created by any employee with "substantial use" as applicable to Inventions and Software (the "Software") shall belong to the University, and the Creator(s) shall assign all right, title, and interest in and to such Software to the University. Software shall be subject to the Software Rights Policy set forth herein, and software produced for use as courseware shall be considered courseware under the terms of this policy.

## **5. Student Academic Creations**

If a student's Inventions, Software, and Copyrightable Works involved "substantial use" of the University resources in a research setting (whether or not for credit, such as in the instance of working with faculty for independent study on a research project for which the faculty member made substantial use of University resources), such Inventions, Software, and Copyrightable Works are subject to this policy and, unless otherwise excluded, are owned by the University. Otherwise, the ownership of other student works and the intellectual property rights submitted in fulfillment of academic requirements ("academic creations") shall be with the Creator(s). The student, by enrolling in the University gives the University a nonexclusive royalty-free license to mark on, modify, retain the academic creations as may be required by the process of instruction, to otherwise handle the work as set out in the University's Intellectual Property Policy, and to otherwise use the work as stated in the course syllabus. The

University shall not have the right to use an academic creation in any other manner without the written consent of the Creator(s).

## **6. Copyrightable Works**

The rights to all copyrightable works other than self-initiated courseware, scholarly and artistic works, manuscripts for artist journals, Software, and student academic creations ("Copyrightable Works") shall be determined pursuant to the University's Copyrightable Works Policy set forth herein. According to the Copyrightable Works Policy, examples of Copyrightable Works created by faculty and/or student to which the University may have rights include: software written for customer relationship management; a skit written at the request of the University for a University celebration; software created for use in musical composition; a video produced to promote the University; and a painting commissioned by the University for display on University property. Examples of Copyrightable Works created by faculty and/or students that may belong to the author(s) of the work include: a painting, a skit, or a musical composition written without the request of the University; a video produced for a class assignment; and a novel.

## **7. Inventions**

The rights to all inventions, ideas, discoveries, and improvements, whether or not patentable, conceived by an employee or student of the University with "substantial use" as applicable to Inventions, alone or in combination with others (the "Inventions") belong to the University under the University's Patent Policy set forth herein.

## **8. Externally Funded Developments**

In the event any coursework, scholarly and artist works, manuscripts for academic journals, Software, Copyrightable Works, or Inventions are funded by an external source, the intellectual property rights in such works shall be governed by the terms of the agreement between the University and the external source, or, in the absence of such agreement, shall be governed by this policy.

## **B. Patent, Software, and Copyrightable Works Rights Policies**

### **1. Patent Rights Policy**

All patent rights on Inventions resulting from substantial use of University resources shall be owned by the University. The following regulations shall be followed with respect to Inventions:

a. Any Creator who conceives an Invention resulting from substantial use of University resources shall report the matter to their appropriate dean, who will, in turn, recommend whether or not to forward the matter to the Provost for consideration of protection and/or commercialization of the same.

b. If the University decides according to the University's procedures that an Invention does not warrant patenting, the inventor is free to patent it. In the event the University decides to take no action with regard to an Invention, the University does not relinquish its right to publish any of the data obtained in the applicable research project.

c. Unless otherwise agreed between the Creator(s) and the University, or unless otherwise specified in a contract with an external funding source relative to the patent rights in an Invention, revenues shall be divided between the employee (recall that "employee" encompasses both faculty and staff) Creator(s) and the University

after direct costs (e.g., cash expenditures, legal costs, etc.), excluding overhead, have been deducted according to the following schedule:

Cumulative Net Income to University	Percentage to University	Percentage to Employee Creator(s) As Individuals	Percentage to College(s) of Faculty Creator(s)
Up to \$99,999	50%	50%	0%
\$100,000 to \$299,999	45%	40%	15%
\$300,000 to \$999,999	40%	30%	30%
\$1,000,000 and above	35%	25%	40%

The employee Creator(s) may, at his/her(their) discretion decide whether to share a portion of their respective revenues with any student Creator(s). If there are no faculty Creators, the percentage designated above for the College of faculty Creators will be evenly divided between the University and the staff Creator(s).

To assist in understanding this above table, consider the following examples:

Example 1: Invention Created by a Faculty Member and a Staff Member:

Cumulative Net Income to University	Percentage to University	Percentage to Faculty Creator	Percentage to Staff Creator	Percentage to College of Faculty Creator
Up to \$99,999	50%	25%	25%	0%
\$100,000 to \$299,999	45%	20%	20%	15%
\$300,000 to \$999,999	40%	15%	15%	30%
\$1,000,000 and above	35%	12.5%	12.5%	40%

Example 2: Invention Created by a Faculty Member and a Student, where the Faculty Member agrees to share some of the Faculty Member's proceeds with the Student (such sharing must be set forth in a written agreement presented to the University):

Cumulative Net Income to University	Percentage to University	Percentage to Faculty Creator	Percentage to Student Creator	Percentage to College of Faculty Creator
Up to \$99,999	50%	50%	0%	0%
\$100,000 to \$299,999	45%	39%	1%	15%
\$300,000 to \$999,999	40%	28.5%	1.5%	30%
\$1,000,000 and above	35%	23%	2%	40%

Example 3: Invention Created by two Faculty Members in Two Different Colleges:

Cumulative Net Income to University	Percentage to University	Percentage to Faculty Creator A	Percentage to Faculty Creator B	Percentage to College of Faculty Creator A	Percentage to College of Faculty Creator B
Up to \$99,999	50%	25%	25%	0%	0%
\$100,000 to \$299,999	45%	20%	20%	7.5%	7.5%
\$300,000 to \$999,999	40%	15%	15%	15%	15%
\$1,000,000 and above	35%	12.5%	12.5%	20%	20%

Example 4: Invention Created by a Staff Member:

Cumulative Net Income to University	Percentage to University	Percentage to Staff Creator
Up to \$99,999	50%	50%
\$100,000 to \$299,999	52.5%	47.5%
\$300,000 to \$999,999	55%	45%
\$1,000,000 and above	55%	45%

**2. Software Rights Policy**

For Software produced by one or more Creators, the Creator(s) shall follow the same policy applicable to Inventions. The University may opt to pursue patent protection and/or copyright registration for any Software, or may waive its rights to do so in the same manner set forth for Inventions. Any revenue generated from Software shall also be shared according to the same methodology as set forth for Inventions.

**3. Copyrightable Works Rights Policy**

Notwithstanding anything to the contrary in this policy, all Copyrightable Works, whether or not created with "substantial use", created by staff of the University shall belong to the University. For Copyrightable Works created by faculty and/or students, ownership shall remain with the Creator(s). However, for Copyrightable Works created by faculty and/or students involving "substantial use" as applicable to copyrightable works:

- a. The Creator(s) shall retain ownership of the Copyrightable Work.
- b. The Creator(s) shall report the matter to their appropriate dean who will ensure that the Creator(s) provide(s) a Copyrightable Work Disclosure to the Vice President of Finance.
- c. According to the University's procedures, the Vice President of Finance and the Creator(s) will use good faith efforts to negotiate royalties from the Copyrightable Work to the University, and the Vice President of Finance will have a written agreement prepared for signature by the Creator(s) for such royalties.

d. The Creator(s) shall, in the agreement, grant the University a fully-paid, perpetual licensed to use, display, distribute, copyright, publish, and perform the Copyrightable Work solely for the University's own purposes, including but not limited to display and performances sponsored by the University open to the public with or without fees charged therefor. The University shall have no obligation to make an accounting to the Creator(s) for revenues to the University under this license.

#### **4. General Policy**

The general policies set forth below are applicable to any and all intellectual property rights created by faculty, staff, and students of the University.

a. In case of cooperative research sponsored in whole or in part by an external source, a written contract shall be made between the University and the external source. This contract should include a statement of policy substantially equivalent to that outlined below:

"It is agreed by the parties to this contract that all results of experimental work, including inventions and copyrightable works, carried on under the direction of the scientific staff of the University, belong to the University and to the public and shall be used and controlled so as to produce the greatest benefit to the University and the public. It is understood and agreed that if patentable inventions or copyrightable work grow out of the investigation and such inventions or copyrightable work have commercial value, the contracting party shall receive preferential consideration as a prospective licensee, with a view to compensating said contracting party in part for the assistance rendered in the investigation.

"It is further agreed that the name, trademarks, and service marks of the University shall not be used by the contracting party in any advertisement, whether with regard to the agreement or any other related matter, without the prior written consent of the University."

b. In case of a research project where it is proposed that all costs including overhead, salary of investigator, reasonable rent on the use of equipment, etc., are paid by an external source, the external source and the University shall negotiate ownership of all patent or copyright rights as memorialized by written agreement prior to the provision of any funding by the external source. The University shall reserve the right to publish all data of fundamental value to science and technology.

c. For intellectual property rights owned by the University and for which the University seeks protection, the University will indemnify, defend, and hold harmless employees and students from claims of infringement of the intellectual property right of any third party. For intellectual property rights owned by Creator(s), the Creator(s) will indemnify, defend, and hold harmless the University from claims of infringement of the intellectual property rights of any third party.

#### **C. Trademark Policy**

The University may develop a trademark policy that provides for the protection of the trademarks and service marks of the University. The University does not acquire by this policy any trademarks or service marks belonging to any faculty, staff, or student.



#### **D. Creator and University Responsibilities**

If the University is entitled to ownership and/or license rights of intellectual property rights according to the guidelines above, the Creator(s) involved will promptly disclose the Invention, Software, or Copyrightable Work to the University and will not publish or otherwise disclose the Invention, Software, or Copyrightable Work to others except as permitted herein. The Creator(s) will also execute all documents necessary (such as an assignment of rights) to memorialize and perfect the University's ownership and/or license rights. The Creator(s) will assist the University to determine whether protection should be sought for the Invention, Software, and Copyrightable Work and, where appropriate, whether the Invention, Software, or Copyrightable Work has commercial viability. In the event the University decides that protection and/or commercial sale/license is appropriate, the Creator(s) shall assist the University in the activities necessary to protect and/or commercialize the intellectual property rights in the Invention, Software, or Copyrightable Work. In the event that the University decides to take no further action, the University may, at its sole discretion, if so requested by the Creator(s) assign the University's intellectual property rights to the Creator(s). If the University has no ownership rights or license rights, or assigns such intellectual property rights to the Creator(s) according to the guidelines above, the University shall have no obligation to assist the Creator(s) in the development, protection, or commercialization of the Invention, Software, or Copyrightable Work.

#### **E. Independent Contractors**

In performing duties for the University or for University Programs funded in whole or in part by an external source, employees shall only utilize the services of employees and/or students of the University. In the event an employee wishes to engage the services of a person or entity other than an employee or student of the University (an "independent contractor"), the employee must first consult with the University, and the independent contractor must enter into a written agreement with the University prior to such engagement shall assign all right, title, and interest in and to the work performed for the employee to the University and/or external funding source, as appropriate.

#### **F. University Procedures**

The University shall establish procedures that require employment contracts and course catalogs or syllabi to state that the employee or student is subject to this policy and to resolve questions concerning intellectual property rights and any disputes that develop under this policy. Final decisions on disputed matters will be made by the Provost or designee and shall constitute final action.

#### **G. Waiver of University Rights**

The University may, in its sole discretion, waive any or all of its right, title, and interest in and to an Invention, Software, or Copyrightable Work. The procedures required for such waiver shall be established by the University from time to time.

#### **H. Modifications to this Policy**

Changes in the above policies may be made by the University to conform to the requirements of the United States Government when contracting with the United States Government or a Federal Government Agency. In addition, the University reserves the right to modify this Policy from time to time in accordance with University Procedures. The then-current policy will be made available to employees and students upon request. Royalties shall be distributed according to the policy in effect at the time the University enters into any license, assignment, or contractual agreement regarding the exploitation of the intellectual property.

**I. Internal Procedures for Managing Intellectual Property**

The University shall establish and maintain internal procedures for managing intellectual property in accordance with this Policy. The procedures will also identify the person(s) having authority to make the decisions for the University as set forth in this Policy, unless a specific person is identified in this Policy. The procedures may be amended by the University from time to time at its sole discretion, and will be made available upon request.

Questions about this Policy should be directed to:

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