

Intellectual Properties

University Operations – Financial Activity

CWU Policy 202-14

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Policy Executive: Senior Vice President – Finance and Administration

Responsible Office/Unit: Office of Senior Vice President – Finance and Administration

Policy Statement:

Applicability:

Content:

Policy

(1) It is important for Central Washington University (CWU) to provide uniform policies and procedures for the regulation and administration of intellectual property rights generated by the activities of its faculty, employees and others associated with the university such as visiting scholars. The following University Intellectual Properties Policy is therefore established. Nothing in this policy shall be construed to overrule or ignore current law and acceptable use policies regarding existing intellectual properties. This policy supersedes and replaces all prior intellectual properties policies (2-2.10 Copyrights and Royalties Policy).

(2) Definitions – For the purposes of this policy, the definitions of terms are:

- A. ***Normal and customary supported works:*** Those works developed with no more than the normal support provided to employees and students of the university: general computer support, email, library resources, office space, etc. The use of these resources that are ordinarily available to employees shall be regarded as normal and customary support by the university, and shall not entitle the university to exclusive ownership rights in an intellectual property. The university will not construe the provision of personal office, department facilities, library, laboratory, word processing, data processing, or computation facilities as solely of themselves constituting significant use of space or facilities. Nor will CWU construe the payment of salary or CWU-funded faculty research grants, professional leaves, etc., solely of themselves to constitute significant use of funds. Should any controversy concerning this policy arise, it will be referred to the Intellectual Properties Committee.
- B. ***Intellectual Properties (IPs):*** Intangible properties protectable as to ownership under the laws of patent, copyright, trademark, or trade secret.

- C. **Investigator** (also called Principal Investigator): Refers to the author, creator, inventor, whether faculty, staff, administrative exempt employees of the university, visiting scholars, etc. In limited cases, students are specifically included.
- D. **President:** President of Central Washington University.
- E. **University:** Central Washington University.
- F. **University-assigned works:** Are those works that are the result of a specific reassignment for an employee that are explicitly out of the norm of regular duties. In general, the university will have supported this work by reassigned time, special funding of equipment, etc., and such support will be documented in a specifically negotiated agreement/contract. Such assignment does not fall under the category of “other duties as assigned” as referred to in many employees’ position descriptions, nor does such an assignment equate as “works-for-hire” (q.v.).
- G. **University-sponsored works:** Works resulting almost wholly from university support of equipment, supplies, etc., that is beyond that which would be defined as normal and customary. As a general rule, such works would rely heavily on the expertise and/or facilities provided by the university.
- H. **Works-for-hire:** Works qualifying as “works made for hire” under the Copyright Act of 1976, as amended, codified at 17 U.S.C. 101 as well as manuscripts, software, patentable inventions or creations, or other materials produced by persons whose primary employment by the university is specifically to produce such works (e.g., graphic designers, marketing personnel, television producers). Borderline determinations should be documented, when desired, in accordance with this policy. Should any controversy concerning this policy arise, it will be referred to the Intellectual Properties Committee.

(3) Objectives

- A. To define, clarify and protect the rights and equities of investigators, the university, governmental or private sponsors of research and creative works, and the public, with respect to inventions and original works, by providing for just and equitable recognition of the legitimate interests of each of the above in such inventions and works.
- B. To enhance the university’s pursuit of research and creative works, education, and public service by promoting recourse to the patenting, licensing, and copyright process and by providing information, support and liaison concerning the procedures and problems involved therein.
- C. To encourage broad utilization of the results of university-based research and creative works and to provide a vehicle for the transfer of new technology and ideas from the university to the community at large, by permitting exploitation (both commercial and otherwise) in the public interest and for the public benefit, in a manner consistent with the integrity and objectives of the academic process, including the goal of public dissemination of the results of research and creative works.
- D. To stimulate innovative and creative scholarship, research and creative works, writing and their recognition, by establishing an administrative process that enables the university to make payments to investigators when the university licenses IP developed by those investigators.
- E. To encourage and assist scholars and researchers in identifying potentially commercialize-able IP, to require prompt and early reporting thereof to the Intellectual Properties Committee (IPC) and to promote scholarly publication concerning such IP in a manner that does not prejudice the obtaining of a patent or other forms of IP protection.

- F. To devise and promulgate clear and practicable regulations, procedures and forms for the reporting and disclosure of IP and the timely prosecution of patent applications and copyright registrations in appropriate cases.
- G. To provide for obtaining legal protection and licensing of IP, where appropriate, through the Intellectual Properties Committee or an IP management organization or publishing entity designated by that committee.
- H. To preserve and protect the rights, as agreed, of any government or private sponsors of research and creative works in any invention or work that may be generated by such research and creative works, and to ensure compliance with the statutory or other terms of any such grant.
- I. To preserve and protect the rights of the university in inventions or other original works which result from the use of university funds or facilities by faculty, employees, students or trainees, in keeping with state law.

(4) Policy for Determining Ownership Rights

- A. The principle is hereby recognized that there are usually three interests involved in connection with research and creative work and invention performed in the university by or under the direction of the faculty and staff of the university. The investigator, the university, and the general public, whose taxes and gifts support the university, represent these three interests. If the research and creative work is financed wholly or in part by an outside agency there exists an additional interest.
 - 1. In general these interests are best served by immediate publication and dissemination of the results of the research and creative work. In some cases, however, the interests of all are best protected and furthered by obtaining legal protection for, and commercializing, the results of research and creative works, which include but are not limited to copyrightable materials, information, and tangible materials.
 - 2. Distribution of net income resulting from intellectual property is detailed in Section 5 of this document.
 - 3. For intellectual properties developed before the creation of this policy, the investigator(s) has(have) the option to (1) continue under the existing agreements made at the time of undertaking work, or (2) request to the Intellectual Properties Committee to have his/her/their work approved and governed by this policy.
 - 4. Multiple investigators have the requirement to decide for themselves on this matter. Members of the IPC will act as consultants if requested to do so.
- B. Intellectual Properties Resulting from Personal or Private Research and Creative Works (i.e., normal and customary works) - The university shall have no vested interest in intellectual properties clearly resulting from personal or private and developed by a person, without more than normal and customary cost or expense to, or use of facilities, equipment or staff of, the university. Insofar as faculty members have an obligation to produce scholarly works, they may use university property to create such scholarship. The university has no claim on the revenues generated from these properties created by individual effort. Revenues generated by intellectual properties created by the individual effort of the faculty member (or members) remain with the faculty member(s).

1. Such intellectual properties may be voluntarily offered by the faculty member to the Intellectual Properties Committee for the possible securing of a patent or copyright and for subsequent developing, processing and exploitation under university aegis. If such offer is accepted by the Intellectual Properties Committee, the investigator shall assign her/his rights to CWU and shall thereafter receive SEVENTY-FIVE (75%) of the net profits if any (amount received by the university, less costs) derived from any exploitation of the patent or copyright. This policy shall be applied in compliance with all state ethics laws (Cf. RCW 42.52.160, Use of persons, money, or property for private gain).
- C. Intellectual Properties Resulting from University Sponsorship – (i.e., university sponsored and university assigned).
1. Wholly university supported - Intellectual properties resulting from research and creative work wholly supported by university funds shall be the property of Central Washington University. The developers of such IPs shall confirm the university's ownership by assigning their rights to Central Washington University and shall execute all other documents as required to enable the university to protect and manage those rights and shall be entitled to receive a share of the net profits (amount received by the university, less costs) derived from any commercial exploitation of the patent, licensing, or copyright of that work. That share is determined according to the schedule included in the procedures implementing this policy (Cf. Sect. 8).
 2. Multiple funding sources - Intellectual Properties resulting from research and creative work supported by an outside agency or agencies, and with CWU funds, shall be governed by the provisions of the agreement with the sponsoring agency and CWU. In the absence of such provisions, the Intellectual Property rights shall be determined in accordance with this policy.
 3. Intellectual Properties Resulting from Research and Creative Work Supported by an Outside Agency - Intellectual properties resulting from research and creative work supported by an outside agency or agencies shall be governed by the provisions of the agreement with the sponsoring agency. In the absence of such provisions the intellectual property rights shall be determined in accordance with this policy.
 4. Intellectual Properties Produced "for Hire" - The university shall be the sole proprietor of any work done "for hire," and may make such disposition of resultant materials as it may choose. Should any controversy concerning this policy arise, it will be referred to the Intellectual Properties Committee.
 5. Intellectual Properties and Rights of Students
 - a. Coursework assignments - IPs (writings, software programs, artworks, etc.) produced as a result of general coursework assignments are the property of the student or students. Assignments requiring multiple students to participate are the property of those students and they have the requirement to decide for themselves rights and distribution.
 - b. Mentor-guided projects - IPs produced as the result or by-product of the guided supervision of a mentor on a specific project are the property of the mentor. Such work arrangements should also be documented in a separate agreement between the mentor and student(s) involved. This situation applies to cases in which the student is being paid by funds from a mentor's research grant and also in cases in which a student is taking mentor-guided research credit courses (e.g. CHEM 495).
 - c. Theses - The university recognizes that copyright for theses remains with the student.

6. The original records (including software) of an investigation for a graduate thesis or dissertation are the property of the university but may be retained by the student at the discretion of the student's major department and faculty mentor.
7. The university shall have, as a condition of degree award, the royalty-free right to retain, use and distribute a limited number of copies of the thesis, together with the right to require its publication for archival use.
8. Asserting or Relinquishing University Rights to Intellectual Properties - The university may relinquish all of its rights to the investigator in the following cases:
 - a. Normal and customary works - If the invention is judged by the Intellectual Properties Committee to be the result of personal or private research or creative work, under the rules adopted by the state Executive Ethics Board, and have required no more than normal and customary support of the university.
 - b. Determination to not accept rights offered by investigator - If the university decides not to secure a patent for an invention which is a result of personal or private research or creative work but has been submitted to the Intellectual Properties Committee voluntarily by the investigator for possible development and patent under university auspices as hereafter noted.
 - c. Determination not to pursue rights for university-sponsored or university assigned works - If the University determines that it is not in its best economic interest to pursue a patent on an invention, the rights may be released to the sponsoring agency (if such action is required by grant or contract agreement), or to the Investigator.
9. Rights when investigator moves to new employment - When an investigator moves to new employment, CWU shall enter into a technology administration agreement ("TAA") with the new employer to enable the orderly administration of rights related to any IP created by the investigator. CWU will retain all rights to commercialize or otherwise license the intellectual property, and rights in improvements created at the new university will be determined in accordance with that university's intellectual property policy.

(5) CWU Distribution Policy and Schedule for Net Revenues from Licenses, Royalties, and Copyright

- A. Scope and Intent for the distribution and sharing of net revenues
 1. Research, invention, creative endeavors, and other intellectual work shall be encouraged and supported by Central Washington University. For university-sponsored and university-assigned materials a sharing of royalties and income is appropriate because of the investigator's provision of creative efforts on the one hand and the university's specific provision of salary, facilities, administrative support, and other resources on the other.
 2. If there are two or more investigators, each investigator shall share equally in the said share, unless all investigators have previously agreed in writing to a different distribution and have notified the university in writing thereof.
- B. University-sponsored/University-assigned - A portion of the net profits after obligations from the sale or licensing of university-sponsored or university-assigned intellectual property shall be allocated to its investigator(s) to foster a culture of practical innovation. This should be based not only on cash royalties received, but also on stock or other assets received by the university from the sale or licensing of that intellectual property. A portion of the university's share should go

directly to the investigators' academic unit (college or department), to encourage future intellectual property development.

- C. Net revenue - Net revenue income is defined as gross income from licensing minus direct costs. For this purpose, direct costs may include:
1. All costs associated with obtaining legal protection for the intellectual property;
 2. All costs from the marketing and licensing of the intellectual property;
 3. All legal costs associated with the above or in connection with, or in anticipation of, litigation or controversy between any parties involving rights under such Intellectual Property;
 4. Direct costs shall not include operating costs of CWU's sponsored research office.
- D. Net Revenue distribution for Intellectual Properties - When income generated from various discoveries and creations in teaching, research and creative works is small (under \$25,000), investigators will retain any generated revenue up to and including \$25,000. Sharing beyond that limit for creations in which university resources are instrumental in the production is set forth in the table below. The first \$25,000 in net revenue for any individual item of intellectual property shall be paid to the investigator in full, after which distribution is suggested as follows. Individual contracts or agreements may vary in detail from this suggested schedule.

1. Table

Participation	Distribution		
	Investigator	CWU Grad Office	Reinvestment [1]
Individual effort	100%	0	0
University-sponsored			
\$0-\$25,000	100%	0	0
\$25,001-\$50,000	75%	15%	10%
\$50,001-\$100,000	60%	20%	20%
\$100,001 and greater	50%	25%	25%
University-assigned [2]	20%	50%	30%

2. This specific percentage of royalty funds will be reinvested in the investigator's scholarly activities or that of the department or college.
3. Excluding employees whose primary duties include creation of intellectual properties (e.g, promotion publications in print, video, and digital formats produced for hire. Cf. Sect. II, definitions).

E. Distribution process

1. Distribution of the investigator's share shall be made annually from the amount of net royalties if any, received during the previous fiscal year.

- a. Prior to the determination of the distribution of net income, the investigator shall receive a statement of direct expenses charged against the gross income derived from an agreement.
- b. Investigators shall have 30 working days to challenge the statement of direct expenses.
- c. After resolution of such challenge, if any, the distribution of funds will occur.
- d. Distributions to investigators are final and shall not be affected by unanticipated expenses 90 days after distribution.
- e. Adjustments may be made to correct a clerical error.
- f. In the case of the death of the investigator, any unpaid royalties shall be paid to the investigator's estate unless otherwise specified.
- g. In the event of any litigation, actual or imminent, or any other action to protect patent rights, distribution of royalties will be withheld until resolution of the dispute.

(6) Procedure with Respect to Outside Employment and Avoiding Conflict of Interest

- A. See relevant CWU policies. (Cf. Policy Manual, 2-2.7 Ethics, 2-2.9 Conflict of Interest, Faculty Code 7.30; state law and regulations (RCW 42.52 Ethics in Public Service)).

(7) Criteria Governing Outside Commercial Sponsorship of Research and Creative Work

- A. Contracts and other arrangements between the university and outside commercial sponsors of research and creative work must comply with the following criteria.
 1. Research investigators and the university shall be free to disseminate and publish the results of sponsored research and creative works, provided that in order not to jeopardize applications for patents the university may agree that any proposed publication will be submitted to the sponsor with notice of intent to submit for publication and that unless the sponsor in writing requests a delay within two (2) months from the date of such notice, the investigators or the university shall be free to proceed with immediate publication. However, if the sponsor requests a delay, the submission of the manuscript will be withheld for the period requested, but in no event for longer than SIX (6) months from the date of the notice of intent to submit for publication and only in order to permit the sponsor to prepare and file the necessary application.
 2. The university shall retain the right to take title to any patentable inventions or discoveries arising from the undertaking of sponsored research, except that the university may grant an exclusive license to the sponsor for an agreed-upon period and generally bearing a royalty to be agreed upon. Such licenses shall also be subject to a reservation of rights to the university to allow the university to continue to make and use the IP in its own research and education.
 3. Any agreement or arrangement with the commercial sponsor shall not impose any restrictions upon the university in conflict with its established policies and practices, but shall permit performance of the research, creative work or other investigation in the same manner and subject to the same administrative requirements applicable to research financed with the university's own funds.

4. Requirements of granting agencies will be complied with (e.g., NSF Grant Policy Manual, Sect. 7 <http://www.nsf.gov/pubs/2002/nsf02151/gpm7.htm>).

(8) Procedures for the Administration of Intellectual Properties Policy

A. The Intellectual Properties Committee

1. The Intellectual Properties Committee (IPC) shall be vested with authority to administer this Policy and reports to the President.

2. Membership of IPC - The IPC shall consist of the following persons:

Voting: 1 faculty member of each college
 1 Dean of Libraries
 AVP of Grad Studies or designee

Non-voting: Legal counsel

Chair: Elected by voting members

Quorum: Majority

3. Meetings of IPC - The IPC shall meet as often as the Chair deems necessary, but at least quarterly based on the fiscal 12-month calendar.
4. Powers and Duties of IPC - The IPC shall have the following delegated authority, powers and duties.
 - a. To interpret and apply the Intellectual Properties Policy, in keeping with applicable state and federal laws and regulations.
 - b. To evaluate inventions for patentability and economic feasibility, and where desirable to seek expert advice to assist it in making such determinations.
 - c. To decide on the category into which an invention or original work falls for the purposes of determining who has or shares the equity therein.
 - d. To assign inventions to outside organizations for the evaluation, patenting and licensing of inventions, and to procure the receipt of royalties or other benefits by the university.
 - e. To release patent rights to the investigator in the absence of overriding obligations to outside sponsors of research, in cases where it is deemed equitable or appropriate to do so, subject to the written approval of the president or a person designated by the president.
 - f. To submit its decisions on patent and copyright matters to the president of the university, or to a person designated by the president for such purposes.
 - g. To provide assistance and advice to faculty and other research personnel concerning all aspects related to the patenting and licensing of inventions and the copyright in original works.
 - h. To ensure an effective system of patent and copyright administration by means of an ongoing review of applicable policies and procedures and to make reports and recommendations for improvement when appropriate to the president.

- i. To take the actions necessary to achieve the objectives and goals of the intellectual properties policy, without being limited by the specific powers and duties enumerated above.
 - j. To determine the patent or related rights or equities of the University to other interested parties in an invention and to decide on the appropriate division of royalties.
- B. Procedure for Early Notification and Reporting Intellectual Properties - All employees of the university, all non-employees who use university research facilities and those who receive grant or contract funds through the university shall promptly report any ideas for and/or reduction to practice of a potentially patentable invention or discovery, or copyrightable work that may be commercialize-able, to the IPC. The purpose of such a report is two-fold:
 - 1. determination of ownership rights, and
 - 2. determination by the university to assert its rights or release them (Cf. Sect.4).
- C. A faculty or staff member who writes or produces a work which he or she believes may be commercially exploitable shall notify the IPC in writing (IPC Form 1). Works developed and intended to be published or distributed from the university and with substantial use of university facilities are subject to this notification requirement.
 - 1. Example 1: Investigator develops a shareware program and wishes to distribute it via the campus network.
 - 2. Example 2: An author wishes to publish and distribute a chapbook of poetry
- D. However, publications of manuscripts as commercial monographs, textbooks, or in academic periodicals, collections and conference proceedings, are not subject to this notification requirement. (Cf. Sect. 4)
- E. The report (IPC form 1) shall be submitted at the earliest opportunity to the IPC (IPC Form 1). Such a report is filed when the investigator first sets to work on a project to develop an IP, or later in the process when the investigator realizes that development of IP is probable.
- F. The IPC may forward the report to the department chair or the immediate supervisor of the investigator for evaluation. The department chair or immediate supervisor to whom the report is submitted shall review it and shall return an evaluation to the IPC within THIRTY (30) days after receipt, together with a written opinion regarding the accuracy of the investigator's statement and the reasons for such opinion.
- G. The chair and members of the IPC shall take steps needed to assure and preserve the confidentiality of all documents. (See confidentiality agreement, IPC Form 2.)
- H. The investigator shall be notified of meetings of the IPC and may be invited to attend the meetings at which her/his report will be considered.
- I. The IPC shall within ninety (90) days of the submission of the report and required statement notify the president of the university, or a designated agent, the investigator and the departmental head or immediate supervisor of its decision with respect to the disposition of the matter and the respective rights or equities of any interested parties.

- J. The president or designated agent may overrule in writing the decision of the IPC, but failing such action within thirty (30) days of submission of the decision to the president or such agent the decision of the IPC shall be binding on all parties, unless appealed within that time.
- K. The investigator shall be notified in writing of the final decision of the university within thirty (30) days.
- L. If the administration of CWU decides not to pursue development of the intellectual property, or takes no specific action that indicates intent to do so, within one hundred twenty (120) days after the receipt of the IPC Form 1 by the office of graduate studies, all rights shall revert to the investigator upon written claim of the Investigator.
- M. If the university pursues development of the intellectual property, it shall take action within two hundred seventy (270) days after the issuance of the final, written recommendation of the IPC. If the university fails to act within this period, all rights shall revert to the Investigator upon written claim.

(9) Execution of Necessary Documents

- A. Shared copyright registration, the purchase of an ISBN, where appropriate, and marketing and distribution methods will be based on a mutually negotiated agreement between the investigator and the university.
- B. A suitable technology transfer agent (TTA) may be selected by mutual agreement of the investigator and the IPC for patent filing and other agreed upon actions. The investigator will submit a detailed disclosure form to the TTA with a copy to the IPC. The investigator will then work directly with the TTA on submission of the patent.

History:

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