

Intellectual Property – What it is, why you should care, and existing PSU policies

Hosted by the Faculty Welfare Committee (Lisa Doner presenting)

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IP = Intellectual Property What is it?

Intellectual property is an intellectual or creative product developed by the human mind.

Intellectual property is considered an intangible asset.

Examples:

- *Art and Designs*
- *Literary works*
- *Music*
- *Symbols, images, and names used for businesses*
- *Syllabi containing unique course structures and/or original materials*
- *Research products, papers and data*

In order to qualify under [copyright laws](#), the work must be fixed in a tangible medium of expression, such as words on a piece of paper, music notes written on a sheet, recordings on a tape or code in a program.

Works for Hire

When a person or company hires a designer, computer programmer, artist or other independent contractor, **the party that is hiring will own whatever work is created**, including all rights under any trademark, patent or copyright. A written agreement which clearly states that faculty or staff creations are specifically work for hire would be a red flag that you cannot claim those as your own to use or sell.

From our Academic Affairs website: <https://campus.plymouth.edu/academic-affairs/psuip/>

“PSU retains full rights to common elements of course syllabi including learning objectives, course descriptions, course requirements and course schedules that are submitted, reviewed and approved as specified by the appropriate academic department and/or curriculum committee.

Rights to all other course materials belong to the instructors who create them. The exception to this principle is course materials for which a faculty member receives compensation from PSU beyond the academic year salary, such as course reduction, grant award, paid leave (sabbatical or other), or stipend ([see Appendix C of the online policies](#)). In such cases, a written agreement, initiated by the School or College that specifically spells out the ownership rights of the School or College and the instructor

will be made prior to course or course materials development. In the absence of a written agreement, the default ownership is to the instructor who creates the materials.”

The United States Copyright Office, as well as the United States Patent and Trademark Office, oversee all intellectual property rights in the United States. The World Intellectual Property Organization is the officiating entity for all participating countries worldwide.

Copyrights protect original works of authorship. Intellectual property examples of copyrights are:

- literary works
- music
- dramatic works
- pantomimes and choreographic works
- sculptural
- pictorial, and graphic works
- sound recordings
- artistic works
- architectural works
- computer software

A trademark is any special mark which differentiates goods and services of one entity from its competitors. Intellectual property examples of trademarks are:

- slogans
- logos
- colors
- sounds

Trademarks can overlap with copyrights. A logo could be registered as a trademark and be copyrightable as an artistic creation. Trademarks may protect designs, words, or other elements which are not considered copyrightable.

Patents protect practical designs and inventions if granted by the US Patent and Trademark Office. A patent grants property rights on an invention, allowing the patent holder to exclude others from making, selling, or using the invention. After 12 months in the public domain, patents cannot be granted (ie. Software, poems or music shared on a website for over a year cannot then be patented even if they later “go viral”). Patents are not forever – they must be renewed and these renewals can be costly (thousands of dollars). A service that companies (and universities) offer is to hold and maintain a patent for individual employees. But this affects the ownership and control of use of the property.

The role of Plymouth State University’s new union agreement –

**PSU’s 2018 Collective Bargaining Agreement
Article 18: Intellectual Property Policy**

“18. INTELLECTUAL PROPERTY POLICY 18.1. Intellectual Property

The parties to this agreement affirm, and agree to abide by, the terms of the current PSU Intellectual Property Policy as negotiated between the administration and faculty, and endorsed by the PSU Faculty on November 5, 2014 **until such time as a revised policy is vetted on campus and receives endorsement of the Faculty Welfare Committee and the Administration. Once any new policy has been endorsed by the full faculty and approved by the Administration, it shall become effective and binding on all bargaining unit members.”**

The current policy (also here as a handout) can be found at <https://www.plymouth.edu/engagement/wp-content/uploads/sites/162/2017/11/PSU-Intellectual-Property-Policy-Original.pdf>.

The proposed policy (other handout) can be found here at the Office of Academic Affairs website: <https://campus.plymouth.edu/academic-affairs/faculty/policies/>
A shorter version of this policy was in the process of being quietly implemented this last winter until the Faculty Welfare Committee met with Academic Affairs individuals (Gail Mears, Ben Amsden and Andrew Ines) to discuss a more inclusive process for IP changes. These meetings occurred in February and April 2018. As Chair of Faculty Welfare, on July 31, 2018, Lisa Doner sat in on another meeting between Academic Affairs members: Ben Amsden, Andrew Ines, and Joe Boyer plus Matt Florence, a TreMonti Consulting Project Manager. TreMonti is a Reston, VA company that is tasked with developing new policies, including IP, for Plymouth State. That meeting ended with the understanding of all parties that IP revision would be an iterative process, with drafts created by the Office of Academic Affairs then going to faculty Welfare for review and revision, then returned to Academic Affairs. The final steps in the process would be presentation of proposed final drafts to the Faculty membership. Based on feedback to Faculty Welfare, additional revisions might be requested of Academic Affairs.

Please note that there were no recordings or minutes taken at that July 31 meeting. This is a verbal agreement of process only.

The AAUP has issued a warning in an online report: <https://www.aaup.org/get-involved/issue-campaigns/intellectual-property-risk>

“Intellectual property (IP) at colleges and universities refers most importantly to the products of faculty, staff, and student research and scholarship. IP falls into two groups—work covered by patent law and work covered by copyright law. Both categories have undergone significant change over the last generation. In response, university policies have either evolved or been radically revised. The most troubling changes have occurred in university patent policies, with major research universities leading the way in *limiting or eliminating faculty members’ traditional rights* to decide what happens to their discoveries or inventions.

Many institutions have sought to deny faculty members copyright on the instructional materials they author (especially online courses). Campus patent policies have also taken a radical turn for the worse, with a number of campuses revising them to mandate automatic institutional ownership of the fruits of scholarly work. AAUP provides recommended language both for patent and online instruction policies.

The AAUP has issued a warning: Your intellectual property is in danger. The first task in protection is educational. Everyone on campus needs to learn more about the law, the issues at stake, and the rights they can assert through collective

action. AAUP's IP web section helps you with the information you need to participate in informed discussion and organize for better campus policies."



Intellectual Property Policy

Policy Statement

The purpose of this policy is: (1) to encourage the creation, development, and management of Intellectual Property, Patents, copyrights, and trademarks in the best interest of the public, the creator(s), Plymouth State University (PSU), and the research sponsor, if any; (2) to provide for protection of Intellectual Property through Patents, copyrights, and trademarks, (3) to ensure that monetary and other benefits derived from Intellectual Property, Patents, copyrights, and trademarks are equitably distributed to the Creator(s), PSU and other parties as appropriate; and (4) to address ownership issues related to Intellectual Property developed at or on behalf of PSU.

Application of Policy

This policy applies to all PSU employees.

Definitions and Policies:

1. **Creator.** "Creator" means any member of the PSU faculty or staff, and any other persons employed by PSU, whether on a full-time or a part-time basis; visiting faculty and researchers; and any other persons, including students, who create or discover intellectual Property while employed by PSU or while using PSU facilities, resources or equipment. Intellectual Property can be created by one or more individuals, each of whom, to be considered a Creator, must have conceived of an essential element or provided creative input into the conception of the Intellectual Property.
2. **Creator-Owned Intellectual Property.** "Creator-Owned Intellectual Property" means Intellectual Property owned by the Creator. Creator-Owned Intellectual Property includes Intellectual Property unrelated to a Creator's employment responsibilities or field of study at PSU and that is developed on his or her own time without significant use of PSU facilities, resources or equipment. Intellectual Property created with the use of an office, library, or desktop computer are examples of facilities and equipment that are not considered significant. Unless created as a Work Made for Hire, as Sponsor-Supported Intellectual Property, or as assigned in the course and scope of employment, pedagogical, scholarly or artistic works by PSU faculty, staff or students are also included as Creator-Owned Intellectual Property (examples books, course materials, compositions, visual arts, dramatic works, and refereed materials). Creator-Owned Intellectual Property also includes works of students created in the course of their education, such as theses, dissertations, papers and journal articles unless otherwise

- designated in another PSU Policy.
3. Intellectual Property. “Intellectual Property” means any new and useful process, scientific or technological development, technology, machine, composition of matter, life form, article of manufacture, software, tangible property, research data, or any work that is subject to protection by patents, copyrights, trademarks, or trade secrets. It includes such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique and innovative uses of existing inventions. Intellectual Property may or may not be patentable, copyrightable or subject to a trademark.
 4. Intellectual Property Advisory Committee (IPAC). “Intellectual Property Advisory Committee (IPAC)” means a PSU committee chaired by the Vice Provost for Research and Engagement, the Chair of the Faculty Welfare Committee, the Director of the Enterprise Center at Plymouth, and with three other permanent members drawn from the PSU staff and faculty, who may have experience in the topical areas of the patent disclosures. The Provost shall appoint the members of the IPAC. Members of the IPAC shall serve a two-year term from the date of appointment with a maximum of two consecutive terms. All permanent members of the IPAC will have full voting rights on a disclosure or application submitted to the IPAC. Meetings of the IPAC shall require a quorum of at least three members.
 5. Intellectual Property Officer. The “Intellectual Property Officer” means the individual appointed by the Provost with the responsibility of overseeing and administering the PSU Intellectual Property program in accordance with this policy and for administering Patents, copyrights and trademarks related to University-Owned Intellectual Property and Sponsor-Supported Intellectual Property. Currently, the Intellectual Property Officer is the Vice Provost for Research & Engagement.
 6. Office of Research and Engagement. The Office of Research and Engagement means the Office of the Vice Provost for Research and Engagement, including the Office of Sponsored Programs.
 7. Patent. “U.S. Patent,” as defined by the US PTO, means a grant which gives the owner of an invention that is covered by the Patent the right to exclude all others from making, using, or selling the invention in the United States. In the United States, a Patent provides that exclusive right for up to twenty years. To qualify for U.S. Patent protection as an invention, Intellectual Property must be deemed new, useful, and non-obvious to one skilled in the art, and must not have been in public use or on sale in the United States or described in a printed Publication as defined below, anywhere in the world for more than one year prior to the filing date of the U.S. Patent application. Patent rights in many foreign countries can be lost if there has been any disclosure of the invention, verbal or written, anywhere in the world prior to filing the foreign Patent application. However, if the U.S. Patent application has been filed prior to any disclosure, some foreign countries allow Patent applications to be filed within one year of the U.S. filing date even if there has been an intervening Publication.
 8. Patentable Intellectual Property. “Patentable Intellectual Property” means Intellectual Property for which a Patent may be obtained.
 9. Publication. “Publication” means a public disclosure of Intellectual Property,

which may be verbal or printed. Printed Publications include abstracts and, in certain instances, grant proposals, funded or unfunded. A public disclosure is a non-privileged communication to someone other than those with a professional need to know within PSU. The issuance of a Publication may jeopardize the ability to secure a Patent in the U.S. or in foreign countries. Questions surrounding the implications of Publication can be addressed by the Vice Provost for Research and Engagement.

10. Sponsor-Supported Intellectual Property. “Sponsor-Supported Intellectual Property” means Intellectual Property created under a grant or sponsored research agreement with an external agency or entity. Ownership of Sponsor-Supported Intellectual Property is determined in accordance with the terms of the grant or sponsored research agreement. In the absence of contract terms that specifically designate ownership Sponsor-Supported Intellectual Property is owned by PSU.
11. University-Owned Intellectual Property. “University-Owned Intellectual Property” means Intellectual Property owned by PSU. University-Owned Intellectual Property includes Works Made for Hire that are commissioned by PSU or that a Creator is assigned to create in the course and scope of her/his employment with PSU; Intellectual Property created with significant use of PSU facilities, resources or equipment; Intellectual Property assigned to PSU; and Sponsor-Supported Intellectual Property that is designated as university owned in the applicable grant or sponsored research agreement or for which ownership has not been specifically designated. Intellectual Property that would otherwise be designated as Creator-Owned Intellectual Property shall be considered to be University-Owned Intellectual Property if the University pays for Patent, copyright or trademark protection with the consent of the Creator.
12. Voluntary Disclosures. “A voluntary disclosure is “creator-owned intellectual property” in which the creator petitions the Vice Provost for Research and Engagement and IPAC for assistance with prosecution and marketing of the intellectual property. If agreeable to all parties, “creator-owned intellectual property” would become “university-owned intellectual property.”
13. Work Made for Hire. “Work Made for Hire” means: (1) a work prepared by an employee within the scope of his/her employment; or (2) a work specially ordered or commissioned if the parties expressly agree in a written contract that the work shall be considered a Work Made for Hire.

Procedures and Responsibilities

1. PSU employees and Creators will actively participate in the protection of Sponsor-Supported and University-Owned Intellectual Property. Until notification has been provided to the Office of Research and Engagement and permission has been granted, PSU employees and Creators will avoid Publication of Intellectual Property that may constitute Sponsor-Supported or University-Owned Intellectual Property. The University has the option of declining the patenting of any technologies that have been publicly disclosed in seminars, published papers, master’s theses, dissertation defenses or elsewhere prior to any patent office filing.

Responsible Party: PSU employees and Creator

2. When University-Owned Intellectual Property or Sponsor-Supported Intellectual Property is created, the Creator must complete and submit an Intellectual Property Disclosure Form to the Office of Research & Engagement. The Intellectual Property Disclosure Form is available on the Vice Provost for Research and Engagement website (link provided below). A Creator is not required to disclose Intellectual Property that clearly constitutes Creator-Owned Intellectual Property, but must make a disclosure if there is any question about ownership. The Creator shall retain perpetual irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Creator

3. The Office of Research and Engagement shall review a submitted disclosure for completeness and suitability for protection by Patent, copyright, or trademark and suitability for further development or commercialization. If Intellectual Property is determined to deserve further consideration, the Creator's disclosure shall be forwarded to the IPAC.

Responsible Party: Office of Research and Engagement

4. The IPAC shall review referred disclosures and make recommendations to the Intellectual Property Officer regarding suitability of Intellectual Property for Patent, copyright or trademark protection and what marketing, licensing or other commercialization efforts should be taken. Recommendations may also be made regarding placing Intellectual Property on hold, sending it back to the Creator for further development or releasing it to Creator.

Responsible Party: IPAC

5. The Vice Provost for Research and Engagement determines whether Patent, copyright or trademark protection shall be pursued for Intellectual Property. The Vice Provost for Research and Engagement also administers and makes decisions regarding marketing, licensing or commercialization of Intellectual Property. With the approval of the Provost, Intellectual Property may be released to the Creator, but PSU shall retain a perpetual, irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Vice Provost for Research and Engagement

6. As requested by the Office of Research and Engagement, the IPAC, or the Vice Provost for Research and Engagement throughout the review process, the Creator shall make adjustments to the submitted disclosure; provide information as required to determine the potential marketability of Intellectual Property and suitability for Patent, copyright or trademark protection; complete paperwork necessary to obtain protection of Intellectual Property; make assignments as necessary to pursue Patents or clarify ownership of University-Owned Intellectual Property and Sponsor-Supported Intellectual Property; provide responses to office actions and assist in the marketing, licensing or commercialization of Intellectual

Property. The Creator must assign to PSU any interest in a patent equivalent to the property interest that the Intellectual Property Officer determines to belong to PSU under this policy.

Responsible Party: Creator

7. For Patentable Intellectual Property, if it is determined that a Patent application should be prosecuted, the prosecution shall be carried out by the Intellectual Property Officer and the Office of Research and Engagement in a diligent manner and without expense of any kind to the Creator. If the Patent application is discontinued, the Vice Provost for Research and Engagement shall issue a letter notifying the Creator that ownership of all commercial Patent rights revert to the Creator(s), however, PSU shall retain a perpetual, irrevocable, non-exclusive, royalty free license to use the intellectual property and any corresponding patent(s) for research and education purposes.

Responsible Party: Vice Provost for Research and Engagement and Office of Research and Engagement

8. The IPAC shall review ongoing and pending Patents referred by the Intellectual Property Officer and make recommendations regarding the continuation of Patent protection, marketing, licensing or other commercialization efforts for University-Owned Intellectual Property.

Responsible Party: IPAC

9. Net revenues earned on any Patents, trademarks, copyrights related to University-Owned Intellectual Property will be distributed by the Office of Research and Engagement as described below after all expenses associated with the particular University-Owned Intellectual Property have been recovered by PSU and payments have been made to any third party as required under any licensing, commercialization or sponsored research agreement. Net revenues received by PSU will be distributed as follows:
 - a. 50% as direct payment to the Creator(s); and
 - b. 50% for support of research and scholarly activity at PSU

If a Creator dies, the Creator's share of net revenues will be distributed to the Creator's heirs. If a Creator leaves PSU, the Creator is still entitled to receive his/her share of net revenues. In the event of multiple Creators of Intellectual Property, all named Creators shall receive an equal share, with the total distribution made to all Creators being equal to the net revenues to be received by the Creator under this policy, unless the Intellectual Property Officer is provided with an Intellectual Property disclosure signed by all Creators specifying the percentage each Creator is entitled to receive. However, the revenue splitting requirement in this policy shall not apply to University-Owned Intellectual Property that are Works Made for Hire or that are subject to an alternate revenue splitting arrangement in a contract entered

into between the Creator(s) and PSU. A Creator of University-Owned Intellectual Property may agree to a full waiver or reduction of his/her share of net revenues as provided in this policy in exchange for equity participation in a business entity that has an agreement with PSU regarding the University-Owned Intellectual Property.

Responsible Party: Vice Provost for Research and Engagement and Provost

10. Upon request in writing by the Creator, the Provost shall consider an appeal of a determination made under this policy. The Provost shall resolve any dispute regarding protection and commercialization of University-Owned Intellectual Property. The decision by the Provost regarding any dispute shall be final.

Responsible Party: Vice Provost for Research and Engagement and the Provost

11. The creator of intellectual property will receive credit for her or his contribution to patents, copyrighted material, and other intellectual property. When appropriate, the name of the faculty creator(s) will be listed with the intellectual property, even when the intellectual property is owned by Plymouth State University.

Responsible Party: Vice Provost for Research and Engagement and the Provost

Reference and Cross References

Forms and Tools

Intellectual Property Disclosure Form is available on the PSU Office of Research and Engagement Website.

Proposed Plymouth State University Ownership of Intellectual Property (IP) Policy

1.0 The purpose of this policy is to encourage flexibility for faculty and students to work with industry sponsors toward the dissemination of research results, the creation and development of intellectual property for the public benefit, and the recognition of the creators of such intellectual property.

1.1 Definitions

- 1.1.1 Intellectual Property means patentable inventions, trademarks, copyrightable works, mask works, or tangible research property ~~including data.~~
- 1.1.2 IP means Intellectual Property.
- 1.1.3 IPAC means the Intellectual Property Advisory Committee.
- 1.1.4 IPO means the Intellectual Property Officer.
- 1.1.5 PSU means Plymouth State University.
- 1.1.6 Sponsor means any third party who engages a PSU employee or student to conduct research or otherwise commissions a Work for Hire.
- 1.1.7 Work for Hire means a copyrightable work prepared within the scope of an employee's employment or a work specially ordered or commissioned.

1.2 Ownership

- 1.2.1 PSU Owned IP
 - IP developed with **material** use of PSU funds or facilities, or
 - IP developed in the conduct of employment responsibilities, or
 - ~~IP developed pursuant to a sponsored research agreement, or~~
 - IP created for a sponsor pursuant to a written agreement with PSU providing for the transfer of ownership of the copyright to PSU.
- 1.2.2 Jointly Owned IP
 - Sponsor Owned IP ~~IP that is co-developed by PSU and Sponsor, pursuant to a pre-negotiated agreement of ownership approved by the participating faculty member.~~ **IP that is both PSU owned IP and Sponsor owned IP.**
- 1.2.3 Sponsor Owned IP
 - ~~IP that originates solely, or jointly (with a faculty member and) with any agent or employee of Sponsor, and~~ **IP developed pursuant to a sponsored research agreement for which Sponsor has paid all, or most of, the development and patent expenses. An agreement is worked on**

~~royalties/shares (if any) with approval of the participatory faculty member.~~

1.3 Material Use of Funds or Facilities

Generally, IP will be considered not to have been developed with material use of PSU funds or facilities if:

- only a minimal amount of unrestricted funds has been used; and
- the IP has been developed outside of the assigned area of research of the Creator under a research assistantship or sponsored project; and
- only a minimal amount of time has been spent using significant PSU facilities or only insignificant facilities and equipment have been utilized (note: use of office, library, machine shop facilities, and of traditional desktop personal computers are examples of facilities and equipment that are not considered significant); and
- the development has been made on the personal, unpaid time of the Creator unrelated to the Creator's employment responsibilities.

The Intellectual Property Officer shall make the final decision on whether material use of PSU funds or facilities was made.

1.4 Ownership of Student Work

~~Notwithstanding any other section herein, Unless otherwise expressly designated herein or in another PSU policy or agreement, IP created by students will be owned by either PSU or the Sponsor, pursuant to a pre-negotiated agreement of ownership. This excludes copyrightable works of students created in the course of their education, such as theses, dissertations, papers and journal articles shall be considered student owned.~~

1.5 Consulting Agreements

To benefit the reputation of ~~the University~~ **PSU** and its faculty, PSU encourages faculty to develop research relationships through **PSU** as opposed to pursuing independent consulting. Members of the PSU community must ensure that the terms of their consulting agreements with third parties do not conflict with their duties to PSU. Each individual should make his/her duties to PSU clear to any third party for whom that individual expects to consult. Specifically, the scope of any such consulting services and the ownership of any resulting IP should be consistent with the faculty member's duties to PSU, and must be disclosed to avoid conflict of interest. PSU will not negotiate any consulting agreements on behalf of a faculty

member; however, any questions regarding PSU's policies may be directed to the IPO.

1.6 Organization

~~The Intellectual Property Advisory Committee (IPAC) is the~~ **The Academic Deans are** empowered to develop IP policies for PSU. The Academic Deans appoint members of the IPAC. The **IPAC through the IPO** is charged with the implementation and administration of these policies. The IPO is also appointed by the Academic Deans.

1.7 Faculty Exemptions

~~Notwithstanding any other section herein, the copyright for pedagogical, scholarly, or artistic works developed by a faculty member shall be owned and retained by the faculty member, including the reproduction, distribution, performance, adaptation, use in derivative works, display, and ability to authorize others to do the same. In the case of copyrighted pedagogical materials, the faculty member maintains ownership but PSU maintains rights for use if the material was developed or used in a PSU class.~~

Notwithstanding any other section herein, the copyright in copyrightable teaching materials developed by a faculty member shall be owned by the faculty member, who shall decide how such materials should be disseminated; provided, however, that if the faculty member leaves the employ of PSU, PSU shall have a royalty free license to use any such materials in a PSU class.

1.8 Disclosure and Technology Transfer

1.8.1 Disclosure

1.8.1.1 Disclosure to PSU

PSU is obligated to report promptly to the appropriate federal agency any inventions made during the course of government sponsored research. PSU is also obligated to report inventions to industrial sponsors who sponsor research. In order for PSU to comply with its obligations, PSU employees and students must report to the IPO any IP created pursuant to a sponsored research agreement, a consulting agreement, or with use of **material** funds or facilities administered by PSU. The form for such reporting is entitled *PSU IP Disclosure*. A copy may be obtained from the IPO.

1.8.1.2 Disclosure to the Public

A public disclosure of IP (e.g. a conference presentation) before the filing of a patent application may bar PSU from obtaining a patent on the IP.

PSU employees and students should not publicly disclose the IP before discussing the IP with the IPO as described in Par. 1.8.2

1.8.2 Technology Transfer

Upon receipt of a disclosure form, the IPO will discuss the IP with the individual who made the disclosure. A decision will be made by the IPAC whether to pursue a patent or other legal protection for the IP. The IPO will decide whether, and how, to pursue the licensing **and/or sale** of the IP, including as appropriate, by researching the market, developing a business plan, negotiating terms of licenses and distributing royalties in accordance with this policy.

1.8.3 Royalties

Net revenues received by PSU for the sale, licensing or other transfer of IP deemed owned by PSU pursuant to this policy will be distributed as follows:

- 50% to the individual responsible for creation of the IP, and
- 50% to PSU for support of research and scholarly activity.