

**Title 4 - Codification of Board Policy Statements**

**Chapter 12**

**INTELLECTUAL PROPERTY POLICY**

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## **Section 1. Preamble**

1. The Nevada System of Higher Education is dedicated to teaching, research, and the extension of knowledge to the public. The personnel at its institutions recognize as two of their major objectives the production of new knowledge and the dissemination of both old and new knowledge. A byproduct of these objectives is the development of new and useful products and processes and the publication of scholarly works. Such activities (1) contribute to the professional development of the individuals involved, (2) enhance the reputation of the institutions concerned, (3) provide additional educational opportunities for participating students, and (4) promote the general welfare of the public at large. (B/R 6/07)
2. Inventions and copyrightable works often come about because of activities of NSHE personnel who have been aided wholly or in part through the use of funds and/or facilities of the System. It becomes significant, therefore, to ensure the utilization of such inventions for the public good and to expedite their development and marketing. The rights and privileges, as well as the incentive, of the inventor or author/creator must be preserved so that the abilities of the inventor or author/creator and those of other personnel of the NSHE may be further encouraged and stimulated. (B/R 6/07)
3. The Board of Regents acknowledges that faculty, staff, and students who are employees of the Board regularly prepare for publication, usually through individual effort and initiative, articles, pamphlets, books, and other scholarly works that may be subject to copyright and that may generate income. Publication may also result from work supported either partially or completely by the institution. With the advent of innovative techniques and procedures, the variety and number of materials that might be created in a higher education community have increased significantly, causing the ownership of such copyrightable works to become increasingly complex. (B/R 6/03)
4. The foregoing considered, the Board of Regents of the Nevada System of Higher Education does hereby establish the following policy with respect to inventions, intellectual property, and restricted access research from which NSHE faculties, staff and students are contributing participants. (B/R 6/07)

## **Section 2. Definitions**

1. "Intellectual property" is a category of intangible property, which includes patents and copyrights. (B/R 6/91)
2. The term "inventions" shall refer to all inventions, discoveries, computer programs, processes, methods, uses, products, or combinations whether or not patented or patentable at any time under the Federal Patent Act as now existing or hereafter amended or supplemented. (B/R 2/90)

3. "Copyrightable works" shall include the following: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other video or audio broadcasts; (4) distance education courses or programmed instructional materials; (5) computer programs and documentation; and (6) other materials or works which qualify for protection under the copyright laws of the United States or other protective statutes whether or not copyrightable there under. (B/R 6/03)
4. "Net income" is defined as income received by the NSHE from a NSHE owned invention or copyrightable work, less all payments or obligations directly attributable to patenting, copyrighting, marketing, licensing, protecting, or administering the invention or work. (B/R 6/03)
5. "Personnel" refers to part-time and full-time members of the faculty, staff, all other agents and employees, and undergraduate and graduate students and postdoctoral fellows of the NSHE. (B/R 6/03)
6. "Work for Hire" is defined by the copyright laws of the United States, and is used herein, as a work prepared by an employee within the scope of his or her employment. (B/R 6/91)

### **Section 3. Significant Use**

When an invention or a copyrightable work is developed by NSHE personnel or others participating in NSHE programs using significant System resources such as facilities, materials, equipment, personnel, funds or other resources under the control of or administered by the NSHE, the NSHE will own the invention or copyrightable work in accordance with the provisions of this policy. (B/R 6/03)

1. For the purposes of developing inventions or copyrightable works, the NSHE does not construe the provision of office or library facilities or traditional desktop personal computers as constituting significant use of NSHE space or facilities, nor does it construe the payment of salary from unrestricted accounts as constituting the significant use of NSHE funds, except in those situations where the funds were specifically paid to support the development of inventions or copyrightable works. (B/R 6/03)
2. Textbooks developed in conjunction with class teaching are also excluded from the "significant use" category, unless such textbooks were developed using NSHE administered funds paid specifically to support textbook development. (B/R 6/03)
3. Generally, an invention or a copyrightable work will not be considered to have been developed using NSHE funds or facilities if:
  - (a) only a minimal amount of unrestricted funds have been used; and
  - (b) the invention or copyrightable work has been created outside of the assigned duties of the inventor or author/creator; and

(c) only a minimal amount of time has been spent using significant NSHE facilities or only insignificant facilities and equipment have been used; and

(d) the development of the invention or copyrightable work has been made on the personal, unpaid time of the inventor or author/creator.

(B/R 6/03)

4. This section shall not be interpreted as preventing member institutions of the Nevada System of Higher Education from adopting stricter criteria on what constitutes the significant use of NSHE resources. (B/R 6/03)

#### **Section 4. Inventions**

1. An invention disclosure should be submitted when something new and useful has been conceived or developed, or when unusual, unexpected, or unobvious research results have been achieved or used. (B/R 6/91)

2. Determination of rights and equities in inventions (patentable or not) shall be as follows:

a. Except as otherwise specified by the NSHE in writing, inventions shall belong to the NSHE if conceived or reduced to practice: (1) by an employee of the NSHE as a result of the employee's duties, (2) by agreement with a non-NSHE sponsor, or (3) through the significant use, by any person, of the NSHE's resources such as facilities, materials, equipment, personnel, funds, or other resources under the control of or administered by the NSHE. (B/R 6/03)

b. Inventors acquire ownership in inventions which are: (1) not the result of a NSHE employee's duties or subject to the terms of agreements with research sponsors or other third parties, and (2) do not involve the significant use of resources administered by the NSHE. (B/R 6/03)

c. In the event there is a question about an invention as to whether the NSHE has an ownership claim, the invention should be disclosed to the NSHE. Such disclosure is without prejudice to the inventor's ownership claim. In determining ownership interest in an invention, a designated official may determine that the NSHE has no property interest in the invention because its conception and reduction to practice was unrelated to the inventor's NSHE duties, involved only insignificant use of institutional resources, or for such other reasons as may be set forth in the guidelines. (B/R 6/03)

d. Sponsor-Supported Efforts. Prior to signing any agreement with a non-NSHE sponsor that may result in or that deals with patent rights or the like, where NSHE time, facilities, materials, equipment, personnel, funds, or other resources are involved, NSHE personnel must bring the proposed agreement to the attention of the appropriate administrators of the constituent institution in accordance with its invention procedures and either obtain a written waiver of NSHE rights or otherwise modify the agreement to conform with these policies, as is determined by the institution in its discretion. Research agreements with private sponsors shall define ownership of inventions. The agreement under which inventions may be produced may contain specific provisions with respect to disposition of rights to these materials. The sponsor may receive an option to license such inventions on terms to be

negotiated. In those cases where all rights are vested in the NSHE, where income is shared between the sponsor and the constituent institution, the inventor may appropriately share in the income. The nature and extent of inventor participation in income, however, shall be subject to sponsor and NSHE regulations as well as the agreement. (B/R 6/03)

## **Section 5. Copyrightable Works**

1. Copyright is the ownership and control of the intellectual property in original works of authorship, which is subject to copyright law. In contrast to a patent which protects the "idea," copyright covers the "artistic expression" in the particular literary work, musical work, computer program, video or motion picture or sound recording, photograph, sculpture and so forth, in which the "expression" is embodied, illustrated, or explained, but does not protect any idea, process, concept, discovery, or the like. It is the policy of the NSHE that all rights in copyright shall remain with the author/creator unless the work is a work for hire (and copyright vests in the NSHE under copyright law), is supported by a direct allocation of funds through the NSHE for the pursuit of a specific project, is commissioned by the NSHE, is created with the significant use of NSHE administered resources, or is otherwise subject to contractual obligations. (B/R 6/03)
2. Except as may be provided otherwise in this policy, the NSHE does not claim ownership of books, articles, and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly study. Such works include those of students created in the course of their education, such as dissertations, papers, and articles. Similarly, the NSHE claims no ownership of popular nonfiction, novels, poems, musical compositions, or other works of artistic imagination that are not institutionally commissioned works or that were not created with the significant use of NSHE administered resources. If title to copyright in works defined within this paragraph vests in the NSHE by law, the NSHE will, upon request and to the extent consistent with its legal obligations, convey copyright to the creators of such works. (B/R 6/03)
3. The NSHE shall retain ownership of works created as institutional rather than personal efforts -- that is, works created for NSHE purposes in the course of the author/creator's employment. For instance, work assigned to staff programmers is "work for hire" as defined by law (regardless of whether the work is in the course of sponsored research, un-sponsored research, or non-research activities), as is software developed for NSHE purposes, and the NSHE owns all rights, intellectual and financial, in such works. (B/R 6/03)
4. Except as excluded under Section 3, the NSHE owns all rights, intellectual and financial, in copyrightable works created in the course of scholarly projects specifically funded by NSHE sponsored agreements or other NSHE funds. Prior to signing any agreement with a non-NSHE sponsor that may result in or which deals with copyrightable works, where any NSHE time, facilities, materials, personnel, or resources are involved, NSHE personnel and students must bring the proposed agreement to the attention of the appropriate administrators of the constituent institution in accordance with its copyright procedures and either obtain a written waiver of NSHE rights or otherwise modify the agreement to conform with these policies as is determined by the institution at its direction. (B/R 6/03)

5. Under the copyright laws of the United States, commissioned works of non-employees are owned by the author/creator and not by the commissioning party, unless there is a written agreement to the contrary. NSHE personnel must, therefore, generally require NSHE commissioned contractors to agree in writing that ownership to copyrightable materials is assigned to the NSHE. Examples of copyrightable works which the NSHE may commission non-employees to prepare are:
  - a. Illustrations or designs.
  - b. Artistic works.
  - c. Architectural or engineering drawings.
  - d. Forwards and introductions.
  - e. Computer software.
  - f. Reports by consultants or subcontractors.(B/R 6/03)
6. Any videotaping, broadcasting, or televising of classroom, laboratory, or other instruction, and any associated use of computers, must be approved in advance by the appropriate institutional administrators, who shall determine the conditions under which such activity may occur and resolve questions of ownership, distribution, and policy. (B/R 6/91)
7. The NSHE in all events shall have the right to perform its obligations with respect to copyrightable works, data, prototypes, and other intellectual property under any contract, grant, or other arrangements with third parties, including sponsored research agreements, license agreements, and the like. (B/R 6/03)
8. Except as provided in Section 3, NSHE resources are to be used solely for NSHE purposes and not for personal gain or personal commercial advantage, or for any other non-NSHE purposes. (B/R 6/03)

## **Section 6. Administration**

1. Institutional procedures for the development of inventions, copyrightable works, and intellectual property are as follows:
  - a. Each institution of the NSHE is required to develop policies and procedures for handling inventions, copyrightable works, and intellectual property. Each President shall appoint an Intellectual Property Committee consisting of no fewer than three or more than nine members, one of whom shall be designated by the President to serve as chair. In each case the committee shall include a representative of the office of fiscal affairs of that institution. This committee shall make recommendations to the President regarding procedures, guidelines, and responsibilities for the administration and development of inventions, copyrightable works, intellectual property, and such other matters as the President shall determine. The Committee shall report annually to the President and to the Chancellor on inventions and copyrightable works disclosed and the disposition thereof. (B/R 6/03)

- b. Each President shall appoint one institutional officer who is responsible for the administration and disposition of inventions, copyrightable works and intellectual property. It will be the duty of this Intellectual Property Administrator to determine ownership of inventions and copyrightable works, develop terms of agreements with non-NSHE sponsors, inventors and authors/creators, and to resolve disputes among co-inventors and co-authors/co-creators. Detailed operational guidelines and procedures for the administration of these responsibilities shall be established by each institution. (B/R 6/03)
  
- c. When income is to be shared, all net income received by the constituent institution on inventions and copyrightable works subject to this policy shall be divided with the inventor(s) or the author(s)/creator(s) on the basis stated in Section 7, it being understood that if there should be a plurality of inventors, the portion accruing to the inventors or authors/creators will be distributed on an equal share basis unless specifically agreed otherwise in writing by all the inventors or authors/creators. The inventor(s) or author(s)/creator(s) at or before the time of filing a patent application or copyright must agree in writing to any other terms and conditions negotiated with the institution. In the case of a plurality of inventors or authors/creators, all individual inventors or authors/creators must sign the same agreement. (B/R 6/91)
  
- d. In the implementation of its policies and procedures with respect to inventions, each institution may elect, through the recommendation of its Intellectual Property Administrator and with approval of the President, any of the following courses:
  - (1) To develop and manage its licensing program through an independent patent assistance organization so as to secure competent evaluation of inventions or discoveries, expeditious filing of applications for patents, and aggressive licensing and administration of patents; or
  - (2) To develop and manage its licensing program through an affiliated nonprofit corporation; or
  - (3) To develop and manage independently its own licensing program; or
  - (4) To release an invention to which the institution has title or an interest to the inventor for management and development as a private venture after the execution of an agreement providing for the division of income.
 (B/R 6/91)
  
- e. In the implementation of its policies and procedures with regard to distance education courses, each institution shall require compliance with all federal copyright laws, including the provisions of the TEACH Act, 17 U.S.C. Sec. 110(2). In accordance with the TEACH Act, the institution's policies on distance education should include, among other things, provisions regarding: (1) limitations on use of copyrighted materials; (2) limiting access to materials to enrolled students; (3) use of copyrighted materials as part of mediated instructional activities; (4) providing informational materials to students, faculty and staff members regarding copyright laws; (5) providing notice to students that course materials may be subject to copyright laws; (6) limitations on digitizing of analog works; (7) limiting retention of copies of materials; (8) preventing unauthorized further transmission of digital materials; and

(9) non-interference with technological measures taken by copyright owners to prevent retention and distribution.

- f. Each institution's policies shall provide for an appeal procedure, with final decision by the President, in the event of a disagreement as to the ownership and use of an invention or intellectual property. (B/R 6/03)

#### **Section 7. Distribution of Income**

The inventor of the author/creator shall receive not less than 60 percent of the net income from each invention or copyrightable work. The inventor's or the author/creator's academic unit or department shall receive not less than 25 percent of the net income, and any remaining income shall go to the institution. (B/R 6/91)

#### **Section 8. Institutional Policies**

The intellectual property policy of each institution shall be consistent with these guidelines and shall be submitted to the Chancellor for review and subsequent approval by the Board of Regents. (B/R 6/03)

(B/R 12/04 – reorganization)

#### **Section 9. Periodic Reporting**

Periodically or upon request, each NSHE President or his or her designee shall report to the Academic, Research and Student Affairs Committee of the Board on the status and outcomes of institutional research endeavors. (B/R 6/07)

#### **Section 10. Restricted Access Research**

The Board of Regents through NSHE institutions is committed to the creation and dissemination of knowledge. Further, the Board recognizes the importance of open intellectual communication within a research group, within an NSHE institution, and within the community at large. Recognizing that NSHE institutions are dedicated to academic freedom and to the public documentation and dissemination of the knowledge that they create, a free and open academic environment is an essential element in fulfilling research and educational missions. Policies or practices that inhibit the free exchange of ideas, by limiting scholarly interchange, can markedly restrain both the advancement of knowledge and its productive use.

In meeting this commitment, NSHE faculty may find it important to engage in research in the national interest where restrictions may be imposed on access to, documentation, and dissemination of information. In these cases, the specific research may be characterized as “classified” or “restricted access.” Restrictions on these projects create potential conflicts with the academic values of NSHE institutions.

This policy does not attempt to anticipate all possible concerns about restricted access research. In some cases, decisions will need to be made about specific research projects to which the application of particular policy guidelines are not clear. In choosing to accept or decline such projects, an institution must weigh the potential of a project for generating and disseminating new knowledge for the benefit of society, against the project's potential for adversely affecting the climate for research conducted in a free and open environment. While this policy sets no explicit limits on the extent of classified research permitted by an NSHE institution, it is not the intent of the policy to encourage an institution to engage in classified research as a primary ongoing activity.

1. Restricted access research includes proprietary, sensitive but not classified, and classified research, unless otherwise provided.
2. The President shall develop policies and procedures for all restricted access research that include provisions for oversight of research projects by the President or his or her designee, appropriate project controls, and guidelines for the release and dissemination of project results, including preliminary results. These procedures must be reviewed by the Chancellor and published by the institution. Copies of the policies and procedures must be lodged with the Secretary of the Board upon adoption by the institution, and whenever modified thereafter.
3. The President or his or her designee may enter into contracts with confidentiality clauses where such clauses protect from public disclosure only that information defined as restricted access by Board policy and in accordance with the guidelines of the Board and institution for accountability and dissemination of research results.
4. NSHE auditors and legal staff shall have access to materials related to restricted access research, excluding classified research, as is appropriate and germane to the performance of their jobs.
5. The President or his or her designee must have the appropriate security clearance for the oversight of classified research.

(B/R 6/07)