

**Loyola University Maryland
Provisional Policies and Procedures for
Intellectual Property, Copyrights, and Patents**

Approved by Loyola Conference on May 2, 2006

Introduction

In the course of fulfilling the University's educational mission of inspiring students to learn, lead, and serve in a diverse and changing world, Loyola faculty, administrators, staff, and students may develop Intellectual Property through their research and other employment-related activities. The University has an interest in protecting this Intellectual Property for several reasons. Through promoting the disclosure, dissemination, and utilization of Intellectual Property, the University and its Employees support the public good. Creation and development of Intellectual Property provides professional benefits to the individuals involved, contributes to the life of the University, and may provide monetary benefits to the Inventors and the University. With this in mind, the University seeks to reward, encourage, and support research and development by members of the University community while upholding obligations to sponsors that may be funding specific research endeavors.

Loyola University Maryland has adopted these Policies and Procedures for Intellectual Property, Copyrights, and Patents in order to establish the principles and processes to guide decision-making related to Intellectual Property. This policy covers all forms of Intellectual Property created at or under the auspices of the University, including but not limited to those covered by patents and copyrights. Further, when persons outside of Loyola collaborate in the development of Intellectual Property, the terms of this policy shall be applicable only to the contribution to the Intellectual Property made by the Member(s) of the Loyola Community.

These Policies and Procedures will allow the University to carry out its responsibilities to individual authors and Inventors, the University community, and the general public. Regarding Intellectual Property, these Policies and Procedures also define the rights and responsibilities of Loyola faculty, administrators, staff, and students and the University.

Definitions

Employee is any individual employed by Loyola University Maryland, including any faculty member, administrator, staff member, or student employee.

Intellectual Property is a new creation, such as inventions, new processes, written compositions, computer software, new chemical compounds, music, other artistic creations, and new forms of plants or animals. Intellectual Property is granted legal aspects of a property right, including patents, copyright, and trademarks.

Invention is any new or useful process or discovery, method, technique, machine, device, manufacture, software, or other improvement thereof. Inventions are novel, useful, and not obvious to individuals skilled in the field in which they are developed.

Inventor is an individual who makes an independent inventive contribution to the development of an Invention. An Inventor formulates “a definite and permanent idea of the complete and operative intention as it is thereafter to be applied in practice.” Individuals – including students – who carry out the independent idea conceived of by someone else or test a concept are not Inventors. However, anyone – including a student – who makes an independent innovative contribution to an Invention must be recognized as a co-Inventor.

Member of the Loyola Community means any Employee or enrolled student of Loyola University Maryland.

Principal Inventor is an Inventor who oversees the creation of an Invention by a group of Inventors.

Sponsored Project is an externally funded activity governed by a formal written agreement between Loyola University Maryland and the sponsor. Sponsored project agreements typically include grants, contracts, cooperative agreements and letters of agreement.

Substantial Contribution is a contribution of Loyola University Maryland resources above and beyond what is ordinarily available to Employees to carry out their assigned duties or, in the case of students who are not employees of the University, one's normal academic activities. Normal use of assigned office space, office equipment, library resources, or administrative staff would not be considered a Substantial Contribution. Sabbaticals, summer research grants, laboratory facilities, and release time are among the types of support that may be considered a Substantial Contribution.

Work for Hire is a work of authorship prepared by an Employee within the scope of employment or a certain type of work that is specially ordered or commissioned in accordance with a written agreement.

Copyright

1. Ownership of Material Subject to Copyright Protection

- a. In keeping with the longstanding tradition of faculty ownership of scholarly writings and creative works and other materials that are potentially subject to copyright protection, Loyola University Maryland disclaims ownership of works of authorship by faculty members with the following exceptions:
 - i. **Sponsored Project:** When copyrightable material is created by a faculty member utilizing funding from a Sponsored Project agreement, the terms of the agreement will supersede this general policy with regard to ownership.
 - ii. **Certain works developed specifically for the use of the University:** When a faculty member is assigned a specific task with a defined outcome that includes copyrightable material, said work shall be considered a Work for Hire and shall be owned by the University. For example, a faculty member may be assigned to adapt an introductory course to a distance-learning format to be utilized by multiple faculty members. Because developing the course is likely to require collaborations with many individuals across campus representing substantial use of University resources, ownership will reside with the University.
 - iii. **The University shall have the right to use materials – including but not limited to departmental websites, course descriptions, course syllabi, course assignments, digital academic presentations, and course examinations – developed or used by faculty during their employment without payment of any royalties or other fees. Should a faculty member separate from the University, the University shall retain the non-exclusive right to use said materials internally without payment of royalties or other fees.**
- b. With the following exceptions, any work created in the course of one's duties by an Employee who is not a faculty member will be considered a Work for Hire and wholly owned by the University:
 - i. **Sponsored Project:** If copyrightable material is created through a Sponsored Project, the terms of the Sponsored Project agreement will supersede this Policy.
 - ii. **Scholarly writings – including articles, contributions to edited volumes, and books – that are authored by a non-faculty Employee will be wholly owned by the Employee. This exception does not include software.**

- c. A work created by a student other than in the course of employment by the University is owned by the student, subject to the terms of any applicable Sponsored Project agreement.

2. Compliance with University Policies

- a. All Employees must comply with Loyola's policy on outside employment prior to providing services to another institution that may result in the development of Intellectual Property (e.g., to create a distance-learning or internet-based course).
- b. All Members of the Loyola Community must adhere to Loyola's policy on Copyright Permissions in the development of any work that is owned by the University.

3. Distribution of Income

In the absence of a written agreement providing for the distribution of income from a copyrightable work, income shall be distributed as follows:

- a. Income from works that are solely owned by the author will accrue and belong to the author.
- b. Income from all works owned by the University will accrue and belong to the University; however, income from any work developed through a Sponsored Project agreement shall be distributed in accordance with any stipulations provided within the terms of the agreement.
- c. In the case of works developed by faculty specifically for the use of the University as in 1a(ii) above, the parties may choose to negotiate a written agreement governing the distribution of any income/royalties. In the absence of such an agreement, such income/royalties will belong to the University.

Patents

1. Ownership of Inventions

- a. Unless the University has entered into a Sponsored Project agreement to the contrary, Loyola University Maryland asserts its ownership of all Inventions made or conceived by a Member of the Loyola Community where the University has provided a Substantial Contribution. If the University has not provided a Substantial Contribution, the Invention shall be owned by the Inventor(s), subject to the terms of any applicable Sponsored Project agreement.
- b. Patents from Inventions owned by the Inventor should be administered so as to not involve the name, facilities, or resources of the University. Time spent in administering such patents should conform to University policies on outside activities by an Employee, if applicable. Inventors may request to assign Inventor-owned patents to the University for administration in accordance with these Policies and Procedures. Employees should not patent Inventions that are in the specific area of their work in Loyola research programs or in a work area assigned to them without obtaining permission from the Vice President who oversees their Division.

At the request of the University, a Member of the Loyola Community who has developed an Invention that is owned by Loyola University Maryland shall be required to execute any papers necessary for making application for patents in the United States and abroad and assigning of such patent applications or patents to Loyola University Maryland or its designee.

2. Publication and Patent Rights

Because patents exclude others from using inventive methods or materials for a defined period of time, they provide opportunities for Inventions to be commercialized. Commercialization provides opportunities for the general public to benefit from the Invention and remuneration to accrue to the Inventors and other interested parties. Because of the potential value inherent in a patent, establishing ownership is a legally defined process that requires Inventors to adhere to specific steps.

To protect an Invention's potential value as it is being developed, Inventors are advised to:

- a. Establish the date of Invention through maintaining bound notebooks recording the development of the Invention on signed and dated numbered pages that are witnessed. Signed and dated entries also should be maintained if further efforts are made to reduce the Invention to practice.
- b. Prior to publication, disclose the Invention as required in Section 3 below so as to ensure that its patentability is not compromised. (Inventors should note that

describing an Invention in a federal grant application constitutes publication and compromises patentability if the grant is awarded because funded applications are publicly available through the Freedom of Information Act. With this in mind, when submitting a grant application Inventors should identify any section of an application that contains confidential and/or proprietary information in order to protect an Invention.)

- c. Obtain Non-Disclosure agreements before discussing an Invention with any individual, including students, potential commercial partners, and others. All Non-Disclosure agreements must be retained by the Inventor in a secure place and provided to the University upon request.

3. Disclosure of Inventions

Any Inventor who creates an Invention during the course of or related to his/her University activities must disclose the Invention to the University on the Loyola University Maryland Invention Disclosure Form (Appendix 1). When more than one Inventor participated in the creation of an Invention, the Principal Inventor must identify all co-Inventors and identify the share in the Invention assigned to each co-Inventor. The Disclosure Form must be delivered to the Office of Research and Sponsored Programs, which will forward copies to the Vice President for Academic Affairs. If any of the Inventor(s) are faculty members, the Office of Research and Sponsored Programs also will forward the Disclosure Form to the appropriate Dean(s). If any of the Inventor(s) are non-faculty Employee(s), the Office of Research and Sponsored Programs also will forward the Disclosure Form to the Vice President overseeing the Inventor(s) Division(s), if other than the Academic Division.

If a Sponsored Project agreement supported the creation of the Invention, the Director of the Office of Research and Sponsored Programs will be responsible for complying with any reporting requirements and ensuring that reporting deadlines are met.

4. Determination of Substantial Contribution

If the Inventor or Principal Inventor is a faculty member, the Dean to whom the Inventor or Principal Inventor, as applicable, reports will determine whether the University has provided a Substantial Contribution to the Invention. In instances where the Inventor or Principal Inventor is a student, the Dean to whom the student's academic advisor reports will determine whether the University has provided a Substantial Contribution to the Invention. In all other cases, the Vice President of the Inventor's Division will determine whether the University has provided a Substantial Contribution. The Inventor or Principal Inventor, as applicable, will be informed in writing of the decision made.

For all Inventions owned by the University, signatures of the Inventor(s) will constitute agreement to the percentage share identified on the Disclosure Form and will be used as the basis for determining the proportional share of any potential proceeds accruing to each co-Inventor with the sum total equivalent to the Inventor's share as delineated in

Section 6 below. The percentage share is binding throughout the life of the patent unless all parties sign an amendment to the Disclosure Form altering the percentage shares to be received by each co-Inventor.

Inventors also must disclose any potential conflicts of interest and execute all assignments, contracts, waivers, disclosures, or other legal documents necessary to vest in the University the rights to any Invention in which it retains an interest. Moreover, these obligations are binding even if an Inventor or co-Inventor leaves the University.

Inventors may not enter into any patent or assignment agreement on any Invention in which the University may hold an interest without prior authorization from the Vice President overseeing their Division.

5. Determination to Pursue a Patent

Obtaining a patent for an Invention is a costly and time-consuming process. Once a patent has been obtained, the owner also must expend significant effort to license or otherwise commercialize an Invention as well as to protect a patent from any claims that may arise. Because of this, the University must be prudent when determining whether or not to pursue a patent for an Invention.

Once ownership by the University has been established, if the Inventor or Principal Inventor, as applicable, is a faculty member, the Dean overseeing the area will convene an *ad hoc* committee so that a recommendation can be made as to whether or not the University should pursue a patent. If the Inventor or Principal Inventor, as applicable, is a student, then the Dean to whom the student's academic advisor reports will convene the *ad hoc* committee. In all other cases, the Vice President who oversees the Division will assume the Dean's role as described in this and the next paragraph. It is anticipated that the *ad hoc* committee may include several faculty members or other Members of the Loyola Community who have the necessary expertise to provide an independent evaluation of the Invention. In addition to information provided by the Inventor(s), it is anticipated that the *ad hoc* committee may rely upon information provided by other sources qualified to evaluate an Invention including outside consultants, friends of the University with expertise in the area of the Invention, and technology development firms. The Director of the Office of Research and Sponsored Programs will be responsible for helping to facilitate this process.

The *ad hoc* committee will play an advisory role, making a recommendation to the Dean or Vice President, as applicable, as to whether to pursue the University's interest in the Invention. Subsequently, the Dean or Vice President, as applicable, will confer with the Vice President for Academic Affairs. Final decision-making authority will rest with the Vice President for Academic Affairs.

If an initial decision is made to pursue an Invention, the Vice President for Academic Affairs may ask the Director of the Office of Research and Sponsored Programs to help to identify an organization or individuals with expertise in patenting and commercializing

technology. The University may choose to assign its ownership rights to a commercial venture or other interest that has the resources to patent and commercialize the Invention as well as to protect the Intellectual Property from any legal challenges.

If a decision is made not to pursue the Invention, the University will relinquish its ownership to the Inventor(s) who may then choose to pursue a patent utilizing their own resources in accordance with the guidelines set forth in Paragraph 1 above; however, the Inventor(s) will be required to provide the University with a non-exclusive, royalty-free license to utilize said Invention.

In either case, the University will notify the Inventor or Principal Inventor, as applicable, of its decision regarding whether or not to pursue the Invention within four months of the date the Disclosure Form is received by the Office of Research and Sponsored Programs.

If the University decides to pursue an Invention, the University shall move expeditiously to apply for a patent or enter into an assignment agreement with an interested party to patent and commercialize the Invention. If no application has been filed or assignment agreement negotiated within six months of the date of the ownership decision, the Inventor(s) may request in writing that the University relinquish its ownership so that the Inventor(s) can act to protect the value of the Invention. The University will deliver a final decision in writing to the Inventor(s) within three weeks of the date of this request.

6. Distribution of Financial Benefit and Expense

The expenses of any patent application or proceeding for an Invention owned by the University will be paid by the University or its assignee. The University reserves the right to enter into a written agreement with a party of its own choosing or an Inventor(s) to share the costs of a patent application and proceedings.

All patent income will be directed to a Technology Development Fund. Use of the Technology Development Fund will be restricted to supporting the development, administration, patenting, commercialization, and protection of Inventions. When available, funding for patent applications will come from the Technology Development Fund.

Prior to the distribution of any royalties or other income, all direct expenses related to prosecuting and maintaining a patent and commercializing the Invention, including attorney's fees, shall be reimbursed to the University from receipts related to the Invention. Upon request, the University will provide a list of these expenses to the Inventor(s).

The resulting net income will be distributed according to the following schedule:

Inventor(s)	50%
Technology Development Fund	10%
General Fund	40%

If the Inventor or Principal Inventor, as applicable, is a faculty member, 10% of the net income will be re-directed from the General Fund to the academic Department of which the Principal Inventor is or was a member. Use of the Department's share may only be used to support future research endeavors.

Disputes

An appeal concerning application of any aspect of this policy must be submitted in writing to the Assistant Vice President for Human Resources with a copy to the Vice President for Academic Affairs. The appeal will be reviewed by an *ad hoc* committee named by the Assistant Vice President for Human Resources. If the creator is a faculty member, the *ad hoc* committee will consist of one faculty member from the creator's academic area (business, education, humanities, natural sciences, or social sciences), an academic dean who is not the creator's dean, and the Assistant Vice President for Human Resources. If the creator is not a faculty member, the *ad hoc* committee will consist of one director from the creator's division, an assistant or associate vice president who is not in the creator's division, and the Assistant Vice President for Human Resources. The individual appealing the decision will be provided an opportunity to present information to the *ad hoc* committee at a convened meeting. The decision of the committee will be final and will be reported in writing to the applicant.