

# Policy on Intellectual Property From the Faculty Handbook<sup>1</sup>

## 2.4.9 Policy on Intellectual Property

This Policy shall apply to all original works of authorship created, and all discoveries and inventions conceived or first reduced to practice, on or after formal approval of this policy.

This Policy establishes criteria for guidance of University of New Haven administrators, faculty, staff, and students, as well as others in making supervised use of university facilities and resources concerning the development, ownership, management, and marketing of intellectual property (“IP”). This Policy applies to any invention, discovery, technology, creation, development, writing, art work, musical composition and performance, literary work, software, or other forms of expression of an idea or the idea itself that arises from the activities of such persons.

The governors, administrators, and faculty of the University of New Haven wish to foster an intellectual environment in which creative efforts and innovations – some using new instructional technologies and models, including distance learning methods – can be encouraged and rewarded, while providing the University and its learning communities with reasonable access to, and use of, IP academically beneficial to them.

**a. Definitions**—As used in this Policy, the following capitalized terms have the following meanings:

1. **“Academic Works”** means original work(s) of authorship protectable under copyright law in any media that are created by faculty and/or by students in the course of their educational endeavors but that are not patentable. “Academic Works” includes works such as course materials, textbooks, articles, theses, dissertations, abstracts, fiction and non-fiction books, software, musical compositions, paintings, sculptures, and all other works of artistic or scholarly creation that are not UNH Works.
2. **“Course”** means an organized body of information used for educational instruction, including all instructional materials and presentations made by faculty member(s) or other instructors responsible for delivering the instructional materials.
3. **“More than Incidental Use of UNH Resources”** means use of specialized, research-related facilities, equipment, or supplies provided by the University for academic purposes, but does not include routinely available office equipment such as desktop computers and commercially available software, reference materials, or other resources.
4. **“Extraordinary UNH Resources”** means a direct allocation of University funds or use of specialized equipment, either of which is significantly greater than or different from that ordinarily available for the creation of Academic Works, and includes substantial contribution by non-faculty employees working within the scope of their University employment. “Extraordinary UNH Resources” does not include the incidental use of University facilities, support staff, and related resources, to the extent that those resources are customarily available for regular faculty members’ use in their academic activities.
5. **“UNH Works”** means any original work(s) of authorship protectable under copyright law that are created: (1) at the specific direction or request of the University for a specific University purpose; (2) as part of a project involving a grant, contract sponsor, or other third party pursuant to a written agreement; or (3) using Extraordinary UNH Resources.

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<sup>1</sup> April 26, 2012

**b. Copyright Policy**—Under U.S. copyright law, copyright in all works created by a person within the scope of his or her employment belongs to the employer. However, it is traditional at the University of New Haven (and other universities) that the copyright in certain works be deemed owned by the creator. The University disclaims ownership of such works, under certain circumstances, as described in this Policy. Faculty retain copyrights for academic works created within the ordinary level of resource and support provided the faculty in general. Faculty share copyrights with the University in situations where academic works are created with extraordinary levels of resources and/or support relative to that provided the faculty in general. The University retains copyrights in all UNH Works.

**1. Academic Works with Ordinary Resources and Support.** The University will not claim any ownership interest in the copyrights in Academic Works. Faculty who create Academic Works shall have the right to own the copyrights in such works.

The University shall have a non-exclusive royalty-free right to retain, use, reproduce, and distribute a limited number of copies of each Academic Work solely for research and noncommercial educational purposes, provided such license is consistent with any contract the author enters into with a publisher regarding such Academic Work.

The University reserves a non-exclusive royalty-free license to use descriptive or exemplary material created for classroom teaching use for the documentation of the Course itself, such as announcements and catalogs, curricular review, and accreditation reporting.

**2. Academic Works with Extraordinary UNH Resources.** When Academic Works are created with extraordinary resources and support being provided to a faculty member, the faculty member shall own the copyright in such Work, but the faculty member and the University shall identify the relative shares of the Net Proceeds each shall be entitled to prior to the creation of the work and any such decision shall be stated in a written agreement. In situations where the relative shares are not identified, then each shall be entitled to a fifty-percent (50%) share of the Net Proceeds received by the faculty member, unless and until such time as the parties may agree otherwise. Any change to the fifty percent (50%) shared arrangement must be reflected in a written agreement between the parties.” “Net Proceeds” means all revenue received by the faculty member for the publication or other exploitation of the Academic Work, less the faculty member’s costs related to such publication or exploitation (including by way of example and not limitation, legal fees and agent commissions).

**3. UNH Works.** The University shall retain the copyrights in all UNH Works.

The University’s copyright notice should appear on all works owned by the University, *e.g.*, “Copyright © 20\_\_ Board of Governors of the University of New Haven. All rights reserved.”

### **c. Patent Policy**

**1. General.** All discoveries and inventions (collectively, “Inventions”) that have been for the first time reduced to practice or conceived in whole by members of the University faculty or staff (including student-employees) of the University shall be disclosed in writing to the provost. Likewise, all Inventions that have been for the first time reduced to practice or conceived by members of the University faculty or staff (including student-employees) of the University in collaboration with persons or entities outside the University shall be disclosed in writing to the provost. Such disclosures in writing are to be forwarded to the provost in cases that meet either of the following descriptions: (a) If the employee discovered or invented something within the scope of his or her employment and/or (b) If the employee discovered or invented something with More than Incidental Use of University Resources regardless of whether the discovery or invention is within or outside the scope of employment. In each of these situations, the Invention should be reported so the University can assess its possible interest in such Inventions developed using its resources. The University

makes no claim to Inventions by its faculty or other employees unrelated to the activities for which the individual is employed and that have not involved More than Incidental Use of UNH Resources.

**2. Disclosure of Inventions.** Promptly following the occurrence of an Invention, whether or not patentable, inventors/discoverers must prepare and submit in writing to the University an Invention disclosure for each Invention subject to this patent policy. Each such disclosure will include information about the inventor(s)/discoverer(s), what was invented or discovered, circumstances leading to the Invention, and facts concerning subsequent activities. The University and inventors/discoverers will maintain appropriate confidentiality of the disclosure while the University conducts the process of defining the University's interest.

**3. University Interest.** The provost will evaluate the interests involved and make a recommendation to the president in three (3) months or less from the University's receipt of a complete Invention disclosure from the inventors/discoverers; however, an extension of up to six (6) months from receipt of such Invention disclosure may be declared by written notice from the University to the inventors/discoverers. If the University has not identified its interest by the end of such six (6) months, then the University forfeits its interest in the IP unless the University and the inventors/discoverers agree otherwise. The provost may appoint an ad hoc committee to conduct a review prior to making a recommendation. The president will review the provost's recommendation and determine whether or not the University desires to exercise its interest in the IP.

If the University does not desire to exercise its interest in the IP, it will so notify the inventors/discoverers, who will thereafter be free to deal with the IP as they choose. In such instances, the University may reserve a nonexclusive, royalty-free license to use the IP solely for research and educational purposes, unless expressly agreed otherwise in writing.

When the University desires to exercise its interest in the IP, the inventors/discoverers will assign all rights in such IP to the Board of Governors of the University of New Haven.

If the University does not patent and/or license an Invention it had elected to retain in a timely manner, then upon the request of the inventors/discoverers, the University may assign ownership of all rights in such IP to the inventors/discoverers in a writing executed by the Provost, to the extent that it may lawfully do so under the terms of any applicable third-party agreements. The University may retain a nonexclusive, royalty-free license to use any such IP solely for research and educational purposes.

Because decisions regarding when it may be appropriate for the University to exploit an Invention depend in part on the stage of the Invention, differences in opinion regarding development-related issues may arise. For example, some inventions may be worthy of patents but not ready to be exploited until they are further developed. Some Inventions could be exploited early on but may be more marketable and yield better returns/commercialization at a later time. If questions regarding the timeliness of the University's exploitation arise, either party, the inventors/discoverers or the University through the provost may submit the question for dispute resolution pursuant to Section 2.4.9.f.3 of this Policy.

**d. Commercialization Considerations**—The University encourages the development of Inventions resulting from University research by industry for public use and benefit. It recognizes that protection of proprietary rights, *e.g.*, in the form of a patent or copyright, is appropriate to induce a company to risk the investment of its personnel and financial resources to develop the Invention. In some cases, an exclusive license may be necessary to provide an incentive for a company to undertake commercial development and production.

**e. Income Sharing Arrangements**

1. If the University exercises its interest in the IP and enters into an arrangement for the commercialization of the Invention (or any other income-producing transaction with respect to such IP), it will share the net income derived from such activities as described in this section.
2. "Net Royalties" means: (1) all amounts received from the exploitation of an Invention, whether or not such amounts are designated as royalties and regardless of the form of such payments, plus (2) amounts received from the sale of a patent or Invention (clauses (1) and (2) collectively, the "Royalties"); less (3) the University's costs related to the patent and commercialization process (including but not limited to assessing patentability, prior art and related searches, filing and prosecution of patent applications, maintenance fees, payments to third parties, and any legal and consulting fees for the foregoing and/or related to a license, sale, or other transaction), and (4) ten percent (10%) of Royalties after reduction of other expenses to cover administrative overhead.
3. Except as agreed in a prior writing by the parties, Net Royalties will be paid annually as follows: Fifty percent (50%) to the inventor(s) and fifty percent (50%) to the University. In the event of multiple inventors, they will be expected to agree among themselves on the fractional distribution of the "inventor" share of any Net Royalties.

#### **f. Administrative Matters**

1. **Applicability.** All university employees, including faculty, staff, post-doctoral fellows, and student employees, and non-employees, including students and volunteers are covered by this Policy as are all persons having More than Incidental Use of UNH Resources. All covered persons are required to execute the University Intellectual Property Agreement. This Policy applies to them whether or not a signed agreement is on file with the University. Non-employees and other unpaid persons associated with the University who do not have More Than Incidental Use of UNH Resources are not covered by this Policy.

Visiting scholars and faculty will be subject to the same provisions of this Policy as regular University personnel during the period they are associated with the University, unless otherwise specified in writing.

2. **Exclusions.** This policy does not establish University policy with respect to University faculty members' consulting, non-University professional, or other business activities.
3. **Policy and Contract Dispute Resolution.** Ownership of IP where faculty interests are involved shall be considered matters of faculty welfare. If disputes regarding intellectual properties issues arise, a dispute-resolution committee consisting of the chair of the Faculty Senate, the chair of the Faculty Affairs Committee, the chair of the Budget and Finance Committee, and two university administrators appointed by the provost will review the issues and establish a resolution. Examples of issues that may be addressed by the committee are (a) determining if Extraordinary UNH Resources have been provided for in Academic Works and (b) determining if an individual is covered by the Patent Policy. The decision of the committee exhausts the internal process of the university in settling IP disputes. Ongoing disputes would then need to be resolved by voluntary settlement, mutually agreed-upon arbitration, or civil litigation.
4. **Intellectual Property Policy Modification.** The University may from time to time determine that this document and its tenets require modification. The University administration and the University Intellectual Property Advisory Committee, Faculty Senate, or its designated committee will discuss any proposed revisions prior to implementation, in accordance with the *Faculty Constitution* and *Faculty Handbook*. Similarly, the General Faculty may revise its approvals with respect to those matters that fall under its purview, consistent with its responsibility under the *Faculty Constitution* and *Faculty Handbook*.

**5. Guidelines for Disclosure.** The provost will develop and distribute general guidelines to clarify what is expected of an individual to meet the disclosure requirements of the intellectual property policy.