

Title 4 – Codification of Board Policy Statements

Chapter 12

INTELLECTUAL PROPERTY, RESEARCH, AND ENTREPRENEURIAL ACTIVITY

Section 1.	Preamble	2
Section 2.	–	4
Section 4.	Ownership by NSHE of Intellectual Property Other Than Traditional Scholarly and Creative Works.....	5
Section 5.	Ownership of Traditional Scholarly and Creative Works	6
Section 6.	Equity Interests in Private Companies	7
Section 7.	Administration	8
Section 8.	Distribution of Income	10
Section 9.	Periodic Reporting.....	10
Section 10.	Restricted Access Research.....	10
Section 11.	Institutional Research and Entrepreneurial Activity.....	11

3. "Intellectual Property" is a category of property, which are creations of the mind and their embodiment; the tangible and intangible result of research (including but not limited to data, lab notebooks, charts, biological material, cell lines and samples), compilations and original works of art, literature or music and includes Inventions and Works, Trademarks and Trade Secrets.
4. "Inventions" shall refer to all innovations, discoveries, technological advances, compilations, potentially patentable computer software, tangible research property, trade secrets and proprietary information, mask works, processes, methods, uses, products, or combinations of any of the foregoing, whether or not patented or patentable at any time under the U.S. Patent Act, as now existing or hereafter amended or supplemented.
5. "Net income" is defined as any consideration, including but not limited to cash, equity, royalties received by NSHE from NSHE owned Intellectual Property, less any administrative fees set by the institution, and less all payments or obligations directly attributable to patenting, copyrighting, marketing, licensing, protecting, maintaining, defending, enforcing and administering the Intellectual Property.
6. "Personnel" refers to part-time and full-time members of the faculty, staff, research and graduate assistants, employed students, residents and all other agents and employees, visitors, volunteers, and undergraduate and graduate students and postdoctoral fellows of NSHE.
7. "Significant Use of NSHE Resources" means more than de minimus, unreimbursed use of NSHE resources (including, for example, funding, Personnel time, property, equipment, facilities, supplies, other resources or Intellectual Property owned by or paid for through NSHE). "Significant use of NSHE Resources" includes the efforts and/or time of Personnel to the extent NSHE has compensated or will compensate Personnel for such efforts and/or time.

Significant Use of NSHE Resources does not include the use of property, equipment, facilities, supplies or other resources that NSHE makes available to the general public (for example, library facilities or resources) or to Personnel (for example, the occasional and infrequent use of office furnishings, office supplies, computers, communications equipment, and administrative support).

NSHE institutions may adopt stricter or more specific written criteria and guidelines regarding Significant Use of NSHE Resources.

8. "Trademark" is defined under both state and federal law. Under state law, Trademark is defined as "any word, name, symbol or device, or any combination of them" that identifies and distinguishes the source of the goods made or sold by one party from those of others. In addition, "service marks" are used to identify and distinguish the source of a service rather than goods and "trade names" are used to identify a business, occupation or vocation and distinguish it from others. Under the federal Trademark Act of 1946, a Trademark is defined in 15 United States Code Section 1127 as a word, name, symbol, device or any combination thereof that is used by a person in commerce, or which a person intends to use in commerce and which may be registered, to identify and distinguish goods from those manufactured or sold by others, and to indicate the source of the goods.

3. The Intellectual Property:

- a. Is developed by a student as part of a course; and
- b. The course description states that Intellectual Property developed by students as part of their course work shall belong to the students, except as provided in Section 4.2.c herein below.

(B/R 6/17)

**Section 4. Ownership by NSHE of Intellectual Property Other
Than Traditional Scholarly and Creative Works**

- d. Sponsor-Supported Efforts. Any agreement with a non-NSHE party that may result in the conception, creation or development of any Intellectual Property must be brought by Personnel to the attention of the appropriate administrators of the constituent institution 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. The agreement under which Intellectual Property may be produced may contain specific provisions with respect to disposition of rights to such Intellectual Property in conformance with this policy, and state and federal law. In those cases where income is received by the institution from the disposition of the Intellectual Property conceived, created or developed under the agreement, such income shall be dispersed according to Sections 7.1(c) and 8. The nature and extent of participation in income, however, shall be subject to NSHE institution policies and procedures, as well as the terms of the agreement.

(B/R 6/17)

Section 5. Ownership of Traditional Scholarly and Creative Works

1. Faculty and Student Traditional Scholarly and Creative Works. Except as may be otherwise provided herein, NSHE claims no ownership in any Traditional Scholarly and Creative Works of Personnel or of students.
2. Limited Exceptions. For Traditional Scholarly and Creative Works, an institution policy, set forth in the institution Bylaws may provide for limited exceptions to Personnel ownership of Traditional Scholarly and Creative Works as follows:
 - a. The granting of a perpetual, royalty free, non-exclusive license to the institution to use certain Works owned by Personnel for education, research, commemorative or

Ownership of copyright in any computer software not patentable as defined by 35 USC Section 101 shall be retained by the author subject to provisions regarding ownership of commissioned works and works created in the normal scope of employment described herein.

5.

Section 7. Administration

Institutional procedures for the development of Intellectual Property are as follows:

1. Institution Policies and Procedures and Intellectual Property Administrator. Each institution of NSHE is required to develop policies and procedures for handling Intellectual Property. The Intellectual Property policies and procedures must be consistent with the requirements set forth in Title 4, Chapter 12 and must be submitted to the Chancellor for approval. Each President shall appoint one institutional officer, an Intellectual Property Administrator, who is responsible for the administration and disposition of Intellectual Property.

It will be the duty of the Intellectual Property Administrator, in accordance with the institution policies and procedures, to determine ownership of Intellectual Property and Works, develop terms of agreements with non-NSHE parties, 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.

2. Intellectual Property Committee. Each President may appoint an Intellectual Property Committee. The Committee shall work with the Intellectual Property Administrator in accordance with the institution Intellectual Property policies and procedures.
3. Net Income Sharing. When net income is to be shared, all net income received by the constituent institution on Intellectual Property and Works subject to this policy shall be divided with the Personnel conceiving, authoring, creating or developing such Intellectual Property and/or Works in accordance with Section 8, it being understood that if there should be a plurality of Personnel, the portion accruing to the Personnel will be distributed on an equal share basis unless specifically agreed otherwise in writing by all the Personnel. The Personnel, at or before the time of filing for formal protection of any Intellectual Property or Work, or at the request of the institution, must agree in writing to any other terms and conditions negotiated with the institution. In the case of a plurality of Personnel, all the Personnel must sign the same agreement.
4. Institution Implementation Options. Each institution may elect any of the following options regarding Intellectual Property.
 - a. Commercialization Through 501(c)(3) Entity. Each institution may license, assign or convey any right, title, interest, or any other right in or to any Intellectual Property or Work to any 501(c)(3) entity for the purpose of commercializing the Intellectual Property or Work.

- iv. required to fully indemnify and hold harmless the Board of Regents, NSHE, the institution, and State of Nevada, and their officers, employees, and agents from and against any and all liabilities, judgements, and/or expenses, including attorney fees, arising either directly or indirectly, from any act or failure to act regarding the commercialization of Intellectual Property with third parties.
 - b. Third Party Transfers. To promote commercialization of the Intellectual Property, the 501(c)(3) entity may license, assign or convey any right, title, or interest in its Intellectual Property to a third party. Any such transfer must have the consent of the Intellectual Property Administrator and the institution's President and occur pursuant to a written agreement that is both reviewed by the institution's General Counsel and expressly contains the following condition: the third party must diligently pursue and use its best efforts to commercialize the Intellectual Property and the 501(c)(3) entity may revoke the transfer if it determines that the third party is failing to use its best efforts.
 - c. Conveyance To Faculty. If an institution determines that it has no interest in the commercialization of Intellectual Property, upon the approval of the Intellectual Property Administrator and the institution's President, it may convey the Intellectual Property to one or more faculty members who created the Intellectual Property to manage and develop it as a private venture. Any such conveyance must be pursuant to a written agreement reviewed by the institution's General Counsel and provide for an agreed-upon sharing of value received for the conveyance between the institution and the faculty member(s).
 - d. Release To Public Domain. If an institution determines that it is in its best interests, upon approval of the Intellectual Property Administrator and the institution's President, it may release or abandon Intellectual Property to the public domain.
- 5. TEACH Act Compliance. 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:
 - a. limitations on use of copyrighted materials;
 - b. limiting access to materials to enrolled students;
 - c. use of copyrighted materials as part of mediated instructional activities;
 - d. providing informational materials to students, faculty and staff members regarding copyright laws;
 - e. providing notice to students that

Section 8. Distribution of Income

Except as may be provided in a written agreement to the contrary including agreements entered into pursuant to NRS 231.1593 (Knowledge Fund), the distribution of Net Income from Intellectual Property shall be as follows: The Personnel shall receive not less than 60 percent of the net income from each Intellectual Property. The Personnel' academic unit or department shall receive not less than 60 percent of the net income from each Intellectual Property. The Personnel' academic unit or department shall receive not less than 60 percent of the net income from each Intellectual Property.

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)

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5. Transparent, expeditious, and informed review and processing of contracts related to research and entrepreneurial activity;
6. Policies and procedures related to intellectual property that are related to or support research and entrepreneurial activity; and
7. Recommendations for policies or changes to policies adopted by the Board of Regents to support research and entrepreneurial activity.

Presidents shall report upon request to the Board the findings and actions taken as a result of this evaluation.

(B/R 6/17)