

Title 4 - Codification of Board Policy Statements

Chapter 12

INTELLECTUAL PROPERTY, RESEARCH, AND ENTREPRENEURIAL ACTIVITY

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Section 1. Preamble

1. The Nevada System of Higher Education (NSHE) 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 conception, authorship, development and creation of Intellectual Property and the publication of scholarly works. Such activities seek to a. contribute to the professional development of the individuals involved, b. enhance the reputation of the institutions concerned, c. provide additional educational opportunities for participating students, and d. drive economic development within the State, e. foster entrepreneurial activity, innovation and commercialization, and f. promote the general welfare of the public at large.
2. Intellectual Property often comes about because of activities of NSHE Personnel through association, employment or Significant Use of NSHE Resources. It becomes significant, therefore, to ensure the utilization of such Intellectual Property for the public good and to expedite their development, marketing and commercialization. The rights and privileges of NSHE and its institutions must be preserved, as well as the incentive of the Personnel to further encourage and stimulate teaching, research, creative and scholarly activity, service and the extension of knowledge to the public.
3. The Board of Regents acknowledges that Personnel 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. Publications 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 Works to become increasingly complex.
4. The foregoing considered, the Board of Regents of NSHE does hereby establish the following policy with respect to Intellectual Property and restricted access research for which NSHE Personnel are contributing participants.

(B/R 6/17)

Section 2. Definitions

1. "Commercial Value" means something that may be commercialized or offered for sale as determined by the institution.
2. "Course Materials" includes, but is not limited to:
 - a. Materials prepared for use in teaching, in any form, including distance education courses;
 - b. Digital, print, audio, and visual materials, or any combination thereof; and
 - c. Documents related to course approval by relevant authorities, lectures, lecture notes and materials, syllabi (except for courses designated in accordance with institution policy adopted pursuant to Section 5.2.b), study guides, bibliographies, visual aids, images, diagrams, multimedia presentations, web-ready content, and educational software (without commercial value).

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.

9. "Traditional Scholarly and Creative Works" are:
 - a. Original works of authorship, including but not limited to books, journal articles, texts;
 - b. Lectures, musical or dramatic compositions, published or unpublished scripts;
 - c. Films, filmstrips, charts, transparencies, and other video or audio broadcasts;
 - d. Course Materials, including but not limited to, distance education courses or programmed instructional materials; and
 - e. Other materials or works of artistic or creative imagination and works of students created in the course of their education such as exams, theses or dissertations, papers, and articles.

10. "Trade Secrets" are defined in NRS 600A.030(5) as "information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:
 - a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
 - b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

11. "Work(s)" means any original work of authorship or creation that can be protected under copyright law, the Semiconductor Chip Protection Act or any statute enacted in the future that governs the protection of intellectual property and is based on principles similar to the principles governing copyright.

12. "Work Made for Hire" is defined by the Copyright Act of 1976 (17 USC Section 101 et seq), and is used herein, as a work prepared by Personnel within the normal scope of employment.
(B/R 6/17)

Section 3. Determination of Significant Use of NSHE Resources and Ownership of Intellectual Property

The determination of Significant Use of NSHE Resources and/or ownership of Intellectual Property will be made by the Intellectual Property Administrator in consultation with the Personnel creating the Intellectual Property and the dean, chair or equivalent supervisor of the Personnel creating the Intellectual Property. If the Personnel disagree with the decision of the Intellectual Property Administrator, the opportunity for an appeal must be provided in accordance with the institution's Intellectual Property policy.

Generally, Intellectual Property will not be considered to have been developed using Significant Use of NSHE Resources if:

1. Only a minimal amount of Personnel's work time, unrestricted funds or facilities and equipment have been used;
2. The Intellectual Property has been created outside of the course and scope of the employment of Personnel;

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

1. Invention Disclosure. An invention disclosure must be submitted on a form prescribed by the institution, when Intellectual Property (other than Traditional Scholarly and Creative Works):
 - a. Has been conceived, created, or developed; or
 - b. Upon request from the institution.

An invention disclosure must be made before Intellectual Property is disclosed or transferred:

- a. To any other party outside of NSHE;
- b. To the public generally;
- c. For commercial purposes; or
- d. Before any presentations or publication regarding the Intellectual Property.

In the event there is a question as to whether the NSHE has an ownership claim to Intellectual Property, the Intellectual Property must be disclosed by Personnel to the NSHE institution. Such disclosure shall be without prejudice to the Personnel's ownership claim. Ownership of such Intellectual Property shall be determined in accordance with Section 3 hereinabove.

2. Determination of Rights and Equities. Determination of rights and equities in Intellectual Property shall be as follows:
 - a. NSHE Ownership. Except as may otherwise be specified in an agreement between NSHE and Personnel in writing, Intellectual Property shall belong to NSHE if conceived, created, developed or reduced to practice (where necessary to perfect): (1) by Personnel as a result of the Personnel's duties, (2) by agreement with a non-NSHE party, or (3) through Personnel's Significant Use of NSHE Resources.
 - b. Personnel Ownership. Personnel acquire ownership in Intellectual Property which: (1) is not conceived, created, developed or reduced to practice in the course and scope of Personnel's employment or subject to the terms of agreements with research sponsors or other third parties, and (2) does not involve the Significant Use of NSHE Resources administered by NSHE.
 - c. Student Ownership. Except as otherwise provided herein below, NSHE shall not claim ownership of Intellectual Property created by students using NSHE resources in connection with classwork and available to all students in the course, if the student is not paid by NSHE or any third party, and the class or project is not supported by a corporation, government grant or contract or other third party.

Intellectual Property first conceived, created, developed, or reduced to practice in sponsored graduate research will be owned by NSHE and shall be subject to NSHE policies and procedures governing Intellectual Property.

- 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 promotional use; and
 - b. Ownership by the institution of certain Course Materials made as a work for hire or as designated in accordance with the institution Bylaws.
3. **NSHE Sponsored Agreements or NSHE Funds.**
 - a. NSHE owns all rights, intellectual and financial, in Works authored or created in the course of scholarly projects specifically funded for that purpose by NSHE sponsored agreements or other NSHE funds. Such Works may include the creation of Course Materials that are specifically commissioned for the use of the institution. The creation of such Works and NSHE's ownership rights must be set forth in a written agreement with Personnel.
 - b. Prior to signing any agreement with a non-NSHE party that may result in or which deals with Works, where any NSHE time, facilities, materials, Personnel, or resources are involved, NSHE Personnel must bring the proposed agreement to the attention of the Intellectual Property Administrator of the constituent institution for review, negotiation and binding signature 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.
4. **Computer Software.** Any potentially patentable computer software regardless of the form of expression or object in which it is embodied, together with any user manuals or other relevant documentation, and any computer database that is developed under or subject to any agreement between NSHE and any third party, with the use of direct or indirect financial support from NSHE, or with significant use of NSHE resources shall be owned by NSHE.

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. NSHE Commissioned Works. 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, require NSHE commissioned contractors to agree in writing that ownership to copyrightable materials is assigned to NSHE. Such Works shall be considered Works Made for Hire and NSHE shall own the copyrights. Examples of Works which 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.
6. Instructional Recordings. Any videotaping, broadcasting, or televising of classroom, laboratory, or other instruction, and any associated use of computers, must be approved or authorized in accordance with an institution policy developed in consultation with the faculty.
7. NSHE Obligations. 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 research agreements, license agreements, and the like.
8. NSHE Resources. Except as otherwise provided in Title 4, Chapter 12, NSHE resources are to be used for NSHE purposes and not for personal financial gain or personal commercial advantage.

(B/R 6/17)

Section 6. Equity Interests in Private Companies

Equity ownership in a company or developing business venture may be agreed to as part of an agreement for commercialization of an NSHE-owned Intellectual Property and Works. However, any such agreement must be reviewed and approved by the System General Counsel to ensure that pursuant to the special fund doctrine the equity interest does not violate the provisions of the Nevada Constitution, Article 8, Section 9, and to ensure that the agreement contains appropriate provisions to protect the state, the institution and institution foundation from liability for the debts of the company or developing business venture. Institution foundations, research foundations, other institution affiliated non-profit entities or companies wholly-owned by any of those entities may be entitled to own such equity interests under the special fund doctrine.

(B/R 6/17)

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, or interest it may have in Intellectual Property to a 501(c)(3) entity, including an affiliated nonprofit corporation as set forth in Title 4, Chapter 10, Section 10 of the Board of Regents Handbook, if the 501(c)(3) entity is:
 - i. created for the sole benefit of the institution;
 - ii. obligated to act at all times in the best interests of the institution;
 - iii. prohibited from pledging funds of the Board of Regents, NSHE, the institution, or the State of Nevada;
 - iv. directed to use its best efforts to commercialize Intellectual Property and to conduct any commercialization and related activities in compliance with all applicable state and federal laws, including the "Bayh-Dole Act," as set forth in 35 U.S.C. §§ 200-212; and

- 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 course materials may be subject to copyright laws; f. limitations on digitizing of analog works; g. limiting retention of copies of materials; h. preventing unauthorized further transmission of digital materials; and i. non-interference with technological measures taken by copyright owners to prevent retention and distribution.
- 6. Assignment of Ownership. Each Personnel does hereby assign and agree to assign any Intellectual Property to NSHE for which NSHE has an ownership interest pursuant to this policy. All newly hired and current Personnel who participate in the development of Intellectual Property, which is owned by NSHE in accordance with Title 4, Chapter 12, are required to assign, through a written instrument, all ownership and any other interest in the Intellectual Property to NSHE.

(B/R 9/19)

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 25 percent of the net income, and any remaining income shall go to the institution. Unless otherwise agreed to in writing, equity received as consideration (partial or in full) for rights to Intellectual Property shall be held on behalf of the Personnel, and upon a liquidation event for that equity, the Net Income received shall be distributed in accordance with this paragraph.

(B/R 6/17)

Section 9. Periodic Reporting

Periodically or upon request, each NSHE President or his or her designee shall report to the Board of Regents on the status and outcomes of institutional research endeavors.

(B/R 6/17)

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)

Section 11. Institutional Research and Entrepreneurial Activity

The Nevada Board of Regents and the Nevada System of Higher Education support and encourage efforts by faculty and staff to advance research, technology commercialization, industry engagement, and the entrepreneurial goals of the institution, as well as the objectives set forth in the State Economic Development Plan and the Knowledge Fund created pursuant to Nevada Revised Statutes 231.1592, and similar activities. These efforts must include the vigorous pursuit of related federal, state and industry-sponsored research, entrepreneurial and economic development opportunities.

In support of these efforts, Presidents shall ensure institutional procedures, policies and protocols establish and sustain a culture that promotes and incentivizes these research and entrepreneurial goals and activities. On a periodic basis, Presidents shall evaluate existing institutional procedures, policies and protocols and make provisional changes as necessary to comply with this Section. Areas of evaluation should include, but are not limited to, the following:

1. Transparent, expeditious, and informed review of conflict of interest issues, particularly as they affect research and entrepreneurial activity;
2. Methods of increasing faculty awareness and incentivizing faculty to participate in NSHE and institutionally supported research and entrepreneurial activities through performance evaluations, workload adjustments, and leave opportunities;
3. Faculty recruitment plans that include provisions for attracting and retaining faculty active in research and entrepreneurial activity;
4. Consulting policies that allow for and encourage research and entrepreneurial activity;

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)