

ANDERSON UNIVERSITY

INTELLECTUAL PROPERTY POLICY

Purpose

The purpose of this policy is to clarify issues related to the ownership, use, and sale of intellectual property created by university personnel (i.e. faculty, staff, or students).

Anderson University wishes to foster an intellectual environment that encourages creativity, innovation, and entrepreneurship while managing its resources for the benefit of all constituents. In this policy the university seeks to foster these goals and honor traditions in the academic setting while recognizing federal laws.

Definitions

Intellectual property refers to any copyrightable or patentable work and covers all types of intellectual property such as inventions, discoveries, trade secrets, trade and service marks, writings, art works, musical compositions and performances, software, literary works, architecture, etc. This list is not exhaustive and applies to other types not listed here, regardless of whether they may be protected by patent, copyright, trademark, trade secret or other law.

Copyrightable work includes original works of authorship fixed in a tangible format including syllabi and other course materials, books and other literary works, articles, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, software, internet sites or other material that qualifies for protection under United States copyright law.

Patentable work is any new and useful discovery, process, machine, device, manufactured product, composition of matter, or other invention that qualifies for protection under United States patent law.

Scholarly and artistic works are works reflecting research and/or creativity that within a university are considered as evidence of professional advancement or accomplishment. Examples include publications, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, and the products of science.

Works for hire refer to works prepared by an employee within the scope of employment. (Note that the law recognizes that the copyright for works for hire rests with the institution. Materials created by faculty for their courses, however, have been considered an exception since the administration provides very little control and direction for their development.)

University resources refers to university funds, facilities, equipment and personnel.

Substantial use of university resources refers to extensive use of resources beyond what is ordinarily made available to employees. For example, for faculty “substantial use” would be reduction in teaching load or funding that goes beyond the customary release time, grants and sabbaticals awarded within current policy. A specific example would be a year of release time to write a history of a prominent leader or agency of the Church of God. Other examples include extraordinary use of special equipment, facilities, supplies or time of university employees.

Policy Statement

AU policy seeks to encourage creativity while conserving the resources of the university. Thus, in consideration of the “work for hire” principle, *intellectual property of a scholarly or artistic nature* shall be the sole and exclusive property of the creator unless a specific contract with alternative provisions has been negotiated prior to the creation of the property. The latter is desirable when the production of intellectual property involves “substantial use” of university resources. In this case the Provost, on behalf of the administration, is responsible to initiate the negotiation.

In cases where employees (with or without the participation of students) create intellectual property (such as a video or internet site) for an *agency outside the institution* and make “substantial use” of university resources, prior negotiation to determine ownership shall be carried out by the Provost on behalf of the university. (In general the agency will control the distribution of property, while copyright ownership will remain with the creators.)

In the case where AU *commissions a piece of work* with a person within or outside of the university, ownership is determined by a written contract prepared prior to the start of the project.

Policy with respect to pedagogical materials seeks to balance the needs of all faculty members and the administration. Materials created for pedagogical purposes, such as syllabi and tests, are considered to be owned by the person who authored them. However, the institution and its personnel are permitted to use or modify such materials for internal educational and administrative purposes, including reporting to accreditation agencies. Excluded from the understandings in this paragraph are works published by an established publishing house and sold to students through a vendor. In addition, in selected cases (for instance, ones that involve substantial use of university resources) the university may negotiate a different understanding than recorded here; such an understanding must be negotiated prior to the creation of the property and should be initiated by the administration.

Works for hire that would *not customarily be considered of an artistic or scholarly nature, nor created for pedagogical purposes*, shall be considered jointly owned by the creator and the university.

Intellectual property created by a university employee *outside of work time*, outside the scope of the employee’s job responsibilities, and without the use of university resources is the sole property of the creator even though the work may be similar to the employee’s job duties.

Policy with respect to students attempts to balance student and institutional needs. Intellectual property created by *students* is considered the property of the student. The university, however, reserves the right to use such material, with appropriate discretion and attribution, in promotion of the university. Intellectual property created by students and employees jointly is considered to be jointly owned by the creators. (The employee shall have decision-making powers in regard to permissions and sales of jointly created property.)

Funds received from the sale of intellectual property shall be allocated by proportion of ownership and expended as determined solely and independently by the owner(s).

Questions or disputes regarding the interpretation of this policy shall be mediated by a mutually agreed upon third party.

Confidentiality agreement (for vendors or non-creators involved in any commercialization and/ or marketing activity or review). During the evaluation period, an invention may be safely disclosed outside the institution under the protection of a Confidential Disclosure Agreement or CDA. This is because disclosures made under an appropriate CDA are not considered public disclosures, unless the recipient of the information does breach the CDA. When a staff member wishes to disclose an invention to an external researcher associated with a company or other profit organization, or directly to the company or organization itself they should have a confidentiality agreement signed that states the obligation of the recipient not to use the invention, etc., for any other purposes than to evaluate it. Refer to Appendix A for AU Confidentiality Agreement.

According to the *Early Disclosure Statement* all covered persons are required to notify the Provost of each Supported Invention and Incidental Invention through a disclosure document found in Appendix B. Upon review of the disclosure document, the Provost will determine whether the Invention is a Supported Invention or an Incidental Invention and, in the case of a Supported Invention, shall further determine, with assistance from patent counsel, who are the Inventor(s), consistent with U.S. patent law.

All *revenue* (i.e. 100%) will go to the institution to cover university expenditures associated with the development, patent filing, copyright registration and any other continuing costs associated with licensing and other commercialization of the intellectual property. After initial university expenditures have been covered *shared net revenues* will be distributed as follows:

Any invention created using substantial university resources and time, and for the work of the university (e.g. <i>Phoenix</i> , the online application).	75% net revenue goes to the institution. 15% goes to the creator's department. 10% goes to the creator(s) to be shared equally in the case of more than one inventor unless otherwise negotiated.
Invention created using some university resources and time, but not directly created for the university.	20% net revenue goes to the institution. 80% net revenue goes to the creator(s) to be shared equally in the case of more than one inventor unless otherwise negotiated.

Responsible Party

Responsibility for this policy lies with the Office of the Provost.

Policy Review

This policy is to be reviewed every three years.

Distribution

This policy is distributed via the Faculty and Staff Handbooks and posted on the AU website.

Approved by President's Executive Staff, May 20, 2015
Approved by Board of Trustees, June 23, 2015

APPENDIX A

ANDERSON UNIVERSITY

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality Agreement ("Agreement") is made and effective the _____ DAY OF _____, 201__ by and between **Anderson University** ("Owner/Institution") or their agent and

_____ for _____ ("Recipient").
Company or Organization

1. **Confidential Information.** Owner proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Recipient. Confidential Information shall include all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Recipient by Owner. Confidential Information disclosed orally shall be identified as such within ten (10) days of disclosure. Nothing herein shall require Owner to disclose any of its information.
2. **Recipient's Obligations.**
 - A. Recipient agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Recipient shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know. Recipient will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.
 - B. Confidential Information furnished in tangible form shall not be duplicated by Recipient except for purposes of this Agreement. Upon the request of Owner, Recipient shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request.
 - C. Signer of this document affirms that he/she has full authority to undertake this agreement for his/her company that is represented herein.
3. **Term.** This Agreement will cover all disclosures of Confidential Information made by Owner to Recipient during the period that ends one year after the Effective Date of this Agreement. Recipient's obligations under this Agreement with respect to Confidential Information disclosed to Recipient will continue in effect until three years after the Effective Date.
4. **Other Information.** Recipient shall have no obligation under this Agreement with respect to Confidential Information which:
 - A. Is or becomes publicly available without breach of this Agreement by Recipient;
 - B. Is rightfully received by Recipient without obligations of confidentiality; or
 - C. Is developed by Recipient (or its agents, contractors, and employees) without breach of this Agreement.

These exceptions provide, however, that such Confidential Information shall not be disclosed until thirty (30) days after written notice of intent to disclose is given to Owner along with the asserted grounds for disclosure.

5. General Conditions:

- A. No License. Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information.
- B. No Publicity. Recipient agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Owner without the express consent from Owner.
- C. Governing Law and Equitable Relief. This Agreement shall be governed and construed in accordance with the laws of the United States and the State of Indiana.
- D. No Assignment. Recipient may not assign this Agreement or any interest herein without Owner's express prior written consent.
- E. Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.
- F. Headings. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Dated this _____ day of _____, 201__ by

Name and Title

Company or Organization Represented

Witnessed by

Name (acting for **Anderson University** as recipient of this NDA)

THIS INSTRUMENT WAS PREPARED BY John D. Ritchison, Patent Attorney and Attorney at Law, 115 E. 9th St. – Suite A, Anderson, Indiana 46016. PH. (765) 640-4134.
jdritchison@comcast.net

APPENDIX B

**ANDERSON UNIVERSITY
EARLY DISCLOSURE STATEMENT**

Title of Invention: _____

Names of Inventors: _____

Description of Invention: _____

Sponsorship (if any): _____

Design Date and Date put into practice: _____

Publication Dates (existing or projected, if any): _____

Please submit form to: Provost's Office

Supported Invention – Refer to patent counsel

Incidental Invention only

Provost Signature

Date