

University Intellectual Property and Rights Management Policy	Effective date: September 14, 2018 Replaces: New
Application: University-wide Access: Public	Position responsible for facilitating compliance: <i>Intellectual Property Policy and Rights Management Committee (IPPRMC)</i>

This Policy is excerpted from NULTA CBA (2014-2017) ARTICLE XXVII. INTELLECTUAL PROPERTY and is subject to any changes to the CBA that are made through collective bargaining. This policy will always default to the language of the Current CBA.

I. POLICY

To benefit teaching, research, and the public interest, the University and NULTA work together to generate, maintain, and promote intellectual property. This policy sets out provisions to enhance faculty awareness of and access to the mechanisms that protect intellectual property; provide guidelines for the establishment of ownership of faculty-generated intellectual property; establish the process for initiating and drafting contracts that set the terms of faculty-university cooperation and joint ownership; and establish a continuing committee to monitor intellectual property law while ensuring that the university and NULTA are best positioned to obtain the benefits thereof.

II. DEFINITION OF INTELLECTUAL PROPERTY

Intellectual Property will be defined and protected as defined in the following:

A. Intellectual Property

Patents, trademarks, copyrights and trade secrets are different types of intellectual property. They are governed by different laws and serve different purposes.

B. Copyright

Copyright protects original works of authorship fixed in a tangible medium of expression—including, but not limited to, poetry, sculpture, computer programs, teaching materials for either online or in-person teaching (e.g., class notes, lectures, assignments, and activities), and research materials (e.g., proposals, articles, books, book chapters). Copyright protection is controlled by title 17, U. S. Code; it is available to both published and unpublished works, and certain benefits are afforded even without registration.

C. Trademark

Trademarks are logos, slogans, and names that identify the source of a product; generally, the more "fanciful" the name, the easier it is to protect. Domain names, when used in conjunction with the sale of goods and/or services, can also derive protection from trademark law. Trademark protection is created by both the laws of the United States (title 19, U. S.

Code) and the State of New York (General Business Law), and protects words, names, symbols, sounds, or colors that distinguish goods and services from those manufactured or sold by others and indicate the source of the goods.

D. Patents

Patents protect inventions. A patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. The right conferred by the patent grant is, in the language of the statute and of the grant itself, “the right to exclude others from making, using, offering for sale, or selling” the invention in the United States or “importing” the invention into the United States. There is a very short window for filing patent applications. For that reason, faculty who are seeking patent applications should consult with the Intellectual Property Policy and Rights Management Committee (IPPRMC) who will expedite university review of patent related issues. Inventors should also consult with an attorney prior to publishing or otherwise disclosing an invention. There are three types of patents:

- (1) Utility patents, which may be granted to anyone who invents or discovers any new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof;
- (2) Design patents, which may be granted to anyone who invents a new, original, and ornamental design for an article of manufacture; and
- (3) Plant patents, which may be granted to anyone who invents or discovers and asexually reproduces any distinct and new variety of plant.

E. Trade Secrets

A trade secret exists where there is a formula, pattern, device, or compilation of information, which gives one an opportunity to obtain an advantage over competitors who do not know or use it. To be able to enforce a trade secret, there must have been reasonable efforts to preserve the information in secret.

II. DEFINITION OF ADDITIONAL TERMS

The following defines the additional terms used in this policy.

Additional Resources: Resources not routinely made available to faculty and staff in association with their normal responsibilities, access to which may be conditioned upon entering into a contract with the university. Examples of additional resources include, but are not limited to, additional funding or tangible resources from university sources, facilities, IT services or server space; assistance from university employees with experience relevant to a proposed venture.

Intellectual Property Policy and Rights Management Committee (IPPRMC): A body composed of faculty and university staff/administration convened to ensure consistent and current means of effecting the goals of this article.

Joint Research Agreement: An agreement between a faculty member and the university setting the terms of patent ownership, costs, and licensing.

Request Form: Form utilized when requesting additional resources.

Signed, Written Agreement: An agreement memorializing the terms of a faculty member's obtaining additional resources; such agreement can be a simple assignment or rights, or a complex document setting the terms of a joint venture.

IV. SCOPE OF POLCY AND PROCEDURES

The following defines Ownership of Intellectual Property and Exceptions:

- A. Copyrights
 - i. Except as otherwise set forth below, the copyrights of materials authored by a faculty member are wholly owned by that faculty member. This provision applies to, but is not limited to, the works described in Section 2B. For those materials, no disclosure of copyright to the university is needed, and the university automatically waives ownership.
 - ii. First exception: The copyright to works generated with significant additional university resources shall be deemed the property of both the faculty member and the university; however, such joint ownership shall only be effective upon a signed, written agreement stating that the copyright shall be jointly owned. University resources that are not considered significant or additional include library and basic office equipment usage.
 - iii. To enable the duplication, display and distribution of syllabi and course materials, faculty grant the university a license to duplicate, display, and distribute, through print or electronic media, course materials they own for the semester the course is taught, and the grading period following it.
 - iv. Second exception: If a faculty member assigns the copyright to the university, such assignment shall only be effective upon a signed, written agreement.
 - v. In no event shall the above be construed to derogate the university's rights under a non-exclusive license.
 - vi. Questions and concerns related to copyright ownership are to be submitted to the chair of the Intellectual Property Policy and Rights Management Committee (IPPRMC), and feedback will be given in a timely manner.
- B. Trademarks
 - i. Except as otherwise set forth below, trademarks generated and maintained by a faculty member are wholly owned by that faculty member.
 - ii. First exception: Trademarks generated and maintained to offer services by or in affiliation with Niagara University are the property of the university.
 - iii. Second exception: Domain names with site content hosted on the servers of the university, or utilizing the name of the university, must be registered in name of university, and any related trademark is the property of the university.
 - iv. Third exception: A trademark generated with additional resources shall be deemed the property of both the faculty member and the university; however, such joint ownership shall only be effective upon a signed, written agreement stating that the copyright shall be jointly owned.
 - v. Fourth exception: The faculty member assigns his or her trademark to university; assignment shall only be effective upon a signed, written agreement.
- C. Patents
 - i. Except as otherwise set forth below, patentable inventions by a faculty member are wholly owned by that faculty member.
 - ii. First exception: Inventions generated with additional resources shall be deemed the property of both the faculty member and the

university; however, such joint ownership shall only be effective upon a signed, written agreement stating that the patent shall be jointly owned. Such an agreement shall be considered a joint research agreement. To initiate this process, the faculty member should request that the Intellectual Property Policy and Rights Management Committee (IPPRMC) provide them with an "Invention Disclosure" form.

- iii. Second exception: The faculty member assigns the patent to the university; assignment shall only be effective upon a signed, written agreement.
- iv. Because celerity is important in handling patent applications, the IPPRMC will review and process patent paperwork within 30 days.

D. Trade Secrets

- i. Except as otherwise set forth below, trade secrets developed by a faculty member, even if housed on university property (including computers) are wholly owned by that faculty member.
- ii. Any trade secret incorporating material generated by the university is the joint property of the faculty member and the university.

E. Online Courses:

Online courses, those converted from face-to-face, and other courses designed for delivery online will be hosted on the university-sponsored technology platform. The faculty member will hold copyright until separation of employment at which time it is agreed the copyright may become jointly owned with the university, if the University offers and the faculty member agrees to sell the copyright; resulting in a dual copyright. Upon separation of employment from Niagara University, the faculty member retains copyright, as stated above, and the ability to use the content for instruction at another institution; conversely upon purchase of the copyright Niagara University retains the ability to use these course materials, without the ability to sell the content.

F. In the event a faculty member is unavailable to teach his or her copyrighted course, the faculty member, in consultation with department chair and dean, will develop a mutually agreeable plan for offering the course.

G. These copyright agreements are accepted unless a work-for hire, specially commissioned, or specially contracted work agreement is negotiated separately. Novel, uncovered, and emerging issues will be addressed by the Provost and Vice-President of Academic Affairs, working with the IPPRMC, as deemed necessary by the parties.

4. Establishing Joint Ownership: From Idea to Contract

- A. Faculty working on developing intellectual property of any sort should be mindful of the nature of the intellectual property and the manner in which it should be protected; faculty members with questions should consult their attorney and the IPPRMC for clarification.
- B. Faculty who would like additional resources shall obtain a copy of a request form from the IPPRMC.

- C. The dean of the faculty member's college must sign the request form for it to be considered by the university.
 - D. The university shall evaluate the request form and inform the faculty member of the decision in a timely manner.
 - E. If the university determines that it may provide additional resources, the parties shall negotiate to set the terms of joint ownership, along with other considerations, such as, but not limited to, grants and other pre-existing terms affecting the status of intellectual property; proportion of the ownership; continuing strategies to protect and promote the intellectual property; ways the IP could be used for the public interest; the nature of the parties' relationship; insurance considerations; liability concerns; the consent required for sale and licensing; the long-term costs of maintaining the IP; and the conditions for reversion and termination.
 - F. If the parties cannot come to an agreement, the faculty member is free to seek resources from other sources; however, the terms of negotiations shall remain confidential.
5. Intellectual Property Policy and Rights Management Committee (IPPRMC)
- A. The voting members of the IPPRMC will be composed of six members equally apportioned between faculty elected by the senate and administration appointed by the president. The committee members shall elect a chair from among themselves each year. After the first appointment, subsequent members shall serve a three-year term. Committee members may serve one additional term or part thereof.
 - B. Permanent Advisory Members: Due to the complex nature of intellectual property law, there shall be three permanent advisory members, selected based on their professional obligation to remain current in the field: the director of libraries, the director of the Office of Information Technology, and the general counsel, who shall be available to educate and advise the committee as needed.
 - C. The committee shall maintain a Web page hosted at www.niagara.edu/intellectualproperty, and shall ensure that updated information regarding the university and NULTA's position on IP is set forth and routinely updated. The request form for obtaining additional resources shall also be located on this site.
 - D. The committee shall monitor and ensure compliance and advantageous positioning with regard to changes in intellectual property laws and best practices and shall report to the senate, the president, and NULTA when changes affect existing policies.

III. Oversight of the Policy

If any situation occurs that is not covered in the procedure of this policy, the *Intellectual Property Policy and Rights Management Committee* (IPPRMC) in consultation with the Provost and Vice-President of Academic Affairs will issue guidance consistent with the overall spirit of the policy. This decision regarding the procedure to be followed will be final.

IV. Revision of this Policy

Any revision of this policy must be approved by the *Intellectual Property Policy and Rights Management Committee* (IPPRMC) in consultation with the Provost and Vice-President of Academic Affairs. This policy will reflect and in cases of discrepancy, defer to the language of the most recent CBA.

Approved: PPRC 5/8/18

Approved: President's Cabinet 9/14/18