Shepherd University
Intellectual Property Policy

Introduction

At any college or university, intellectual property (e.g., inventions, discovery of patentable processes, creative work) can occur through the normal course of professional development activities. Shepherd University recognizes that, while the main objective of professional development is not to generate intellectual property, if a valuable intellectual property interest develops from such activity it is in everyone's best interest to define the ownership interests in advance. In keeping with this philosophy, the Intellectual Property Policy is intended to encourage professional development that is in the best interests of the public, funding agency, the University and the faculty member while at the same time allowing for the protection and disclosure of Intellectual Property developed by faculty and/or staff at Shepherd University. In addition, this policy is intended to protect the interests of all concerned parties regarding both recognition and monetary gain from the development of intellectual property. The working definitions for some of the terms used in the following portions of this policy can be found in Appendix A.

1.0 Intellectual Property

1.1 Definition

Intellectual property can take many different forms. For the purpose of this policy the term intellectual property will apply to all original works of authorship fixed in a tangible medium of expression created by faculty, students, and staff during their employment at Shepherd University. This includes but is not limited to materials that hold or are eligible for copyright protection, patent, and/or trademark laws.

1.2 Copyrights

According to the United States Patent and Trademark Office, a copyright provides protection to authors of works under title 17 of the U.S. Code. Protection occurs regardless of whether a work is commercially published. The copyright does not protect the subject matter of the work but the form of expression. In section 106 of the 1976 U.S. Copyright Act, the holder of a copyright is granted certain rights to the publication, reproduction, and/or performance of the work.

1.3 Materials which may be Copyrighted

A variety of materials are subject to copyright protection. The following are examples of materials that may be subject to copyright protection:

- Architectural plans and structures;
- Bibliographies, books, glossaries, journal articles, and laboratory manuals;
- Choreographic work and pantomimes;
- Computer-generated and computer-transmitted materials;
- Computer programs and/or software;
- Databases;
- Drawings and other representations of a scientific or technical character;
- Dress and fabric designs;
- Graphic and sculpture works;

- Lectures;
- Live video and/or audio broadcasts;
- Musical or dramatic compositions;
- Programmed instructional materials (including web-based courses or materials);
- Unpublished scripts;
- Visual aids such as films, film strips, charts, photographs and transparencies;
- World Wide Web pages and/or sections of those pages;
- Works of art.

1.4 Trademarks

Trademarks are devices, names, symbols, or words used to indicate the source of goods or services and to also distinguish these goods or services from those of others that may provide similar goods or services. Trademarks do not prevent others from making, selling, or supplying the same goods and services but do prevent other individuals or companies from using a similar trademark. All trademarks used in the United States for interstate or foreign commerce must be registered with the United States Patent and Trademark Office.

1.5 Patents

Patent law identifies and specifies both what can be patented and the conditions that must be met in order for a patent to be granted. The U.S. Patent and Trademark Office was established as the regulatory body to review patent applications and the granting of patents. Title 35 of the U.S. Code and Public Law 106-113, 113 Statute 1501 provides the guidelines for what is patentable and who may obtain a patent. Various courts have interpreted the statute in such a manner so that abstract ideas, the laws of nature, and physical phenomena are not deemed to be patentable subject matter. Additionally, ideas and/or suggestions are not patentable and in order to be the basis of a patent a complete description of the subject matter must be presented.

2.0 Categories of Intellectual Property

This policy places all forms of intellectual property (e.g., materials eligible for a copyright, patent, or trademark) into categories depending on the status of the individual(s) involved in creating the work. These different statuses are described below.

2.1 Acquired Intellectual Property

Intellectual property may be acquired when Shepherd University is named as a beneficiary in a will or trust or through an assignment to the University. Such a conveyance assigns some or all of the rights to one or more forms of intellectual property. The Shepherd University Foundation will accept such a gift and will provide guidance as to its distribution, categorization, and use.

2.2 Aesthetic and Scholarly Work Resulting in Intellectual Property

The traditional policy and practice in academe is that when the independent efforts of faculty members, students, and/or staff produce intellectual property that the rights to the property are owned by that individual or individuals. The expectation of professional development leading to aesthetic or scholarly works is not, of itself, to be taken as a commissioned work, even if University resources (including faculty development funds) are used. In keeping with this tradition, only those exceptions noted in following sections of this policy will limit the ownership of these works.

2.3 Commissioned Work Resulting in Intellectual Property

Works commissioned by Shepherd University will assign rights to intellectual property in the contract. Normally, ownership will be granted to Shepherd University and if this is not the case the contract will include provisions that provide the University with the rights to use and/or reproduce the work without cost to Shepherd University.

2.4 Contract/Sponsored Work Resulting in Intellectual Property

For those contracted or sponsored projects that produce intellectual property resulting in a patent, copyright or trademark and that also produce net income, Shepherd University will distribute the net income as described in Section 3.4.

2.5 Personal Work Resulting in Intellectual Property

Any copyrights, patents, or trademarks obtained for work completed by a University employee or employees (student, faculty, or staff) outside the scope of their normal duties that do not make significant use of University resources will be the property of that employee(s).

3.0 Revenue Sharing from Intellectual Property

Royalties generated from intellectual property will be assigned based on the previously described categories. These royalties may result from the leasing, licensing, sale, or use of the intellectual property produced. Net revenues will be shared with the creator(s)/inventor(s) as described in this section of the policy. Net revenues will be considered the total cumulative sum of money received from a specific item of intellectual property after the expenses incurred by the development of the product and the securing and maintenance of the appropriate patent, trademark, copyright, or licensing fees are deducted. Examples of these expenses may include, but are not limited to, publication costs, student salaries, matching funds, and facility improvements required for the project.

3.1 Net Revenue from Acquired Intellectual Property

When revenues are generated from intellectual property acquired by Shepherd University as part of a bequest from a will or trust, 100% of the net revenues will be retained by Shepherd University.

3.2 Net Revenue from Aesthetic and Scholarly Work Resulting in Intellectual Property

All revenues generated from intellectual iroperty produced by faculty, staff, and students through aesthetic and/or scholarly work as described in Section 2.2 above will remain the sole property of that person(s).

3.3 Net Revenue from Commissioned Work Resulting in Intellectual Property

Net revenues generated from works commissioned by Shepherd University will remain the sole property of Shepherd University. If this is not the case, the contract for the work will specify how the net revenues are to be distributed. If the originator of the work is to retain the rights to this work, the contract must provide for fair use of the work without cost to Shepherd University.

3.4 Net Revenue from Contract/Sponsored Work Resulting in Intellectual Property

Shepherd University recognizes the importance of sharing net income generated by contract and sponsored projects. The net income derived from these projects will be distributed as outlined in the following schedule, unless otherwise stipulated in advance and in writing:

- The first $5,000 will be paid to the creator(s)/inventor(s) and thereafter the net income will be distributed as follows (based on a modification of the Shepherd University Indirect Cost Sharing Policy):
  - 50% of the net income to the creator(s)/inventor(s);
  - 15% of the net income to the Shepherd University Research Corporation for use in supporting scholarly activities across campus;
  - 8.25% to the unit VP;
  - 8.25% to the creator's/creators' school (dean);
  - 7% to President;
  - 7% to University counsel;
  - 4.5% to VPAF.

When intellectual property is conceived and developed jointly by two or more employees, each will share in the portion to be allocated to the creator(s)/inventor(s) in proportion to the overall contribution of each of the individuals. If the creator(s)/inventor(s) are unable to reach an agreement as to the distribution of net income then the Vice President for Academic Affairs (VPAA) shall decide the distributions.

When applicable laws, regulations or conditions associated with contracts or sponsored projects dictate that either a lesser share be provided to the creator(s)/inventor(s) or that the distribution described above cannot be utilized these laws, regulations, or conditions will take precedent.

3.5 Net Revenue from Personal Work Resulting in Intellectual Property

Any and all revenues generated from intellectual property produced by faculty, staff, and students through personal work as described in Section 2.5 above will remain the sole property of that person(s).

4.0 Administrative Responsibilities

4.1 Policy Administration

The administrative responsibility for this policy is vested in the VPAA.

4.2 Notification Procedures

Individuals producing work that Shepherd University may claim as described in Sections 2.0 and 3.0 shall promptly send a written notification to the VPAA. When more than one employee is involved, each will sign the report and also indicate the percentage of which each contributed to the development of the work. The report submitted must identify the source(s) of funding and provide a full and complete description of the intellectual property. At the request of the VPAA creator(s)/inventor(s) will provide any additional information and/or execute documents associated with work. The VPAA will consult with appropriate University officials and notify the creator(s)/inventor(s) in writing within 180 calendar days as to whether or not Shepherd University

will claim a proprietary interest, but failure to provide a final decision within 180 days shall not constitute a waiver of the University's interest.

4.3 University Ownership of Intellectual Property

When Shepherd University gains intellectual property as a result of contract/sponsored work, it is expected that the University will make arrangements to obtain the legal protection (patent or trademark) and market of such work. The University may make arrangements with an outside agency to both obtain the patent or trademark registrations and/or market this intellectual property. At no time will representatives of the University disclose the details of the work prior to obtaining the patent or trademark to anyone who is not bound by confidentiality. For those items of intellectual property which it owns, Shepherd University will retain all rights to manage, market, promote, sell, or in any other way make use of the intellectual property based on terms and conditions deemed acceptable by the University. Shepherd University will have a period of no less than two years (24 months) to make satisfactory progress in obtaining a patent or trademark and in marketing the work in which creator(s)/inventor(s) have a share following notification as described in section 4.2 above. If the University does not meet this obligation, the creator(s)/inventor(s) can submit a written request to the President that 100% of the ownership of the intellectual property pass to the creator(s)/inventor(s).

5.0 Appeal Process

Any disputes related to intellectual property as described in this policy are to be submitted in writing to the President. In the event that the rights and/or equities of intellectual property are in dispute, the President will convene an *ad hoc* review committee consisting of three individuals. One committee member will be selected by the creator(s)/inventor(s) of the intellectual property in question, one committee member will be selected by the VPAA, and the final committee member will be selected by the Faculty Senate. The President will charge this committee to reach a settlement that will be binding unless a further appeal is made by any of the creator(s)/inventors or the VPAA, to the President. If an appeal is made the committee will present the case to the President. After hearing the case the President will make a final decision that is binding upon all parties involved.