V. Policy

1.0 The Default Rule. Under U.S. copyright law, and in the absence of an express waiver as set forth in this policy, the University holds the copyright (as a Work Made for Hire) in copyrighted works authored by its employees (Copyright Materials) who are acting within the scope of their employment. Otherwise, the University does not hold copyright in a work, unless the copyright has been transferred to it by written assignment, contract, or process of law. The Default Rule holds for all University employees except Faculty as outlined in Section 2. All Copyright Material that Staff author/create are PSU Copyright Materials.

2.0 University’s Waiver of the Default Rule for Faculty. By this policy, and subject to the limitation set forth below, the University hereby waives its rights under the Work-Made-for-Hire copyright law, and agrees that the Faculty author/creator of Copyright Materials will hold the original copyright to those Copyright Materials. This waiver of the Default Rule is contingent on a Faculty member’s grant of rights outlined in section 6, and is subject to the following exceptions, under which the Default Rule applies:

   2.1 Copyright Materials developed under a Sponsored Project.
   2.2 Copyright Materials developed under a Separate Agreement

REFORMAT TO INCLUDE THIS INFORMATION HERE, WHERE IT IS RELEVANT:

6.0 Course Materials. Upon using Course Materials in a registered course, all Faculty by policy grant to the University a non-exclusive, non-commercial copyright license in those Course Materials, and must upon request provide copies of Course Materials to University, for the purposes of:

   6.1 archiving and accreditation, making derivatives for the purpose of accommodation and accessibility (such as may be required under the American’s with Disabilities Act), using syllabi for any use, and
   6.2 teaching University registered courses.

Any use of such licensed Course Materials by the University will maintain attributions to the original author/creator and any contributors to derivative works. At any time the Faculty author/creator of those Course Materials may proactively terminate the license under 6.2, above, by providing written notice to the administrative head of their department, school, or college.

INCLUDE AS “EXHIBIT A” AN ASSIGNMENT OF COPYRIGHT FORM THAT FACULTY WILL USE TO RETAIN ALL RIGHTS TO THE WORK. THE LICENSE FOR ALL COURSE MATERIALS REFERENCED IN 6.0 ABOVE, NOT EXCLUSIVELY 6.2, WILL BE TERMINATED BY THIS NOTICE.

The University’s rights under the licenses granted in 6.2 shall survive for one academic term beyond Faculty’s termination of the license to provide University time to replace or remove Course Materials from current teaching materials.
3.0 Copyright ownership under Separate Agreements. When entering into Separate Agreements, University and the Faculty member may agree that the copyright in Copyright Materials created under the Separate Agreement will be owned by either the Faculty member or the University. For University, this Separate Agreement will be made between the Faculty and the Unit. In proposing ownership of Copyright Materials in Separate Agreements, the Unit shall consider both the level of University resources to be used in the Separate Agreement, and any anticipated incorporation of pre-existing Copyright Materials whose copyright is owned by the Faculty. No Separate Agreement shall be able to change any part of this policy.

4.0 Scholarly Work Exemption. To the extent that any PSU Copyright Materials are necessary to create and disseminate a Scholarly Work, and to the extent that these PSU Copyright Materials are not encumbered by the terms of a Sponsored Project or Separate Agreement, PSU will not assert its ownership in the copyright to such materials. The University will endeavor in all cases to preserve the publishing rights of Faculty members when entering Sponsored Project agreements. The University recommends that when entering into agreements for the publication and distribution of Copyright Materials, authors make arrangements allowing them to archive their materials in PDXScholar, the University's open access institutional repository.

THIS RECOMMENDATION SEEKS TO ACQUIRE SCHOLARLY WORKS THAT ARE OWNED BY FACULTY FOR AN OPEN-ACCESS REPOSITORY WITHOUT SPECIFIC ASSIGNMENT OF RIGHTS.

5.0 PSU Copyright Materials License back to Faculty. To the extent that any PSU Copyright Materials authored/created by University employees under a Sponsored Project are not encumbered by the terms of that Sponsored Project and/or are not licensed or expected to be licensed to a third party, the University hereby grants a non-exclusive, non-commercial copyright license to the Faculty author(s)/creator(s) of that PSU Copyright Material. This license terminates if the PSU Copyright Materials are licensed to a third party for Commercial Use. Faculty are encouraged to further distribute such PSU Copyright Materials for public benefit under appropriate non-commercial open source (http://www.opensource.org/) or creative commons (http://creativecommons.org/) licenses.

7.0 Faculty disclosure. Faculty using or distributing PSU Copyright Materials under the license granted in section 5 above have an obligation to mark PSU Copyright Materials as “© Portland State University.” Faculty desiring to use or distribute PSU Copyright Materials for Commercial Use may seek an appropriate license by disclosing the PSU Copyright Materials to the University’s Office of Innovation & Intellectual Property.

12.0 Sponsored Projects.
12.1 When negotiating agreements with external parties for Sponsored Projects, the University shall endeavor to retain PSU ownership of copyright for any Copyright Materials created by all Faculty and Staff under the Sponsored Project. The University may grant rights in PSU Copyright Materials created under a Sponsored
Project to an external sponsor commensurate with the purpose of the agreement and the nature of the Sponsored Project, but will not grant a license for Commercial Use in a Sponsored Project agreement unless a separate license to such rights is executed through the Office of Innovation & Intellectual Property.

V. Procedure

1. Policy Interpretation and Dispute Resolution

1.1 This policy and its implementation may require interpretation and review. University constituents should make every attempt to resolve disputes informally with the assistance of one or more of the following: the Office of Innovation & Intellectual Property (for overall policy clarification and matters regarding Commercial Use of PSU Copyright Materials), the Office of Academic Affairs (for issues involving Course Materials and Separate Agreements), and the Sponsored Projects Administration in Research and Strategic Partnerships (for obligations or issues stemming from Sponsored Projects).

1.2 If informal procedures and consultation do not provide resolution of a dispute or policy issue, University constituents may file a request for formal dispute resolution or policy interpretation with the Provost’s Office (VP of FADM). THIS MAY BE SUBJECT TO CBA GREIVANCE. CONSIDER REPLACING THIS LANGUAGE WITH THE SAMPLE POLICY LANGUAGE RECOMMENDED BY THE AAUP:

How to Resolve Emerging Issues and Disputes

In light of the changing legislative environment, and in view of the evolution of contracts and policies in the intellectual property area AAUP believes that the establishment of an on-going Intellectual Property Committee representing both faculty and administration would serve a useful purpose in both collective bargaining and non-collective bargaining environments. Such a committee could serve a variety of purposes, including keeping faculty and administration apprised of technological changes that will affect the legislative, contract, and policy contexts. Such a committee would play a role in policy development, as well as perform a dispute resolution function. In the absence of such an overall policy committee, a dispute resolution committee with both administrative and faculty representation is essential.

The Intellectual Property Policy and Rights Committee will be composed of members equally apportioned between faculty (elected by the Faculty Senate, or some similar faculty body) and administration (appointed by the president or his/her designee.) The committee members shall elect a chair from among themselves each year. At the time of initial appointment or election, each member shall be designated as serving a one or two, or three-year term, so that the term of one faculty committee member and one administration member will expire each year and replacements will be appointed or elected each year. After the first appointment subsequent
members shall serve a three-year term, commencing on July 1 and terminating on June 30. Committee members may serve one additional three-year term.

The Committee shall monitor and review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies, when such changes affect existing policies.

The committee shall serve as a forum for the receipt and discussion of proposals to change existing institutional policy and/or to provide recommendations for contract negotiations.

Disputes over ownership, and its attendant rights, of intellectual property will be decided by the Intellectual Property Policy and Rights Committee.

The committee shall make an initial determination of whether the college or university or any other party has rights to the invention or other creation, and, if so, the basis and extent of those rights. The committee shall also make a determination on resolving competing faculty claims to ownership when the parties cannot reach an agreement on their own.

The committee will review the merits of inventions, and other creations, and make recommendations for the management of the invention, including development, patenting, and exploitation.

If the inventors/creators disagree with the determination of the committee he/she may appeal to binding arbitration. The cost of the arbitration shall be borne equally by the university and the creator(s).

THE UNIVERSITY OF WASHINGTON HAS ESTABLISHED A POLICY WITH SIMILAR COMMITTEE OVERSIGHT:

Committee

The President of the University will appoint an Intellectual Property Management Advisory Committee to review periodically the policy set forth in this statement and recommend such changes to the President as the Committee deems desirable. The Committee will also advise on broader intellectual property issues that arise in the promotion and protection of research. The Committee will report to the Vice Provost for Intellectual Property and Technology Transfer and consist of no fewer than five members, a majority of whom shall be chosen from the faculty.