



## Board of Governors Rule

Governance  
Intellectual Property  
Responsible Unit: Research Office; University  
Relations  
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### **BOG GOVERNANCE RULE 1.5 INTELLECTUAL PROPERTY; PATENT, COPYRIGHT, AND TRADEMARK RIGHTS**

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#### **SECTION 1: PURPOSE & SCOPE.**

- 1.1 West Virginia University is committed to fostering an environment that encourages the generation of new discoveries, knowledge, creative, and scholarly works and other Intellectual Property by Employees and Students.
- 1.2 The University seeks to encourage research and the development of Intellectual Property by providing appropriate financial compensation to inventors, creators, and the University. In doing so, the University seeks to incentivize the timely and full disclosure by Employees and Students involved in the creation or invention of Intellectual Property to the University.
- 1.3 This Rule sets forth the rights and responsibilities, including any actions for violation of this Rule, of the University, Employees, and Students with respect to Intellectual Property. This Rule also outlines the appropriate procedures for the disclosure of Intellectual Property to the University.
- 1.4 This Rule applies to all Employees and Students of West Virginia University, including West Virginia University Institute of Technology and West Virginia University Potomac State College, (collectively the “University”).

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#### **SECTION 2: OWNERSHIP OF INTELLECTUAL PROPERTY.**

##### **2.1 *Employees.***

- 2.1.1 ***Definition.*** Per the purpose of this Rule, Employee means all Adjunct Faculty, Faculty, Classified Employees, Non-Classified Employees, and Post-Doctoral Staff, as well as visiting Faculty and emeritus Faculty that creates or invents Intellectual Property with More than Incidental Use of University Resources.

2.1.2 **Ownership.** Intellectual Property created by Employees with More than Incidental Use of University Resources or within the scope of their employment with the University shall be owned by the University.

2.1.3 **Assignment to University.** Pursuant to the policies of this University and the agreement between each Employee and the University, all Employees agree to assign and hereby assign their rights in Intellectual Property to the University. All Employees agree to cooperate and execute any further documents necessary to perfect the University's ownership of such Intellectual Property.

## 2.2 **Students.**

### 2.2.1 **Undergraduate Students.**

2.2.1.1 Intellectual Property created by an Undergraduate Student for a credited course or part of an extracurricular activity and without More than Incidental Use of University Resources is owned by the Undergraduate Student.

2.2.1.2 Intellectual Property created by an Undergraduate Student in the following circumstances is owned by the University:

2.2.1.2.1 An Undergraduate Student collaborates with faculty or staff to create Intellectual Property as part of internal, third-party, or sponsored research or development activities regardless of whether the collaboration is for a credited course;

2.2.1.2.2 An Undergraduate Student creates Intellectual Property as a Student-Employee of the University within the course and scope of the Undergraduate Student's employment;

2.2.1.2.3 An Undergraduate Student creates Intellectual Property with More than Incidental Use of University Resources not associated with a credited course for which the Undergraduate Student is enrolled; or

2.2.1.2.4 As otherwise agreed to in writing by the University and the Undergraduate Student.

2.2.1.3 All Undergraduate Students shall, as is reasonably necessary, cooperate and execute any documents required to perfect the University's ownership of Intellectual Property.

## 2.2.2 *Graduate Students.*

- 2.2.2.1 Intellectual Property created by a Graduate Student in the following circumstances is owned by the Graduate Student:
  - 2.2.2.1.1 Intellectual Property created for a credited course, excluding courses for thesis and dissertation hours when the thesis or dissertation is sponsored pursuant to an agreement between an external sponsor and the University or an internal University sponsorship agreement;
  - 2.2.2.1.2 Intellectual Property created in connection with the Graduate Student's Self-Funded research, thesis, or dissertation, in the absence of a separate written agreement between the Graduate Student and University specifying Intellectual Property ownership; or
  - 2.2.2.1.3 Intellectual Property created as part of an extracurricular activity and without More than Incidental Use of University Resources is owned by the Graduate Student.
- 2.2.2.2 Intellectual Property created by a Graduate Student in the following circumstances is owned by the University:
  - 2.2.2.2.1 Intellectual Property created in connection with such Graduate Student's research, thesis, or dissertation that is sponsored pursuant to an agreement between an external sponsor and the University or an internal University sponsorship agreement, regardless of whether the research, thesis, or dissertation is for a credited course;
  - 2.2.2.2.2 Intellectual Property created as part of internal, third-party, or sponsored research or development activities;
  - 2.2.2.2.3 A Graduate Student creates Intellectual Property with More than Incidental Use of University Resources not associated with a credited course for which the Graduate Student is enrolled;
  - 2.2.2.2.4 A Graduate Student creates Intellectual Property as a Student-Employee of the University within the course and scope of the

Graduate Student's employment, including teaching responsibilities; or

2.2.2.2.5 As otherwise agreed to in writing by the University and the Graduate Student.

2.2.2.3 All Graduate Students shall, as is reasonably necessary, cooperate and execute any documents required to perfect the University's ownership of Intellectual Property.

2.2.3 ***University Innovation Centers.*** Intellectual Property conceived and first actually reduced to practice by a Student during the Student's use of University Innovation Centers is exempted from this Rule and shall be owned by the Student unless otherwise agreed to in writing by the University and Student.

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### SECTION 3: COPYRIGHT.

#### 3.1 ***Ownership by Employees and Students.***

3.1.1. Unless agreed otherwise in writing by the University and Employee or Student, the Employee or Student shall retain copyright in scholarly, pedagogical, or artistic works, including, without limitation, textbooks, papers, journal articles, dissertations, novels, poems, musical compositions, works of popular nonfiction, dramatic works and other works of artistic expression, but not including computer software, to the extent such works are not Institutional Works.

3.1.2. However, pursuant to Section 2, patentable Intellectual Property including those described in papers, journal articles, and dissertations, are owned by the University.

3.2 ***University Retained Rights to Employee and Student works.*** The University shall retain and is hereby granted by all Employees and Students the right to use such scholarly, pedagogical, or artistic works owned by the Employee or Student pursuant to Section 3.1 of this Rule for any non-commercial or commercial purpose, to the extent such University use does not conflict with the exclusivity granted by the Employee or Student to a third-party publisher.

3.3 ***Third Party Publisher.*** In the event the University desires to use or distribute textbooks, novels, published collections of poems, works of popular nonfiction, scientific publications, and other published works of interest to the general consuming public published by a third-party publisher pursuant to an agreement between the third-party publisher and the Employee or Student, the University shall be required to purchase or license the right to use or distribute such works directly from the third-party publisher at the prevailing rate for parties similarly

situated to the University. Additionally, Employees must obtain appropriate approvals under Board of Governors Rule 1.4 – Ethics, Conflicts of Interest, and Outside Consulting Arrangements.

### 3.4 *Institutional Works.*

3.4.1 Institutional Works means copyrightable works created for institutional purposes in the course of an Employee’s or Student’s employment, but not directed to the personal initiatives of the Employee or Student. Institutional Works include, but are not limited to, simultaneous or sequential contributions over time to course materials, courseware, and course design used for teaching at the University, videotaped or recorded lectures and courses, University software, brochures, training programs, orientation or marketing materials.

3.4.2 All right title and interest in Institutional Works, including copyright, shall be owned by the University. Pursuant to the policies of this University for Employees and Students and the agreement between each Employee and the University, all Employees and Students have assigned or, if necessary, hereby assign their rights in Institutional Works to the University.

3.4.3 All Employees and Students agree to cooperate and execute any further documents necessary to perfect the University’s ownership of such Intellectual Property.

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## **SECTION 4: MANAGEMENT AND ADMINISTRATION OF INTELLECTUAL PROPERTY.**

4.1 *Intellectual Property Management.* In accordance with the affiliation agreement between the West Virginia University and the West Virginia University Research Corporation (“WVURC”), WVURC and its Office of Technology Transfer (“OTT”) shall be responsible for managing the transfer, licensing, ownership, and commercialization efforts of Intellectual Property on behalf of the University. Employees and Students should be kept informed by OTT of negotiations and the status of Intellectual Property that has been disclosed to OTT pursuant to this Rule.

4.1.1 *IP Disclosure Form.* All Employees and Students having created Intellectual Property that is owned by the University pursuant to Section 2 of this Rule, shall promptly fill out, execute and submit to OTT an Intellectual Property Disclosure and Assignment Form (“IP Disclosure Form”) upon creation, or invention of Intellectual Property. The IP Disclosure Form can be found at: <https://techtransfer.research.wvu.edu/forms>.

4.1.1.1 *Due Date.* Submission of the IP Disclosure Form must be completed either at least ninety (90) days before a Public Disclosure of the Intellectual Property or within one (1) month after the creation, or

invention of such Intellectual Property, whichever is earlier.

- 4.1.1.2 **Updates to Disclosure.** In the event research, updates, revisions or changes of such Intellectual Property continue after initial submission of an IP Disclosure Form, Employees and Students must fill out, execute and submit an updated IP Disclosure Form within thirty (30) days after said research, updates, revisions, or changes to such Intellectual Property.
- 4.1.2 **Copyright Form.** In the case of copyrightable works that are owned by the University, all Employees and Students having created such copyrightable works shall promptly fill out, execute, and submit to OTT a Copyright and Assignment Form (“Copyright Form”). The Copyright Form can be found at: <https://techtransfer.research.wvu.edu/forms>.
- 4.1.2.1 **Due Date.** Submission of the Copyright Form must be completed at least ninety (90) days before a Public Disclosure of the copyrightable work or within one (1) month after the creation of the copyrightable work.
- 4.1.2.2 If the President determines that the copyrightable work is a scholarly, pedagogical, or artistic work for which the University does not claim ownership pursuant to Section 3, OTT will waive in writing any assignment effected by way of the execution and submission of the Copyright Form and execute any further papers necessary to negate any such assignment by the Employee or Student to the University.
- 4.2 **Evaluation Period.** OTT will make all reasonable efforts to evaluate IP Disclosure Forms and/or Copyright Forms and to notify the Employees and Students having submitted the same of whether the WVURC, on behalf of the University, will pursue protection of the submitted Intellectual Property or whether the University will waive its right to such Intellectual Property within a reasonable time after receiving a completed IP Disclosure Form or Copyright Form. In the event the University waives its right to Intellectual Property and assigns it back to the inventor(s), pursuant to an agreement between the University and inventor(s), and the inventor(s) subsequently license or commercialize the Intellectual Property, the University shall receive 5% of the net sales received by the inventor(s) from all sources for the life of the license or commercialization arrangement plus a separate 15% of the net sales received by the inventor(s) until WVURC is reimbursed for its expenses incurred pursuing protection of the Intellectual Property.
- 4.3 **Cooperation with OTT.** Employees and Students shall, as is reasonably necessary, assist OTT in obtaining protection for submitted Intellectual Property, including, without limitation, cooperating in the review of literature and prior art related to the Intellectual Property, assisting outside counsel, and executing appropriate disclosures, assignments,

declarations and other documents required to effectively establish, protect and set forth the ownership and rights of the University.

- 4.4 ***IP Protection.*** The right to determine the means and extent of legal protection, such as patent or copyright protection, for submitted Intellectual Property is within the sole discretion of WVURC and its OTT, as designated by the President.
- 4.5 ***IP Protection Costs.*** WVURC shall bear all costs associated with obtaining, managing, and enforcing such legal protection of Intellectual Property owned by the University.
- 4.6 ***IP Administration.*** No University Intellectual Property, including copyright, shall be assigned, licensed, sold or otherwise transferred without authorization from the President. Public Disclosure of Intellectual Property shall be withheld if, in the sole discretion of OTT, withholding of such Public Disclosure is necessary to secure patent protection for the Intellectual Property. The WVURC and its OTT has the right to transfer ownership of any Intellectual Property through this Rule without the prior authorization of an Employee or Student.
- 4.7 ***Request for Public Dedication.*** The inventors or creators of Intellectual Property, acting collectively where there is more than one, may request to place their Intellectual Property in the public domain if (i) the University and the collective inventors mutually agree that public dedication would be in the best interest of technology transfer; (ii) public dedication of the Intellectual Property does not violate the terms of any external, internal, or third-party sponsored agreement; and (iii) the University Provost's Office in consultation with OTT provides written approval of the public dedication request.
- 4.8 ***Failure to Comply.*** Any Employee or Student who fails to abide by the requirements within this Rule shall be subject to appropriate disciplinary action including, forfeiture of some or all of the Revenue owed under Section 5, warning, suspension, termination, or other disciplinary action as may be appropriate. Furthermore, although conduct may not violate this Rule, it may still be prohibited by the University under a different rule, policy, or standard of behavior. Accordingly, in such cases, the University reserves the ability to take any necessary action.

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## SECTION 5: REVENUE AND RESEARCH EQUITY.

- 5.1 ***Revenue Distribution.*** Where the University has an ownership interest in Intellectual Property pursuant to this Rule, the following distribution of Revenue shall control:

Employee/Student:	40% of Net Proceeds
Department/Division:	10% of Net Proceeds
College/School:	10% of Net Proceeds

University: 40% of Net Proceeds

5.2 ***Co-Creators Revenue Distribution.***

5.2.1 If more than one Employee or Student created the subject Intellectual Property, the 40% share of Net Proceeds shall be distributed according to the percentage contribution to the Intellectual Property by each Employee or Student as determined by the creators and as identified on the IP Disclosure Form or Copyright Form.

5.2.2 In the absence of such percentage of contribution on the IP Disclosure Form or Copyright Form, or, in the event it is determined that inventorship or creation of the Intellectual Property lies in part with an Employee or Student not named on the disclosure forms, the 40% share of Net Proceeds shall be determined pursuant to the Dispute Resolution process outlined in Section 7.

5.3 ***Right to Modify.*** The President may modify the distribution schedule or negotiate a different schedule distribution model for Employees or Students.

5.4 ***Equity Interest.*** OTT may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty or monetary consideration as part of an agreement between the University and the Employee or Student. Any agreement between the University and the Employee or Student to accept equity interests in lieu of or in addition to royalty or monetary consideration or to sell or transfer such equity interests must be approved by the President.

5.5 ***Equity Proceeds.*** If monetary proceeds are generated by the sale of equity interests, those proceeds shall be distributed according to rules for Revenue distribution under Section 5.1 of this Rule.

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**SECTION 6: TRADEMARKS.**

6.1 ***University Marks.*** To protect its name and the institution, the University has registered its own name and associated trademarks and service marks. The rights given to these trademarks, trade dress, and service mark registrations are maintained and managed by West Virginia University Brand and Trademark Licensing. The University reserves the right to control, commercialize, license, and protect the trademark, trade dress, and service marks of the University. The University exclusively owns all trademarks, service marks, and trade dress that it creates or commissions and uses to identify the University, its programs, goods, services, products, and property.

6.2 ***Other Marks.*** Outside of trademarks identifying the institution, the University may seek legal protection for trademarks that identify products and/or services that are offered by units of the University system. In the event that a trademark is designed for University use only, West



Virginia University Brand and Trademark Licensing will maintain its rights to all trademarks and manage the legal protection of all trademarks.

6.3 ***New Marks.***

6.3.1 ***University Related.*** If any University Employee or Student has a potentially new mark related to the University it must be submitted to West Virginia University Brand and Trademark Licensing for evaluation of marketability and licensing potential.

6.3.2 ***Academic Unit.*** If a potentially new mark is related to an academic unit, the West Virginia University Provost's Office will review and consider marketability and licensing potential in conjunction with West Virginia University Brand and Trademark Licensing.

6.3.3 ***Innovation Centers.*** All potentially new marks associated with a Student's use of the University Innovation Centers, and unrelated to University associated trademarks, trade dress, and service marks, must be submitted to the OTT for processing.

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**SECTION 7: DISPUTE RESOLUTION.**

7.1 ***Resolution by OTT.*** If a dispute about a claim of ownership of Intellectual Property under this Rule arises, such dispute shall first be presented to OTT in the form of a letter setting forth the details of the dispute or issues to be resolved. The OTT will make efforts to address such dispute within a reasonable period of time.

7.2 ***Appeal Process.*** If the parties to the dispute are not satisfied with OTT's proposed resolution, the party may appeal in writing to the President. Such appeal shall be submitted by way of a letter setting forth the details of the dispute. The President shall designate a committee of neutral parties to resolve the issue. The committee's decision shall be final.

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**SECTION 8: DEFINITIONS.**

8.1 "Adjunct Faculty" is defined in BOG Faculty Rule 4.6 – Adjunct Faculty.

8.2 "Classified Employee" is defined in BOG Talent & Culture Rule 3.1 -- Administration and Employment Practices.

8.3 "Faculty" is defined in BOG Faculty Rule 4.2 – Appointment, Promotion, Tenure, and Dismissal for Cause.

8.4 "Graduate Student" means a Student primarily taking, auditing, or enrolled in "Graduate

Courses,” as defined in BOG Academics Rule 2.5 – Student Rights and Responsibilities, either full-time or part-time.

- 8.5 “Information Technology Resources” is defined in BOG Rule 1.11 – Information Technology Resources and Governance.
- 8.6 “Innovation Centers” means the LaunchLab Applied Innovation Center in Morgantown, the Beckley LaunchLab at WVU Tech, the Brickstreet Center for Innovation and Entrepreneurship, and other University programs designed to encourage student businesses and entrepreneurship as specifically designated by the President. A list of Innovation Centers as specifically designated by the President will be released annually.
- 8.7 “Intellectual Property” means all forms of patented and unpatented inventions, improvements, discoveries, tangible research property, materials, copyrightable works, copyrightable software, copyrights, registered and unregistered trademarks, trade secrets, know how, methods, tests, information, data, research data and results, technology, machinery, hardware, algorithms, databases, source code, computer programs, on-line studies program materials and on-line study programs, trade names, and trade dress.
- 8.8 “More than Incidental Use of University Resources” means use of University Resources that is important to the creation of the Intellectual Property and that is not normally provided to the public without charge, or the use of funds administered by the University towards the creation of the Intellectual Property. More than Incidental Use of University Resources is use of specialized, research-related facilities, equipment or supplies provided by the University for academic purposes and use of on-the-job time. The occasional and infrequent use of the following would typically not constitute “More than Incidental Use of University Resources”: routinely available, office-type equipment, including desktop computers and commercially available software, as well as use of reference materials or other resources collected on the University campus which are generally available in non-University locations.
- 8.9 “Net Proceeds” means Revenue less all expenses paid or incurred by WVURC and the University in securing protection for the Intellectual Property and in the marketing, sale, transfer, licensing, exploitation, or commercialization of the Intellectual Property, including, without limitation, legal fees, governmental fees, advertising costs, and marketing firm fees.
- 8.10 “Non-Classified Employee” is defined in BOG Talent & Culture Rule 3.1 -- Administration and Employment Practices.
- 8.11 “Post-Doctoral Staff” means a staff member with a doctorate degree that is remunerated or unpaid and conducting mentored research or scholarly training to advance professional skills.

- 8.12 “President” means the President of West Virginia University or his or her designee.
- 8.13 “Public Disclosure” means any non-confidential disclosure of Intellectual Property to any third-party outside of the University or WVURC, including without limitation, presentation at a symposium, discussion during a public panel, disclosure to a publishing agency or marketing firm, publication in a journal or magazine article, or any other non-confidential disclosure to or discussion with non-University personnel.
- 8.14 “Revenue” means any monetary proceeds, royalties or income derived from the sale, transfer, licensing, exploitation, or commercialization of Intellectual Property.
- 8.15 “Self-Funded” means a Graduate Student who independently finances their tuition for a credited course or a research, thesis, or dissertation, whether the source of funding is personal funds, employer reimbursement, or external fellowship, and absent an agreement between an external sponsor and the University or an internal University sponsorship agreement.
- 8.16 “Student” is defined in BOG Student Life Rule 6.1 – Student Rights and Responsibilities; Student Conduct.
- 8.17 “Student-Employee” means a Student who is also a University Employee acting within the scope of their employment.
- 8.18 “Undergraduate Student” means a Student primarily taking, auditing, or enrolled in “Undergraduate Courses,” as defined in BOG Academics Rule 2.5 – Student Rights and Responsibilities, either full-time or part-time.
- 8.19 “University Resources” means all tangible and intangible property and resources supplied by the University, including, without limitation, facilities, Information Technology Resources, space, University personnel, supplies, and University funds or funds administered by the University, including, without limitation, funds derived from outside grants, contributions, and research contracts.

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**SECTION 9: DELEGATION.<sup>i</sup>**

- 9.1 The Board of Governors delegates to the President the authority to adopt additional internal policies and procedures to effectuate the implementation of this Board of Governors Rule. Any actions taken pursuant to this delegation must be consistent with the guidelines provided by this Rule.

**SECTION 10: AUTHORITY.**

10.1 W. Va. Code § 18B-2A-4 *et seq.*

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**SECTION 11: SUPERSEDING PROVISIONS.**

11.1 This Rule repeals and supersedes and replaces any internal University policy or procedure which relates to the subject matter contained within this Rule. This Rule also supersedes and replaces any rule of the Higher Education Policy Commission which relates to the subject matter contained within this Rule.

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<sup>i</sup> The Board of Governors specifically delegates the authority to the University Vice President of Research to update any website links contained within this Rule without going through the Board's formal rulemaking procedures.