

Intellectual Property

I. Policy Statement

Lander University has among its primary purposes teaching, research, and the expansion and dissemination of knowledge. Products of these endeavors include the development and use of intellectual property. It is the intent of the University that its faculty, staff, and students carry out their scholarly work in an open and free atmosphere that encourages publication and creation of such works without constraint, but consistent with applicable laws and University policy. The purpose of this policy is to encourage and reward research and scholarship that result in the creation of intellectual property and to recognize the rights and interests of the inventor or creator, the public, the external sponsor, and the University.

II. General Definition

“Intellectual property,” broadly defined, refers to all inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data, and other creative or artistic works that have or may have commercial value.

III. Categories

- A. For the clarity of this policy, intellectual property can be categorized as follows:
1. Scholarly work – material prepared for traditional academic publications, such as scholarly journals, or other texts of a scholarly nature.
 2. Creative work – works of a primarily aesthetic nature, including artistic works, audiovisual works, digital works, musical or dramatic compositions and/or performances, literary works, etc.
 3. Course materials – material with a pedagogical intent, used by the faculty member in fulfillment of Lander University’s educational mission. This term generally refers to materials intended for immediate use by a student in a course, including online materials such as video lectures.
 4. Invention – any inventive idea and/or its reduction to practice, such as a new and useful process or method for producing an industrial result, composition of matter, device, design in connection with the production or manufacture of an article, computer hardware or software program, or knowledge supporting these inventive ideas, or any new use of or improvement to an existing system, device, composition, program, or process.

IV. Applicability

This policy shall apply to faculty, staff, and students.

V. Definitions

For brevity, in this document the following terms will be used:

- “University” shall mean “Lander University”
- “faculty” shall mean “faculty member”
- “faculty/staff/student” shall mean “faculty member, staff employee, or student”

The term "substantial use of University resources" refers to the use of University funds, programs, equipment, space, or other physical assets that goes above and beyond those customarily and currently provided to employees as part of their ordinary conditions of employment. In general, the use of University funds or external funds administered through the University, the use of students or employees as support staff to develop the work, or the use of specialized or unique facilities, laboratories, and equipment, or other special subventions provided by the University, would be construed as “substantial use” unless specifically approved as an exception. The University does not construe the ordinary use of office space, library facilities, University computers and networks, or salary as constituting “substantial use.”

VI. Disclosure of Intellectual Property

In order for the University to identify, protect, and commercialize intellectual property that emanates from the work of its faculty, staff, and students, it is the University’s policy that information about any intellectual property, including inventions, must be disclosed, in confidence to the University, in a timely fashion and prior to any public release. Public release in any form may have the effect of consigning the intellectual property to the public domain, thereby precluding the University and any associated party from pursuing intellectual property protection.

Inventions may be disclosed to the University by completing and signing an Invention Disclosure Form, which may be obtained from the Office of Academic Affairs.

VII. Ownership of Intellectual Property

- A. The University owns the intellectual property under the following conditions:
 1. If the intellectual property is commissioned by the University, is a component of the University pursuant to a signed contract, or is considered work for hire under copyright law; or
 2. If the intellectual property is conceived or reduced to practice by the faculty, staff, and/or students of the University as research that required substantial use of University resources (e.g., facilities, equipment, funding) and/or University personnel beyond that required for the inventor’s professional duties for the

University. In these cases, the inventor and the University may negotiate the intellectual property rights, and the intellectual property rights shall be shared by the inventor and the University in a proportion deemed appropriate by both parties according to the particular use of University resources.

- B. The faculty/staff/student owns the intellectual property under the following conditions:
1. If the intellectual property is unrelated to the faculty's/staff's/student's job at the University;
 2. If the intellectual property is scholarly work, creative work, and/or course materials as defined in **Section III**;
 3. With respect to any inventions, if the invention was conceived or reduced to practice independently of the University. A faculty, staff, and/or student who claims ownership of an invention carries the burden of proof to document the right to ownership of the invention by demonstrating that: (a) the invention was not conceived or reduced to practice as part of an activity within the inventor's scope of employment by the University and (b) the Invention was conceived or reduced to practice on his/her own time.
- C. Intellectual property shall be considered jointly-owned intellectual property:
1. If the criteria for University ownership and individual ownership (as set forth in **Section VII, A and B**) overlap; or
 2. If the intellectual property, other than scholarly work, creative work, and/or course materials as defined in **Section III**, was created within the scope of employment on University time with the substantial use of University facilities, or with University financial support as required for the inventor's professional duties for the University; or
 3. If the faculty/staff/student involved in the creation of the intellectual property worked in collaboration with other University employees for whom the creation was a part of their University employment responsibilities, or as part of a team to contribute the kind of expression intended to be part of an integrated whole. The University's employees who work as programmers, graphic artists, video technicians, scriptwriters, and other University support personnel create this kind of expression. When added to the faculty/staff/student contribution, the result is a jointly-owned work.

The commercial value of jointly-owned intellectual property shall be shared between the University and the faculty/staff/student as set forth below. When termination of employment (faculty/staff/student) or enrollment (student) occurs in cases in which intellectual property is jointly-owned, a negotiated, written letter of agreement shall be executed with the University. The agreement shall be negotiated with the

faculty/staff/student by the appropriate vice president and approved by the Vice President of Academic Affairs in accordance with federal, state, and University policies, procedures, regulations and/or law. The agreement shall establish separate ownership rights, stipulate the percentage of ownership between the faculty/staff/student and the University, and describe future uses of the intellectual property. To initiate an agreement: (a) the faculty/staff/student shall contact his/her appropriate chair and dean or appropriate supervisor and request separate joint ownership rights and (b) the appropriate dean or supervisor in turn shall notify the appropriate vice president to request a letter of agreement from the Vice President of Academic Affairs and to execute the agreement with the faculty/staff/student.

In all cases of jointly-owned intellectual property, the University must specify before the project is undertaken for how long and over how many iterations said intellectual property exists before a product is forthcoming. Any University-assisted product that the University has expressed no interest in owning *ab initio*, cannot, at a later date, be declared owned or jointly-owned by the University.

VIII. Patent Procurement

The University shall have the sole discretion to determine whether to procure and/or maintain, including the right to prepare, file, and prosecute any patent applications for, any inventions owned or jointly-owned by University. The University will not unreasonably withhold the patenting of any idea, and, if the University elects not to pursue a patent, it must present legitimate reasons. If the University chooses not to pursue a patent, the other parties would have the right to do so.

IX. Distribution of Royalties

Commercial value from any jointly-owned intellectual property and any inventions owned by the University shall be shared between the faculty/staff/student and the University. For this to occur, there must be (a) an offer and an identifiable buyer with whom to negotiate and (b) a negotiated, written letter of agreement executed between the faculty/staff/student and the University. The agreement shall be negotiated with the faculty/staff/student by the Vice President of Academic Affairs in accordance with federal and state law, state regulations and University policy.

The faculty/staff/student shall retain any generated revenue up to and including \$25,000. Sharing net profits beyond that limit for jointly-owned creations in which University resources were instrumental in their production is set in the table below.

Note: Net profits shall be calculated by subtracting from gross revenues, license fees, or other such payments the upfront and direct costs of patenting and protection of patent rights, including attorneys' fees and/or fees for any technology transfer the University incurred to pursue the patent.

When there are two or more inventors who are employees of the University, each shall share equally in the income unless the inventors agree on an alternative distribution. When a joint invention involves another institution, net profits shall be shared with that institution and/or the inventor at that institution.

In addition, when income is generated from the sale of textbooks written by University faculty and sold through the University bookstore while the faculty member is an employee of the University, all royalties shall be distributed as set in the table below.

The first \$25,000 in income from any individual item of intellectual property or from the sale of textbooks shall be paid to the inventor/author in full, after which the distribution of net royalties shall be as follows:

	\$25,001 - \$50,000	\$50,001 - \$75,000	\$75,001 - \$100,000	\$100,001 - \$125,000	over \$125,001
Inventor	70%	65%	60%	55%	50%
Inventor's Department	15%	15%	15%	15%	15%
Inventor's College	10%	10%	10%	10%	10%
University *	5%	10%	15%	20%	25%

*for the enhancement of research and education

In the event of the death of the faculty/staff/student, any unpaid royalties shall be paid to the estate of the faculty/staff/student unless otherwise specified.

In the event that the percentage of ownership and payment and the recovery of research and development costs are not addressed in writing, the economic relationship shall be shared on a 50%/50% basis after the recovery of research and development costs and costs of applying for, obtaining, and maintaining any intellectual property rights, such as patent rights, by the University.

To initiate an agreement, the faculty member, in concert with his/her department chair and dean, shall request a letter of agreement with the University through the Vice President of Academic Affairs.

In the event that the faculty member is no longer an employee of the University, all textbook royalties described above shall become the property of the former faculty member.

X. Disclosure

Copies of this policy shall be printed in the University faculty/staff/student handbooks, and shall be posted electronically on the University's website.

XI. Review

Ownership of this policy shall reside with the Office of Academic Affairs. This policy may be reviewed, as circumstances warrant, by the Vice President of Academic Affairs, Faculty Senate, Student Government Association, Academic Council, President's Council, and the General Counsel. Proposed revisions and amendments shall be transmitted through the Provost/Vice President for Academic Affairs to the President for final approval by the Board of Trustees.

XII. Dispute Resolution

In the event of any differences between the faculty/staff/student, on the one hand, and the University, on the other hand, that cannot be reconciled by direct negotiation, the matter shall be submitted for binding arbitration either to a single arbitrator agreed on by all parties or to a three-person panel consisting of one person representing the faculty or staff member, one person representing the University, and a third person designated by the first two appointees. Knowledgeable members of the University community will typically be chosen for such panels in order to expedite a decision and minimize cost. In the event that costs are incurred, they shall be divided equally between the faculty/staff/student and the University. Decisions of the panel shall be binding on both parties. The panel shall have full access to any pertinent records over which the faculty/staff/student or the University has jurisdiction.

XIII. Responsibility for this Operating Policy

A. Policy Owner

As part of the initial approval of this policy by the Lander University Board of Trustees, the Provost/Vice President for Academic Affairs is the policy owner for the ongoing evaluation, review, and approval of this policy. Subsequent reviews of and revisions to this policy must be made in accordance with approved operating policy procedures and processes. This policy shall be reviewed every three years or more frequently, as needed.

B. Responsibility for Policy Implementation

The President has assigned the responsibility for implementing this policy to the Provost/Vice President for Academic Affairs.

XIV. History

- Proposed and approved by Faculty Senate on 11/29/2005.
- Approved by the Board of Trustees on 12/16/2005.
- Proposal to update the policy was discussed by the Faculty Senate on 10/17/2006. No vote taken.
- General Committee C of the Faculty Senate moved to accept changes to the Intellectual Property Policy. Faculty Senate approved on 2/6/2007.

- On 3/20/2017, the President disapproved the 2/6/2007 changes to the Intellectual Property Policy on the basis that they were too restrictive on faculty.
- Revised and approved by the Faculty on 8/31/2017.
- Reviewed and approved with minor edits by University General Counsel on 11/16/2017.
- Faculty Senate endorsed policy with General Counsel's changes on 11/28/2017.