Intellectual Property

The New School
Intellectual Property Rights Policy
Approved June 13, 2002

POLICY OVERVIEW AND PURPOSE

The New School (the "University") seeks to encourage creativity and invention among its faculty members and students. In doing so, the University affirms its traditional commitment to the personal ownership by its faculty members and students of Intellectual Property Rights in works they create. This Policy governs the Intellectual Property Rights of the University, faculty members and students in the work product, ideas and inventions (regardless of the medium) created in connection with activities associated with the University (the "Work" or "Works"). The term "Intellectual Property Rights," as used in this Policy, refers to copyrights, rights in trademarks and service marks, patents, moral rights, and other intangible proprietary rights. The term "Works," as used in this Policy, does not include any Works created by faculty or students outside the scope of their activities in connection with the University, except to the extent that such activities fall within one of the limited Exceptions set forth below or the policy concerning disclosure of faculty-student agreements.

The University supports the Intellectual Property Rights of its faculty and students in materials which they create or otherwise author related to academic work, including, but not limited to art objects, lecturer notes, lecture transcripts and tapes (audio or video), works of original authorship (including both literary and artistic works, and including documentations of these such as photographs or art works), software, compilations of information such as databases, and any other research, scholarly or creative work and its derivatives, in any medium, except as otherwise set forth in this Policy.

The University recognizes that individuals may have dual roles at the University and that faculty members may also act in an administrative capacity ("Faculty-Administrators"). This Policy does not apply to Works created by (i) staff members or (ii) administrative personnel or Faculty-Administrators acting within the scope of their administrative duties because such Works are governed by the "work for hire" doctrine or are otherwise the property of the University. Works by Faculty-Administrators acting within the scope of their faculty duties are subject to this Policy.

GENERAL RULE

Faculty members and students will own all Intellectual Property Rights in Works they create in connection with activities associated with the University, subject only to the limited Exceptions to the General Rule and the University's Minimum Rights. If more than one person contributes to a Work, then the contributions of each contributor shall be acknowledged and each contributor shall be treated as having Intellectual Property Rights in the Work under this Policy.
No Limitation on Fair Use
Nothing in this Policy shall limit the rights of faculty members, students, or the University to make a "fair use" of copyrighted Works as that term is defined in the Copyright Act.

EXCEPTIONS TO THE GENERAL RULE
When any one of the following Exceptions applies to a Work, then faculty members and students who participate in the creation of the Work will retain the following "Faculty/Student Minimum Rights": the right to make and retain a reproduction; the right to include that reproduction in their portfolio; and the non-transferable right to copy, use, display, and distribute that reproduction for non-commercial purposes. Such Faculty/Student Minimum Rights are in addition to any interest of the creator set forth in Section IV below.

Exception 1: Outside Sponsored Research/Activities
Exception 1 applies to Works created as part of activities sponsored by an outside sponsor. "Sponsored Research" is used here to mean all research or activities for which financial support or contribution has been received from an external organization or sponsor, including commercial establishments ("Outside Sponsor").
If the activities meet any of these conditions, then
a. at the outset, the activity will be identified as falling within Exception 1 under the Policy so that student and faculty members know in advance of the terms of this Exception and its applicability; and

b. with knowledge of the terms of this Exception, each student and faculty member will have the option not to participate in the activity; and

c. each student and faculty participant will enter into a written agreement, when appropriate, with the University and/or Outside Sponsor specifying the Intellectual Property Rights to be transferred to the University and/or Outside Sponsor and other terms; and

d. the sponsored activity must be approved by the Provost or the Provost's designee.
In all cases under Exception 1, students and faculty shall retain Faculty/Student Minimum Rights. All other Intellectual Property Rights retained by the students and faculty and all Intellectual Property Rights transferred to the University and/or Outside Sponsor will be governed by the provisions of the agreement with the University and/or Outside Sponsor.
The University may transfer some or all of its Intellectual Property Rights to the Outside Sponsor. Any revenue received by the University from commercialization of the Intellectual Property Rights will be distributed as set forth in Section IV below.

Exception 2: University Commissioned or Sponsored Activities
Exception 2 applies to activities or Works which are commissioned or sponsored by the University. A University commissioned activity or Work is one in which the University specifically commissions a faculty member or student to create a Work which will be
either covered by the "work for hire" doctrine or the subject of a separate agreement, such as an agreement with respect to a faculty development grant or other type of grant. An activity or Work is sponsored by the University when University support makes the Work possible or when the University provides exceptional support, either with money, facilities, equipment or staff, for the development or production of a Work that is to be introduced commercially. In such instances, if a Work developed or produced by means of such University support is introduced commercially, it is reasonable for the University to participate in the fruits of the enterprise and/or to be reimbursed for the University's extra or special costs, and the University will be entitled to do so. Use of library facilities and facilities available to the general public, occasional use of office equipment and office staff, and works created during the course of classroom instruction will not ordinarily be considered the basis of University sponsorship of a project.

The University may designate certain University resources (i.e., facilities, equipment, funding) (the "Designated Facilities") in which the University (i) has made an exceptional investment and (ii) has recognized at the outset that the use of such Designated Facilities may give rise to a commercially viable product. The Provost will create and revise the list of Designated Facilities as necessary, after consultation with an advisory group composed of members of the University community including faculty members. Students or faculty who create Works through the use of any Designated Facilities are responsible for disclosing such Works to the University. Such disclosure shall be made when it can be reasonably concluded that the Works have been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects the Intellectual Property Rights for the creator and the University. Failure to make such disclosure is a violation of University Policy. At any time after disclosure, the University may agree in writing to waive its rights to participate under this Exception. Faculty members or students may seek exemption from the terms of this Exception and from University participation. Faculty members will not be considered to have made the requisite use of Designated Facilities if the faculty member receives advance written approval of the proposed use from the Department Chair on one of the following grounds: (i) the Work to be produced through the use of the Designated Facilities or equipment is for academic purposes only and the faculty member does not use any University-provided funds or University-administered funds in connection with the activity; or (ii) the faculty member compensates the University for the fair market value of the Designated Facilities used for the project. Students will not be considered to have made the requisite use of Designated Facilities if (i) the student receives advance written approval of the proposed use from the Department Chair; or (ii) the student does not use any University-provided funds or University-administered funds in connection with the activity. Projects which are exempted for one of the foregoing reasons shall be reported to and reviewed by the Provost.
In all cases under Exception 2, students and faculty shall retain Faculty/Student Minimum Rights. Any revenue received by the University from commercialization of the Intellectual Property Rights will be distributed as set forth in Section IV below.

**Exception 3: Student or Faculty Initiated Agreements**

Exception 3 applies to Works created by a student or faculty member where the student or faculty member either:

a. seeks and receives assistance from the University with obtaining intellectual property protection (i.e., getting a patent) or assistance with an agreement or with commercialization of a Work; or

b. seeks permission and the University, in its sole discretion, grants permission to use one of the University’s names, trademarks or other University intellectual property rights in connection with a Work.

Faculty members and students must obtain the University’s approval before using one of the University’s names or trademarks in connection with a Work. When either (a) or (b) is the case, then the student or faculty member shall enter into an agreement whereby the University, or affiliate of the University, will provide such assistance or an agreement whereby the University will provide such permission to use the name or trademark. The agreement will establish the structure and goals of the initiative, and it will outline the obligations of each party contributing to it.

In all cases under Exception 3, the student or faculty member shall retain Faculty/Student Minimum Rights. The agreement will allocate Intellectual Property Rights and compensation among the parties in light of, among other things, the contribution of each party to the initiative, the rights that the parties may require to perform their roles within the initiative, or the scope of use of the University’s name or trademark. Any revenue received by the student or faculty member from commercialization of the Intellectual Property Rights or use of the University’s name or trademark will be distributed as set forth in Section IV below.

**DISTRIBUTION OF ROYALTIES DERIVED FROM COMMERCIALIZATION**

Royalty income and other non-equity revenue derived from the licensing of Intellectual Property Rights under any of the Exceptions listed above will be distributed as follows, unless the University and the creator have agreed in writing upon an alternative distribution arrangement:

1. The University will be reimbursed for any out-of-pocket expenses incurred in obtaining and maintaining intellectual property protection for a Work, and in evaluating and marketing such Work.
2. The remaining net income will be distributed as follows:

1. 50% to the creator(s) (any portion of such revenue payable to student and faculty participants will be divided among them in accordance with the degree to which each contributed)
2. 20% to the University
3. 10% to the creator's department or equivalent unit
4. 10% to the creator's school or academic division
5. 10% to faculty development programs or student scholarships.

AGREEMENTS BETWEEN FACULTY AND STUDENTS
From time to time, current faculty members may wish to enter into agreements with current students relating to the creation of Works (and commercialization thereof) outside of the scope of their activities with the University. Except to the extent that such Works fall within one of the Exceptions, the University will have no stake in any Intellectual Property Rights therein. However, the faculty members are required to disclose the existence and general nature of such agreements to the Provost in order for the University to safeguard against any impropriety or unfairness or the appearance thereof.

CONFLICT RESOLUTION
Administration of this Policy shall be the responsibility of the Office of the General Counsel. Questions should be directed to the Office of the General Counsel regarding the application, interpretation or implementation of the Policy, or regarding any disagreement among creators concerning assignment or apportionment of Intellectual Property Rights or sharing of royalties. Disagreement with any determination made by the Office of the General Counsel may be directed to the Provost for a final determination.

The University reserves the right to change this Policy from time to time. The Board of Trustees has sole authority to approve changes to this Policy.