



POLICIES *and* PROCEDURES

Board of Trustees Policy Number:
ACAF 3.10

Date of Adoption/Revision:
September 29, 2016

SUBJECT	INTELLECTUAL PROPERTY
AUTHORITY	Office of the Provost and the Office of Sponsored Programs
APPLICABILITY	This policy applies to all constituents of the College.
PURPOSE	The purpose of this policy is to protect Bennett College and the daily work of its members (students, faculty, and staff) and their work under a sponsored research program or activity on or off-campus.
POLICY	Bennett College recognizes and supports the role of academic institutions in fostering an atmosphere of intellectual and creative endeavor. As such, Bennett College recognizes that faculty and staff of the college own the products of their intellectual and creative activity in all circumstances where Federal law, work-for-hire rules, or the college's contribution of extra-ordinary resources, does not mandate Bennett College ownership. The college recognizes that it receives indirect benefits from faculty and staff's intellectual and creative pursuits, and that such pursuits directly enhance the ability of faculty and staff to fulfill their primary function at the college. As such, the college encourages the unfettered production of creative and scholarly work by its community and only seeks, through this policy, to clarify under what circumstances Bennett College may have ownership rights.

DEFINITIONS	<p>The following categories are considered Intellectual Property and shall be treated the same under all provisions of this policy:</p> <ol style="list-style-type: none"> 1. Patents This Policy shall apply to patent(s) resulting from Bennett College's related activities of individuals subject to this Policy as students, faculty, and staff members. For purposes of this Policy, the term "patent" or "patents" shall apply to those inventions, innovations or discoveries that are or may be protected under Title 35 of the United States Code. 2. Inventions The term "invention(s)" used in this Policy describes innovations or discoveries that come within the definition of "patents" that a patent application has been filed, or a patent has been issued. Such an invention must be a product or a process that provides a new way of doing something or that offers a new technical solution to a problem. Patent-protection means that someone else cannot commercially make, use, distribute, or sell the invention without owner's permission for a limited
--------------------	---

period of 20 years.

3. Copyrights

This Policy applies to those copyrightable works developed or authored by persons covered by this Policy as students, faculty, and staff members. The term “copyrightable works” or “copyrights” applies to work of authorship considered protectable under Title 17 U.S.C.

“Copyrights” include but are not limited to grant proposals, copyrightable books, manuscripts, poems, plays, choreography, photography, videos, audio recordings of choir, work of art, research publications, pedagogical work such as course materials, syllabi, and lecture notes.

- "work-for-hire": is a statutory exception to the general ownership provisions of the copyright law. It is a way of allocating whether an employee or an employer is the author, and thus copyright holder, of work performed in the course of employment. The work-for-hire provision entitles an employer to assert ownership over materials prepared by its employees acting within the "scope of their employment":
- The AAUP notes "In traditional academic works 'the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions.' Thus it follows that the faculty member rather than the institution would have ownership" (4, *Ibid*). As to syllabi/courses and general teaching materials, it is fair for the college to retain a right of free use where that material was created by the faculty member, however, it important to acknowledged that the faculty member still "owns" that material.
- "extra-ordinary:" resources notes normal use of offices, computers, nominal office supplies, library facilities, etc. and does not count as "extra-ordinary" resource contribution by the college.
- Administration ownership of faculty scholarly works, lecture notes and teaching materials are not included in this policy.

4. Trademarks and Service Marks

Trademarks and Service Marks as described under this Policy shall be interpreted in accordance with Title 15 U.S.C. and also in accordance with validly existing laws of the State of North Carolina covering trademarks. The existence of a trademark or service mark does not change the definition or treatment of patent(s) or invention(s) associated with such a trademark.

Bennett College owns all rights in trademarks related to its seal, logo,

magazine, words and slogans used in advertising and events.

5. Tangible Research Property

“Tangible Research Property” as used in this Policy means tangible products of research that include, but are not limited to: compositions, biological and chemical materials (including but not limited to cell lines, plasmids, dna, rna, and transgenic animals), diagrams, analytical methods, prototypes, devices, equipment, psychological research, articles of research data. Tangible research materials created by faculty, staff, or students in the course of employment at Bennett College, or work directly related to professional or employment responsibilities, or work carried out on Bennett College’s time, at Bennett College’s expense, or with substantial use of Bennett College’s resources under grants is the property of Bennett College. Use of resources is considered substantial when the additional support received is beyond the normal support level made available by the College through the annual unrestricted budget for a department.

Data obtained from the use of tangible research materials in research labs legally belongs to Bennett College, not to the individuals who produced the data. Tangible research materials made by students or non-employees working with a faculty or staff member under the above conditions are also the property of Bennett College. Commercial licensing of tangible research products is permitted when all restrictions are removed by the sponsored agency on publication or dissemination of research results and materials.

Intellectual Property developed by Covered Persons in the course of such individual’s participation in an on-campus program, project or other relationship between Bennett College and a third party is assigned to the Bennett College and considered “Bennett College Owned.” Intellectual Property developed by faculty and staff within the scope of their employment is owned by Bennett College to the extent permitted by law. All scholarly and artistic works developed by students during their employment at Bennett College under an external agreement are Bennett College-Owned.

Office of Sponsored Programs is responsible to submit a copy of the Intellectual Property Policy to the third party. Following the disclosure of an invention pursuant to this Policy, the Office of Sponsored Programs will be responsible for reporting the invention as required under the terms of external funding agreements, if any.

Under the new Uniform Guidance developed by Office of Management and Budget, there is only one (1) federal regulation for intellectual property developed under sponsored projects:

When intellectual property is developed under federal grants, the federal government typically retains rights to the use of that property. Under general principles, the government has the right to use the intellectual property on its own behalf and to authorize others to use the intellectual property when doing something for the government. The award agreement will provide details and restrictions.

The Office of Management and Budget (OMB) published final guidance on grants management reforms in the [December 26, 2013, Federal Register](#). Section 200.59 of the [uniform guidance](#) defines intangible property as “property having no physical existence, such as trademarks, copyrights, patents and patent applications and property....” Section 200.315 sets forth the government rights in intangible (intellectual) property developed under federal grants as well as the grantee's rights and requirements, which are largely in keeping with the principles embodied in Circular A-110 for colleges and universities.

When intellectual property is developed under federal grants, the federal government typically retains rights to the use of that property. Under this general principle, the government has the right to use the intellectual property on its own behalf and to authorize others to use the intellectual property when doing something for the government.

According to 2 CFR §200.315(a), title to intangible property “acquired under a Federal award vests upon acquisition in the non-Federal entity. The non-Federal entity must use that property for the originally-authorized purpose, and must not encumber the property without approval of the Federal awarding agency.” When no longer needed for the originally authorized purpose, disposition of the intangible property must be disposed of in keeping with the requirements surrounding use of equipment (2 CFR §200.313(e)).

As international collaboration increases, the evolution of international standards for the enforcement of copyright and related rights has been dramatic in recent years, diverse from country to country, and this evolution has been driven principally by two factors. The first is the advance of technological means for the creation and use (both authorized and unauthorized) of protected material, including, most recently, the advent of digital technology, which makes it possible to transmit and make perfect copies of any information existing in digital form, including works and productions protected by copyright and related rights. The second factor is the increasing economic importance of goods and services protected by intellectual property rights in the realm of international trade; simply put, trade in products embodying protected intellectual property rights is now a booming, worldwide business. Please consult the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which forms part

	<p>of the overall Agreement establishing the World Trade Organization (WTO), requires the members of the WTO to ensure that effective enforcement procedures are available. The TRIPS Agreement also includes provisions requiring action by customs authorities against suspected counterfeit or pirated goods.</p>
<p>PROCEDURES</p>	<ol style="list-style-type: none"> 1. Intellectual Property Assignment Agreement All Bennett College faculty and staff, and students who engage in activities that will or may result in Bennett College ownership of Intellectual Property in accordance with this Policy must, prior to participating in any such activity, execute the Intellectual Property Agreement (“IPA”), attached to the Intellectual Property Manual as Appendix A. If the IPA is not executed as required, such individual is still subject to this Policy as a condition of his or her participation. 2. Obligation to Disclose All individuals participating in Bennett College activities as faculty and staff, visitors and/or students must disclose to the Office of Sponsored Programs, Office of Provost, and to the Office of the President in a timely manner any and all Intellectual Property invented or created by them so that Bennett College can determine whether it has an ownership interest according to this Policy. Disclosure does not itself constitute a surrender or determination of ownership. Disclosure shall be made by completion of the appropriate Intellectual Property Disclosure Form, appended to this Policy as Appendix B, and by submitting it to the appropriate administrative offices as directed on the form. Failure on the part of any Covered Person to complete the Disclosure Form(s) as required shall not in any manner impair or diminish the rights (including ownership rights) and obligations of either Bennett College or the individual as described in this Policy. Covered Persons uncertain whether Intellectual Property developed by them during the period of their employment with Bennett College must be disclosed should consult with the Department and Division Deans. 3. Determination of Ownership Following receipt of a properly completed and signed Disclosure Form, the Office of Sponsored Programs, the Office of the Provost and the Office of the President will determine whether, consistent with this Policy, Bennett College is entitled to ownership of the Intellectual Property disclosed, and it shall promptly notify the inventor(s) or creators(s) in writing of its decision. Bennett College’s decision as to ownership and disposition of Intellectual Property will be made in accordance with the institutional mission and goals and the requirements of applicable external agreements and obligations. Bennett College’s

decision may, in some instances, include exercising ownership and thereafter placing the Intellectual Property in the public domain.

4. Timeliness

Bennett College acknowledges the interests of inventors and creators in pursuing timely protection and/or publication of innovations and discoveries, and/or theses or dissertations. Once disclosure is made, Bennett College will act within 75 days with respect to ownership determinations. If Bennett College concludes that this time period is or will be inadequate, Bennett College will inform the affected parties in writing of the circumstances of the delay and the expected date of determination.

If the College decides not to pursue commercialization of any invention disclosed by a Bennett College inventor, the inventor may petition the Board of Trustees, in writing, to release the rights of the invention to the inventor. If there are no obligations to any other third party, including but not limited to sponsors or government agencies, Bennett College, at the sole discretion of the Bennett College BOT, may release the invention to the inventor, provided, however, that, as a condition of such release of rights, Bennett College shall be entitled to ten percent (10%) of all future revenues or other monetary or financial considerations resulting from the invention.

Process for Seeking Intellectual Property Protection

Invention Reporting and Determinations of Patentability

Following the disclosure of an invention pursuant to this Policy, the Office of Sponsored Programs will be responsible for reporting the invention as required under the terms of external funding agreements, if any.

Further, in good faith consultation with the inventor or inventors, President will undertake a patentability review based upon the potential commercial value of the invention, with the assistance of an attorney if necessary. Where the filing of a patent application is considered appropriate, it shall be Bennett College's responsibility to undertake such filing at its own expense and in its own name.

All inventors of Bennett College-Owned inventions shall reasonably cooperate with Bennett College's designees in securing patent rights for inventions and shall diligently execute all documents as may be required. All patenting activities shall be at the expense of Bennett College.

Commercialization of Intellectual Property

1. Reporting to Research Sponsors and Collaborators

The Office of Sponsored Programs has primary responsibility for notifying the external research sponsors and collaborating parties of Intellectual Property developed under agreements with them.

Recognizing that such reporting cannot be undertaken until Intellectual

Property reports have been received from covered persons, the Office of Sponsored Programs is also responsible for developing, managing and retaining Intellectual Property Assignment Agreements and initiate the disclosure process.

Office of Sponsored Programs must obtain clearance form sponsor agency before publication or dissemination of research results.

2. Licensing for Commercialization

Bennett College will license its Intellectual Property in a manner that conforms to its mission and goals and consistent with its policies. Commercialization of Bennett College-Owned Intellectual Property shall be assumed and accomplished by the Office of the President, with support from other units within the College and with the support of a licensing consultant as considered necessary or desirable. Only the President shall have the authority to engage a third-party as a licensing agent to act on behalf of Bennett College.

Authority to sign licenses or other agreements concerning Bennett College-Owned Intellectual Property shall rest with the President. In no case shall inventors or creators have authority to enter into agreements regarding the Intellectual Property. Any such attempted agreements are voided.

In situations where Bennett College is negotiating the licensing of Intellectual Property with a company, it is a prohibited conflict of interest for any faculty or staff member who supervises an inventor or creator of that Intellectual Property to influence or attempt to influence the licensing negotiations. In addition, it is conflict of interest for such personnel to co-found in a Bennett College-licensed start-up company with inventors or creators under their supervision.

3. Distribution of Licensing Revenues

“Royalty Income” shall mean all revenues received by Bennett College through the licensing for commercialization of Intellectual Property. For the purpose of this definition, revenues shall include, but are not limited to, fees, payments and percentages of gross or net sales of licensed products.

“Net Royalty Income” shall mean all Royalty Income, less:

- Bennett College' out-of-pocket costs for securing and maintaining legal protection, such as patenting;
- Bennett College’s out-of-pocket costs associated with the utilization of an attorney, licensing agent or consultant if applicable;
- Bennett College’s internal costs of production if the invention was not part of sponsored research.

	<p>Net Royalty Income shall be distributed as follows: 50% to the creator(s), 50% to Bennett College. For Intellectual Property owned by joint creators or inventors, the royalty share for the inventor/creator shall be shared equally, unless all inventors or creators agree otherwise. “Any scholarly or creative work developed by a faculty member should remain the property of that faculty member.”</p> <p>Bennett College may accept a minority equity interest in a business entity in partial consideration for the licensing and commercialization of the Invention. Net Royalty Income in the form of equity interest in a company shall be distributed immediately according to revenue sharing formula stated above (Royalty Income less out-of-pocket costs, deducting such costs from the number of shares at the current market value). When Bennett College accepts equity in a business entity, the inventor(s) shall receive 50% share of that Net Royalty Income in the form of equity and Bennett College shall receive 50% of the Net Royalty Income in the form of equity. The inventor’s 50% share of equity interests shall be issued by the company in the name of the inventor and distributed directly to the inventor at the time of the issuance of shares. Inventor will be wholly responsible for any tax burden, benefit, and business judgment regarding the management of the shares as distributed. Bennett College shall have no financial responsibility to the inventor for shares of equity interests.</p> <p>If Bennett College transacts a licensing arrangement with a company that includes the payment of royalties in cash as well as equity, all inventors and creators will be entitled to their established share of cash Net Royalty Income, regardless of whether they have also received an equity share.</p> <p>To avoid any conflict of interest or conflict of commitment, Bennett College’s employees engaged in negotiating commercialization will assure that information is kept confidential and they will not personally invest in non-public companies holding licenses to the intellectual property or will not engage in Bennett College licensing negotiations with any company in which that fund is invested.</p> <p>The Intellectual Property Manual, Intellectual Property Agreement (IPA), Appendix A and the Intellectual Property Disclosure Form, Appendix B are available on Bennett College’s intranet, BelleNet, under Sponsored Programs tab.</p>
--	--

Replaces policy: <i>Date</i>
