

Intellectual Property Policy

Policy Summary:

It is the policy of Worcester Polytechnic Institute (WPI) to encourage creativity and entrepreneurship among its faculty, students, and staff. WPI invests in this endeavor by making available its own facilities, equipment, personnel, and information resources.

WPI also actively seeks specific support for creative activity from external sources, both public and private.

The Policy supports the strategic goals of creating an outstanding student experience that promotes personal and intellectual development; recruiting and retaining excellent students, faculty and staff; and strengthening research, and scholarship, as well as institutional financial resources.

Inventions, discoveries, and creative works that are developed by individuals at WPI, may have commercial as well as scientific and scholarly value. The intent of this policy is to provide incentives that foster creative activity and to help assure that any such intellectual property produced will be exploited for the benefit of the creator(s), WPI, and the public. To help meet these policy objectives, WPI makes available from the Office of Intellectual Property and Innovation's, technical and legal assistance to protect ownership of intellectual property and to aid in its commercial development.

The specific aims of this policy are the following:

1. to encourage creativity among, WPI faculty, students and staff;
2. to increase the likelihood that ideas, inventions, and creative works produced at WPI are used to benefit the public;
3. to protect the traditional rights of the creator(s) with respect to owning the products of their intellectual endeavors;
4. to assure compliance with the provisions of contracts with external sponsors; and
5. to provide that, when intellectual property is introduced for commercial development, the creator(s) and WPI share any net profits, where appropriate.

Scope of Policy

1. Who Is Covered: WPI Personnel Community

For purposes of this policy, WPI personnel community refers to WPI faculty members (this includes full time, part time, tenured, tenure-track and non-tenure track faculty), visiting faculty, postdoctoral scholars, researchers (research associates, scientists and engineers, and postdoctoral fellows), visiting scholars, investigators, administrators, office and technical staff, students, contractors (as appropriate), consultants, and all others whose work affiliation is with WPI, whether compensated by WPI or not. WPI personnel are obligated under this policy when their creative work is developed partially or entirely during performance of their WPI responsibilities or when it involves the use of WPI resources such as space, facilities, equipment, staff, or funds, as stipulated for the particular circumstances described in the sections below "Determination of Rights for Patentable Subject Matter" for both patentable and copyrightable material.

As a condition of affiliation with WPI, members of the WPI personnel community are bound by all WPI policies, including this one.

2. What Is Covered: Intellectual Property

All intellectual property produced at WPI by its personnel (defined above) is covered by this policy. Intellectual property shall consist of, for example and without limitation: inventions, creative works, patentable subject matter, copyrightable materials, know-how, electronic or paper documents, software, multimedia or audiovisual materials, and photographs. For purposes of this policy, intellectual property is divided into two categories:

- "Patentable intellectual property" shall include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) and discoveries or other material that is patentable under US law (whether or not produced in the US), as well as all software that is excluded from "copyrightable material" (whether or not patentable under US law).
- "Copyrightable intellectual property" shall include, without limitation, all creative works, electronic or paper documents, software, multimedia or audiovisual materials, and photographs, and any other materials that may be copyrightable under US law (whether or not produced in the US).
- All research lab notebooks, data sets, data images, gene constructs, reagents, animal, human and plant cell lines, model organisms remain the exclusive property of WPI.

2.1 Patentable Intellectual Property

Responsibility for Disclosure of Patentable Intellectual Property: WPI personnel who alone, or in association with others, create patentable subject matter with any use of WPI resources are responsible for disclosing the patentable subject matter to WPI. Such disclosure shall be made in a timely manner when it can be reasonably concluded that a patentable subject matter has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator and WPI. [See more](#).

Determination of Rights to Patentable Subject Matter: Except for Patentable Intellectual Property developed independently and without WPI resources as noted below, all Patentable Intellectual Property produced by WPI Personnel shall be deemed "work made for hire" and be WPI's sole and exclusive property. WPI will assert ownership rights to patentable intellectual property developed under any of the following circumstances:

- **2.1.1** Development was funded by an externally sponsored research program or by any agreement that allocates rights to WPI.
- **2.1.2** Development required use of WPI resources (for example but not limited to facilities, equipment, funding, or personnel). WPI has rights to patentable material derived from research carried out with any use of WPI resources. However, patentable material developed independently by the creator outside of normal duties associated with the creator's position and with no use of WPI resources or facilities is vested with the creator and/or with the organization whose resources were used.
- **2.1.3** The creator was assigned, directed, or specifically funded by WPI to develop the material.
- **2.1.4** Material was developed by administrators or staff in the course of their employment duties and constitutes "work for hire" under US law.

2.2 Copyrightable Intellectual Property

Responsibility for Disclosure of Copyrightable Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give its personnel the right to retain ownership of their copyrightable products. This policy protects that traditional right and personnel are not obligated to disclose the creation of copyrightable material, even when the product might have commercial value, unless the material was developed under one of the qualifying conditions listed in the next section, in which case the creator is responsible for timely disclosure.

Determination of Rights to Copyrightable Intellectual Property: Except for Copyrightable Intellectual Property developed independently and without WPI resources as noted below, all Copyrightable Intellectual Property produced by WPI Personnel shall be deemed "work made for hire" and be WPI's sole and exclusive property. To the extent that copyrightable material is developed for courses or curriculum at WPI by such individuals, and as a condition of employment by WPI, the creators of such copyrightable material grant a non-exclusive, royalty-free, perpetual license to WPI to use of such material for educational and research purposes. WPI will assert ownership rights to copyrightable intellectual property developed under any of the following circumstances.

- **2.2.1** Development was funded by an externally sponsored research program or by any agreement, which allocates rights to WPI.
- **2.2.2** WPI personnel was assigned, directed, or specifically funded by WPI to develop the material, or WPI has negotiated an understanding or formal contract with the creator.
- **2.2.3** The material was developed with extraordinary or substantially more use of WPI resources than would normally be provided for the creator's employment duties. This might occur as disproportionate use of staff time, networks, equipment, or direct funding.
- **2.2.4** Works created by non-faculty independent contractors on behalf of WPI, unless otherwise specified in a written agreement between such independent contractor and WPI. Such contractors do not share in the creator's portion of Net Royalty Income (as defined below under "Income Distribution").
- **2.2.5** Laboratory Notebooks, data sets, biological materials.

Scholarly and Artistic Works Exception: "Scholarly and Artistic Works" means copyrightable and copyrighted works that are in the nature of academic and scholarly works of authorship and works of visual art, including but not limited to photography, film, audio-visual works, sculpture, painting, choreography and the like.

"Scholarly and Artistic Works" include by way of example 1) scholarly articles and papers written for journal publication (rights to these is assigned to the publisher as a condition for publication), presentations and scholarly papers prepared for seminars and conferences, pedagogical works, and teaching and curriculum materials (including classroom lectures, seminars and presentations reduced by or for the author to written or other recorded form); and 2) paintings, drawings, musical compositions and performances, dramatic compositions and performance, poetry, fiction and other works of artistic expression authored by WPI faculty, post-graduate students, and postdoctoral fellows and postdoctoral associates ; provided that, the definition shall not apply to the works of WPI Students authored pursuant to activities undertaken as Teaching Assistants that are Scholarly or Artistic Works as described in this paragraph will remain the property of their authors.

"Scholarly and Artistic Works" shall be and remain the property of their Authors ("Individually-Owned Works") unless such copyrighted works are (i) developed as part of a WPI project, program or activity that is the subject of an external WPI agreement; (ii) developed within the scope of employment by non-faculty WPI Employees; or (iii) developed as part of a WPI- Commissioned project. All Scholarly and Artistic Works described in the preceding sentence under (i), (ii), or (iii) are WPI-Owned.

2.3 Intellectual Property Created by Students

It is the general policy of WPI that WPI Students shall have ownership rights in Intellectual Property developed by them independently, except where it is developed using WPI funds, part of any project, Interactive Qualifying Project (IQP), Major Qualifying Project (MQP), directed study, directed research, or where WPI has external obligations with respect to Student Intellectual Property, such as via a contract with a company, or where there are federal funds involved. If there are no WPI external obligations for the Intellectual Property, Student Intellectual Property may assign to WPI and be treated as a WPI Invention.

If there is Student Intellectual property that is free from WPI external obligations the Students may choose to enter into an agreement with WPI for the value of that Intellectual Property. Such value will not exceed 1% of the current value of that Intellectual Property. The waiver provisions of this Policy shall apply to WPI Students (Section 6).

Activities undertaken by WPI Students receiving financial aid as tuition assistance shall not be considered "WPI funds" unless such assistance consists of employment at WPI (including, but not limited to teaching assistantships) or is charged against a grant, contract or other agreement between WPI and an external funding source.

As a condition of study or a degree award, each student shall grant to WPI a non-exclusive, royalty-free, non-commercial license to reproduce and publicly distribute, including by electronic means, copies of the student's work in which the student retains copyright.

3. Significant Use of WPI Resources

Generally, an invention, software, or other copyrightable material, will not be considered to have been developed using WPI funds or facilities if:

- **3.1** only a minimal amount of unrestricted funds has been used; and
- **3.2** the Intellectual Property has been developed outside of the assigned area of research of the inventor(s)/author(s) under a research assistantship or sponsored project; and

- **3.3** only a minimal amount of time has been spent using significant WPI facilities or only insignificant facilities and equipment have been utilized (note: use of office, library, machine shop facilities, and of traditional desktop personal computers are examples of facilities and equipment that are not considered significant); and
- **3.4** the development has been made on the personal, unpaid time of the inventor(s)/author.

4. Intellectual Property Developed Under Sponsored Research Agreements

Ownership of copyrightable and patentable intellectual property developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement.

Government and nonprofit sponsors generally allow rights to intellectual property that arise from the research program to vest with the institution, subject to certain retained rights held by the federal government. Under special circumstances, sponsors, including government agencies, will provide for the institution to retain title to all intellectual property that arises in the course of the research program, with the sponsor retaining an option to acquire commercialization rights through a separate license agreement.

5. Special Agreements

Since WPI aims to encourage creativity, it reserves the right to allow some flexibility in applying this policy. The inventor(s) or author(s) may request the VPR Office to release the intellectual property to them, at their own expense, unless other agreements exist.

6. Waiver or Return of Rights

WPI may determine that WPI will not take ownership of invention or WPI may, after initially exercising ownership, determine that WPI will no longer pursue or maintain intellectual property protection, for example in cases without a revenue producing license. Where WPI determines that it will not pursue or maintain intellectual property protection and licensing of WPI-Owned Intellectual Property, it will promptly and in writing advise the inventor(s) or author(s). To the extent permitted by external obligations, including any applicable laws and regulations, WPI may consider application by inventor(s) or author(s) for alternative funding of prosecution or maintenance of intellectual property, or waiver of ownership rights and the terms under which such waiver may be made. WPI will not consider requests for waiver of ownership with respect to any invention or software program unless all inventors and authors, as legally determined, concur with the request for waiver. Ownership waivers, if granted, will be made to all relevant inventors and authors as joint owners. Waiver agreement terms between WPI and the inventor(s) will include a perpetual, royalty-free right and license retained by WPI to use the invention or software for its own education and research purposes, and will be further subject to any external obligations as may be required.

7. Administration of Intellectual Property Policy

Except as otherwise specified in this policy or as otherwise duly authorized by WPI, the IPI department has responsibility for the interpretation, implementation and oversight of this Policy. The IPI department will issue such administrative guidelines and procedures to facilitate Policy as may be reasonable and consistent with it. In accordance with otherwise applicable WPI policy or contract terms, WPI may also pursue disciplinary, or civil or criminal action, for Policy violations. These duties are delegated to the Director of Intellectual Property and Innovation

WPI personnel who wish to pursue the commercialization of their independently developed and owned intellectual property through WPI may offer such intellectual property to WPI by following the administrative process outlined above.

8. Income Distribution

Costs and Net Royalty Income: Unless otherwise agreed, Net Royalty Income shall mean Gross Royalties in the form of cash or cash proceeds whether from the sale of equity or obtained in licensing transactions, less all commercialization costs, including but not limited to, previous and ongoing billed costs for protection of intellectual property, marketing, legal fees and other licensing costs.

Distribution of Net Royalty Income: With respect to intellectual property owned by WPI hereunder, Net Royalty Income shall be distributed (usually annually) as follows:

- 50% Creator(s) (personal)
- 5% Creator(s) Department
- 5% Creator(s) Office of the Dean
- 5% Office of Intellectual Property and Innovation
- 35% WPI

It is encouraged for the Department share give priority to the inventor's laboratory if at all possible. The funds should be directed towards a continued investment in research and technology development. Dean and Department shares may involve multiple Deans or Departments. If this occurs, the split will go according to how the inventors have agreed to split their share.

Note that Intellectual Property created by students may have a different distribution per the conditions in section 4.

The creator will receive personal royalties as income. If the creator chooses to donate a portion of the royalties to research, the creator may do so in accordance with the policy and procedures of the Development Office of WPI and in accordance with local, state and federal tax policies.

Where all or a portion of the Royalty Income received by WPI is in shares of stock, stock options, warrants or other indicia of ownership ("Equity"), Inventors and Authors shall be entitled to shares to be negotiated with the company. If Inventors and Authors obtain Equity from the company, WPI Equity will be wholly owned by WPI. For all other Inventors/Authors who did not receive Equity from the Company, WPI, upon occurrence of a liquidation event, distribute cash according to the distribution agreed upon among the inventors in their original invention disclosure.

WPI may postpone the distribution of Net Royalty Income when future expenses relating to the applicable technology, such as patent prosecution costs, or an infringement suit, are reasonably anticipated.

8.1 Creator Equity Participation

Creators may receive equity in return for their contributions as founders or consultants only in accordance with specific WPI policies. Annually, creators must fully disclose their equity positions and shall otherwise be and remain in compliance with the WPI Conflict of Interest policies.

9. Conflict of Interest and Conflict Avoidance in Equity Transactions

Where a Creator(s) holds or will acquire an equity or founder's stock and/or option position in a company to which Intellectual Property that the Creator(s) helped develop is licensed by WPI, WPI will accept an equity position in lieu of royalty. In all such situations, Creator(s) who remain in the employ of WPI will not use WPI students for research and development projects sponsored by the company without expressly disclosing to students the inventor(s)' equity ownership interest in the company and without the express approval of the academic department head or other appropriate administrative unit supervisor. In addition, inventor(s) will not restrict or delay access to their research results so as to benefit the company (apart from any WPI- authorized agreement with the company) and will not engage in such other activities that may create a presumption of conflict of interest between their activities as faculty or staff of WPI and their activities with or on behalf of the company. The limitations and conditions of this paragraph are in addition to those required by WPI's conflict of interest or other related policies.

10. Survival of Terms

All licenses and rights granted to WPI will survive any termination of employment or end of enrollment by a student as applicable.

11. Conflict Resolution

When a disagreement arises between WPI and the inventor(s) concerning the interpretation of this policy, an Intellectual Property Appeal Board (the "Appeal Board") will be appointed and convened to resolve the disagreement. Appeals shall state explicitly what is in dispute and be submitted in writing to the President of WPI and to the Committee on Governance. When a request for an appeal is received, an Appeal Board shall promptly be appointed.

- **11.1** The Appeal Board is composed of five persons, three appointed by the Committee on Governance and two appointed by the WPI administration. The COG-appointed members shall be members of the faculty chosen from a current list of tenure-track faculty members who have agreed to serve on the Appeal Board if so requested, and who have a variety of experience. In making their respective appointments, COG and the WPI Provost will seek to ensure that some of the appointees are familiar in detail with this policy and its past applications, and some of the appointees are familiar with the technical area of the intellectual property under consideration. No person with a special interest in the outcome of its decisions, including people who have participated in the decision that is under appeal, shall be appointed to the Appeal Board.
- **11.2** The Appeal Board shall promptly meet, elect a chair, and hear the appeal. The Appeal Board shall receive written briefs from each party to the dispute, take oral presentations open to all parties and their counsels, and receive written emendations to the written briefs. The Appeal Board shall have the power to summon witnesses and documents necessary to reaching its decisions. The Appeal Board shall consider all relevant facts, policies, and precedents, and then reach a decision. The Appeal Board shall report its decision in a written finding that includes the principal arguments leading to its conclusions.

12. Use of WPI Name, Mark, or Insignia

The WPI name, seal, or logo may not be used:

1. in conjunction with any private or commercial
2. in tandem with the advertisement of any product.
3. by any individual or group promoting

Any questions regarding the use of the WPI name, seal, or logo should be referred to the WPI Chief Marketing Officer.

12.1 **Changes to this Policy**

The Provost will periodically initiate review of this Policy to address legal developments and to reflect experience gained in its administration. Policy changes will be made in accordance with governance and applicable legal requirements.

THEREFORE, BE IT RESOLVED that the Board of Trustees approves the Intellectual Property Policy, effective May 13, 2016.

Academic Planning Committee Meeting

May 12, 2016

Meeting of the Corporation

May 13, 2016