

TITLE 4 – Codification of Board Policy Statements
Chapter 12
Intellectual Property POLICY PROPOSED REVISIONS

SECTION	PROPOSED REVISION	PURPOSE/RATIONALE	SUBSTANTIVE CHANGES
Sec. 1.1 Preamble	Adds term “Intellectual Property.”	The term “Intellectual Property” is used throughout for consistency in lieu of “inventions and copyrights.”	None.
Sec. 1.1 Preamble	Adds references to economic development, entrepreneurial activity, innovation and commercialization	These terms are added to be consistent with Board emphasis on such activities.	None.
Sec. 1.2 Preamble	Revises existing language to use the term “Intellectual Property”; Adds “commercialization” and language to encourage research, creative and Scholarly/Creative activity; Adds language regarding preservation of NSHE and institution rights as well as those of the inventor/author/creator.	These revisions recognize the additional goal of commercialization of Intellectual Property and clarify that all aspects of creativity and invention are encouraged. The added reference to preservation of NSHE and institution rights is an acknowledgment that the employer and employee both have ownership rights to Intellectual Property that must be respected.	None. The current policy addresses both faculty and NSHE/institution rights to Intellectual Property.
Sec. 1.3 Preamble	Revises language to use the word “Personnel”;	For clarification, the word “Personnel” is used consistently throughout the policy in lieu of students, staff, or faculty.	None.
Sec. 1.4 Preamble	Revises language to use the terms “Intellectual Property” and “Personnel”	The terms “Intellectual Property” and “Personnel” are used throughout the policy for clarification and consistency.	None.
Sec. 2 Definitions	Clarifies definitions for Course Materials, Intellectual Property, Inventions, Net Income, Personnel, Significant Use of NSHE Resources, Trademark, Traditional Scholarly/Creative Works (Copyrightable Works), Trade Secrets, Work(s), Work Made for Hire. Adds a definition for “Commercial Value.”	Through the use of capitalized and defined terms, the entire policy will be much clearer. These terms and concepts, with the exception of “Commercial Value,” are referenced in the current policy. Through these revisions defined terms are consolidated in one section and clear definitions are provided that build on existing language. Regarding the definition of “Significant Use of NSHE Resources,” new language is used to define the same concept that is contained in the existing policy and no substantive change is intended. Language has been added to provide that more than <i>de minimus</i> use of	The revisions to the definitions do not substantively change the concepts in the current policy. The new language regarding “Significant Use of NSHE Resources” is intended to express the same concept that exists in the current policy. “Commercial Value” is a new term that is used later in the

SECTION	PROPOSED REVISION	PURPOSE/RATIONALE	SUBSTANTIVE CHANGES
		resources is required. “Significant Use” includes the compensated efforts and time of Personnel. Use of public facilities and occasional/infrequent use of supplies, equipment and administrative support are excluded. Existing language on “Significant Use” regarding adoption of “stricter criteria” by institutions is moved from Sec. 3 into Sec. 2, and expanded to include the adoption of “guidelines”. The exception language regarding textbooks is deleted, but texts are included in the definition of “Traditional Scholarly/Creative Works” which remain the property of the author or creator.	definition of “Course Materials.” See Sec. 2.2.c.
Sec. 3 Determination of Significant Use of NSHE Resources and Ownership of Intellectual Property	New language is added to provide a process for determination of “Significant Use of NSHE Resources,” with the VP for Research or other individual designated by the President as the final authority. Guidelines regarding “Significant Use” are clarified and language establishing student rights to Intellectual Property is added.	Current policy does not address how “Significant Use” is determined. The amendments will protect faculty by providing a process and an appeal. New language addresses when students will own Intellectual Property that is developed as part of course work.	The amendments enhance the rights of faculty by providing a process for determination of Significant Use and clarify the rights of students to Intellectual Property.
Sec. 4 Ownership by NSHE of Intellectual Property other than Traditional Scholarly and Creative Works	The revisions clarify existing language regarding NSHE and faculty ownership of Intellectual Property, and add language concerning student ownership of Intellectual Property. Language is added to clarify that sponsored graduate research is owned by NSHE. Existing language on “Invention Disclosure” is clarified and new language regarding the timeframe for such disclosure is added.	The revisions insert the terms Intellectual Property and Personnel to be consistent throughout. Student ownership and the timing of invention disclosure are not addressed in the current policy and therefore, these additions provide clear guidelines. Graduate research is traditionally the result of “Significant Use” of resources and therefore, is the property of the institution.	The new language clarifies the existing policy.
Sec. 5 Ownership of Traditional Scholarly and Creative Works	Revisions to existing language to clarify that NSHE does not own faculty and student copyrightable works which are referred to as “Traditional Scholarly and Creative Works.” New language is added allowing institutions, in consultation with the Faculty Senate to develop limited exceptions set forth in Bylaws to require the granting of a non-exclusive license to the institution to use certain	In light of the very broad definition of Traditional Scholarly/Creative Works in Sec. 2.9, the simplified language in this section confirms the traditional faculty and student ownership of scholarly and creative Works. Traditional Scholarly/Creative Works includes such things journal articles, monographs, scripts, screen plays, music, songs, stories, essays, poetry, novels, choreographed performances, and any	Although the existing policy is silent regarding development of policies for non-exclusive licensing of Works to the institution and ownership of certain Course Materials, the new language is a substantive addition to existing policy that

SECTION	PROPOSED REVISION	PURPOSE/RATIONALE	SUBSTANTIVE CHANGES
	<p>Works and for ownership of certain Course Materials.</p>	<p>such projects completed while on sabbatical or while on or off contract.</p> <p>The new language regarding licensing of Works to the institution and ownership of Course Materials is intended to allow the institution, working with the Faculty Senate, to identify in institution Bylaws particular situations where such licensing to or ownership by the institution would be appropriate.</p> <p>Language is added to Sec.5.3.a to clarify that Course Materials which have been specifically commissioned by the institution in a written agreement with Personnel, belong to the institution.</p>	<p>to allow the institution working with faculty to develop limited exceptions which must be made part of the institution Bylaws.</p>
<p>Sec. 6 Equity Interests in Private Companies</p>	<p>New language is added to allow equity ownership in a company or business venture as part of an Intellectual Property commercialization agreement. Review and approval by the VC for Legal Affairs is required.</p>	<p>This new language addresses a legal issue under the Nevada Constitution which prohibits state ownership of equity or stock of private companies. The new language recognizes the special fund doctrine exception to this prohibition.</p>	<p>The new language is a substantive addition to existing policy that is intended to enhance faculty ability to commercialize Intellectual Property.</p>
<p>Sec. 7 Administration</p>	<p>Clarifications of existing language regarding: a. Institution Policies and Procedures and Intellectual Property Administrator; b. Intellectual Property Committee; c. Net Income Sharing; d. Institution Implementation Options; e. TEACH Act Compliance; and g. Appeal Procedure. New language is added in Sec. 7.d.5 to allow institutions to release certain Intellectual Property to the public domain and report any such release to the Chancellor. New language is added in Sec. 7.f to require Personnel to assign in writing ownership to NSHE of any Intellectual Property which NSHE owns pursuant to the policy.</p>	<p>Language is moved from Sec. 9 regarding the requirement for institutions to adopt policies, and is amended to require Chancellor approval of the policies instead of Board of Regents approval.</p> <p>Other revisions to existing policy language provide clarification and are consistent with the existing policy. Each institution must develop policies and procedures consistent with the provisions of Title 4, Chapter 12 and an Intellectual Property Administrator appointed.</p> <p>The new language on release or abandonment to the</p>	<p>The change to Chancellor approval of institution policies is substantive, but is consistent with the Board's efficiency and effectiveness initiative.</p> <p>The clarifications of existing language do not substantively change the current policy.</p> <p>The new language regarding</p>

SECTION	PROPOSED REVISION	PURPOSE/RATIONALE	SUBSTANTIVE CHANGES
		<p>public domain or to the inventor/creator of Intellectual Property is proposed in recognition of the occasional decision at institutions of higher education to make Intellectual Property publicly available and to release it to the inventor/creator. Such decisions must be determined to be in the best interest of the institution and NSHE.</p> <p>The new language regarding Assignment of Ownership is a legal requirement based on the United States Supreme Court decision in <i>Stanford v. Roche Molecular Systems, Inc.</i> Although the <i>Stanford</i> case involved a technical interpretation under the Bayh-Doyle Act regarding federally funded inventions, the decision has broader implications for institutions of higher education. The Supreme Court noted that title to inventions developed by employees of federal contractors does not automatically vest in the employer and therefore, the contractors “institute policies to obtain assignments from their employees.” <i>Stanford v. Roche Molecular Systems, Inc., et al</i>, 131 S.Ct. 2188, 2196, 2199, 180 L. Ed. 2d 1, 14, 16 (2011). The current policy does not address assignment of ownership. The amendment is needed to require written assignment by the employee to the institution of rights to Intellectual Property that are the property of the institution. The policy does not require assignment of any property rights that belong to the employee. In essence, the written assignment acts as a confirmation and acknowledgement by the employee of the institution’s ownership of certain Intellectual Property rights.</p>	<p>release of Intellectual property by an institution to the public domain or to the inventor/creator, is a substantive addition.</p> <p>The new language regarding assignment of rights is a substantive addition to existing policy, but it is not intended to make any change to ownership rights of faculty as established by the existing policy. The written assignment using the phrase “does hereby assign” is a legal formality which serves as the faculty member’s acknowledgement of the institution’s ownership of Intellectual Property as provided the policy (<i>e.g.</i>, developed with the Significant Use of NSHE Resources).</p>
Sec. 8 Distribution of Income	Revisions to existing language to clarify that Knowledge Fund net income may be distributed in accordance with provisions of the <i>Nevada Revised Statutes</i> (NRS). New language added to address	The percentage distribution of net income that is set forth in existing policy is not changed. The revisions merely clarify that Knowledge Fund income distribution must adhere to agreements entered into	No change to existing rights. The Knowledge Fund and equity interest language are substantive additions that are

SECTION	PROPOSED REVISION	PURPOSE/RATIONALE	SUBSTANTIVE CHANGES
	holding and liquidation of equity interests.	under NRS 231.1593. The new language clarifies that the distribution of income from liquidated equity interests must comply with the policy.	needed to clarify faculty/institution rights.
Sec. 9 Institutional Policies	Existing policy is deleted and moved to Sec. 7.1.a. The amendment provides for Chancellor approval of the institution policies.	See Sec. 7.1.a above.	See Sec. 7.1.a
Sec. 10 Periodic Reporting	Title to section added; reference to “Workforce, Research and Economic Development Committee” is deleted.	All sections are given titles for ease of citation. The Workforce, Research and Economic Development Committee does not exist.	Reference to committee deleted and policy now provides that the Board of Regents may request information regarding institutional research endeavors.
Section 11 Restricted Access Research	Title to section added; no amendments to the existing policy.	All sections are given titles for ease of citation.	None.
Section 12 Institutional Research and Entrepreneurial Activity	Title to section added; no amendments to the existing policy.	All sections are given titles for ease of citation.	None.

NSHE Intellectual Property Policy - Flowchart

