

**BAKER UNIVERSITY**

**INTELLECTUAL PROPERTY POLICY**

**Approved by the Board of Trustees February 18, 2005**

# BAKER UNIVERSITY<sup>1</sup> INTELLECTUAL PROPERTY POLICY<sup>2</sup>

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<sup>1</sup> All occurrences of "Baker University", "University", or "the University" refer to Baker University, Baldwin City, Kansas including its Schools located in other Kansas locations and Missouri locations and any University program or course offered off-site

<sup>2</sup>All occurrences of "the Policy", "this Policy", or "Intellectual Property Policy" refer to the Baker University Intellectual Property Policy.

## **I. WHAT IS THE PURPOSE OF THE BAKER UNIVERSITY INTELLECTUAL PROPERTY POLICY?**

A. The specific aims of the Baker University Intellectual Property Policy are to:

1. Promote and encourage creativity and knowledge creation both in and outside the classroom;
2. Protect the rights of scholars and students with respect to owning the products of their intellectual endeavors;
3. Set forth mechanisms for determining ownership rights in intellectual property and for resolving disputes with respect to such property;
4. Set forth guidelines for how the University and members of the University community will participate in any net profits that result when intellectual property is introduced for commercial development;
5. Protect the rights of a scholar to take his or her work and use the work elsewhere when leaving the institution and, in certain circumstances, retain for the University the right to use certain works developed by faculty and staff who may leave the institution;
6. Protect the University's interest in work products developed for the University by outside consultants and independent contractors;
7. Support the preservation of and access to intellectual property.

## **II. WHO IS COVERED?**

A. This Policy applies to all "covered individuals," who are:

1. All persons employed by Baker University, including full and part-time faculty, adjunct and visiting faculty or researchers, administrative officers, staff members, and student workers;
2. Independent contractors or consultants. Any adjunct faculty who sign contracts designating them as independent contractors are treated as faculty for purposes of this Policy;
3. For purposes of this Policy, a "student" is any individual who registers for any course at the University, including any staff that might register for such courses. Where a student is also an employee, s/he is considered staff with regard to intellectual property as a result of his/her employment and as a student with regard to other intellectual property. A full-time non-faculty employee who is also taking one or more courses is considered to be

staff with regard to intellectual property as a result of his/her employment and as a student with regard to other intellectual property.

4. Anyone using University facilities or resources under the supervision or with the permission of University personnel, including, but not limited to, volunteers and students enrolled at the University or other institutions and/or performing internships at the University.

### III. DEFINITIONS

- A. All intellectual property produced by covered individuals, acting individually or in groups, performing research or engaging in work or study at the University or in connection with a University program, is covered by this Policy. For purposes of this Policy, intellectual property is divided into three categories and defined as follows:
  1. "Copyrightable Intellectual Property" shall include, without limitation, all creative works, electronic or paper documents, course materials and syllabi, software (including source code and object code), multimedia or audiovisual materials and photographs, and any other materials that may be copyrightable under U.S. law (whether or not produced in the U.S.). While software and other proprietary information (including trade secrets) may be capable of patent protection, such intellectual property shall be considered Copyrightable Intellectual Property for purposes of this Policy. With respect to software and its appropriate disposition, the University will consult with the software creator.
  2. "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 potentially patentable under U.S. law (whether or not produced in the U.S.).
  3. "Other Intellectual Property" shall include all registered and common law trademarks, service marks, domain names, logos and all other types of proprietary rights created specifically for the University not otherwise covered under this Policy.
- B. "Scholarly and Creative Work Exception" for Copyrightable Creations: Key Elements. The University recognizes and adopts as policy the longstanding custom that faculty own the copyright to their scholarly, pedagogical, and creative works. Such works are thus an exception to the work for hire rule.
  1. Where copyrightable creations are created under the "Scholarly and Creative Work Exception," copyright ownership vests with the faculty creator, and royalties go to the creator, whether or not the creator has made Substantial Use of University Resources.
  2. For the purposes of this Policy, students, postdoctoral fellows, and postdoctoral associates are considered scholars in training and therefore copyrightable creations created by them fall under the "Scholarly and Creative Work Exception" as in (1)

immediately above.

3. For purposes of this Policy, if a member of the faculty of the University takes a sabbatical, any intellectual property created by such faculty member while on sabbatical shall not be subject to this Policy, unless the faculty member has had Substantial Use of University Resources while developing such intellectual property. Notwithstanding the foregoing, if the intellectual property created by the faculty member during such sabbatical is based upon or is a derivative work of intellectual property owned by the University, then this Policy shall continue to apply.
4. The “Scholarly and Creative Work Exception” does not apply to non-faculty University employees (unless agreed to otherwise) and does not apply in the absence of an agreement assigning those rights into which the University and a non-faculty employee enter prior to the creation of the work.
5. “Scholarly and Creative Works” are works that have a primary goal of disseminating academic or scholarly knowledge, or are works of artistic expression. Scholarly and creative works may include – but are not necessarily limited to – course materials, such as textbooks, lecture notes, exams, syllabi, workbooks, and laboratory manuals; scholarly publications, journal articles, research bulletins, monographs, and reviews; books, whether fiction or non-fiction; plays; poems; musical compositions; and work of visual art, such as paintings, drawings, sculpture, and photographs, and electronic expressions (including software/encoded works in some instances) of such works. For purposes of this policy, Scholarly and Creative Works are works generally expected of faculty as evidence of their professional achievement.

C. Substantial Use of University Resources.

1. “Substantial Use of University Resources” shall mean the extensive use of any University-paid time or funding, or the extensive use of facilities, equipment, staff assistance, and/or significant administrative support, including use of dedicated laboratories, dedicated computer centers, and dedicated equipment. By way of elaboration, Substantial Use of University Resources occurs when the creation of the work requires use of University resources beyond those widely available to University personnel and students (including all classes of persons described under Article II of this Policy) in support of their academic work within their respective departments, colleges, academic or administrative units such as the routine use of an assigned/general purpose office and computer, libraries, generally available information resources, photocopiers, local telephone, reasonable office supplies, and limited administrative support or limited use of shared University resources.
2. Decisions about whether works of intellectual property are made with Substantial Use of University Resources may be negotiated by the creators or inventors, in advance where possible, in accordance with the procedures set forth in Article XII.

**IV. COPYRIGHTABLE INTELLECTUAL PROPERTY**

## **A. Responsibility for Disclosure of Copyrightable Intellectual Property**

1. The creator of Copyrightable Intellectual Property is not obligated to disclose the creation of such property, unless the Copyrightable Intellectual Property is owned by the University, as set forth below. If the Copyrightable Intellectual Property is owned by the University under this Policy, the creator is responsible for timely disclosure to the University as set forth in Article XII, when it can be reasonably concluded that Copyrightable Intellectual Property 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(s) and the University. With respect to Copyrightable Intellectual Property owned by the University that generates royalties, such royalties shall be allocated pursuant to Article X of this Policy.

## **B. Determination of Rights to Copyrightable Intellectual Property**

1. Except as set forth below, the creator of Copyrightable Intellectual Property shall retain his/her rights, and the University shall not have ownership rights in keeping with the tradition of academic institutions to give faculty members and students the right to retain ownership of their copyrightable materials.
  - a. The University owns Copyrightable Intellectual Property developed under any of the following circumstances:
    - i. Development was funded as part of an externally sponsored research or development program that expressly allocates rights to the University or by any agreement that expressly allocates those rights;
    - ii. A covered individual was expressly assigned, directed, or specifically funded by the University to develop specific Copyrightable Intellectual Property, and the University has a contract with the creator;
    - iii. Copyrightable Intellectual Property was developed by administrators or other non-faculty employees, including student employees, in the course of employment duties and constitutes work for hire under U.S. law; or
    - iv. Copyrightable Intellectual Property was developed with Substantial Use of University Resources.
  - b. The University has the right to use Copyrightable Intellectual Property owned by covered individuals (through the Scholarly and Creative Work Exception or otherwise) in the following circumstances:
    - i. Upon request by the University, covered individuals will grant to the University a non-exclusive, perpetual license (with royalties to be negotiated, when appropriate) to make copies of Copyrightable Intellectual Property that such creator owns that was created while the creator was employed by the University to use such Property in teaching, scholarship and research in support of the University's educational mission, provided that the covered individuals shall have the right to approve proposed uses of their Copyrightable Intellectual Property.

The University has no right under this paragraph to record or distribute the recording of a covered individual's classroom lecture or performance for commercial purposes without the covered individual's permission, which is in the sole discretion of the covered individual to give.

- ii. In the event a covered individual leaves the University, the covered individual will grant to the University a license to create derivative works from Copyrightable Intellectual Property that is in the form of course materials created by the covered individual for use in the University curriculum so long as the University identifies to the covered individual the material it wishes to use. Unless otherwise requested by the covered individual with reasonable advance notice, the University will, when exercising its license, credit the covered individual.
- iii. It is suggested, but not required, that any covered individual, when publishing a scholarly work, request the publisher to place a note on the first page of the publication giving the University and other nonprofit organizations the right to make copies of all or any portion of the published work for educational purposes without written permission or payment of an additional fee. Suggested language is as follows:

"Copyright [date] [Publisher]. Permission is granted for nonprofit educational and library duplication and distribution of this [article].

- iv. In the event that a covered individual or group of covered individuals has created Copyrightable Intellectual Property prior to the initiation of employment or matriculation at the University, the University will not assert ownership or license rights to such property. To the extent the faculty or employee or student creates derivative Copyrightable Intellectual Property from such work (that does not fall within the Scholarly and Creative Work Exception) while employed or matriculating at the University, the terms of this Policy shall govern the rights to such derivative property.

## **V. PATENTABLE INTELLECTUAL PROPERTY**

### **A. Responsibility for Disclosure of Patentable Intellectual Property**

1. Covered individuals who alone, or in association with others, create Patentable Intellectual Property with Substantial Use of University Resources are responsible for disclosing the Patentable Intellectual Property to the University as set forth in Article XII. Such disclosure shall be made when it can be reasonably concluded that Patentable Intellectual Property 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 Patentable Intellectual Property for the creator(s) and the University. Creators are encouraged to seek the advice of the appropriate University officer under Article XII in determining whether the subject matter is Patentable Intellectual Property within the meaning of this Policy. With respect to Patentable Intellectual Property owned

by the University that generates royalties, such royalties shall be allocated pursuant to Article X of this Policy.

## **B. Determination of Rights to Patentable Intellectual Property**

1. Except as set forth below, the creator of Patentable Intellectual Property shall retain his/her rights, and the University shall not assert ownership rights.
  - a. The University owns Patentable Intellectual Property developed under any of the following circumstances:
    - i. Development was funded as part of an externally sponsored research or development program that expressly allocates rights to the University or by any agreement that expressly allocates those rights;
    - ii. The creator was assigned, directed, or specifically funded by the University to develop specific Patentable Intellectual Property and the University has a contract with the creator that allocates ownership rights to the University;
    - iii. Patentable Intellectual Property was developed by administrators or other non-faculty employees, including student employees, in the course of employment duties and constitutes work for hire.
    - iv. Patentable Intellectual Property was developed by any individual with Substantial Use of University Resources.
  - b. The University has the right to use Patentable Intellectual Property owned by covered individuals in the following circumstances:
    - i. Upon request by the University, covered individuals will grant to the University a non-exclusive, perpetual license (with royalties to be negotiated, when appropriate) to use Patentable Intellectual Property that they own in teaching, scholarship and research in support of the University's educational mission, provided that the covered individual shall have the right to approve proposed uses of the Patentable Intellectual Property.

## **VI. OTHER INTELLECTUAL PROPERTY**

All proprietary rights that constitute Other Intellectual Property shall be owned solely by the University and Article X shall not apply. The University reserves the right to control and protect the trademarks and service marks of the University.

The Baker University name, seal, and logo may not be used:

- In conjunction with any private or commercial enterprise.
- In tandem with the advertisement of any product.



- By any individual or group promoting itself.

Use of the University name, seal or logo on letterhead and business cards is standardized and regulated by the Marketing Department. Any questions regarding the use of the University name, seal, or logo in circumstances other than the ones listed above should be referred to the Vice-President for Marketing.

## **VII. AGREEMENTS REGARDING INTELLECTUAL PROPERTY**

- A. Because the University aims to encourage creativity, it reserves the right to allow flexibility in applying this Policy on a case-by-case basis. In such cases, ownership of Copyrightable or Patentable Intellectual Property developed pursuant to a special agreement between the University and the creator or creators will be governed by the provisions of any such agreement.
- B. The appropriate University officer shall review all contracts between the University and covered individuals or independent contractors so that the University's ownership interest in the work product may be protected. Examples include contracts for:

- Curriculum and course materials;
- Reports by consultants or subcontractors;
- Computer software;
- Architectural or engineering drawings, illustrations or designs prepared for the University;
- Artistic works commissioned by the University;
- Web pages and/or advertising material prepared for the University.

Contracts must contain work for hire language that provides that the University owns the work. Contracts with adjunct faculty may, but are not required to, include work for hire language, at the discretion of the individual department or program, but shall include language retaining all rights for the University.

## **VIII. WHAT SPECIAL RULES APPLY TO STUDENTS?**

Intellectual Property created by students is subject to the following additional rules:

- A. The University makes no claim to copyright ownership of intellectual property created by students that is not developed within the scope of an employment relationship with the University or with one of its employees, and not making Substantial Use of University Resources.
- B. Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.
- C. Students who are hired to perform specific tasks that contribute to the creation of Copyrightable or Patentable Intellectual Property will ordinarily have no rights to ownership

of that Property, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright or patent of the rest of the Property will ordinarily retain copyright or patent ownership of the portion contributed by the student.

- D. Students collaborating with covered individuals on projects that result in Copyrightable or Patentable Intellectual Property, except those who are hired or directed to perform specific tasks that contribute to the creation of such property, will be granted the same rights and obligations of copyright and patent ownership as would another covered individual working collaboratively on the project. To the extent a covered individual working with the student asserts sole ownership of the work product, he or she must establish this right at the outset of the collaboration, through a written agreement, or be barred from asserting sole ownership rights.
- E. If none of the above relationships applies, students performing work compensated by the University are subject to the provisions governing staff or other non-faculty employees, and their work constitutes work for hire under U.S. law, as set forth in this Policy.
- F. The University reserves the right to make copies of student papers, course assignments, dissertations and theses for use in the University curriculum, including uploading the work in the University's course management system, and for archival purposes. The student, by enrolling in the University, gives the University a nonexclusive royalty-free license to mark on or retain the work as may be required by the process of instruction, or otherwise handle the work as set out in the Intellectual Property Policy or in the course syllabus. The University shall not have the right to use the work in any other manner without the written consent of the creator(s).
- G. Students may not disseminate any print, electronic materials, video or audio recordings, or any other Copyrightable or Patentable Intellectual Property they make, use, or receive in class for commercial purposes or to anyone not enrolled in the class.

## **IX. WHAT IS THE PROCESS FOR FORMALIZING OWNERSHIP AND ALLOCATION OF RIGHTS/RESPONSIBILITIES?**

### **A. Reporting the Creation of Intellectual Property.**

The University shall develop sufficiently detailed guidelines to be distributed to and consulted by individuals who, pursuant to this section, are required to determine and disclose to appropriate University officers that they are creating Copyrightable or Patentable Intellectual Property that may be owned by the University or that such creator(s) have an interest in such property. These guidelines will be revised by the University as revisions become necessary or appropriate. If creator(s) of such Intellectual Property, or any individual(s) who claims an interest in such Intellectual Property, including an individual acting on behalf of the University, determine that under the University guidelines the creator(s) or other such individual has an interest in Copyrightable or Patentable Intellectual Property that may be owned by the University pursuant to this Policy, then the creator(s) or other such individual shall disclose this development to the appropriate University officer(s) so that the University may act to protect its ownership interest in the property. Such

disclosure shall be made when it can be reasonably concluded that Copyrightable or Patentable Intellectual Property 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(s) and the University.

B. Waiver or Return of Rights.

The University may, in its sole discretion, waive, transfer, or license to the creator(s) its rights in any intellectual property when such action does not conflict with obligations to other interested parties. This could occur, for instance, if the costs for protecting and developing the intellectual property are not likely to be matched by anticipated income and royalties.

C. Agreements regarding the ownership and use of intellectual property.

In the event the University or any covered individual wishes to negotiate a special agreement regarding intellectual property referred to in Article VII, or otherwise modify the application of this Policy to any particular intellectual property, an agreement regarding ownership and use of such property may be reached. The appropriate University officer shall be responsible for negotiating all such agreements.

**X. HOW ARE ROYALTIES DISTRIBUTED?**

- A. Unless otherwise agreed, the net income (gross royalties and license or use fees minus administrative, licensing, legal, direct, and other reasonable expenses) resulting from the creation and marketing of Copyrightable or Patentable Intellectual Property owned by the University pursuant to this Policy will be divided evenly between the creator/inventor and the University.
- B. Absent an agreement otherwise, in the event that Intellectual Property is created by multiple inventors, royalties will be shared pro rata equally among all parties (inventors and the University).
- C. The creator's share will continue after he or she leaves the University.

**XI. WHAT IF THERE IS A CONFLICT OF INTEREST?**

- A. Faculty, staff and students cannot use their institutional affiliation to popularize the competing product of for-profit enterprises.
- B. Before entering into an agreement with an outside entity to commercialize a course taught at the University, including an agreement to record or distribute classroom lectures or performances, faculty must seek approval from the appropriate Academic Dean.

**XII. POLICY ADMINISTRATION; DISPUTE RESOLUTION**

- A. General administration of this Policy is the responsibility of the Associate Vice President of Information Services. General administration includes, but is not limited to:
  - 1. Facilitation of the review of this policy every three years, or more frequently if needed, and administering any revisions to this Policy through the approval process.
  - 2. Development and revision of guidelines, procedures, disclosure forms and other accompanying materials and facilitation of the approval process for such materials.
  - 3. Establishment of procedures to ensure that employment contracts and course catalogs or syllabi state that the employee or student is subject to this Policy.

4. Education of the Baker community on intellectual property issues and this Policy.
5. Policy clarification.
6. Consultation with legal counsel regarding intellectual policy issues or revisions to this Policy.

B. All questions about this policy should be referred to either the Associate Vice President of Information Services or the appropriate administrator as follows:

**Creator**

**Administrator**

College of Arts & Sciences faculty and staff	Vice-President and Dean of CAS
College of Arts & Sciences students	Assistant Dean of Student Academic Services
SPGS faculty, staff and students	Executive Vice-President and Dean of SPGS
School of Nursing faculty, staff, and students	Dean of the School of Nursing
Administrative staff--Baldwin campus	Director of Human Resources
Creators of Other Intellectual Property	Vice-President for Marketing

C. Submission of disclosures will be made to the appropriate administrator as follows:

**Creator**

**Administrator**

College of Arts & Sciences faculty and staff	Vice-President and Dean of CAS
College of Arts & Sciences students	Assistant Dean of Student Academic Services
SPGS faculty, staff and students	Executive Vice-President and Dean of SPGS
School of Nursing faculty, staff, and students	Dean of the School of Nursing
Administrative staff--Baldwin campus	Director of Human Resources
Creators of Other Intellectual Property	Vice-President for Marketing

D. In the event that a dispute arises regarding the application of this Policy, the individual should follow the standard grievance process as appropriate to their status at the University, i.e., the Baker University Faculty Constitution and Bylaws (for Faculty), the Employment Policies Handbook (for Staff) and the Student Handbook (for Students). As a general rule, dispute resolution with regard to this Policy will be handled as follows:

1. Dispute Resolution for faculty of all schools and colleges:

<u>Committee Membership</u>	<ul style="list-style-type: none"> <li>▪ Faculty Grievance Committee for the faculty member’s school/college</li> <li>▪ Associate Vice President of Information Services (at the request of the Faculty Grievance Committee, will serve in an advisory capacity)</li> </ul> <p>If the unit head of the faculty member serves on the Faculty Grievance Committee, the faculty members involved in the dispute has the option to ask the unit head to be recused from the deliberations.</p>
<u>Appeals</u>	Appeals of the Faculty Grievance Committee’s decision will go to the Dean of the faculty member’s school/college.

2. Dispute Resolution for students will go to an ad hoc committee consisting of

<u>Committee Membership</u>	<ul style="list-style-type: none"> <li>▪ Dean or Director of student academic services for the school/college</li> <li>▪ One faculty member outside of the student’s immediate study concentration (chosen by and mutually agreeable to the Dean/Director of student academic services and the student)</li> <li>▪ Associate Vice President of Information Services</li> </ul>
<u>Appeals</u>	Appeals of the ad hoc committee will go to the Dean of the student’s school/college.

3. Dispute Resolution for staff will go to an ad hoc committee consisting of:

<b><u>Committee Membership</u></b>	<ul style="list-style-type: none"> <li>▪ The head of staff member's unit if the person involved in the dispute is not the unit head</li> <li>▪ Director of Human Resources</li> <li>▪ Associate Vice President of Information Services</li> <li>▪ One staff member outside of the person's work unit (chosen by and mutually agreeable to the Director of Human Resources and the disputing party)</li> </ul>
<b><u>Appeals</u></b>	Appeals of the ad hoc committee will go to the University officer for the staff person's unit or President if the person involved in the dispute is a University officer..

4. Dispute Resolution for University officers will go to an ad hoc committee consisting of:

<b><u>Committee Membership</u></b>	<ul style="list-style-type: none"> <li>▪ Three members of the Administrative Council (chosen by and mutually agreeable to the Director of Human Resources and the University officer)</li> <li>▪ Director of Human Resources</li> <li>▪ Associate Vice President of Information Services</li> </ul>
<b><u>Appeals</u></b>	Appeals of the ad hoc committee will go to the President if the person involved in the dispute is a University office.