

**BLUEFIELD STATE COLLEGE
BOARD OF GOVERNORS
POLICY NO. AC-208**

TITLE: INTELLECTUAL PROPERTY

SECTION 1. GENERAL

1.1 Scope: This rule establishes guidelines for intellectual property provisions and property.

1.2 Filing Date: January 5, 2018

1.3 Effective Date: April 2018

1.4 BSC Policy Monitor: Vice President for Academic Affairs

SECTION 2. Policy Statement

Bluefield State College (BSC) encourages the production of creative and scholarly research, works, discoveries, and inventions, known broadly as intellectual property, among faculty, students and staff. The products of this scholarship may create rights and interests on behalf of the creator, author, inventor, public, sponsor and the College. The purpose of this policy is to support and reward scientific research and scholarship, and help faculty, students and staff identify, protect, and administer intellectual property matters and define the rights and responsibilities of all involved. BSC faculty and employees are encouraged to retain a non-exclusive, royalty-free license that allows them and BSC to use work they author or create and intend to publish in furtherance of BSC's academic mission both in the live classroom and online.

2.1 Applicability

The policy applies to works created by all classifications of faculty, staff and students of the College and to non-employees such as consultants and independent contractors, who create *works for hire* on behalf of the College, unless a written agreement exists to the contrary.

SECTION 3. Intellectual Property

3.1 Intellectual Property shall consist of the following:

3.1.1 Copyrightable material produced from creative and scholarly activities, such as written text (articles, course materials, instruction manuals, and textbooks); images (digital photographs, print materials and artwork); videos and slide animations; music and audio recordings (lyrics, plays, and scores); and computer software (code, courseware, databases, programs, and web applications);

3.1.2 Patentable works such as patents (processes, machines, manufactures, or compositions of matter); devices; and software excluded from copyrighted materials;

3.1.3 Trademarked materials, such as words, names, symbols or logos, domain names, trade dress, and slogans or any combination of words which has been adopted by the College to identify itself and to distinguish itself and its sponsorship from others; and

3.1.4 Trade Secrets.

SECTION 4. Ownership and Use

4.1 General Rule

In keeping with the view that prompt and open dissemination of the results of research and creative work among BSC scholars, the State of West Virginia, and the nation at large is essential to the College's multiple missions of teaching, research, and economic development, and in order to best encourage such activity, it is the general policy of BSC that Intellectual Property shall be the property of the faculty - author or creator. The College may assert ownership rights to Intellectual Property developed under circumstances set forth further below.

4.2 Patentable Intellectual Property

4.2.1 Responsibility for Disclosure of Patentable Intellectual Property:

College personnel who alone or in association with other entities create or intend to create novel patentable subject matter with any ***Significant and Substantial Use*** of College resources must disclose the matter and obtain prior authorization from the Office of the Provost (or designee). Such disclosure shall be made when it can be reasonably concluded that a patentable subject matter has or will be 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 the College. If “***Significant and Substantial Use***” of College resources has been documented, then, and only then, creators are encouraged to seek the advice of the Provost (or designee) in determining whether the subject matter is patentable or whether the College desires to pursue patenting the matter.

4.2.2 Determination of Rights to Patentable Subject Matter:

Except as set forth below, the creator of patentable intellectual property shall retain his/her rights, and the College shall not assert ownership rights. The College will assert ownership rights to patentable intellectual property developed under any of the following circumstances:

4.2.2.1 Development was funded by an externally sponsored research program which allocates rights to the College or by any agreement which allocates rights to the College.

4.2.2.2 Development required ***significant and substantial use*** of College resources or more than minimal use of College personnel. Participation of students *paid by the College* that influences development of the patentable subject matter constitutes significant use of College resources.

4.2.2.3 The creator was assigned, directed, or specifically funded by the College as to develop the patentable subject material. Written notification of the assigning, direction, or specific funding shall be provided by the College to the creator(s) in advance of each project’s origination.

4.2.2.4 Material was developed by administrators or staff in the course of employment duties and constitutes *work for hire* under U.S. patent law.

4.3 Other Intellectual Property

4.3.1 Responsibility for Disclosure of Other Intellectual Property:

Faculty are not obligated to disclose the creation of traditional original works (other than patentable intellectual property described in 4.2.1), even when the work might have commercial value, unless it is created under conditions by which the College may assert ownership rights to Intellectual Property as described below, in which case the creator is responsible for timely disclosure. If “***Significant and Substantial Use***” of College resources has been documented, then, and only then, faculty are encouraged to disclose any protectable material that has commercial value to the extent that they may wish College assistance in copyright protection and marketing, in exchange for profit sharing with the College, as set forth in Section 8. All disclosures should be made to the Provost and Vice President for Academic Affairs.

4.3.2 Determination of Rights to Other Traditional Intellectual Property.

Except as set forth below, the creator of traditional Intellectual Property (other than patentable intellectual property described in 4.2.2) shall retain his/her rights, and the College shall not assert ownership rights. However, creators will grant the College a non-exclusive, royalty-free, perpetual license to use the Intellectual Property without limitation, and in perpetuity, for satisfying requests of accreditation agencies only. This will include faculty-authorized syllabi and course descriptions. This *will not include* course materials, lectures, or presentations generated by the faculty creator unless the faculty is currently employed full-time by the College to teach that course and sections of the course that are taught at that time. The spirit of this policy will be that the intellectual property of the faculty creators of instructional material, lectures, or presentations will leave with the faculty creators when they are no longer employed by the College. The College may share in ownership rights to Intellectual Property developed under the following circumstances:

4.3.2.1 Development was funded by an externally sponsored research program which allocates rights to the College or by any agreement which allocates rights to the College.

4.3.2.2 Development required “***Significant and Substantial Use***” of College resources or more than minimal use of College personnel. Participation of students *paid by the College* that influences development of the copyrightable work may constitute significant and substantial use of College resources. Prominent use of the Bluefield State College name or any image, trademark or logo of BSC also constitutes significant and substantial use of College resources.

4.3.2.3 The creator was assigned, directed, or specifically funded by the College to develop the patentable subject material. Written notification of the assigning, direction, or specific funding shall be provided by the College to the creator(s) in advance of each project's origination.

4.3.2.4 Material was developed by administrators or other non-faculty employees in the course of employment duties and constitutes "*work for hire*" under U.S. law (e.g., the College's website, alumni bulletins, admission materials, fundraising materials, catalogs and magazines).

4.4 Intellectual Property Developed Under Sponsored Research Agreements

Ownership of Intellectual Property developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement. Government and nonprofit sponsors may allow rights to intellectual property that arises from the research program to vest with the College, subject to certain retained rights held by the federal government. Sponsored research programs funded by private sponsors will generally provide for the Sponsor to retain title to all intellectual property that arises in the course of the *privately-funded* research program with the College retaining an option to acquire apportioned commercialization rights through a separate license agreement.

4.5 Intellectual Property Developed Under Outside Services

As required by the BSC Policy Bulletin No. 36, 3c (1), *Report of Outside Services*, the value of faculty members accepting short-term, temporary or part-time employment in their respective field is recognized. Outside activities or periodic employment of faculty are not restricted unless such activities or employment interfere with the adequate performance of full-time academic duties. The purpose of this reporting system is to provide a vehicle for committing such activities to record, so that those activities and employment will not become detrimental to the mission of, or to the performance of the faculty member's duties at Bluefield State College.

This report is to be completed by each full-time faculty member during the Spring Semester and submitted to the appropriate Dean for filing with the Office of the Provost/Vice-President of Academic Affairs. If concerns surface the Provost/Vice-President of Academic Affairs shall counsel with the faculty member and his/her Dean. Faculty are not obligated to disclose the creation of novel patentable works, or traditional original copyrightable works, or any other Intellectual Property described in 3.1, even when the work might have commercial value, if the work was created under Outside Services employment, where faculty members accept short-term, temporary or part-time employment in their respective field with a separate company, and the work was created without *significant and substantial* use of College resources.

Faculty are encouraged to disclose any protectable material that has commercial value to the extent that they may wish College assistance in copyright protection and marketing in exchange for profit sharing with the College. All disclosures should be made to the Provost and Vice President for Academic Affairs.

4.6 Use of Bluefield State College Names and Logos

Faculty, staff, and students may, consistent with the College's brand portrayal guidelines, use the College's names, logos, and/or other marks where necessary to identify themselves on matters of official College business. Bluefield State College names, logos, and other marks shall not be used for commercial purposes or by individuals or entities in a manner that implies College endorsement or responsibility for particular activities, products, or publications, or by any individual or group promoting itself, without the express written permission of the Provost and Vice President for Academic Affairs or designee.

SECTION 5. Administration

5.1 General:

This policy shall be administered by the Provost and Vice President for Academic Affairs (VPAA), who shall adhere to its terms and provisions.

5.2 Intellectual Property Review Committee:

In implementing this policy, there shall be an Intellectual Property Review (IPR) Committee of the BSC Faculty whose functions shall include: **(1)** reviewing policy provisions from time to time, as needed, with recommendations for change or amendments to the Provost and Vice President for Academic Affairs; **(2)** serving as a non-binding advisory body in the case of any dispute relating to this policy; and **(3)** reviewing other intellectual property issues as requested by the Provost and VPAA. The (IPR) committee shall be formed on an ad-hoc and as-needed basis. The committee shall consist of one (1) faculty member from each BSC School appointed by their respective Dean, (2) staff members, (2) student members and (2) subject matter experts relative to the property in discussion, which shall be non-voting members.

5.3 Dispute Resolution:

In the event the creator of Intellectual Property objects in writing to a determination of the IPR Committee as reported to the Provost and VPAA, the creator and the Provost will provide all relevant information to the BSC President. The President, or the President's designee, is hereby empowered and authorized, after reviewing the circumstances of the case and considering the desirability of asserting the College's interests, to accept or reject the determination of the VPAA. The President shall then provide the creator, and the VPAA, with the President's final written determination. In the event a party does not accept the President's final written determination with regard to a dispute, that party can request a non-binding arbitration by a panel of three arbitrators pursuant to, and administered by, the America Arbitration Association.

5.4 Changes to Policy:

The College reserves the right to work with the Faculty Senate to change this policy from time-to-time. Proposed changes shall be discussed among the Provost and VPAA, the Intellectual Property Review (IPR) Committee, Vice Presidents, School Deans and the President. The BSC Board of Governors shall have the sole authority to implement changes to this policy that have been approved by the Administration of the College and the College Faculty Senate.

5.5 Special Agreement:

The overriding principle underlying this Intellectual Property Policy is to encourage creativity and inventiveness, so BSC reserves the right to allow some flexibility in applying this policy on a case-by-case basis. In such cases, ownership and use of materials developed pursuant to a special agreement between the College and the creator/author will be governed by the principles of that agreement.

SECTION 6. Definitions

6.1 Significant and Substantial Use:

“Significant and Substantial Use” of College resources requires resources of a degree or nature not routinely made available to all faculty in that department. For example, providing a faculty member with paid release time from his or her faculty appointment for the development of a specific project involving Intellectual Property or significant use of BSC inventoried capital equipment or College-purchased materials specific to his or her research development of a specific project involving Intellectual Property, or extended IT support from another BSC-paid staff member would be considered significant use of College resources. Faculty shall be notified of the about specific project assigned to them when developing Intellectual Property by the College in advance of that project’s origination.

However, *ordinary use* of computers or communication resources, or use of a departmental office or lab space that is available to all department members *would not* be considered significant and substantial use of College resources.

“Significant and Substantial Use” of College facilities means *extensive* and *unreimbursed* use of *major* College laboratory, studio or computational facilities, or human resources on the College payroll. The use of these facilities must be important to the creation of the intellectual property; merely *incidental* use of a facility *does not* constitute significant or substantial use, nor does extensive use of a facility commonly available to all faculty or professional staff (such as libraries and offices), nor does extensive use of a specialized facility for routine tasks.

“Significant and Substantial Use” of College facilities will only be considered "extensive" and facilities will be considered "major" if similar use of similar facilities would cost the author or creator more than \$25,000 (twenty-five-thousand dollars) in constant 2017 dollars (based on the U.S. Department of Labor CPI Inflation Calculator), if purchased or leased in the public market. Creators or authors that wish to directly reimburse the College for the use of its facilities must make arrangements to do so with the Provost and VPAA before the level of facilities usage for a particular intellectual property becomes *Significant and Substantial*. This provision is not intended to override or supersede any other department or College policy concerning reimbursement for facilities usage or any other written agreements to the contrary.

6.2 Works for Hire:

The circumstances in which a work is considered a "*work made for hire*" is determined by the United States Copyright Act of 1976 as either:

(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. (17 U.S.C. § 101)

SECTION 7. Ownership and Royalties

Where **“Significant and Substantial Use”** has been documented, and the faculty author or creator seeks marketing assistance with Intellectual Property, as described in Section 4, all revenues derived from College-shared Intellectual Property including electronic media will be received and administered by the Office of the Provost in consultation with the President. For each specific piece of Intellectual Property share-owned with the College, costs incurred in the process of perfecting, transferring, and protecting any College rights to the property that are paid by the College will first be deducted from the gross income available before distribution. An accurate accounting of all such costs shall be made available to the author/creator upon request. The distribution of net proceeds (income less all costs including that of an agency engaged to provide patent administration services) that is received from College-shared Intellectual Properties shall be shared equally (50% proceeds to the author/creator and 50% proceeds to the College) between the faculty author or creator and the College absent an agreement otherwise. The College and/or the author/creator may, in appropriate circumstances, enter into good-faith negotiations to take equity positions in companies licensed to market or use Intellectual Property.

SECTION 8. Related Policies and References

8.1 BSC Policy Bulletin No. 36, 3c (1) *Report of Outside Services*, Revised 5/1/2004.

8.2 BSC *Faculty Expectations for Performance Evaluation*

SECTION 9. Approval and Revisions

9.1 Revision

BSC Intellectual Property Policy – 5 January 2018

Approved by the BSC Intellectual Property Task Force, 00 January 2018

Approved by the BSC Faculty Senate, March 2018

Approved by the Provost and Vice President for Academic Affairs, March 2018

Approved by the President's Cabinet, March 2018

Approved by the BSC Board of Governors, April 2018