

**Johnson University
Intellectual Property Policy**

Please address all questions concerning intellectual property to the Johnson University Intellectual Property Review Board (IPRB).

The Intellectual Property Review Board for 2015-16 and 2016-17 is as follows:

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1. Introduction

Communities of scholars produce intellectual property with commercial value. This is especially true as emerging technologies have enabled faculty, staff, and students to rapidly develop new methods, models, and inventions that make significant contributions to their specialties. In addition, these new technologies require the university to commission projects that are above and beyond the faculty member's normal duties. For example, a faculty member may be paid extra compensation for developing an online course.

In recognition of the continual evolution of ideas from college and university communities, various organizations (e.g., ACE, AAUP, Sloan-C) have recommended that schools formulate written policies to promote progress in science and the arts while protecting the rights of the authors of this progress. Johnson University seeks to promote intellectual creativity and simultaneously protect the rights of people and the institution that nurture this creativity.

1.1 Purpose

The purpose of this policy is to define and manage the conditions of ownership, legal protection, and licensing of intellectual property produced by faculty, staff, and students of Johnson University (hereafter "the university"). This policy applies to all persons employed by the university and all persons registered for courses and/or doing authorized research on or off campus. This includes but is not limited to full-time faculty, adjunct faculty, visiting faculty, administrative staff, technical staff, undergraduate and graduate students.

Upon approval by the administration, this policy will supersede all prior written and/or verbal agreements between the university and all persons or agencies.

1.2 Definitions

1.2.1 Intellectual Property

Intellectual property shall be defined as “legal rights granted in certain creations of the human mind.” Forms of intellectual property include copyrights, patents, trademarks, trade secrets, and any other such rights that may be created by law in the future.

1.2.2 Copyright

Copyright shall be defined as a set of exclusive rights that protects original works of authorship fixed in any tangible means of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

1.2.3 Patent

Patent shall be defined as that bundle of rights that protect inventions or discoveries that constitute any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof; new and ornamental designs for any useful article.

1.2.4 Invention

Invention shall be defined as any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof; new and ornamental designs for any useful article.

1.2.5 Software

Software shall be defined as any set of instructions for a computer or other information processing device, whether in machine or human readable form, or any database or other set of data to be read by such a device.

1.2.6 Courseware

Courseware shall be defined as any electronic platform (developed, purchased, rented, or otherwise licensed by the university) for the electronic delivery of class materials. Courseware includes the delivery of university property such as course syllabi, the basic structure of the course, appropriate department tools or content that is understood to be the property of the university.

1.2.7 Authorship

The author(s) shall be defined as the person(s) who actually created the work—the person(s) who translated an idea into a fixed, tangible expression. Authors are generally entitled to copyright protection.

2. Work for Hire Doctrine

2.1 General principles

The federal laws regulating copyrights generally regard the authors of works as the possessors of (1) rights to reproduction of the copyrighted work; (2) rights for preparation of derivative works; (3) rights to distribute the work; (4) rights to approve public performance of the work; and (5) rights to display the work.

2.2 Exceptions to Entitlement for Copyrights

Section 101 of the Copyright Act of 1976 allowed an exception of the general principle of authorship. This exception states that with “works made for hire” the employer is considered to be the author (owner) of the copyright unless the two parties have signed a written agreement otherwise.

2.3 Definition of Works for Hire

Section 101 defines “work for hire” as (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 such as a contribution to a collective work, as 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, an answer material for a test, or as an atlas. At Johnson University, a work for hire would include development of an online course for which the developer is paid a designated fee.

2.3.1 Scope of Employment

Work “within the scope of employment” refers to (1) the kind of work that the employee was hired to perform, (2) work that occurs substantially within authorized time and space limits, and (3) work actuated at least in part by a purpose to serve the employer.

2.3.2 Work Specially Ordered

“Work specially ordered” refers to any type of work that is done for institutional purposes by persons contracted by Johnson University. The persons doing “work specially ordered” may be employees of the university or outside contractors and/or consultants.

3. Ownership of Copyrighted or Patented Works

3.1 Works by Nonacademic Staff of Johnson University

Any work “specially ordered or commissioned” by nonacademic staff of Johnson University for institutional purposes will be considered “work for hire.” The university is the author of such works unless the two parties have signed a written agreement otherwise. Nonacademic staff includes but is not limited to administrative staff, support staff, and technical staff.

Any work done by nonacademic staff using Johnson University resources but that is not “specially ordered or commissioned” for institutional purposes will be considered the intellectual property of the university unless the two parties have signed a written agreement otherwise. The authorship of the work will be negotiated in advance by the staff members and the Provost or someone designated by the Provost.

Any work not for institutional purposes and not with university resources done by nonacademic staff will be considered the intellectual property of the staff person(s).

3.2 Academic Works Not Considered “Works for Hire”

It has been the prevailing academic practice to treat the faculty member (both adjunct and full-time) as the copyright owner of works that are created independently and at the faculty member’s own initiative for traditional academic purposes. A work made in the course of a faculty member’s normal duties and responsibilities is the property of the faculty member, who has the right to determine the disposition of such work and revenue derived from such work. In the typical work-for-hire situation, the content and purpose of the employee-prepared works are under the control and direction of the employer, and the employee is accountable to the employer for the content and design of the work. In the case of traditional academic works, however, the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. Therefore, in keeping with case law and academic tradition, Johnson University makes no claim of ownership upon pedagogical, scholarly, or artistic works produced by faculty, staff, or students when that work was not “within the scope” of their employment.

This includes but is not limited to syllabi, tests, teaching aids, bibliographies, audiovisual productions, books, classroom supplements, course materials, laboratory notebooks, lectures, novels, poems, popular literature, musical compositions, software, textbooks, refereed literature, recordings, theses, and dissertations. All such works shall be considered the intellectual property of the author(s) regardless of their form of expression, except as he or she may voluntarily choose to transfer such property, in full, or in part. Professors and staff are encouraged to create original works within their specialties and to receive the commercial rewards if applicable.

Authors of teaching and classroom materials, such as class notes, curriculum guides, or laboratory notebooks, shall retain ownership of the copyright, but shall grant the university a non-exclusive, royalty free, perpetual license to use, display, copy, and distribute such works for educational and administrative purposes within the institution, such as complying with accrediting agency requests.

3.3 Academic Works for Institutional Purposes

Works created as a specific requirement of employment or as an assigned institutional duty that may be included in a written job description or an employment agreement may be deemed works made for hire, and ownership will vest with the university. Examples are reports prepared by a dean or members of a faculty committee.

Any academic work in any form that was “specially ordered or commissioned” by Johnson University for a specific program, class, or collective work for institutional purposes shall be considered “work for hire” and therefore owned jointly by the developer and the university. This includes but is not limited to all courseware, software, and class materials for online education. Such work for hire will typically involve a designated fee paid to the faculty member for that project.

For example, Johnson University may pay content developers a one-time fee for developing online courses. The university will retain ownership of that course for use in the future without paying royalties to the content developer. The university may hire online instructors who will use the material created by the developer. On-campus instructors may be given access to those materials to be used in a hybrid course.

The content developer will also retain ownership in order to reuse the materials outside the institution. For example, if the developer is already employed by another institution, he or she will be able to use the materials he created at that institution. Or if the developer is employed by the university at the time he or she creates the material as a work for hire and then leaves the university for employment elsewhere, he or she will be able to use the material.

A work should not be treated as “work for hire” merely because it is created with the use of university resources, facilities, or materials of the sort traditionally and commonly made available to faculty members.

In the case of works for hire for which a faculty receives additional compensation, a written agreement will explain the respective rights of the individual faculty member and the university concerning ownership, control, use, and compensation. Appropriate forms will be provided by the Provost to clarify issues of ownership for any work contracted for institutional purposes. The developer will be considered as a contractor doing work for hire. These forms will be completed by both parties before any work is ordered and any payments made to internal or external contractors. The forms will be a condition of employment.

3.4 Copyright Legend

All works copyrighted by Johnson University shall bear the legend “© Johnson University. All rights reserved.”

4. Inventions

Faculty members and the university shall share the ownership and disposition of patentable discoveries or inventions and intellectual property generated where there is a substantial use of university personnel or facilities not uniformly provided to other similarly-situated faculty members. The creator and the university shall negotiate the allocation specific ownership interest, amounts of remuneration, respective obligations, etc.

The rights to any invention not directly arising from an individual’s employment but with use of university resources will be negotiated on a case by case basis. Permission to use university resources for such purposes must be obtained from the Provost in advance.

Any invention arising from but not directly related to an individual’s employment responsibilities and developed on his or her own time and without university resources will be owned by the inventor.

5. Distribution of Copyright and Patent Income

Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor.

Funds received by the university from the sale of intellectual property owned by the university shall be allocated and expended as determined solely by the university. Johnson University assumes all financial responsibility for intellectual property to which it takes ownership. The Provost or someone appointed by the Provost will assess patenting costs, copyrights, marketing and licensing of inventions, software, courseware and all other copyrighted works. The university assumes responsibility for acquiring appropriate legal counsel when necessary.

Funds received by the faculty member and the university from the sale of intellectual property owned jointly by the faculty member and the university shall be allocated and expended in accordance with the specific agreement negotiated between the parties.

All income from royalties or transfer of copyrights will be administered through the Finance office of the university.

6. Intellectual Property Review Board

6.1 The IPRB

Johnson University will appoint an Intellectual Property Review Board (IPRB) as an advisory body to the administration and faculty. The board will be comprised of at least four persons, equally apportioned between the administration (selected by the Provost) and the faculty (selected by the faculty). Board members will serve staggered two-year terms. The board will meet at least one time each year. The IPRB will elect one person to serve as chair for one calendar year, beginning in January.

The purpose of this board is to advise the administration and faculty about matters relating to the Intellectual Property Policy. The IPRB shall monitor and review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies when such changes affect existing policies. It will also serve as a forum for the receipt and discussion of proposals to change existing institutional policy and/or to provide recommendations for changes to existing policies.

6.2 Disputes Concerning Intellectual Property

Disputes over ownership, and its attendant rights, of intellectual property will be decided by the IPRB. Any person disputing a decision or policy of Johnson University concerning intellectual property will be advised to appeal to the IPRB. The IPRB will make an initial determination of whether the university or any other party has rights to the invention or other creation, and, if so, the basis and extent of those rights. The IPRB will also make a determination on resolving competing faculty claims to ownership when the parties cannot reach an agreement on their own. The IPRB will attempt to resolve the dispute within two weeks of written notification from the person making the appeal. If a satisfactory negotiation of the dispute cannot be made within two weeks, the Provost will appoint legal counsel and/or an independent mediator agreed upon by the university and the person(s) disputing the policy.

The IPRB will review the merits of inventions, and other creations, and make recommendations for the management of the invention, including development, patenting, and exploitation. If the inventors/creators disagree with the determination of the IPRB, he or she may appeal to binding arbitration. The cost of the arbitration shall be borne equally by the university and the creator(s).

**Contract for Work for Institutional Purposes
Johnson University**

Johnson University hereby commissions _____ to develop, write, modify or create as a work for hire the following project:

[Insert written description of the project here.]

To be completed by the date indicated: _____

This project is considered to be within the scope of employment for the employee. The university and the developer will retain shared ownership of the materials so that both may use them in the future.

This person completing this project will be compensated as follows:

[Insert fees and/or salary description here.]

I, the undersigned, attest that the work described above is a “work for hire” project, and I agree to the terms of employment for this project.

Name

Date