

<b>Policy Number/Title:</b>	1.3.2.02 Intellectual Property Rights
<b>Effective Since:</b>	02/18/2025
<b>Last Revision Approved:</b>	02/18/2025
<b>Responsible Office:</b>	Intellectual Property Rights Committee; Academic Affairs

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### **1. Scope:**

All faculty, staff, and students engaged in research that may lead to intellectual property.

### **2. Definitions:**

For the purpose of this document, intellectual property is defined as any product, new or useful process, or idea resulting from scholarly or creative activity regardless of whether it is eligible for protection under provisions of copyright, patent or trademark law. Examples of intellectual property include (but are not limited to) writings, art works, musical compositions and performances, literary works, architecture, new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, cell lines, data sets, software, musical processes, or unique and innovative uses of existing inventions. Intellectual property is created when something new and useful has been conceived or developed, or when unusual, unexpected, or non-obvious results, obtained with an existing invention, can be practiced for some useful purpose. Intellectual property can be created by one or more individuals, each of whom, to be a creator, must have conceived of an essential element or have contributed substantially to its conceptual development.

A blueprint course is designed and developed as a model for subsequent offerings of the same course. All those who teach the course use the blueprint, which makes some areas of the course standard and unchangeable and other areas term-specific or instructor-specific with placeholders for items, such as the syllabus, schedule, announcements, and messages. The blueprint course model provides a common look, feel, and navigation for students and faculty in a given program.

Creators of intellectual property are defined as faculty, staff, or other persons employed by Winthrop University, whether full- or part-time, or serving in an adjunctive capacity. Creators also include visiting faculty and researchers and any other persons, including students, who create or discover intellectual property using University development and resources as outlined below and whose role in its creation has been agreed upon through previously signed statements.

### **3. Policy:**



It is in the interest of all members of the university community to foster the creation of the highest quality intellectual properties that further the academic mission of the University; foster the dissemination of new knowledge and the maintenance of high academic standards to improve the education we provide our students and the service we provide to the citizens of the State of South Carolina; and to provide incentives for university faculty, staff, and students to participate fully in the use and creation of intellectual properties. Strong mutual interests are shared among the university, the faculty, the staff, and the students in the appropriate allocation of the ownership rights associated with such intellectual properties; and the rights that belong to the owners of intellectual properties should be allocated so as to optimally support the mutual interests of the university, faculty, staff, and students.

The stewardship of such intellectual properties is an important responsibility of both those who create these byproducts of human knowledge and the University sponsoring them. Because of the advent of new technologies and the ability to mass-produce them at will, questions about the ownership of intellectual property created by members of the Winthrop community have arisen. This document sets forth Winthrop University's Intellectual Property Rights Policy concerning the stewardship of these various creations. It will supersede the version ratified by the Board of Trustees in June 2003 and revised in 2017.

#### **4. Procedures:**

The Winthrop University Intellectual Property Rights Policy applies to all University creators in each constituent academic or administrative unit, both full and part-time, including faculty, staff, and to students of each constituent academic or administrative unit. Except as stated in Categories III.2, 3, and 4 below, intellectual property will be the sole property of the originator (faculty, staff, or student as inventor, author, creator, or designer).

Ownership of and rights to intellectual property invented, authored, or designed by Winthrop creators and subject to protection by patent, copyright, or trademark law shall be categorized as follows:

1. Individual scholarly/aesthetic product,
2. University-assisted product,
3. University-commissioned product ("Work-for-Hire"),
4. Third-party sponsored/contracted product.



## 1. Individual Scholarly/Aesthetic Products

Intellectual property that is produced outside of the terms of primary employment and not part of a directed assignment at Winthrop and that makes no more than incidental use of Winthrop resources is considered part of the employee's usual academic environment (such as the usual office, studio, laboratory, computer, and library privileges) shall be owned by the creator who produces the individual product. (The general obligation of faculty to produce scholarly works does not constitute such a directed assignment.)

The items most commonly considered as individual scholarly/aesthetic products are those created by faculty members, non-faculty researchers, or students as part of their ongoing intellectual inquiry, creative impulses, and pedagogical activities and are disseminated among the scholarly and creative communities primarily for the advancement of knowledge. Typically these works reflect research and/or creativity that, within the University, are considered as evidence of professional advancement or accomplishment and are submitted in partial fulfillment for the granting of tenure and awarding of promotion. Such works include scholarly publications, journal articles, reports (contracted or otherwise), research bulletins, monographs, books, plays, choreography, poems, and works of art. In some scholarly disciplines, they may include products such as (but not limited to) software, biological and chemical compounds, data sets, and instructional materials.

Such items are usually protected by copyright rather than patent; copyright protects such products from the moment of their fixation in a tangible medium of expression, that is, instantly and automatically. They may be created spontaneously or take years to develop. If the creation of an individual scholarly/aesthetic project will involve the use of significant institutional resources (as defined in the next section), the creator and the University should agree before the project begins on the use of facilities, allocation of rights to use the work, and the recovery of expenses and/or sharing of benefits from commercialization of the work.

Our faculty enjoy royalties on various creative expressions (whether in print, tangible form, or electronically reproduced). Nothing in this policy should be interpreted to impinge upon or constrict those royalties. One hundred percent of any royalty, sale, or licensing gross income accruing from individual scholarly/aesthetic products shall belong to the creator. If the creator of such individual scholarly/aesthetic products should leave the University, they retain the rights to any such products created at Winthrop unless they have assigned the rights elsewhere. Winthrop will assert no ownership to individual scholarly/aesthetic products created before the creator was employed by or enrolled at Winthrop University.

Faculty will report any new creations (or uses) to their chairs or deans. The disclosure should be less formal than that involved for discoveries, inventions, and patents but should come early in the creation process and will normally be reflected in the faculty member's



Annual Report. Only with such disclosure can the University have a good sense of the intellectual property creation and how the administration can fulfill its obligation to support such work.

## 2. University-Assisted Products

Some intellectual property will be produced outside of the terms of primary employment at Winthrop that will make significant use (other than incidental use as defined above) of university resources not usually assigned to an employee as part of his/her ordinary appointment and that consequently requires specific, case by case permission of one's Dean and/or department head prior to use of those resources. Such products will be deemed university-assisted products.

Examples of such products include, but are not limited to, those for which the creator is granted additional research funding or support; those for which time is reassigned from the creator's usual employment responsibilities; or those for which the creator is provided additional equipment, space, supplies, travel, staff, marketing support, use of University owned technologies, or similar resources. Such university assisted-products shall be owned jointly by the faculty, staff, or creator who produced the intellectual property and by the University.

Because new technologies and works created with them (as, for example, distance education or web-based courses, with the exception of Blueprint courses – see below) are always in a state of ongoing creation, they commonly involve collaborative ownership and significant use of University resources. For instance, a faculty member may use her or his knowledge and expertise to develop the content of a web-based course in her or his field, then collaborate with other University employees such as programmers, graphic artists, video technicians, marketing

specialists, and financial professionals in order actually to deliver the course. Such creations would be an example of significant use of University resources to create or develop a university-assisted product. In such cases, the parties should execute an agreement regarding the sharing arrangement before starting the project that will result in creation of the intellectual property.

Royalties, sales or license fee gross income from the university-assisted product shall be shared between the employee and Winthrop as agreed at the time written permission for significant use of the Winthrop resources is given. In no case shall the employee's share of the gross income be less than 50 percent. Responsibility to file copyright, patent, or trademark claims shall be negotiated and included in the authorization from one's Dean and/or department head. In the event Winthrop funds the copyright, patent, or trademark application process, Winthrop shall have a paid-up, non-exclusive license to use, without other cost, the work for educational purposes.



When income generated from various discoveries and creations in teaching and research is small (under \$25,000), asserting University ownership will doubtless discourage innovation. Creators, therefore, will retain any generated revenue up to and including \$25,000. Sharing beyond that limit for creations in which University resources are instrumental in the production is set in the table below. The first \$25,000 income for any individual item of intellectual property shall be paid to the creator in full, after which distribution is as follows:

	\$25,001– \$50,000	\$50,001– \$75,000	\$75,001– \$100,000	\$100,001– \$125,000	Over \$125,000
Creator	70%	65%	60%	55%	50%
Winthrop	20%	25%	25%	28%	30%
Reinvestment <sup>ii</sup>	10%	10%	10%	17%	20%

In the case of the death of the creator, any unpaid royalties shall be paid to the creator's estate unless otherwise specified. In all cases of university-assisted products, the University must specify before the task is undertaken for how long and over how many iterations of said creation its ownership exists before that creation is forthcoming. Any university-assisted product that the University has expressed no interest in owning ab initio, cannot, at a later date, be declared owned by the University. The University's interest should not be asserted when there is noncommercial use of new information technologies by faculty or for the commercial use of such technologies until the revenues generated are substantial.

The University will normally exert copyright and/or ownership for three years on any university-assisted project. At the end of the three years, the University has the right to renew its claim for two more years, provided it pays an appropriate royalty to the creator. The University may continue to renew its claim every two years. If the University does not renew its claim, the creation becomes the full possession (including copyright) of the creator.

Many university-assisted products will fall under the category of patentable, rather than copyrightable, works. Since publication of an idea embodied in a patentable product bars the filing of a patent application in every country in the world except the United States and starts a very specific clock running on the right to file that patent application, it is crucial that the University be aware of the potential development of such products long before they are completed in order to comply with the requirements for applying for patent, trade secret, or other legal protections for the product. Therefore creators of such potentially-patentable products must inform their Deans or department heads in writing before the work to produce such products is undertaken, and comply with all the appropriate policies and responsibilities set out in this document to protect the rights of both the creator and



the University.

More and more, Winthrop creators are working outside the University in consulting capacities. In such settings, they have access to resources they might not otherwise have access to on campus. Nevertheless, when creations (especially those curricular-related ones) are produced that the University has either substantially supported or provided release or reassigned time for and wishes to use in other educational outreaches, the University shares ownership. This should be made clear early on in this process and before the creator has signed any consulting agreements.

### 3. University-Commissioned Products

Intellectual property produced as the primary employment task or as temporarily-reassigned full-time Winthrop activity, when that task or activity explicitly is to produce a specific work subject to protection as intellectual property, shall be owned by Winthrop. In some cases this will be clear from the job description or the contract of employment. One hundred percent of any royalties, sales, or licenses accruing from such commissioned products shall belong to Winthrop. Such directed work assignments must be defined by written contractual agreement before the work is undertaken by the employee.

A blueprint course may be developed by an individual faculty member, or group of faculty members within a department, college, or across the University, for the purpose of providing standardized content for specific course[s]. The university owns the copyright on the Blueprint course, while the faculty member and the university shall both retain a non-exclusive license to use these materials in educational settings, even if the faculty member leaves the university.

Distance Education Specific Application – A Blueprint course (e.g., offered within an approved online degree program) shall be initiated and commissioned by the university and created by a faculty member, who shall receive a stipend. The university owns the copyright on the Blueprint course, while the faculty member and the university shall both retain a non-exclusive license to use these materials in educational settings, even if the faculty member leaves the university. A Blueprint course contract must be signed prior to work commencing.

### 4. Third-Party, Sponsored/Contracted Products

Intellectual property produced as part of a grant or contract for a third party under an agreement with Winthrop and the employee shall adhere to the terms of the specific contract. All such contracts should be developed before the work is undertaken, must contain an intellectual property ownership clause, and must be approved and signed by the employee's dean and/or department head and by the vice president of the employee's area or by the appropriate administrative officer of Winthrop.



## **Responsibilities**

### **1. Exercising Rights**

The University shall not exercise intellectual property rights in any work created or discovered by a creator other than works meeting the definition of university-assisted products, university commissioned products, or third-party contracted products, unless such rights are voluntarily transferred by the creator or secured through licenses set forth in this policy.

Winthrop University shall have the right to determine the disposition of applicable intellectual property which it holds or in which it shares ownership under this policy. That determination shall include the interests of the University, the public, and the creator, including the creator's professional or ethical convictions concerning the use of intellectual property.

Responsibility for disposition of intellectual property resides with the Office of Academic Affairs , subject to policies approved by Faculty Conference and university leadership.

### **2. Creators' Responsibilities**

Creators must promptly disclose to the University (or dean or chair) any applicable jointly-held intellectual property creation as detailed above. Disclosure shall be made on Intellectual Property Rights Form. Copies must be sent to the Provost, Department Chairperson and College Dean. The Office of Academic Affairs shall routinely report all disclosures to the President.

Creators may not assign or license rights of intellectual property that are jointly held with the University to third parties without the written consent of the University. All assignments must be in writing and shall conform with the requirements of this Policy. Creators of jointly-held intellectual property shall assist the University to obtain statutory protection for the intellectual property

and to perform all obligations to which it may be subject, including executing appropriate assignments and other documents required to set forth effectively the ownership of, and rights to, said intellectual property.

The creator retains responsibility for intellectual stewardship of his or her intellectual property. The creator shall have agreed, or not, to be identified as the creator by the University and by subsequent licensees and assignees, as required by law. Because premature or unauthorized disclosure may defeat legal protection of intellectual property, the University must inform creators of the consequences of premature or unauthorized





disclosures. The University and creators must work together to facilitate both scholarly disclosures and the acquisition of appropriate intellectual property protection.

### 3. University Administration of Intellectual Property

Primary responsibility for identifying, protecting, and managing applicable intellectual property resides with the Office of Academic Affairs. All disclosures shall be submitted to the Office of Academic Affairs, which will determine whether Winthrop University desires to obtain protection for jointly-held intellectual property or otherwise make use of the intellectual property. The Office of Academic Affairs shall notify the creator promptly after it has determined whether it is in the best interest of Winthrop University to seek protection for jointly-held intellectual property. If Winthrop University decides to seek protection for such property, it shall proceed either through its own efforts or those of an appropriate private firm or attorney to obtain protection and/or manage the intellectual property. In those instances where delay would jeopardize obtaining the appropriate protection for the intellectual property, the creator may request that the Office of Academic Affairs expedite its decision whether or not it shall seek statutory intellectual property protection.

In the event that a faculty member who previously created a non-blueprint course leaves the University, the University does not have permission to use or grant access to either the course or its materials without the written permission of that departing faculty member. In this case of a non-blueprint course, the University should make every reasonable attempt to receive written permission from the departing faculty member. These requests should only result from necessity, stemming from the ongoing sustainability of the overall academic program or other significant needs such as accreditation. Moreover, the request should only be to use or grant access to that course or materials as it relates to the ongoing delivery of that course; the content or materials contained within that course should not be used for another course to which the departing faculty member made no contributions. If permission by that departing faculty member is not available after reasonable efforts, or a rights holder cannot be found, the course and material may be determined to be “orphan works” and may fall under the definition of fair use.

Data, such as grades or other specific measurable outcomes within an individual course that are used for accreditation shall be accessible to the program and University administration at all times.

### 4. Specific Responsibilities

The University acknowledges the importance of transferring intellectual property appropriately, effectively, and frugally. To that end, the University shall establish efficient mechanisms for technology transfer in order to maximize any value of intellectual property to the faculty and the University.





The University administration shall:

- A. Provide oversight of intellectual property and technology transfer according to this policy and any other pertinent University policies;
- B. Assist Colleges in aiding and abetting effective transfers and College policies and procedures consistent with University policies;
- C. Provide legal services and cooperate with the Colleges in promoting and licensing intellectual property; and
- D. Take appropriate actions to protect the University's intellectual property.

The Deans of the Colleges shall:

- A. Promote intellectual property transfers consistent with the College's objectives and academic environment;
- B. Establish policies and procedures for intellectual property transfers, avoiding conflicts of interests consistent with University policies; and
- C. Review and approve all agreements that convey or affect the University's rights to intellectual property originating in that College as specified in this policy.

Creators of intellectual property shall:

- A. Disclose to appropriate University or College officials the creation of intellectual property;
- B. Conduct intellectual property transfer activities consistent with University and College policies and procedures, including those governing conflicts of commitment and conflicts of interest; and,
- C. Cooperate with the University in defending and prosecuting patents and in legal actions taken in response to copyright infringement.

## 5. Student Intellectual Property Rights

Students retain their own intellectual property rights unless signed away, and this includes any print or non-print posting of papers (even for use as



examples) by current or former students. Written permission of students who are the creators of papers, projects, research, and similar materials used in this way is required. Student engaged in research guided or directed by faculty that will later be used either commercially, or beyond the current semester, are subject to all contractual agreements between the parties.

#### 6. Material Made Available for University Use

In the course of their contractual duties, many faculty, staff, and students create materials that are subject to intellectual property protection, and that are voluntarily made available for the use of the University without expectation of further compensation<sup>iii</sup>. The University shall retain a non- exclusive, royalty-free license to use such material made available for the use of the University, provided that significant contributions of the creator(s) are acknowledged and there is mutual, written consent. Such licenses shall not include the right to exploit the work for profit outside of the University but may include its use in distance education delivery.

#### 7. Licenses for Non-Commercial Research and Teaching

Given preexisting copyright laws, many faculty, staff, and students encounter not only high costs but also considerable inconvenience in obtaining permission to use material that is subject to intellectual property protection for research and teaching. Creators of intellectual property are, therefore, encouraged to seek from publishers and other persons who assign rights to intellectual property a non-exclusive, royalty-free license for their own non- commercial research and teaching and, where possible, for anyone within the University to use that intellectual property for non-commercial research and teaching<sup>iv</sup>. Appropriate units shall work to assist creators in securing such licenses.

#### 8. Assignment or Licensing of Intellectual Property by the Creator(s)

##### A. Owners

Winthrop University may, at its discretion, permit the creator(s) to assign or license jointly-held applicable intellectual property. The University may not withhold consent for assignment or licensing unless the University intends to pursue protection for such jointly-held intellectual property. Such assignments or licenses shall be subject to the following provisions, unless waived in writing by the University.

- Winthrop University shall retain for itself a royalty-free license to use jointly- held intellectual property for non- commercial research and teaching within the University.
- Winthrop University shall receive a share of all proceeds generated from commercialization of university- assisted products after the creator has recovered



documented out-of-pocket costs for obtaining legal protection for the intellectual property. The shares of such proceeds will be governed by the formula above.

## **B. Creators**

In the event the creator(s) receives a specific request for assignment or licensing of applicable jointly-held intellectual property, they must promptly provide the University with sufficient information to determine the marketability of the applicable intellectual property. The University shall notify the creator in writing of any objection to the proposed assignment or licensing no later than 45 business days after receiving the creator's request to assign or license and the supporting information.

## **9. Intellectual Property Transfer/Commercialization Agreements**

Winthrop University welcomes agreements with third parties for the development, use, dissemination, and commercialization of intellectual property, consistent with the University's mission and its policies on intellectual property. Any agreement to license or transfer ownership of Winthrop University's intellectual property by means of sale, assignment, or exchange shall be subject to this Policy and shall include the terms necessary to fulfill the requirements of this Policy. Agreements relating to the development and/or commercialization of intellectual property may provide that the contracting entity bear the costs of obtaining protection for intellectual property. Any intellectual property held by Winthrop may not be transferred without written consent of the University.

## **Procedures**

Ownership and gross income rights can be defined by any of the above categories and are dependent on the specific written contractual terms agreed upon by all parties. Each Winthrop employee has the responsibility to protect intellectual property during development. The employee must establish intellectual property rights within 60 days of initiating development work by providing written notice to the Dean or department head of his or her area, who will report it promptly to the Provost. The Provost must then provide within 30 days a written determination of Winthrop's intent to pursue or to relinquish any rights to the subject intellectual property. In the event Winthrop elects to relinquish its intellectual property rights, the rights will be assigned to the creator.

The University has an interest in how its name is used. Faculty creators may not decide whether the University should sponsor a program. Use of the University name for non-sponsored research or creation must be approved in writing by the Office of the President and in advance of use.

## **Dispute Resolution**



The creator of intellectual property may appeal any adverse determination concerning the identification, protection, and/or management of intellectual property to the University Office of Grants and Sponsored Research Development, whose determinations may be appealed to the Provost and Dean of the appropriate college. Further appeals are subject to existing University policy concerning review of administrative decisions.

In the event of a dispute over the judgment that assigns a particular product to one of the four categories of intellectual property as outlined above, the dispute is to be adjudicated by the Committee on Academic Freedom, Tenure, and Promotion, augmented by additional members:

If the dispute involves a faculty member, the Committee will be augmented by an administrator or professional staff member outside the faculty member's academic department and two additional faculty members, all three agreed upon by the committee chair and the Provost; If the dispute involves a non-faculty employee, the Committee will be augmented by three professional staff members outside the staff member's administrative division.

The augmented Committee on Academic Freedom, Tenure, and Promotion will make its recommendation to the Provost or, in the case of a dispute involving a non-faculty employee, to the vice president of the employee's area.

<sup>i</sup> A Vision of Distinction, 2002-2003.

<sup>ii</sup> "Reinvestment" refers to a research and development fund that will either be created or named. This fund will be for the exclusive use of faculty involved in research.

<sup>iii</sup> The following are examples of such materials but are not inclusive of all such productions or creations: intellectual property contributions of creators to University committee reports, musical or dramatic performances or productions, and departmental lecture note files.

<sup>iv</sup> For example, it was determined that the author of a scholarly article did not have the right to repeated use of said article for routine class distribution without written permission from the publisher. Examples of language that may be included in contracts to ensure such rights may be found in the University of Texas "Policy and Guidelines for Management and Marketing of Copyrighted Works."

## **5. Resources:**

Student Handbook:

<https://www.winthrop.edu/uploadedFiles/studentconduct/UniversityPolicies.pdf>



#### **6. History of Revisions:**

06/30/2024	Minor Revisions
02/18/2025	Minor Revisions
03/08/2021	Minor Revisions
09/01/2018	Minor Revisions
01/01/2003	Policy first established