

**Title:** Intellectual Property ~ Ownership & Use

**Approval:** President

**Policy Type:** College

**Policy Owner:** Dean of the College & VP for Academic Affairs

**Responsible Office:** Associate VP for Information Services & Resources

**Revision History:**

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1. Purpose

Kentucky Wesleyan College strives to foster the intellectual growth and creativity of its faculty, staff and students by a variety of methods including encouraging the development and dissemination of ideas, discoveries and tangible creations. It supports the making of creations for teaching, scholarship, and/or professional development. This policy is intended to guide faculty, staff, and students in identifying, disclosing, protecting and developing intellectual property, and seeks to clarify and define the ownership of works produced by members of the Kentucky Wesleyan community for their benefit and the benefit of the College.

2. Authority

This policy is issued under the authority of the Kentucky Wesleyan Board of Trustees, shall be administered by the Vice President of Academic Affairs, and is subject to any applicable laws, regulations or specific provisions of the grants or contracts which govern rights in inventions made in connection with sponsored research.

3. Scope

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

4. Definitions

4.1. **Copyright** is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of “original works of authorship,” including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to

both published and unpublished works.<sup>1</sup>

4.2. A **patent** is a limited duration property right relating to an invention, granted by the United States Patent and Trademark Office in exchange for public disclosure of the invention.<sup>2</sup> Invention (patentable idea) shall mean any innovation, or process (way of doing or making things), device, contrivance, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, or any computer software originated from a discovery or finding resulting after study, research or experimentation, whether or not patentable under the law of any nation.

4.3. A **work made for hire**<sup>3</sup> is one which is:

4.3.1. prepared by an employee within the scope of his or her employment, or

4.3.2. 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. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for a publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes; and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and intended to be used in systematic instructional activities.

4.4. A **trademark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others. A **service mark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service rather than goods. The term “trademark” is often used to refer to both trademarks and service marks.<sup>4</sup>

## 5. Ownership of Patents & Copyrighted Works

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<sup>1</sup> U.S. Copyright Office. *Copyright Basics*. <http://www.copyright.gov/circs/circ01.pdf>, accessed 1/25/16.

<sup>2</sup> U.S. Patent Office. “Trademark, Patent, or Copyright?” <http://www.uspto.gov/trademarks/basics/definitions.jsp>, accessed 1/25/16..

<sup>3</sup> U.S. Copyright Office, “Works Made for Hire Under the 1976 Copyright Law,” <http://www.copyright.gov/circs/circ09.pdf>, accessed 1/25/16.

<sup>4</sup> U.S. Patent Office. “Trademark, Patent, or Copyright?”, <http://www.uspto.gov/trademarks/basics/definitions.jsp>, accessed 1/25/16.

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- 5.1. One of the College's primary benefits to society is the production of original works by its employees and students, and in order to best encourage such activity, it is the general policy of Kentucky Wesleyan College that patentable **inventions** and **copyrightable works** shall be the property of the author or creator except as defined in sections 5.2 and 5.3.
- 5.1.1. Unless created in the context of employment by the College, all creative works by students, whether singly, in collaboration with non-College employees, or in collaboration with Kentucky Wesleyan personnel, shall be deemed the property of the student.
- 5.1.2. In the case of full employee or student ownership, revenues shall accrue exclusively to the creator or creators.
- 5.2. The College will retain exclusive ownership of Intellectual Property in the following circumstances. However, it may voluntarily choose to assign or transfer its ownership rights in the property, in whole or in part.
- 5.2.1. When creation of the work by faculty or staff was assigned, authorized by, and usually under supervision of the College the Intellectual Property shall be considered under the principles of **work made for hire**.
- 5.2.2. When a faculty, staff, or student author voluntarily transfers his or her rights to the work, in whole or part, to the College by means of a **negotiated contract transfer**. The transfer must be a written document signed by the creator.
- 5.2.3. When owned exclusively by the College, revenues accrued from intellectual property shall be allocated and distributed at the sole discretion of the College Administration the provisions of section 5.1.2.3 notwithstanding.
- 5.3. When a **joint work** is produced with the use of substantial College resources per advance arrangement and written agreement. Substantial College resources are services, support staff, equipment or facilities provided by the College that go beyond what is traditionally and commonly made available to the faculty, staff, or students for the preparation of course materials, work materials, or the fulfillment of typical work or academic-related obligations.
- 5.3.1. Revenues derived from Intellectual Property owned jointly by the College and any employee or employees will be allocated in accordance with any specific written agreement between or among them that governs this issue. In the absence of a written agreement specifying allocation of revenues from jointly-owned Intellectual Property, the following will apply:
- 5.3.1.1. All costs incurred in the production of, and in the process of perfecting, transferring, and protecting the rights to, the Intellectual Property will be

reimbursed to the party incurring them;

- 5.3.1.2. An accurate accounting of all such costs will be provided by the appropriate party to the other party or parties upon request;
- 5.3.1.3. All net revenues, after costs have been reimbursed, will be divided evenly by the parties, with the College taking a one-half share and the other party or parties taking or evenly dividing, as the case may be, the other one-half share.
- 5.3.1.4. The College and/or the creator or creators of the work may, in appropriate circumstances, take equity positions in companies licensed to market or use Intellectual Property.

5.3.2. **Special Agreements** ~ The College reserves the right to flexibility in applying this policy on a case-by-case basis.

- 5.3.2.1. 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 that agreement.
- 5.3.2.2. Under the terms of certain contracts and agreements between Kentucky Wesleyan College and various agencies of government, private and public corporations, and private interests, Kentucky Wesleyan College may be required to negotiate agreements to provide the sponsor with intellectual property rights to Kentucky Wesleyan inventions. Kentucky Wesleyan retains the right to enter into such agreements whenever such action is considered to be both in its best interest and in the public interest. Ordinarily, Kentucky Wesleyan College will not agree to grant rights in future inventions to private corporations or businesses except as set forth in this Policy.

5.4. **Use License** ~ As a condition of employment, all College employees shall assign a perpetual, non-exclusive, royalty-free license to the College to use any work copyrighted or patented by them for use in furtherance of its academic mission (e.g., in the classroom, at lectures, in promotional materials, etc.), except where the creator is required to assign all rights to a third party such as a publisher.

5.5. **Disclosure** ~ College personnel who alone or in association with others create patentable and/or copyrightable works under any of the circumstances outlined in “College Ownership” above must disclose the matter and obtain prior authorization from the Office of Vice President of Academic Affairs. Such disclosure shall be made when it can be reasonably concluded that the 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.

## 6. Use of Copyrighted Works

- 6.1. It is the policy of Kentucky Wesleyan College to comply with the provisions of United States copyright law (*Title 17, United States Code* and applicable case law). All Kentucky Wesleyan College faculty, staff and students are expected to refrain from using copyrighted works in any way not authorized by (a) **fair-use** guidelines, including those specifically granted to educators in classroom settings, (b) specific exemptions in the copyright law, or (c) licenses or written permission from the copyright owner. Individuals who willfully disregard copyright law place themselves at risk of civil and criminal legal action in addition to the College's disciplinary actions.
- 6.2. "**Fair use**" is a copyright law doctrine that permits the reproduction or other use of a copyrighted work, without the copyright owner's permission, for purposes such as criticism, commentary, news reporting, teaching and research. Rather than specifying which uses are fair, copyright law establishes a four-factor balancing test for courts to employ on a case-by-case basis. These fair use standards, embodied in section 107 of the Copyright Act, are:
  - 6.2.1. The purpose and the character of the use, including whether it is for commercial or non-profit educational purposes.
  - 6.2.2. The nature or type of the copyrighted material (i.e., periodical, film, book, etc.).
  - 6.2.3. The amount and substantiality of the portion used in relation to the whole.
  - 6.2.4. The effect of the use on the potential market for or value of the copy-righted material.
- 6.3. Many materials, such as government documents and older publications, are in the public domain and, therefore, not protected by copyright. These items may be photocopied for reserve, distributed in class, and reproduced freely without permission.
- 6.4. Library Reserves
  - 6.4.1 Materials placed on print or electronic reserve must comply with copyright regulations and conform to the guidelines for fair use according to Title 17, United States Code.
  - 6.4.1 All materials placed on print or electronic reserve will be at the initiative of faculty for the non-commercial, educational usage of students.

- 6.4.2 Users may make one copy of reserve materials for private study, personal reading, research, or scholarship.
7. Faculty, staff, and students may use the **Kentucky Wesleyan name, logos, and marks** to identify themselves (e.g., John Doe, Professor of Physics, Kentucky Wesleyan College). Kentucky Wesleyan's name, logos, and marks shall not be used by individuals or entities in a manner that implies College endorsement or responsibility for particular activities, products, or publications for commercial purposes, or by any individual or group promoting itself, without the express written permission of the Vice President of Academic Affairs.
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