



XAVIER UNIVERSITY

Intellectual Property and Patent Policy

Effective: May 25, 2023

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Responsible University Office: Office of the Provost

Responsible Executive: Provost and Chief Academic Officer

Scope: Students, Faculty, and Staff

A. REASON FOR POLICY

Xavier University is committed to providing an atmosphere conducive to excellence in teaching, scholarship, research and creative activity. Faculty, staff and students are encouraged to engage in the scholarly pursuit of knowledge, artistic production and basic and applied research; they are further encouraged to publish their results freely and whenever possible. Such activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide educational opportunities for participating students, and promote the public welfare.

This Policy sets forth principles and processes related to intellectual property for faculty, staff, students, and independent contractors of the University. The University recognizes and generally affirms the traditional academic expectation around ownership of Course Materials and Scholarly Works. In the spirit of Jesuit educational values and collegiality, the University encourages sharing and collaboration between Xavier community members.

B. DEFINITIONS

Copyright: protection for original works of authorship as soon as an author fixes the work in a tangible form of expression.

Course Materials: includes instructional materials and scholarly works, created by one's own initiative with the aid of standard and customary University resources. Course materials could include, but are not limited to, course outlines, syllabi, lecture notes, assignments, materials located within the learning management system(s), websites, online instruction materials, and other materials developed for a particular course.

Creative and Scholarly Work: artistic and intellectual creations such as journal articles, books, book chapters, textbooks, creative works, websites, unpublished results, artwork, or poetry.

Faculty: as defined in the Xavier Faculty Handbook, faculty includes all principal, participating, affiliated, visiting, adjunct, and emeritus professors.

Intellectual Property (“IP”): the products or creations of the human mind or intellect that is protected from unauthorized use by others.

Invention: a novel and demonstrably useful technical innovation or discovery that meets the requirements of patentability under patent law.

Inventor: the individual or, if a joint invention, the individuals collectively who invented or discovered the subject matter of the invention. (35 U.S.C. §100).

Patent: governmental recognition of an invention or discovery that involves a new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, in accordance with the conditions and requirements of 35 U.S.C. §101.

Significant University Resources: an exceptional contribution of University resources or a contribution of resources that is beyond the Standard Resources available to University members to carry out their duties.

Sponsored Project: an activity that is sponsored, or funded, by an external organization, such as a federal, state, or private organization or agency. Sponsored projects can come in various forms, including but not limited to grants, contracts and cooperative agreements. Such an agreement will typically outline the work to be performed, the terms of the payments, ownership of the intellectual property, and publication rights. Sponsored projects are enforceable by law, and specified objectives are usually accomplished within a specified time frame, with payment being subject to revocation.

Staff: a Xavier employee who is not a faculty member, including exempt, non-exempt, full-time continuing, part-time continuing, and temporary employees.

Standard Resources: those resources readily available to faculty, staff, and the overall Xavier community, which could include the use of office space, ordinary access to University computers, equipment or networks, library resources, administrative/secretarial support staff, photocopying, and current University licensed software. By its nature, this definition cannot be all-inclusive, therefore, what is considered standard will depend on the functions and responsibilities of the department, college, or unit where the employee works.

Work Made for Hire: a work prepared by an employee within the scope of their employment; or a work specifically ordered or commissioned (through a written agreement) for use as a contribution to a collective or collaborative work, a part of a translation, a film or other audiovisual work, or a supplementary work. Supplementary work includes work prepared for publication as a secondary contributor to a work prepared by another, such as introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work. (17 U.S.C. §101)

C. POLICY

I. Faculty in General

- a. Creative and Scholarly Works and Course Materials: The University recognizes and reaffirms the historical academic expectation that all faculty own and control scholarly work, creative work and course materials created by their own initiative with the aid of Standard Resources.
 - i. Access to a faculty member's course materials does not provide permission to reuse.
 - ii. Access to course materials may be necessary for administrative oversight and does not automatically entail any IP infringement. Course Learning Materials may be accessed in accordance with university policies and Exhibit A to this Policy.
 - iii. Course Syllabi Maintenance: Xavier University maintains all course syllabi for accreditation and archival purposes.
 - iv. In extraordinary circumstances in which the current course instructor is unexpectedly unavailable, the department chair, school director, program director, program or course coordinator may appoint a new course instructor who will be granted access to and use of the course materials for the current semester. In the event that a faculty member departs the University under ordinary circumstances, the University does not maintain rights to use the course materials for instructional purposes.
- b. Inventions and Patents: All faculty inventions created of their own volition with Standard Resources shall be owned and controlled by the faculty who creates them. In the event the faculty uses Significant University Resources to create their invention, the faculty should work with their department chair and college dean to determine if Xavier would like to exercise its ownership rights in the invention and assist with the patent process.
- c. Work Made for Hire or Work Commissioned at the Request of the University: Materials, including copyrightable materials, created by Faculty within the scope of their administrative responsibilities (e.g., minutes created by committee chairs, annual reports created by program directors) are considered "work made for hire" and considered the IP of the University. The University also may own work product that was created as a specific requirement of employment or pursuant to an assigned institutional duty, which is consistent with this Policy.
 - i. The University may request or commission a faculty member to perform a specific task with a defined outcome that includes copyrightable materials;

said work shall be considered Work Made for Hire and shall be owned by the University. Such a request should be made or documented in writing, and could include the creation of course materials for use by other faculty (e.g., department-wide courses), which may or may not include additional compensation for the faculty creating the coursework.

- d. Department-Wide Course Materials: Colleges, departments and programs frequently create course materials collaboratively for consistent delivery of a specific course. Such materials will be owned by the University with a perpetual and irrevocable license to the collaborating faculty to use the course materials.
- e. Sponsored Projects: When copyrightable work is created using external funding from a sponsoring organization, the terms of that Sponsored Project (agreement) will supersede the general policy with regard to ownership.
- f. Internal Faculty Awards and Grants: The University and its departments and colleges offer competitive faculty-focused awards and grants throughout the academic year and summer. When applying for these awards and grants, faculty will be made aware of the applicable terms and the terms' impact on intellectual property, if any. Absent specific terms of the internal faculty award or grant, this Policy considers internal faculty awards and grants as standard resources.
- g. Xavier hereby retains an irrevocable, fully-paid, royalty-free, non-exclusive license to utilize a faculty member's Course Materials for non-academic, administrative purposes, which could include, but are not limited to course quality review, accreditation, and employment supervision and oversight.

II. Faculty Working with University Partner Programs

Xavier Colleges, Departments, and Programs work with partner institutions and companies to deliver educational services to our students. The following addresses faculty working in those scenarios:

- a. Course Materials: All Curriculum and Course Materials created by faculty working with University Partners are owned either by the University or the partner institution as determined by the contractual relationship.
- b. Creative and Scholarly Works: The University recognizes and reaffirms the historical academic expectation that all faculty own and control creative and scholarly works created by their own initiative with the aid of Standard Resources.
- c. Inventions and Patents: All faculty inventions created at the faculty's own volition and with Standard Resources shall be owned and controlled by the faculty who creates them. In the event the faculty uses Significant Resources or a Partnering Institution or Company's resources to create their invention, the faculty should work with their Department Chair and College Dean to determine ownership rights in the invention(s) and whether the Partnering Institution or Company or Xavier will assist with the patent process.
- d. Sponsored Project: When copyrightable work or an invention is created using funding from a sponsoring organization, the terms of that Sponsored Project (agreement) will supersede the general policy with regard to ownership.

III. Staff

- a. Work Made for Hire: Copyrightable materials created by Staff within the scope of their employment are considered “work made for hire.” The copyright in such work automatically belongs to the University.
- b. Creative and Scholarly Works:
 - i. The University does not claim ownership over creative and scholarly works created outside of the staff member's scope of employment unless Significant Resources are used.
 - ii. The University also recognizes its staff members make contributions to peer-reviewed scholarly articles and publications. Unless otherwise specified within this policy or in writing elsewhere, the University affirms that staff own and control those scholarly works.
- c. Course Materials: Sections C(I) or C(II), as applicable, provide the IP rights for staff who are teaching a course as an adjunct faculty member.
- d. Inventions and Patents: Inventions created by Staff within the scope of their employment are considered “work made for hire” and are owned by the University. The University does not claim ownership over inventions and patents created outside of the staff member's scope of employment unless Significant University Resources are used.
- e. Sponsored Project: When copyrightable work or an invention is created using funding from a sponsoring organization, the terms of that Sponsored Project (agreement) will supersede the general policy with regard to ownership.

IV. Students

- a. Coursework and Scholarly Works: The copyright in academic materials, including, but not limited to, student projects, papers, presentations, dissertations, theses, and capstones, etc., created by students in their capacity as students while at the University, belongs to those students. This includes both digital and analog materials.
 - i. A student can transfer copyright of materials to the University through a written agreement.
 - ii. Consistent with the Family Educational Rights and Privacy Act (FERPA), student work may be used internally at the University by those with a legitimate educational interest. Student Records, including coursework, are maintained according to the University's Records Management Policy.
 - iii. Students may be required to share their work publicly as a condition of participation in a course (e.g., digital projects, websites, blogs, social media). Students should be aware that End User Agreements may impact intellectual property ownership and should speak with their faculty in the event of privacy or ownership concerns.
- b. Student Employees- Work Made for Hire: When a student is employed by the University, the materials created within the scope of their job responsibilities are considered “work made for hire.” The copyright in such work automatically belongs to the University.

D. PROCEDURES

- I. Procedures for Patents and Inventions:
 - a. For those cases in which Xavier elects not to file an application for patent (and to which the University has no external obligations), the Inventor may request transfer of the University's rights. This request must be made in writing to the Provost or designee. The Provost will either grant the request or advise the Inventor of the University's plan to initiate the patent process and/or license(s) for the invention.
 - b. If Xavier elects to conduct a patentability search, and such search results in a patentable invention, the Provost and Chief Academic Officer or designee and the inventor will negotiate and memorialize the ownership arrangement in writing before filing the patent application.

E. EXHIBITS

Exhibit A – Office of Information Technology Procedures - Access to Course Materials

F. HISTORY (if applicable)

This is a new policy but extends and affirms through policy the historical relationship Xavier had with its faculty, staff and students regarding intellectual property.

Other applicable policies and/or resources:

[Cloud Storage Policy](#)

[Faculty Handbook](#)

[Family Educational Rights and Privacy Act \(FERPA\)](#)

[Information Security Policy](#)

[Privacy of Electronic Information Policy](#)

[Records Management Policy](#)

[Human Resources Policies](#)

[Student Handbook](#)

External:

[35 U.S. Code Title 35—PATENTS](#)

[Bayh Dole Act 1980 \(35 U.S.C. §200 – 212\)](#)

[U.S. Copyright Act of 1976 \(17 USC §101 et seq.\)](#)