

GLENVILLE STATE COLLEGE POLICIES

POLICY 52

INTELLECTUAL PROPERTY RIGHTS

52.1. General

1.1. Scope - This policy covers all types of intellectual property, including, in particular, works protected by copyright, patent and trade secret laws and addresses works including but not limited to: inventions, discoveries, trade secrets, trade and service marks, writings, art works, musical compositions and performances, software, literary works, and architecture.

1.2. Authority - WV Code §18B-1-6

1.3. Effective Date – December 2, 2015

1.4. This policy supersedes any or all previous GSC policies in reference to intellectual property rights; however, nothing in this policy shall conflict with the provisions of Board of Governors Policy 32 as it relates to ownership of electronic course materials.

52.2. Purpose

2.1. Glenville State College (hereafter referred to as the College) is committed to providing an environment that supports the learning, teaching, scholarship, and creative activity of its faculty, students, and staff. Within this context, the Intellectual Property Rights Policy (hereafter referred to as the Policy) is intended to:

2.1.1. Encourage excellence and innovation in teaching, scholarship, and creative activities by identifying and protecting the intellectual property rights of faculty, staff, students, and the College;

2.1.2. Encourage the notion that creative and scholarly works produced at Glenville State College should advance the state of knowledge and contribute to the public good;

2.1.3. Acknowledge and preserve the traditional property rights of scholars with respect to products of their intellectual endeavors (e.g., books, articles, manuscripts, plays, writings, musical scores, and works of art); and

2.1.4. Guide policy and process for commercial uses of intellectual property other than the traditional products of scholarly work.

2.2. Glenville State College created, in 1990, the Glenville State College Research Corporation (hereafter referred to as the GSCRC) for the express purposes of: (a) to foster and support research, development, training, and education at Glenville State College, and (b) to provide evaluation, development, patenting, management and marketing services for inventions of Glenville State College faculty, staff, and students. The GSCRC is incorporated in this Policy with those responsibilities, goals and tasks.

52.3. Definitions

3.1. The term “rule” shall be defined as it is in WV Code §18B-1-6(c). The current definition is quoted below:

3.1.1. §18B-1-6(c)(1) - "Rule" means any regulation, guideline, directive, standard, statement of policy or interpretation of general application which has institution-wide effect or which affects the rights, privileges or interests of employees, students or citizens. Any regulation, guideline, directive, standard, statement of policy or interpretation of general application that meets this definition is a rule for the purposes of this section.

3.1.2. §18B-1-6(c)(2) Regulations, guidelines or policies established for individual units, divisions, departments or schools of the institution, which deal solely with the internal management or responsibilities of a single unit, division, department or school, or with academic curricular policies that do not constitute a mission change for the institution, are excluded from this subsection, except for the requirements relating to posting.

3.2. The term “policy” as it is used by the Board shall be synonymous with the term “rule” defined in 3.1 above.

3.3. The term “administrative procedure” means any regulation, guideline, directive, standard, or statement of policy or interpretation of future effect that does not qualify as a “rule.”

3.4. The term “work” or “works” refers to all works, inventions, developments, discoveries, and curriculum and course materials developed during employment.

3.5. This Policy uses the phrase “substantial use of College equipment, services, or resources” in determining when the College claims ownership of intellectual property, not including work identified in the Policy as traditional “scholarly works.” The following amplifies the intended meaning of “substantial use.”

For the purpose of this policy, the phrase “substantial use” includes substantial College financial, staff, or other support, including the use of College facilities and resources to a

greater extent than the norm typically used for educational and research purposes by similarly situated individuals in the department and/or school in which the Inventor or Author holds his or her primary appointment. The College generally will not regard academic year salary, internal funding from the College, office space, ordinary library resources, usual secretarial, administrative staff, and student resources, or usual computer equipment as constituting Substantial Use.

52.4. Policy

4.1. All works created by employees within the scope of their employment and by students (including those students working in the Work Study Program or in any role compensated by the College, or whose creation involves the substantial use of College equipment, services, or resources) shall be covered by this policy. These works shall be classified as one of three types:

- 4.1.1. Patentable or Commercial Works are any patentable invention, any product or development other than a scholarly work which is offered for sale to the public, computer-related software, databases, web-based learning, and related materials.
- 4.1.2. Scholarly Works that fall within certain categories of copyrightable works for which academic institutions have historically waived any ownership interest in favor of the author. The College currently recognizes the following categories of scholarly works as exempted from this policy: textbooks, class notes, research proposals, presentation and instruction, research articles, research monographs, student theses and dissertations, paintings, drawings, sculpture, musical compositions and performances, dramatic works and performances, poetry, fiction and nonfiction, and student works for class assignment.
- 4.1.3. Works for Hire as defined by the “work-for-hire” rule in the Copyright Act giving the College ownership of the copyright to copyrightable works produced by any employee within the scope of their employment; however, in the case of scholarly works, the College cedes copyright ownership to the author/creator(s).

4.2. The use of College equipment, services or resources is “substantial” when it entails a kind or level of use not ordinarily available to all, or virtually all, faculty, staff, and/or students. Where questions arise as to whether a particular work involves “substantial use” (section 3.5) or falls within the “scope of employment” (section 8.1), the matter shall be referred to a six member ad-hoc committee comprised of three members of the Faculty Senate selected by the Faculty Senate President, the Chief Academic Officer or his/her designee, the Chief Financial Officer or his/her designee, and the Executive Director of the Glenville State College Research Corporation. In the case the committee is unable to reach a majority decision, the College President shall appoint a disinterested party as arbitrator. The creator of the work

has the option, should they disagree with the decision of the ad hoc committee, to appeal to the President of the College for a final decision.

4.3. When employee-created intellectual property results from third-party grants, contracts, or awards made to the College, the intellectual property is owned by the College unless written agreement involving the College, the employee, and the sponsor establishes an alternative ownership arrangement prior to or concurrent with the grant, award, or contract start date. No such agreement shall be entered into without the review and approval of the College President.

4.4. A compilation is a work formed by the collections and assembly of College-owned and individual-owned intellectual property in such a way that the resulting work as a whole constitutes an original work. If the work is a compilation, each contributor shall retain all ownership interests in his/her intellectual property; but by allowing the work to become part of the compilation, he/she thereby grants a non-exclusive, royalty-free license to the College for use of his/her contribution. While the College shall own rights to the compilation, it shall own no rights to the underlying work beyond said license and will share any net proceeds from the compilation as described below.

4.5. If ownership rests with the College, but the College President elects in writing not to exercise ownership rights, then ownership rights and responsibilities related to patenting, copyrighting and licensing shall revert to the creator(s). In such a case, the College retains a nonexclusive, royalty-free right to use the work for non-commercial purposes.

4.6. In the case of employee-owned intellectual property, the creator may petition the College President to accept assignment of ownership rights and the attendant control of and responsibility for development. The College, however, is under no obligation to accept this assignment and would do so only when independent evaluation indicates that accepting the assignment would further the mission and work of the College.

52.5. Ownership of Intellectual Property

5.1. Any one of the following circumstances will result in College ownership:

5.1.1. If intellectual property is created within the scope of employment (including student employees working within the scope of their employment); or

5.1.2. If intellectual property is created on the job with substantial use of College equipment, services or resources; or

5.1.3. If intellectual property results from research supported by Federal funds or third party sponsorship and no written agreement involving the College, the researcher and the sponsor has established an alternative ownership

arrangement prior to or concurrent with the award of funds.

5.1.4. If intellectual property is commissioned by the College; or

5.1.4.1. Pursuant to a signed contract; or

5.1.4.2. If it fits within one of specific categories of works considered works for hire under copyright law.

5.2. Any one the following circumstances will result in Individual ownership:

5.2.1. If the intellectual property is unrelated to the employee's or student's job responsibilities and the employee or student has not made substantial use of College equipment, services or resources; or

5.2.2. If the intellectual property is a work that has been released to the author/creator in accordance with this Policy; or

5.2.3. If the intellectual property is embodied in such traditional scholarly works as books, articles, manuscripts, plays, writings, musical scores, and works of art even though such a work may be within the scope of employment and even if significant College resources were used UNLESS the work is:

5.2.3.1. Created by someone who was specifically hired or required to create it; or

5.2.3.2. Commissioned by the College.

In either of these cases (5.2.3.1 or 5.2.3.2), the College, not the creator, will own the intellectual property.

52.6. Administrative Responsibilities

6.1 Disclosure

6.1.1. If an employee creates intellectual property other than a scholarly work which may lead to commercial development, then he/she is expected to complete immediately an Intellectual Property Notification Notice which will notify his/her Department Chair, the GSCRC Executive Director, the Chief Academic Officer, and the Chief Financial Officer in order to provide sufficient information to permit the College to evaluate the work, both for its ownership and its commercial potential, and, if appropriate, to take steps to protect the College's intellectual property rights.

6.1.2. Within 120 days after such disclosure, the GSCRC Executive Director or his/her designated representative shall notify the inventor in writing whether it is the College's intention to retain its interest and to acquire assignment of all ownership rights of the invention or discovery. If such notification cannot be made during that time period, the inventor shall be notified as to the reason for the delay and the additional amount of time, up to 60 days, necessary to make such determination.

6.2 Guidelines regarding public disclosure of inventions

6.2.1. Internal disclosure of an invention will not interfere with the ability to patent or copyright the intellectual property. However, public disclosure of an invention prior to filing for a patent or copyright application could preclude the availability of patent or copyright protection in most countries. This rule applies to any non-confidential written or oral disclosure that describes the intellectual property (e.g., at a scientific meeting, in a journal, or even in an informal discussion with colleagues).

6.2.2. Accordingly, the College requires inventors to disclose intellectual property to the GSCRC Executive Director as soon as possible, and to delay public disclosure of the intellectual property until the evaluation process is completed and a patent or copyright application is filed if deemed necessary.

6.2.3. During this interim period, an invention may be safely disclosed outside of the College under the protection of a confidential disclosure agreement ("CDA"), because disclosures made under an appropriate CDA are not considered public disclosures. The College requires that all inventors use the College's CDA whenever they disclose information relating to an invention while the invention is under evaluation by the College, and also requires use of the College's CDA as well as consultation with the GSCRC Executive Director if an inventor wishes to disclose an invention to an outside researcher associated with a company or other organization, or directly to such organization.

6.2.4. Inventors should be aware that public disclosure of an invention prior to completion of the evaluation process and filing of a patent or copyright application will adversely affect the commercial value of the invention and therefore may decrease the likelihood that the College will proceed with commercialization of that invention.

6.3 Receiving confidential information from outside researchers

6.3.1. If an inventor receives confidential information from an outside researcher or organization (non-profit or commercial) in relation to research performed by the inventor at the College, the other organization or researcher may impose serious non-disclosure and non-use obligations on the confidential information

and may claim an ownership interest in inventions, copyrightable works, or materials that arise in the course of research performed with such confidential information. For this reason, only the GSCRC Executive Director is authorized to approve and sign CDAs from other researchers or organizations on behalf of the College.

6.4 Administration

6.4.1. The administration of the Intellectual Property Policy will reside in the Office of the GSCRC Executive Director, who may consult with retained counsel on legal matters pertaining to this policy.

6.5 Administrative Procedures – Sponsored Research with Commercial Organizations

6.5.1. The GSCRC Executive Director shall have responsibility for negotiating, executing, and administering funded research agreements between the College and commercial organizations, in accordance with College policies.

6.6 Inventions or Discoveries Arising From Sponsored Programs

6.6.1. The GSCRC Executive Director will review the rules and regulations of all potential sponsors of research with regard to ownership rights and licensing of inventions, discoveries or patents either at the time the proposal is submitted or prior to accepting an award from the sponsor.

6.6.2. If the regulations of a potential sponsor are contrary to the College's Intellectual Property Policy, the GSCRC Executive Director will consult with the potential project director, and/or with the GSCRC Board of Directors. After such consultation, the GSCRC Executive Director will determine whether or not to accept the sponsorship of the research under those regulations.

6.7 Commercialization of University-Owned Intellectual Property

6.7.1. The GSCRC Executive Director shall have the responsibility for protection, commercial development, and administration of all College-owned intellectual property. This commercial development will ordinarily occur through licensing of inventions, copyrightable works, or tangible research materials to a company. The GSCRC Executive Director will regularly consult with, seek the advice of, and inform the inventor or creator of the intellectual property throughout the commercialization process. The College recognizes that involvement of the inventor or creator at every step of the commercialization process is essential for the successful commercialization of intellectual property. The GSCRC Executive Director will use diligent efforts to commercialize the intellectual property.

6.8 Evaluation of Commercial Potential

6.8.1. In the case of an intellectual property that the inventor discloses for possible commercialization by the College, the GSCRC Executive Director will determine its commercial potential.

6.9 Development, Promotion and Licensing

6.9.1. In administering the patent portfolio of the College, the GSCRC Executive Director shall act to bring to the public all inventions and discoveries in which the College has proprietary rights. In doing this, the GSCRC Executive Director shall use whatever means appropriate for development, promotion and licensing of each invention, consistent with the expressed goals of the Intellectual Property Policy.

6.9.2. The College, in coordination with GSCRC, is free to enter into agreements with any outside agent which it deems will successfully aid the College in developing inventions or discoveries, in obtaining patents, or in promoting or manufacturing inventions, provided that such agreements are consistent with this Intellectual Property Policy. If a particular invention or discovery is to become subject to such an agreement, this shall be made known to the inventor.

6.9.3. The GSCRC is free to enter into any licensing agreements which it deems beneficial to the College, the inventor and the public in general, provided such agreements are not prohibited by a sponsoring agency's rules or regulations and will comply with all federal and state regulations.

52.7. Revenue Sharing

7.1. The College wishes to encourage excellence and innovation in teaching, scholarship and creative activities and to support the notion that works produced at Glenville State College should be used for the greatest possible public benefit. In the context of these aims, the College endorses the legitimate expectation of employee author/creators to share in any net revenues produced by licensing or other development of intellectual property. Accordingly, for any work in which the College asserts ownership interest under this Policy, the College and the author/creator(s) will share any annual net revenue (revenues less recovery of all legal and other costs involved in protecting the intellectual property rights of the work, licensing costs, and other directly related administrative costs) in the following percentages, unless different contractual agreements have been reached in relation to particular works:

Net Revenue	Author/Creator	Glenville State College	Author/Creator Department	Glenville State College Research Corporation
< \$5,000	100%	0%	0%	0%
\$5,000 - \$25,000	75%	5%	5%	15%
\$25,000 - \$100,000	60%	5%	5%	30%
> \$100,000	50%	5%	5%	40%

Distribution of allocations will occur no later than 30 days after the accounting close of the College's Fiscal Year.

7.2. If a work involves more than one employee as author/creator, the author/creators will divide their share equally unless they provide the College with an alternative revenue distribution agreed upon by them.

7.3. Recognizing that this area is complex and rapidly evolving, Glenville State College remains open to the possibility of arriving at special agreements as the need may arise in relation to particular projects. This Policy shall be reviewed by the President or his/her designee within three years and revised as necessary, with all revisions to be approved by the Board of Governors.

52.8. Scope of Employment

8.1. Works related to an individual's job responsibilities other than those outlined as Scholarly Works in Section 4.1.2, even if he or she is not specifically requested to create them, will belong to the College as works-for-hire. A copyright work is related to one's job responsibilities if it is the kind one is employed to do and he/she does it, at least in part, for their use at work, or for use by fellow employees or the College. The work should be performed substantially on the job using College facilities; however, the use of personal time or other facilities to create the work will not change its basic nature if that work is related to the creator's job as described above. Works that have nothing to do with job duties will remain the property of the employee, so long as he or she makes no more than incidental use of College facilities.

For example, if one's job is "Safety Engineer," a software program created on one's own initiative to run on each employee's computer to show a graphic of their nearest fire exits is related to their job duties and will belong to the College, even if no one asked the employee to create it and he or she did some of the programming at home on their own computer. A program that the employee creates that does not relate to their job, that neither the employee nor others use at work, and that they create on their own time would belong to the employee.

52.9. Policy Understanding Acknowledgement

9.1. Every employee of Glenville State College, or its affiliates, will sign a copy of this Policy, upon its inception or at their hire, to signify awareness and understanding of the Policy.

9.2. The undersigned acknowledges the receipt of this Policy and agrees to be governed by the terms of such during their employment on matters regarding Intellectual Property Rights.

Employee or College Affiliate Signature

Date

Printed Name of Employee or College Affiliate

Approvals:

President

Date

Chair of the Board

Date