

FAQs for Tulane University's Intellectual Property (IP) Policy¹

1. What is the purpose of the IP Policy?

This policy encourages and supports creativity and innovation across the university while clarifying who owns intellectual property (IP) that arise every day through the normal course of university activities. It aims to balance the interests of the university, faculty, staff, and students.

2. Who does the IP policy apply to?

This policy applies to all Tulane faculty, staff, students, visiting scholars, residents, fellows, and anyone working under a university-administered grant/contract or using university resources.

3. When does the new IP Policy take effect?

The new IP policy only applies to intellectual created after the adoption of the new policy, which is on [INSERT]. Any intellectual property created before this date is governed by Intellectual Property Policy ([INSERT DATE]), available at <https://tulane.edu/about/leadership-and-administration/handbooks-and-policies/intellectual-property-policy>.

4. What is considered “intellectual property” under this policy?

Intellectual property typically includes inventions, patents, copyrights, trade secrets, trademarks, and other proprietary rights arising from employment activities, research, creative works, or university-sponsored activities. Below is a summary of the main types of intellectual property covered by the university's IP Policy. For comprehensive listing, please consult the IP policy directly.

A patent grants an inventor the exclusive rights to a new and useful invention for a set period, usually 20 years from date of filing for utility patents in the United States. The invention must be useful, novel, and non-obvious, and is described in an application is reviewed by the United States Patent and Trademark Office and/or relevant foreign patent office depending on where the applications are filed. Patents encourage innovation by giving inventors a limited-time monopoly on their ideas, after which they enter the public domain. Examples include a new type of battery for an electric car, an improved surgical tool, and a medical diagnostic test.

A trade secret is information that (a) has actual or potential independent economic value, (b) is valuable to others who can't legitimately obtain the information, and (c) is maintained as secret through reasonable efforts taken by the trade secret owner. Examples include customer lists and secret recipes.

A trademark is any word, phrase, symbol, or design that identifies the source of goods or services. It helps consumers in the marketplace distinguish one brand from another. Trademarks serve to protect the goodwill of a business by preventing others from using confusingly similar marks in the marketplace. Examples include a unique phrase associated with an athletic shoe company, a unique name and/or logo for a coffee shop. The university has several registered trademarks with the USPTO.

¹ Any capitalized terms within this FAQ document are defined as per the Tulane University's Intellectual Property (IP) Policy [insert hyperlink]. For a complete understanding of these terms and their specific meanings, we encourage you to consult the policy directly.

Copyright protects original creative and artistic works of authorship, including art, academic writings, films, architecture and photographs. We all create copyrighted works everyday within the university when we write email, create course materials, and write term papers.

5. Who owns the intellectual property created by faculty?

The university recognizes the “academic tradition,” and as a result, faculty retain ownership of their “Academic and Creative Works,” such as scholarly articles and books, and “Course Materials,” unless otherwise agreed in a contract between the faculty and university. However, for any other intellectual property created by faculty in the course of their employment or with more than Incidental Use of University Resources, ownership generally belongs to the university, including patents and trade secrets.

6. Who owns the intellectual property created by staff?

Intellectual property created in the course of a staff member’s employment or with more than Incidental Use of University Resources is typically owned by the university.

7. Who owns the intellectual property created by students?

Students generally own the intellectual property in the work they create in their capacity as a student, including academic papers, theses, artistic works, musical compositions, and other scholarly projects. However, the university retains a non-exclusive, royalty-free license to use these works for non-commercial administrative purposes, such as maintaining a copy of theses or dissertation. If students create intellectual property as university employees, through more than Incidental Use of University Resources, or through participation in a research project governed by an agreement with a third party, then such intellectual property is typically owned by the university or determined in accordance with the terms of the agreement with the third party.

COPYRIGHT (COURSE MATERIALS)

8. Who owns the copyright in the Course Materials created by faculty?

A faculty member generally owns the copyright in all original and creative works of authorship they create for a course, including lecture notes, slide decks, problem sets, and tests (collectively referred to as “Course Materials”), provided that the university has a non-exclusive, royalty-free license to use these materials for administrative purposes, such as curriculum planning or accreditation. However, when a faculty member is specifically requested or commissioned to create Course Materials and is paid a fee specifically to do so, ownership and use of such Course Materials will be agreed upon in a written agreement between the faculty member and the university.

9. Are Course Materials created by faculty protected by copyright?

Course Materials created by faculty are protected by copyright when they are original works of authorship fixed in a tangible medium (e.g., written, electronic, audio-visual) with the required modicum of creativity. This happens automatically under US copyright law. Faculty can add a copyright notice that alerts the world of their intention to assert their copyright. Note: not everything a faculty member create meets the standard of copyrightability. For general questions concerning copyright, please Tulane University Libraries provides information resources on its website at <https://libguides.tulane.edu/copyright/101>. In addition,

the Office of Intellectual Property Management (OIPM) or Office of General Counsel may be able to provide guidance for specific cases or clarifications.

10. Do faculty own the copyright in the learning objectives, facts and ideas in their Course Materials?

No, copyright does not protect learning objectives, facts or ideas. However, faculty own the copyright in the way such facts and ideas are selected, organized, and expressed in the Course Materials, and the original expression of the Course Materials.

11. Who owns the rights to a Digital Course and Course Materials contained within it?

For Digital Courses, the university owns the intellectual property rights in the “Digital Course” itself, but faculty retain ownership of any “Contributed Materials,” such as lecture notes or creative content created by faculty. This is true whether faculty create the Contributed Materials for the course or borrow it from their traditional courses. As part of including Contributed Materials in a Digital Course, faculty grant the university the right to continue to use the Course Materials at the university and the ability to update them, which is essential for any online program. Such an arrangement must be memorialized in a written agreement between the university and faculty. In some cases, a course may be developed by one faculty member and later taught by another. To preserve the quality of the course and the university's investment, the university must be able to update and modify the Digital Course and the Course Materials in it over time. These arrangements must be formalized through a written agreement in which faculty grant the university a license to use their Contributed Materials within the Digital Course at the university.

12. What are examples of situations where others can use Course Materials created by faculty without permission?

Copyright is not an absolute bar for others to use another's work. Others may have a right to use Course Materials under “fair use” or another exception under copyright law. For example, permissible uses of Course Materials include:

- Students may take notes during faculty lectures for their own personal use. That's expected and part of being in a course. However, students may not post those lectures on commercial websites, as that may be a violation of the faculty's copyright.
- Students with disabilities may be authorized to record lectures in connection with an approved reasonable accommodation. Again, this is for personal use and does not give the students a right to post the lectures on a commercial, public website or platform.

In short, more extensive uses beyond traditional notetaking and use of Course Materials, such as posting materials online or creating derivative works, may require faculty permission from the copyright holder (usually the faculty) and could otherwise constitute copyright infringement.

13. What can faculty do to protect Course Materials from unauthorized commercial use?

Sometimes people find that outside third parties have used Course Materials without permission. But there are steps you can also take to protect Course Materials from unauthorized use, such as:

- Include a copyright notice on faculty materials, e.g., © Jane Doe 2024. This includes the symbol © “Copyright”, the date, and faculty name. This puts the world on notice that of a copyright claim to

the Course Materials and helps prevent anyone that uses that work without permission from being an innocent infringer.

- Include a copyright statement in the syllabus stating ownership and restricting reproduction or distribution. This is not required, but again makes it clear that a copyright claim is asserted in the Course Materials. Here is an example of a statement that both asserts copyright and grants students' specific uses:

“My lectures and course materials, including slide decks, tests, outlines, and similar materials, are protected by copyright. You may take notes and make copies of course materials for your own personal use, but you may not distribute them or allow others to do so without my express written consent.”

- Register faculty course materials, academic work and other materials you are concerned about with the U.S. Copyright Office. Registering such materials provides you with additional protection and also the potential for statutory damages for litigation involving willful infringement. For more information, please visit the U.S. Copyright Office website at www.copyright.gov.

14. What can faculty do if Course Materials posted on commercial websites without permission?

If Course Materials are posted on a commercial website without permission, faculty can send a Digital Millennium Copyright Act (DMCA) notice to the website's designated agent requesting the removal of the infringing content. The instructions on how to do this are readily available from various sources including, for example, the Copyright Alliance, see <https://copyrightalliance.org/education/copyright-law-explained/the-digital-millennium-copyright-act-dmca/dmca-notice-takedown-process/>. Additional information may also be found directly on the platform where the unauthorized posting occurred.

15. Can the university use Course Materials if faculty no longer teach or leave the university?

In certain cases where faculty are no longer able to continue teaching their course (e.g., due to illness, or departure), the university retains a limited, one-year, non-exclusive, royalty-free license to use the Course Materials to ensure the continuation of the course. This license is granted for the purpose of maintaining academic continuity, and the Course Materials will not be used beyond the 1 year period without permission.

PATENTS

16. How does the university handle patentable subject matter such as inventions?

The university generally owns all patentable subject matter created by faculty and staff developed in connection with their employment using more than incidental university resources, or through participation in research governed by an agreement with a third party. Faculty and staff must disclose inventions to the Office of Intellectual Property Management (OIPM) before any public disclosure to secure legal protection and enable patent filings. If persons covered by the university IP Policy are uncertain whether to disclose something, please contact OIPM sooner rather than later. If the university receives royalties and other revenue derived from the commercialization of a patentable invention, inventors are generally entitled to a portion any Net Income generated.

17. What happens to intellectual property developed through research funded by a third party or governmental entity?

If a research project is funded by an external sponsor, such as a government agency or private company, the IP developed is generally owned by the university or determined as specified in the funding agreement.

TRADEMARKS

18. Can Tulane employees or students use university trademarks, like logos or names, for their personal projects or businesses?

No. Any use of the university's trademarks, logos, or other identifiers requires written consent from the university. Unauthorized use is prohibited. Please contact the Office of University Communications and Marketing for more information.

FAQ EXAMPLES

Student Work

A student creates a screenplay in an undergraduate course. The student retains the copyright in the screenplay. The university may use a copy of the screenplay as part of evaluating the student's work in connection with the requirements of the course (i.e., non-exclusive limited administrative license). See Section 3.2 of the Tulane IP Policy (2024).

Faculty Course Materials

A faculty member creates an original series of slide decks for a university course. The slide decks do not incorporate any third-party materials. The faculty member retains the copyright in the slide decks. The university may retain a copy of the slide deck for non-commercial administrative purposes such as use for accreditation bodies, departmental curriculum planning, and archiving. That same faculty member suddenly takes ill, and someone else steps in to complete the course. The substitute is allowed to continue to use the course materials created by the faculty to allow for continuity in the course. See Section 3.4 of the Tulane IP Policy (2024).

Online Course Development

A faculty member is asked to create Course Materials for a Digital Course for a new online program. The faculty member wants to use materials from her current traditional course. Before proceeding with course development, the faculty member must voluntarily enter into an agreement with the university granting the university permission to use Course Materials in a Digital Course. The faculty member retains the copyright in both the materials from her current course and any new materials contributed to the online course, unless otherwise agreed to in writing with the university. The original faculty member can still use and take with them their course materials. But the new Digital Course is owned and controlled by the university. The university retains the right to use, modify and create derivative works from the Course Materials without additional permission from the faculty member, and this includes even allowing someone else to teach and modify the Digital Course. The university holds the copyright in the Digital Course that was created, but not the underlying Course Materials that were contributed by the faculty member. One person may create a course, but then others might be employed to facilitate discussions and

grade that course, and even later, revise or update the course. See Sections 3.4 and 3.5 of the Tulane IP Policy (2024).

Staff After Hours

After hours at her home, a staff member responsible for overseeing transfer credits for undergraduates writes a novel about magical creatures in the future. The novel is not part of the staff member's regular employment duties, and therefore is not covered under work for hire. The staff member owns the copyright in the novel and is free to do whatever they want with it without permission from the University. See Sections 1.21 and 3.3 of the Tulane IP Policy (2024).

Librarian Outside Professional Activity

A staff librarian writes a journal article at home, outside of work hours, on their field of specialty. The article is not part of the librarian's assigned job duties but may be considered an outside professional activity for job promotions. The article is generally not considered a "work for hire" by the university under copyright law because the article is: created principally on personal time, outside the course of employment, and without more than incidental use of university resources.

Disclaimer

This FAQ document is meant for informational purposes only and does not serve as legal advice. It simplifies the content of Tulane University's Intellectual Property Policy and should not be considered a substitute for reading the full policy or consulting with the Office of Intellectual Property Management (OIPM) or Office of General Counsel for specific cases or clarifications. For any disputes or legal interpretations, the full Intellectual Property Policy shall govern.