

OFFICE OF GRANTS AND CONTRACTS

Intellectual Property Policy

PREAMBLE

Valdosta State University, hereinafter referred to as the "University," is dedicated to teaching, research, and the extension of knowledge to the public. The University recognizes and encourages the production and publication of scholarly works and research as an integral part of the process of teaching, research and service. Inventions and materials, including the development of new and useful materials, software, devices, processes, and other inventions, some of which may have potential for commercialization, and which qualify for patent or copyright protection, may come about through the activities of University faculty, staff or students who have been aided wholly or in part through the use of the resources of the University. To this end the University establishes this Intellectual Property Policy.

Intellectual Property for the purpose of this policy is defined as creative and scholarly works and inventions which have commercial potential and may be protected under the laws of various countries that establish rights called "Intellectual Property." This term includes patents, copyrights, trade secrets, trademarks, plant variety protection, and other rights (definitions are included in Section IV, page 14).

The University shall require as a condition of employment that all University personnel, including visiting faculty and staff, agree in writing to recognize and adhere to this policy. Students and others working on research projects at the University requiring University assistance or utilization of University facilities also will be required to agree in writing to recognize and adhere to this policy.

I. POLICY STATEMENT

It is the policy of the University that copyrights, patents, and all other Intellectual Property rights arising from aesthetic, scholarly, or other research developed through independent efforts and not part of a directed institutional or University System assignment shall reside with the originator. Independent effort is defined as the product of inquiry, investigation, or research to advance truth, knowledge, or the arts where the specific choice, content, course, and direction of the effort is determined by the individual without assignment or supervision by the institution or System.

The University has a right to ownership of any intellectual property in which it has an interest. An interest is established when the intellectual property results from a specific assignment or when the institution or system provided specific resources to the development of the intellectual property. Assignment, supervision, or resource support that is customary for research and instructional purposes does not establish an interest by the University or System in resultant intellectual property. Unless otherwise agreed, this Policy also applies to any intellectual property in which the University has an interest under the terms of contracts, grants, or other agreements. Any intellectual property in which the University does not have a legal interest may be offered to the University, and, if accepted, the University will administer such intellectual property in accordance with this Intellectual Property Policy or as otherwise agreed.

In conformity with this policy, Intellectual Property will become, in whole, or in part, the property of the University. The President of Valdosta State University, by virtue of authority granted by the Board of Regents, may further allocate or dispose of rights in such Intellectual Property.

Except under special circumstances University will not agree to assign rights in future inventions to private corporations or businesses.

Occasionally, Valdosta State University enters into separate contractual agreements with personnel , such as, but not limited to, consulting, sabbatical, and in-residence agreements that benefit the University. The Intellectual Property Policy will not supersede those instances of separate contractual agreements between personnel and University.

Regarding educational fair use and copyright issues, Valdosta State University personnel must adhere to established University and Board of Regents copyright policy.

I.A. Ownership by Category of Work

I.A.1. Scholarly/Aesthetic. In keeping with traditional academic practice and policy, ownership of copyrights, patents or trademarks to scholarly or aesthetic works that are prepared through independent effort and not part of a directed assignment, shall reside with the originator except as otherwise provided in this policy. The general obligation of faculty to produce scholarly works does not constitute a directed assignment.

I.A.2. Individual Effort. The copyrights, patents or trademarks to any work that is prepared outside the scope of employment and without the use of institutional or system resources by an employee shall be the property of the employee. The University *however* asserts its right to such works created under sponsorship or contract. Copyright ownership of sponsored works and contracted works shall be governed by such agreements or contracts.

I.A.3. Commissioned. When the institution commissions the production of a work, title normally should be with the University. In all cases, copyright, patent or trademark ownership shall be specified in the written contract.

I.A.4. Acquired by Assignment or Will. The University may acquire Intellectual Property rights by assignment or will pursuant to the terms of the written agreement or testament.

II. RIGHTS AND EQUITIES IN INTELLECTUAL PROPERTY (*Addendum attached with examples for each category*)

II.A. Sponsored Supported Efforts

Sponsored project agreements often contain specific provisions with respect to ownership of Intellectual Property developed during the course of such work, in which case the terms of the sponsored project agreement shall establish ownership. When the sponsored project agreement is silent on the matter, all rights in Intellectual Policy shall vest in the University.

Income, if any, from such Intellectual Property shall be shared, subject to sponsor's requirements, in accordance with Section III.J., page 11.

II.B. University-Assigned Efforts

Ownership of Intellectual Property developed as a result of University-assigned effort shall reside with the University.

Income, if any, from such Intellectual Property shall be shared, subject to sponsor's requirements, in accordance with Section III.J., page 11.

II.C. University Assisted Individual Effort

Ownership of Intellectual Property developed by faculty, staff, or students of the University which makes significant use of University resources shall be shared by the Originator and the University. Significant use of University resources shall include, but not be limited to, use of research funding, use of University paid time within the employment period, use of support staff, use of telecommunications services, and the use of facilities other than office or library resources.

Income, if any, from such Intellectual Property shall be shared as described in Section III.J., page 11.

II.D. Individual Effort

Ownership of Intellectual Property developed by faculty, staff, or students of the University shall reside with the Originator of such Intellectual Property provided that:

There is no significant use of University resources beyond what is customary for research and instructional purposes in the creation of such Intellectual property; and

The Intellectual Property was not developed in accordance with the terms of a sponsored project agreement; and

The Intellectual Property was not developed by faculty, staff, or students as a specific University assignment.

It shall be the responsibility of the Originator of the Intellectual Property to demonstrate that this classification applies.

II.E. Consulting

Consulting for outside organizations may be performed by University personnel pursuant to University policies on consulting and to this Intellectual Property Policy. All consulting agreements will include a statement that the faculty member has Intellectual Property obligations to the University and this statement will satisfactorily address these obligations. This Intellectual Property Policy will be attached to the consulting agreement.

II.F. Research notes, data reports, and notebooks

Copyright protection resides in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Research notes, research data reports, research notebooks, and software created during research are included within the definitions of copyrighted materials and software. Ownership of such materials is vested in the University if the research is University-assisted or assigned as defined in Paragraphs II.A. through II.D.

III. ADMINISTRATIVE PROCEDURES

III.A. Responsibility

The administration of the principles and policies set forth in this document is the responsibility of the Vice President for Academic Affairs, whose office shall do so through the Graduate School's Office of Grants and Contracts with the advice of the University Intellectual Policy Committee. The Intellectual Policy Committee shall be appointed by the President and consist of no less than three or more than nine members, one of which shall be designated by the President to serve as Chair. Additional *ad hoc* members may be added by the Chair at any time as considered necessary.

III.B. Disclosure of Intellectual Property

University personnel will promptly provide the Vice President for Academic Affairs through the Office of Grants and Contracts a disclosure describing their creative and scholarly works and new material, devices, processes, or other inventions which may have commercial potential, be it Sponsor-Supported Efforts, University-Assigned Efforts, University-Assisted Individual Effort or Individual Effort. A disclosure form will be provided by the Vice President for Academic Affairs. University personnel shall also cooperate by signing all papers deemed necessary to protect and commercialize Intellectual Property covered by this Intellectual Property Policy.

Disclosures are not required for works of authorship, such as articles for publication in scholarly or professional journals, or instructional or research material for internal use where there is no intent to commercially exploit the Intellectual Property, even though the ownership of the copyright may reside in the University as determined by Sections II.A, II.B., or II.C. In such cases of University ownership, the copyright is assigned to the author for publication purposes.

III.C. Obligations of Principal Investigators/Project Directors

Principal Investigator/Project Directors shall be responsible for informing co-workers, including students, of their rights and obligations under contracts, grants, and the like before the initiation of research.

III.D. Confidentiality

Certain contractual obligations and governmental regulations require that information be maintained in confidence. Additionally, some works, such as certain computer software, may best be protected and licensed as trade secrets, and inventions must be maintained in confidence for limited periods to avoid the loss of patent rights. Accordingly, the timing of publications is important, and University Personnel shall use their best efforts to keep the following items confidential:

- (1) All information or material designated confidential in a contract, grant, or the like;
- (2) All information or material designated or required to be maintained as confidential under any applicable governmental statutes or regulations; and
- (3) All information relating to Intellectual Property developed by University Personnel which may be protected under this Policy until application has been made for protection.

III.E. Collaboration

Collaboration between University Personnel and persons not employed or associated with the University, including researchers at other universities or companies, can result in the development of Intellectual Property jointly owned by the University and other persons or their employers. Protection and commercialization of such joint Intellectual Property can be difficult without extensive cooperation and agreement among the owners. University Personnel involved in or contemplating collaborative activities that may result in the development of Intellectual Property will advise the University of such activities.

III.F. Administration of Sponsor-Supported Efforts and

University Assigned Effort

The Intellectual Property Committee has the responsibility to evaluate Intellectual Property developed from Sponsor-Supported Efforts, and from University-Assigned Efforts, and to determine whether to administer such Intellectual Property by undertaking those efforts it determines, in its sole discretion, to be appropriate to protect and license or otherwise commercialize such Intellectual Property.

III.G. Administration of University-Assisted Individual Efforts

Any Intellectual Property which is the result of University-Assisted Individual Efforts, may be administered by the Originator or, if the Originator and the Committee agree, by the University. Such Intellectual Property which is administered by the University shall be treated as University-Assigned Efforts Intellectual Property and shall require the assignment of the Originator's rights in such Intellectual Property to the University.

Intellectual Property which is administered by the Originator under this Section shall be assigned to the Originator under a simple agreement which provides for periodic reports describing the Originator's administrative activities, generation of payments or royalties, and for payment to the University of a portion of net revenue from the exploitation of the Intellectual Property. Such payment shall normally be ten percent (10%) of the Originator's net revenue from the exploitation of the Intellectual Property; however, the Intellectual Property Committee may recommend a higher or lower percentage if it seems evident that use of University resources warrants a larger or smaller payment provision.

III.H. Administration of Individual Efforts

It shall be the responsibility of University Personnel who are Originators to demonstrate that Intellectual Property made, discovered, or developed while employed at the University as a result of individual effort meets the criteria set forth in Section II.D. Individual Efforts, above. In each case so demonstrated, and agreed by the Intellectual Property Committee, the Intellectual Property will be acknowledged as belonging to the Originator to dispose of as the Originator sees fit. Notwithstanding the above, the disclosure requirement defined in Section III.B. is waived for works of authorship such as scholarly publications and articles and instructional material for internal use which are readily transferred to the public by the Originator without the need for further development or business or legal input. Conditional license of ownership to the author is provided with the disclosure waiver.

Individual Effort Intellectual Property may be assigned to the University to be treated and administered as University-Assigned Effort Intellectual Property if both the University and the Originator agree to do so.

III.I. Declined Sponsor-Supported Effort and University-Assigned

Effort Intellectual Property

Whenever the University chooses not to administer Intellectual Property or chooses to cease administering Intellectual Property which is classified or is being administered under Sponsor-Supported Efforts or under University-Assigned Efforts above, such Intellectual Property, subject to any obligations to the Sponsor, may be assigned by the University to the Originator to dispose of as the Originator sees fit.

III.J. Revenue Sharing with Originators

As noted above in Section III.H. - Individual Effort, the Intellectual Property will be released by the University to the Originator to dispose of as the Originator sees fit. In the other circumstances described above - i.e., Sponsor-Supported Efforts, University-Assigned Efforts, University-Assisted Individual Effort, and University-Administered Individual Effort, the proposed division of net revenue is listed below. Net revenue, which is gross receipts received by the University from license activity minus the out-of-pocket costs incurred by the University in protecting and licensing the Intellectual Property, generated from Intellectual Property administered by the University shall be distributed as follows:

Table 1. Distribution of Intellectual Property Net Revenue

REVENUE DISTRIBU- TION	Originator	Originator's Department	Originator's College	Faculty Research Fund	Administration (Vice-President for Academic Affairs shall distribute)
SPONSOR SUPPORTED	70%	5%	5%	10%	10%
UNIVERSITY ASSIGNED	50%	15%	15%	10%	10%
UNIVERSITY ASSISTED	60%	10%	10%	10%	10%
INDIVIDUAL EFFORT	100%	-	-	-	-
OTHER	To Be Determined				

The Originator's share of net revenue shall be divided (equally) among joint Originators of jointly developed Intellectual Property unless a written

statement signed by all joint Originators which provides for a different distribution is filed with the University prior to the first distribution of shared net revenue.

The percentage for the Originator's Department and College applies only while the Originator is employed by, and conducting research at the University. If the Originator is no longer an employee of the University this share is returned to Administration for re-distribution.

In the event the terms of the license of the Intellectual Property provide the University with equity, or an option to acquire equity, in the entity which licenses the Intellectual Property, the share of such equity due to Originators as identified above will be distributed to the Originators when such equity is transferable or convertible to cash.

In the event the Intellectual Property is licensed to the Originator, or the Originator has a *significant financial interest* in an external entity which holds license rights, the Originator shall waive the right under the University Intellectual Property Policy to receive the Originator's share of royalties identified above (except when the development of the Intellectual Property meets the criteria established for the "Individual Effort" category, in which case this clause does not apply). In the event the Originator does not receive the Originator's share, that share shall be distributed to the other parties in the proportions detailed above in Table 1.

III.K. Interpretation, Decision, and Appeal

Cases where the Originator and the University agree as to the classification and proposed mechanism of commercialization of the Intellectual Property will be processed by the University in accordance with this policy. All cases in which questions arise as to equities, rights, division of royalties, or any other Intellectual Property-related matter shall be referred to the Intellectual Property Committee for consideration, interpretation of policy, and decision. Appeal of an Intellectual Property Committee decision shall be to the Vice President for Academic Affairs, then to the President, and, finally, to the Board of Regents. Appeals within the University must be made in writing within sixty (60) days of written notice of a final decision. Appeals to the Board of Regents shall be made in accordance with Article IX of the Bylaws of the Board, which requires that all appeals be filed within twenty (20) days of the final decision of the President of the University.

IV. PREVAILING POLICY AND HEIRS AND ASSIGNS

IV.A. Prevailing Policy

In the event of conflicts between the Intellectual Property Policy of Valdosta State University and the Intellectual Property Policy of the Board of Regents of the University System of Georgia, the Intellectual Property Policy of the Board of Regents shall prevail.

IV.B. Heirs and Assigns

The provisions of this Policy shall inure to the benefit of and be binding upon the heirs and assigns of (1) all University personnel and (2) all others who agree to be bound by it.

V. DEFINITIONS

- *Intellectual Property* shall be deemed to copyrighted materials, patentable materials, software, trademarks, and trade secrets, whether or not formal protection is sought.
- *Copyrighted Materials* shall include the following: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) mask works; (8) research notes, research data reports, and research notebooks; and (9) other materials or works other than software which qualify for protection under the copyright laws of the United States (see 17 U.S.C. Section 102 et seq.) or other protective statutes whether or not registered thereunder.
- *Mask Work* means a series of related images, however fixed or encoded: having or representing the predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from layers of a semiconductor chip product; and in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product. (See 17 U.S.C. Section 901 et seq.)
- *Novel Plant Variety* means a novel variety of a sexually reproduced plant. (See 7 U.S.C. Section 2321 et seq.)
- *Patentable Materials* shall be deemed to refer to items other than software which reasonably appear to qualify for protection under the patent laws of the United States (see 35 U.S.C. Section 101 et seq.) or other protective statutes, including Novel Plant Varieties and Patentable Plants, whether or not patentable thereunder.
- *Patentable Plant* means an asexually reproduced distinct and new variety of plant. (See 35 U.S.C. Section 161.)
- *Significant Financial Interest* means anything of monetary value, including, but not limited to, salary or other payments for services (e.g., consulting fees or honoraria); equity interests (e.g., stocks, stock options, or other ownership interests); and Intellectual property rights (e.g., patents, copyrights, and royalties from such rights). *This definition applies equally to the Originator, his or her spouse, or his or her dependent children.*

- *Software* includes one or more computer programs existing in any form, or any associated operational procedures, manuals or other documentation, whether or not protectable or protected by patent or copyright. The term "computer program" shall mean a set of instructions, statements, or related data that, in actual or modified ~~form from~~, is capable of causing a computer or computer system to perform specified functions.
- *Trademarks* shall include all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the University System or any of its institutions. (See 17 U.S.C. Section 1127.)
- *Trade Secrets* means information including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which: derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (See O.C.G.A. Section 10-1-761.)

ADDENDUM EXAMPLES

RIGHTS AND EQUITIES IN INTELLECTUAL PROPERTY

Sponsored Supported Efforts

One example of this would be intellectual property resulting from a grant or other source of outside funding that was received by an employee in working with the Office of Grants and Contracts.

University-Assigned Efforts

One example of this would be intellectual property resulting from grant work that was assigned by the University as part of the employee's work load.

University Assisted Individual Effort

One example of this would be intellectual property created by an employee through utilizing University resources including, but not limited to, equipment, release time, and staff support, beyond what is customary for research and instructional purposes. .

Individual Effort

One example of this would be intellectual property created by an employee that did not utilize any University resources including, but not limited to, equipment, release time, and staff support, beyond what is customary for research and instructional purposes.