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# UNIVERSITY OF WYOMING REGULATIONS

**Subject:** University Intellectual Property

**Number:** UW Regulation 9-1

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## I. GENERAL INFORMATION

The Provost and Vice President for Academic Affairs and the Vice President for Research and Economic Development are the University of Wyoming officers responsible for articulating policy and procedures concerning patentable inventions and copyrightable works in which the University may have or assert an interest.

## II. PURPOSE

To establish ownership of copyrights, protectable discoveries and other intellectual property rights and to provide guidelines for the distribution of income received for the dissemination of those works. While the University claims ownership of intellectual property on behalf of the State, the underlying purpose of such claim of ownership is an open and free atmosphere, where individuals are able to freely publish results obtained from this work. Research done primarily in anticipation of profit is incompatible with the aims of the University. However, the University recognizes that patentable inventions and copyrightable materials are conceived or created during the course of research, instruction, and study conducted by faculty and students. These policies have been established to ensure that inventions and materials in which the University may have an interest are utilized in a manner consistent with the public good.

## III. POLICY OBJECTIVES

The principal objectives of the University Intellectual Property Policy set forth herein include the following:

- A.** To provide incentive to creative intellectual effort by University employees, students, and others associated with the University;
- B.** To establish principles for determining the respective interests of the Creators, the University, and sponsors with respect to Intellectual Property;
- C.** To enable the University to develop procedures by which the significance of Intellectual Property may be determined and, if practicable, commercially utilized;
- D.** To provide the means for placing in the public realm the results of research, while

safeguarding the interests of the Creator, the University, and the sponsor; and

- E. To recognize the right of the Creator to financial benefits, when applicable, from Intellectual Property.

#### IV. DEFINITIONS

**Academic Course Materials:** Works created primarily for the instruction of students or for continuing education and certification programs. Such works may include, but are not limited to, slides and presentation content used in classes, class notes, exercises and assignments, syllabi and examinations. These works do not include software, and materials prepared with significant University resources and facilities including, but not limited to, laboratories, studios, specialized equipment, production facilities, or specialized computing resources.

**Academic Personnel:** Academic Personnel shall have the meaning assigned to it in UW Regulation 2-1.

**Creator:** An inventor as defined under the United States patent laws, an author as defined under the United States copyright laws, or other creator in accordance with the United States intellectual property laws.

**Intellectual Property:** Includes all works, work product, designs, developments, discoveries, improvements, inventions, composition of matter, machines, manufacture, materials, methods, processes, diagrams, documentation, reports, evaluations, creations, expressions, algorithms, computer programs, applications, specifications, upgrades, revisions, modifications, and related written or otherwise reproducible materials, whether patentable, copyrightable or not, and all forms of legally recognized intellectual property rights, including copyrights, patents, trade secrets, trademarks, service marks, logos, and other identifiers, mask works, plant variety protection and tangible research property, together with any associated goodwill, supporting technology or know-how.

**Research:** For purposes of this Regulation, "research" is the studious inquiry or examination conducted with the avowed purpose of creating and adding to the knowledge in a field and thereby advancing theory and principles; expansion of ideas, theories, and principles and the interpretation of developed information and the provision of further insights; or improvement and/or facilitation of the application and utilization of knowledge within an applied professional field.

**Software:** The source code and/or object code of computer applications and subroutine libraries.

**University Facilities:** Any facility, including equipment and material, available to the individual as a direct result of the individual's affiliation with the University, and which

would not be available to a non-affiliated individual on the same basis.

**University Resources:** University facilities, equipment, funds, or funds under the control of or administered by the University but not to include: office space, library facilities, ordinary access to computers and networks, or salary.

**Works of Authorship:** Includes, but is not limited to: textbooks; scholarly articles; literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculpture works, motion pictures and other audiovisual works; sound recordings; and architectural works.

## V. COVERAGE

The University's Intellectual Property policies contained herein apply to all University employees and students conducting research and development that furthers the University's mission and is for the public good. Subject to limited exceptions as described within this Regulation, "Work[s] made for hire," as that term is defined by the U.S. Copyright laws of 1976, are the sole and exclusive property of the University, and employees have no patent, copyright, royalty or any other interest in such work(s). The Intellectual Property policies of the University, as amended from time to time, shall be deemed to be a part of the conditions of employment of every University employee.

## VI. INTELLECTUAL PROPERTY OWNERSHIP

### A. Intellectual Property Generally

With the exception of patentable Intellectual Property not within the scope of the employee's duties and created on personal time, Works of Authorship, Academic Course Materials, and all other Intellectual Property as explicitly described in subsections VI(B) and (C) below; all Intellectual Property, including that which is patentable, or part thereof which results from research or other activities carried out at the University, or which is developed with the aid of the University's facilities or employees, or with funds administered by the University; is the property of the University of Wyoming, and, as a condition of employment, is hereby assigned by the Creator to the University in accordance with these policies. Income earned as a consequence of the Intellectual Property and/or licensing such Intellectual Property shall be distributed in accordance with this Regulation.

All Intellectual Property made or conceived of by University employees including those created on personal time but within the employee's scope of duties shall be disclosed in accordance with this Regulation, and the Creator for such invention or discovery shall adequately demonstrate the relative extent to which the Creator's personal time and resources and the University's resources, facilities, and materials

were utilized. In each instance in which it is adequately demonstrated that such Intellectual Property was made exclusively on personal time and not within the scope of duties, utilizing no University resources, facilities or materials, the University shall acknowledge in writing that the Intellectual Property is the sole property of the Creator.

If a Creator so desires, however, Intellectual Property made exclusively on personal time and not within the Creator's scope of duties, utilizing no University resources, facilities, or materials, may be assigned to the University for evaluation, formal registration, administration or protection whether through patent or other means of protection.

The University may choose at its discretion to discontinue patent prosecution or maintenance (or any other form of protection) of Intellectual Property for any reason. Some examples of why the University might choose to discontinue efforts to protect Intellectual Property include, but are not limited to, if the University believes that a discovery or invention is one that is non-patentable or that does not warrant further evaluation as to patentability, if a discovery or invention is returned to the University after negative evaluation by its patent evaluation agent(s), if any, or the University chooses not to pursue or maintain any other form of protection of Intellectual Property. After consultation with the Creator, the University may, in its sole discretion cause any or all rights which it may have to Intellectual Property to be released and transferred to the Creator (for example, the University may agree to co-ownership with the Creator) in exchange for reasonable consideration (as determined by the University) and/or recoupment of patent expenses spent on protecting the patentable Intellectual Property (including maintenance fees a patent or patents issued). In event of an assignment or release, the University shall retain a royalty-free perpetual non-exclusive license for the use of any such patentable Intellectual Property.

#### **1. Income from Intellectual Property and/or Licenses**

Income from Intellectual Property that is not outside of the scope of subsection A, and licenses will be distributed as allocated below. The allocation formula recognizes all forms of cash payments, including royalties and various fees from licensing. After recoupment of legal costs, and subtraction of certain costs outlined below, a percentage of the proceeds that the University receives from the licensing of Intellectual Property will be paid to the Creator, the Office of Research and Economic Development, and the University, as specified below. The Vice President for Research and Economic Development, in consultation with the President, will oversee the distribution of the University's funds according to a Standard Administrative Policy and Procedure (SAP), which will designate the distribution of these funds to the Creator's department, the Creator's college or school, and a fund dedicated to high priority strategic

research initiatives.

A deduction of fifteen percent (15%) to cover operating expenses incurred by the Wyoming Technology Transfer and Research Products Center will be taken annually from the gross license revenue. At the end of each fiscal year, funds exceeding the annual Wyoming Technology Transfer and Research Products Center budget will be moved into a fund dedicated to high priority strategic research initiatives, as determined by the Vice President for Research and Economic Development, in consultation with the President. Additionally, all out-of-pocket payments or obligations (and in some cases, a reasonable reserve for anticipated future expenses) attributable to protecting (including defense against infringement or enforcement actions), marketing, licensing or administering the Intellectual Property shall be deducted from such current or future income. Income then remaining is the net income, which is distributed as set forth below.

So long as the cumulative net income (i.e., the net income from all years) is less than or equal to five million U.S. dollars (\$5,000,000), then the distribution will be allocated as follows:

- Sixty percent (60%) of the net income to the Creator.
- Twenty percent (20%) of the net income to the Office of Research and Economic Development.
- Twenty percent (20%) of the net income to the University (distribution determined by an accompanying SAP as outlined above).

When the cumulative net income exceeds five million U.S. dollars (\$5,000,000) but is less than or equal to ten million U.S. dollars (\$10,000,000), then any further distribution will be allocated as follows:

- Fifty percent (50%) of the net income to the Creator.
- Twenty-five percent (25%) of the net income to the Office of Research and Economic Development.
- Twenty-five percent (25%) of the net income to the University (distribution determined by an accompanying SAP as outlined above).

When the cumulative net income exceeds ten million U.S. dollars (\$10,000,000) but is less than or equal to twenty million U.S. dollars (\$20,000,000), then any further distribution will be allocated as follows:

- Forty percent (40%) of the net income to the Creator.
- Eighteen percent (18%) of the net income to the Office of Research and Economic Development.

- Forty-two percent (42%) of the net income to the University (distribution determined by an accompanying SAP as outlined above).

When the cumulative net income exceeds twenty million U.S. dollars (\$20,000,000), then any further distribution will be allocated as follows:

- Thirty-five percent (35%) of the net income to the Creator.
- Thirteen percent (13%) of the net income to the Office of Research and Economic Development.
- Fifty-two percent (52%) of the net income to the University (distribution determined by an accompanying Standard Administrative Policy and Procedure as outlined above.)

If there is more than one Creator, the applicable royalty percentage will be divided equitably among the Creators. For the avoidance of doubt, to the extent a difference exists between the Creator(s) identified in the Invention disclosure and the Creator(s) identified in any resulting patent application, the latter shall control.

If there is more than one school, department, or center in which the Creator(s) serves, the applicable income will be distributed to the school, department, or center that administered the academic year salary at the time of the disclosure. The University will review the proposed distribution plan, in light of the declarations of department, school, and center affiliations declared at the time of Invention disclosure to the University as well as the sources of salary support at the time of disclosure. Income will be split equally among all Creators (unless otherwise stipulated on the disclosure form) and, where necessary, will be split among the departments, schools, or centers according to the source of salary support (unless otherwise stipulated on the disclosure form and agreed upon by all the affected unit heads). In the case of student Creators, distributions to departments and schools will be split according to the source of salary support for the student at the time of disclosure. In cases where students receive no salary, distributions will go to the department and school that housed the student's work. When multiple disclosures are used to develop a single patent or license, then the income is split equally across the disclosures unless a different distribution is agreed upon by all those affected (Creators, unit heads, etc.). In cases of dispute, the Vice President for Research and Economic Development, or designee, will mediate among the parties and, if necessary, propose a distribution plan for approval to the President.

If the invention, discovery, or other Intellectual Property is the result of sponsored research and the sponsor regulates the distribution of income, such specific regulations shall take precedence over University policy with respect to distribution of the license revenue.

With respect to any Intellectual Property in which another institution or an outside agency shall share in the income derived from the Intellectual Property rights, distribution of income shall be made first to the other institution according to agreed-upon terms, and then to the Creator according to this Regulation.

## **2. Specific Conditions Governing Sponsored Research**

### **a. Government Sponsored Research**

Patents on inventions or other Intellectual Property arising from research financed by the United States Government are controlled by the terms of the supporting grants and contracts, and applicable Federal laws and regulations. Except as provided by Federal law or by government-supported grants or contracts, when no patent rights are claimed or when patent rights are waived by the United States Government, Intellectual Property arising from government-sponsored research are controlled by Intellectual Property (including those set forth in subsections VI(B) and VI(C)) policies set forth herein.

### **b. Non-Government Sponsored Research**

The University must ensure that its facilities and the results of the research of its employees and students are applied in a manner which best serves the interests of the public. Likewise, the legitimate interests of a private sponsor who provides financial or other support to research carried out by or through the University must be considered. The University will normally reserve ownership of patents on inventions and/or other Intellectual Property arising out of research supported in whole or in part by grants or contracts with nongovernmental organizations or firms. Contracts or agreements which are entered into between the University and nongovernmental organizations or agencies should contain clauses setting forth such a reservation, unless deviations therefrom are requested by the sponsor and approved by the Vice President for Research and Economic Development. In the interest of fair treatment to the sponsor and in consideration for such sponsor's investment, special provisions regarding Intellectual Property rights (including patent rights) may be negotiated by the University, provided that the University retains the perpetual, non-exclusive right to use the invention for its own research, educational, and service purposes, without payment of royalty fees. In such cases, in the interest of discharging the University's obligation to the public in the application of its facilities and its employees' and students' time and talent, the University will require the sponsor to use due diligence in the commercial use of the invention, and the University will retain the right to publish the results of the research involved after a period

of time reasonably necessary to protect the rights of the parties and to allow for the filing of a patent application or to secure any other applicable intellectual property protections. Exceptions to this section may be authorized by the Vice President for Economic Development.

## **B. Copyright Ownership**

All copyrights in Works of Authorship, whose Creators are Academic Personnel, except for works made for hire, software and patentable Intellectual Property, remain with their Creators. The University hereby transfers any copyrights it may own in Works of Authorship to Academic Personnel who prepared the Works of Authorship. Works of authorship created by non-Academic Personnel within the scope of their employment are owned by the University. The University may execute a written agreement waiving its rights, if any, in and to such material. The distribution of royalties, if any, is a matter of arrangement between the Creator and his or her publishers or licensees. The University also supports the creation and dissemination of academic or scholarly publications for the purpose of open access, subject to the arrangement between the Creator and their publishers or licensees. Works of Authorship owned by the University including; works made for hire, software, or other patentable Intellectual Property shall be subject to these policies and may be disseminated through open access with the approval of the Vice President for Economic Development.

### **1. Computer Software**

All copyrights in and to computer software, including but not limited to programs, operating systems, procedures, and associated manuals, which result from activities carried out at the University, and which are developed with the aid of or for use with University hardware shall be the sole property of the University of Wyoming. The terms and conditions regarding patentable Intellectual Property, including but not limited to the distribution of income, shall apply to computer software of the type described herein.

### **2. Academic Course Materials**

The University makes no claim to copyright ownership for noncommissioned academic course materials initiated and completed by Academic Personnel. The University hereby transfers any copyrights it may own in Academic Course Materials to Academic Personnel who prepared the Academic Course Materials, except for those prepared with significant University resources and facilities. However, for those created within the employee's scope of duties, the University will claim a perpetual, nonexclusive, worldwide, royalty-free license to use the Academic Course Materials for any of the University's teaching and educational purposes as well as for administrative purposes for

accreditation.

**C. Service Mark, Trademark, and Trade Name Ownership**

Service marks, trademarks and trade names with respect to products resulting from or arising out of research, instruction, or other activities carried out at the University or developed with the aid of its resources, facilities or staff, shall be the property of the University. Without express authorization from the President or the President's designee, no steps shall be taken to secure such trademarks, trade names or service marks by usage or registration. The University reserves the right to register such marks as it deems appropriate, and to license the use of such marks, provided that the income from such licensing shall be used to support the research and educational programs of the University as defined herein.

**D. Students**

Undergraduate and graduate students enrolled in degree or certificate programs at the University own the copyrightable and patentable Intellectual Property they create if it was created:

1. For a course in which the student is enrolled;
2. During extracurricular activities directly unrelated to research projects being undertaken at the University;
3. While using the resources and facilities of the University commonly provided for a student's use and for which a student has paid tuition and fees;
4. While using resources and facilities of the University available to the non-University community with or without an associated fee;
5. Or a combination of 1–4, unless:
  - a. The student is also an employee of the University either on a work-for-hire basis or as part of University faculty-led research and the patentable Intellectual Property is developed within the course and scope of his or her employment as stated in Section V above, in which case Subsection 1 above shall apply;
  - b. The student participates in a University research project where ownership and control of the resulting patentable Intellectual Property rights created under the project have already been defined via agreement to a governmental, philanthropic, corporate, or other sponsor or collaborator;

- c. The student jointly creates the patentable Intellectual Property with a non-student, in which case Section VI excluding this subsection (D)—and applicable law dictate ownership of patentable Intellectual Property as if the student was a non-student described above in subsection (A).

## **VII. PUBLICATION**

A major function of the University is the advancement and dissemination of knowledge. Any practice which unnecessarily restricts the publication of results of scholarly or scientific work is to be avoided. It is recognized, however, that the full development of useful Intellectual Property may be dependent upon the securing of patent protection which will enable the commercial utilization of the Intellectual Property. Accordingly, under certain circumstances it may be necessary to delay for a minimum period the publication of results of research.

If a sponsor proposes to support a research effort, and the rights to any patentable or copyrightable Intellectual Property resulting therefrom will belong to said sponsor, the research agreement with respect to publication shall include language to accomplish the following: First, the sponsor must agree that the results of the research may be published by the investigators. Second, to not jeopardize patent applications, the University and the investigators may agree that any proposed publication will be submitted to the sponsor with a written notice of intent to submit for publication. The notice will advise the sponsor that if, within a period of no more than ninety (90) days from the date of such notice, the sponsor fails to request a delay, the investigators and University shall be free to proceed immediately with the publication. If, however, the sponsor provides timely notice to the University that a delay is desired, the submission of the manuscript to a publisher or other public disclosure shall be withheld for the period requested, but in no event shall the total period of delay be longer than one (1) year following the date of the notice of intent to submit for publication. Such a period will permit the sponsor to have the necessary patent applications prepared and filed, and does not unduly restrict the dissemination of scientific knowledge. Exceptions to this section may be authorized by the Vice President for Economic Development.

## **VIII. AVOIDANCE OF CONFLICTS**

Conflicts involving Intellectual Property ownership may arise when University employees or students enter into personal consulting agreements with outside firms and organizations. The agreements which business firms generally wish to have executed by those who are to serve in a consulting capacity frequently contain provisions requiring the licensing or assignment of the consultant's Intellectual Property to that business firm. Such provisions may apply to areas in which the individual's University work lies, and thus may come into conflict with the terms and conditions of this policy.

Prior to signing any consulting agreement which deals with patent rights, trade secrets, or the like, if any University time, facilities, materials or other resources are to be involved in the carrying out of such consulting work, University employees or students must submit the proposed agreement to the Wyoming Technology Transfer and Research Products Center and obtain a waiver of University rights, or otherwise modify the agreement to conform with these policies.

## **IX. DUTY TO DISCLOSE INTELLECTUAL PROPERTY**

All individuals whose Intellectual Property are covered by these policies have a duty to promptly disclose the same to the Vice President for Research and Economic Development through the Wyoming Technology Transfer and Research Products Center.

The duty of disclosure arises as soon as the individual has reason to believe, based on his or her own knowledge or upon information supplied by others, that the Intellectual Property may be subject to this Policy. Certainty about patentability or copyright ability is not required before a disclosure is made. Prior to any verbal or other disclosure of Intellectual Property, whether formal or informal, to a non-University third party, individuals must disclose the Intellectual Property to the Wyoming Technology Transfer and Research Products Center. Examples of disclosures to non-University third parties include, but are not limited to, potential non-University collaborators, conference presentations, poster sessions, journal publications, conference roundtable discussions, and discussions with potential third party sponsoring entities for support of continued work on the Intellectual Property.

Individuals shall execute such declarations, assignments, or other documents as may be necessary in the course of patent evaluation, registration, administration, or enforcement in order to ensure that title in such inventions shall be held by the University, or by such other parties as may be appropriate under the circumstances. Employees and students who do not promptly disclose shall be subject to disciplinary action.

## **X. WYOMING TECHNOLOGY TRANSFER AND RESEARCH PRODUCTS CENTER**

The Wyoming Technology Transfer and Research Products Center shall review and recommend to the Vice President for Research and Economic Development or the Vice President's designee the procedures for the implementation of these policies; shall resolve questions of Intellectual Property ownership that may arise between the University and its faculty, staff, or students; shall recommend to the Vice President for Research and Economic Development the expenditure of funds from patent and/or licenses; and shall make such recommendations as are deemed appropriate to encourage disclosure and to assure prompt and expeditious handling, evaluation, and prosecution of patent opportunities.

## **XI. PATENT MANAGEMENT**

The Wyoming Technology Transfer and Research Products Center, in consultation with the Office of General Counsel, is authorized to negotiate with reputable agencies or firms to secure arrangements for patent management, including competent evaluation of invention disclosures, expeditious filing of applications on patents, and licensing and administration of patents.

## **XII. EXCEPTIONS**

Exceptions to any of the above policies may be authorized by the President or the President's designee if on the basis of the evidence available, such exception is consistent with the University's responsibilities to the public interest.

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**Responsible Division/Unit:** Office of Research and Economic Development

**Source:** None

**Links:** <http://www.uwyo.edu/regs-policies>

**Associated Regulations, Policies, and Forms:** None

**History:**

University 641, Revision 3; adopted 7/17/2008 Board of Trustees meeting

Revisions adopted 5/10/2013 Board of Trustees meeting

Revisions adopted 9/12/2014 Board of Trustees meeting

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