

Intellectual Property and Scholarly Works Agreement

May 7, 2021

Preamble

The creation of Intellectual Property and Scholarly Works is one of the primary ways the University fulfills its mission of contributing to the body of knowledge for the public good. The University encourages the creation of original works of authorship and the free expression and exchange of ideas.

This agreement is intended to embody the spirit of academic tradition, which provides for ownership by employees for intellectual property and scholarly works and is otherwise consistent with applicable law, which provides for ownership by the University for employment related works.

I. Definitions

- A. “Incidental use” means normal academic use of University Resources commonly available to the unit member, such as the use of an employee’s office computer, Internet services, library facilities, and/or office and laboratory equipment.
- B. “Intellectual Property” is defined as all forms of technology and expression (not including Scholarly Works) whose ownership is subject to legal protection in the United States and/or internationally, including but not limited to patents, copyrights, mask works, trademarks, tangible research property, and rights in data and other proprietary information. Patentable discoveries and inventions may include any new and useful process, machine, article of manufacture, or composition of matter. Copyrightable works may include written and graphic works, computer software, and photographic, video, and audio works. A mask work is a visual representation of a semiconductor chip. A trade or service mark is a word, name, symbol, or device used by an organization to identify its goods or services. Tangible research property includes matter such as biological materials, prototype devices, and engineering designs. Protectable data includes the recorded factual material as well as supporting materials such as experimental protocols and code written for statistical analyses commonly accepted in the scientific community as necessary to validate research findings. Some types of Intellectual Property, such as computer software, may be subject to protection under both patent and copyright laws. There may be additional types of work that fall under these categories of intellectual property.
- C. “Scholarly Work” is defined as any copyrightable property not otherwise expressly excluded by this Agreement, including, but not limited to, copyrightable property: (a) embodied in books, textbooks, manuscripts, works of art or design, musical scores and performances, dramatic works and performances, choreographic works, popular fiction and non-fiction, poems, training materials, or other works of the kinds that have historically been deemed in academic communities to be the property of their author, including lectures notes, course outlines, syllabi, handouts, lab manuals, assignments, exercises, tests, and rubrics developed to support teaching activities, in whatever form, that are created or developed in the regular course of teaching duties or student activity; (b) any

additional work developed for online and hybrid courses to include produced videos, animations, games, simulations, digital lessons or modules, courseware, and other similar works; (c) embodied in a storage medium such as film, videos, audio recordings, multimedia materials, distance learning materials, courseware; (d) has been released by the University to the Author or Inventor, or (e) is created on sabbatical leave with no more than Incidental Use of University Resources.

II. Ownership of Intellectual Property and Scholarly Works

- A.** Intellectual Property created by a member of the bargaining unit is owned by the University at which the member is employed only if it is created:
 - 1.** when the property is embodied in a work that the employee is specifically assigned to create, or which is the product of a commission by the University pursuant to a signed contract which expressly stipulates “work made for hire” including ownership rights; and
 - 2.** with more than incidental use of University resources.

- B.** Intellectual property created within the scope of employment which does not qualify for ownership by the University pursuant to A.1 and A.2 above shall be the sole and exclusive property of and wholly owned by the unit member creating such intellectual property. Where Intellectual Property is owned by the employee, the employee may, at his/her option, assign the rights of ownership in whole or in part to the University, subject to the limitations of section III below.

- C.** The allocation of rights in Intellectual Property arising from research or creative work sponsored by government, industry, or other external organizations will typically be governed by the terms of a written agreement between the University and the sponsor. The University ordinarily will be required by the agreement or by law to grant the sponsor a license, maintain or disseminate data, or grant other rights relating to Intellectual Property arising from the research or work and accordingly will take ownership of such Intellectual Property in order to meet its contractual obligations. Ownership and other provisions of this Policy are subject to such agreements.

- D.** The University recognizes and affirms the tradition in higher education that Scholarly Works are owned by the faculty member authoring them rather than the employing educational institution, unless the University owns the copyright if (1) there is a signed contract; (2) the employee was specifically assigned to create the copyrightable work; (3) the copyrightable property is the result of an alternate assignment and the University indicates at time of development in writing that ownership will be claimed; or (4) more than incidental use of University facilities or financial support was used in the creation, and the University, with knowledge of such support, indicates in writing at the time of development that ownership will be claimed. The University also reserves the right to use the copyrightable property without royalties for educational purposes unless the creator’s right to commercialize it is significantly impaired. Faculty ownership of such Scholarly Works may be affected by the terms of agreements with third party sponsors, as set for in section C above.

- E. All Scholarly Works created by faculty within the scope of employment shall be owned by the Author.
- F. The University shall retain a non-exclusive, perpetual, and royalty-free right to use the Scholarly Works for pedagogical, scholarly, research, or administrative purposes, unless the Author specifically demonstrates that such royalty-free use significantly impairs the Author's right to commercialize the Scholarly Work. Scholarly Works are generally not considered "works made for hire" under this Policy. This includes scholarly works created using Assigned Released Time (ART) and Sabbatical Leaves. With respect to online classes, their development through the University's Quality Assurance Program (QAP) for online course development and teaching is considered "works made for hire" and the University retains its rights to the approved development course shell as described above, but only for the purpose of a course's perpetuation within a program curriculum. The faculty member who developed the course retains their rights to use the course content in any other context. Supplemental material faculty add when teaching an active online course section does not become part of the development course shell.
- G. The University reserves the right to pursue a patent on a patentable intellectual property pursuant to paragraph A.1 above. All costs related to obtaining a patent, including but not limited to pre-patent expenses, patent prosecution, licensing, license maintenance, and patent infringement, shall be borne by the University. Such costs shall be reimbursed to the University before any net revenue is disbursed to the inventor.

III. Revenue from Intellectual Property

- A. Where the employee owns the Intellectual Property or Scholarly Work, the employee shall retain all royalties or other benefits from any commercialization of said Property or Work. However, the University at which the employee is employed shall have a right to use said Property or Work free of royalties, unless the employee can specifically demonstrate that such royalty-free use significantly impairs the creator's right to commercialize the property, work, or invention.
- B. Compensation for online and hybrid courses created by the employee shall be governed by master and local agreements on Online Courses.
- C. Revenue from Inventions and Patents shall be distributed in accordance with this section and negotiated by the University with third parties in a manner to encourage the development of Inventions within the University. Net Revenues may not include funds received from third parties for research.
 - 1. Revenue offered by third parties to fund research must be declined if the receipt would violate the University's Policies, including but not limited to, Policies and Procedures on Financial Conflicts of Interest in Research.
 - 2. Net Revenue shall be distributed between the inventor, the inventor's Program, School, and the University in accordance with the schedule shown in Table I below.
 - 3. Net revenue shall be disbursed in accordance with the applicable license agreement. Inventors shall be permitted to review the University's books

and records regarding the calculation and distribution of Net Revenue no more than one (1) time per year, upon reasonable notice to the Provost, and at the conclusion of the University's fiscal year. In the event there is a dispute regarding the calculation of Net Revenue, the dispute shall be resolved between the parties with the assistance of the University's Internal Auditor.

D. If there is more than one (1) Inventor, the Inventors' share shall be divided equally among all Inventors, unless the Inventors agree in writing to a different distribution in a form acceptable to the University. Distributions are made as described in Table 1 for inventions or patents, unless a distribution plan has already been established for an existing invention or patent.

Table 1:

Annual Net Revenue	Inventors' Share	Inventors' Program Share	School Share	University Share
First \$20,000	100%	0, 0, 0		
\$20,001-\$500,000	50%	10%, 20%, 30%		
\$500,001 + Above	30%	15%, 25%, 30%		

IV. Disputes

The University agrees to work in good faith in the event of any disagreements or disputes on the matter of any terms covered in this Agreement and of the right of any person to their Union representation in the matter.

John B. Pover 5/7/2021
 For the University Date

Suzanne Terdi 5/7/2021
 For the AFT Date

John B. Pover 5/7/2021
 For the University Date

Renee Gonzalez Diaz 5/7/2021
 For the AFT Date