

FACULTY MANUAL

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A HANDBOOK OF  
POLICIES AND  
REGULATIONS

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WASHINGTON  
STATE  
UNIVERSITY

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JANUARY 1992

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Washington State University subscribes to the principles and laws of the state of Washington and the federal government pertaining to civil rights and equal opportunity, including applicable Executive Orders. Washington State University policy prohibits discrimination on the basis of race, creed, color, national or ethnic origin, sex, age, sexual orientation, religion, marital status, the presence of any physical, sensory or mental disability, and status as a disabled or Vietnam-era veteran in the recruitment, admission and retention of students; the recruitment, employment, and retention of faculty, staff, and students; and the operation of all University programs, activities, and services. Evidence of practices which are inconsistent with this policy should be reported to the Affirmative Action Director in the Affirmative Action Office, (1022), French Administration Building, Room 225, 509/335-8288.

## PATENTS

### Introduction

The University patent policy is intended to encourage a healthy atmosphere conducive to research and development through a generous system of rewards and incentives for the creation of intellectual property while at the same time giving proper consideration to the responsibilities this University has as a public land grant university.

The strength of the University lies in its employees. The University's policies can provide invaluable assistance in bringing employee ideas to development and fruition within a framework of mutual trust and collegiality.

This policy is intended to spell out the responsibilities of the University and its employees and establish a framework for ethical conduct. While employees are encouraged to consider the potential market value of their inventions, they shall not be held liable for failing to recognize a potentially patentable invention.

Employees of Washington State University may create patentable discoveries. It is desirable in some cases to seek patent protection for these works and discoveries.

Licensing the use of the property provides an opportunity for both income to the inventor and support for further University research.

This patent policy applies to all University employees. For the purposes of this policy, "employee" shall be defined as any person receiving compensation for service, or any person volunteering services for the benefit of the University. The uncompensated activities of students in furtherance of their educations shall not be considered service which benefits the University within the meaning of this policy.

All employees accept the terms of this policy as conditions of employment. It shall be the responsibility of all immediate supervisors to advise employees of this condition of employment at the time of employment. In addition, each employee shall agree that this policy may be modified by the administration with approval from the Board of Regents after consulting with faculty and staff of the University.

#### Intellectual Property Committee

The Intellectual Property Committee serves as an advisory committee to the President on all University patent, copyright, trademark, and related matters. The committee's responsibilities include the review of patent, copyright, trademark issues affecting the University, determination of the ownership of intellectual property, review of the relationships between the University and Washington State University Research Foundation (WSURF) and other management agents, recommendations to WSURF regarding assignment of inventions to appropriate development organizations, review of licensing policies and agreements, recommendation of policies for the allocation of revenues, and review or development of policy recommendations pertaining to intellectual property.

All matters regarding specific intellectual property coming before the Committee shall be held confidential by all members of the Committee.

The composition and tenure of the Intellectual Property Committee shall be:

1. Six faculty with three-year terms, appointed by the President, with nominations submitted by the Washington State University Faculty Senate Committee on Committees. One of these is appointed chair by the President.
2. Two Deans/Associate Deans of the colleges for three-year terms.
3. One member of the administrative and professional personnel or staff, with a three-year term.
4. Vice Provost for Research, who serves as secretary; Assistant Vice President--Finance; Director, Intellectual Property Administration; and a representative of the Office of Grand Research Development.

#### Policy

##### Scope of Policy.

This policy applies to potentially patentable discoveries and trade secrets which are developed using Washington State University equipment, supplies, facilities, employee time, or trade secret information, or which relate directly to the University's business, research, or development. The University will hold ownership in patents and other non-patentable intellectual products, except those covered by copyright policy. Developed by its employees as a result of their research or employment. The University does not claim rights in inventions for which no equipment, supplies, facilities or trade secret information was used and which was developed entirely on the employee's own time, unless the invention grows directly out of the business of the University or of the University's actual or demonstrably anticipated research or development or unless the invention results from work performed by the employee for the University.

##### Sponsored Research.

Where research has been sponsored by private industry or foundations, licensing of patents shall be negotiated between the sponsor and the University or its agent where appropriate. The University will strive to protect the financial interests of all and ensure that the University retains the traditions of self-governance and academic freedom. The University, on behalf of its constituent colleges, schools, or departments, will not accept grants or enter into agreements for the support of instruction or research that confer upon an external party the power to censor, unduly delay, or exercise effective veto power over either the content of instruction or the publication of research. Publication of research findings may be temporarily delayed in order to protect patent rights or permit the research sponsor to review the proposed publication for the sole purpose of identifying proprietary information furnished by or belonging to the sponsor.

The University normally retains ownership of property developed under sponsorship agreements and will negotiate rights to license the property. The proprietary rights of the University and of the University's employees shall be subject to the agreement between the sponsor and the University. Agreements with outside sponsors shall be approved by the Provost, Vice President--Business and Finance, and Vice Provost for Research or their designees.

##### Disclosure of Potentially Patentable Discoveries.

For the protection of the employee's interests, each employee shall disclose to the Intellectual Property Committee, at the time of employment, all inventions developed or being developed by the employee, for the purpose of establishing his or her ownership rights to developments made prior to employment by the University. In

order to determine the rights of employees and the University, employees shall disclose all potentially patentable inventions and discoveries developed while employed at WSU to the Intellectual Property Committee for review. The Director of Patents, Copyrights and Trademarks will provide assistance in filling out forms for disclosure.

Unless otherwise agreed with an outside sponsor, the University shall own the rights to all patentable property developed as a result of University employment. Discoveries are developed as a result of University employment when the equipment, supplies, facilities, employee time or trade secret information of the University are used, or where the invention is a direct outgrowth of the University's business or University research and development.

#### *Determination of Ownership.*

The Intellectual Property Committee will determine whether the potentially patentable property is owned by the University, by the employee, jointly by the University and the employee, or by an outside sponsor.

Under the federal patent and trademark legislation of 1980 (35 U.S.C. 200 et seq.), the University has the right of first refusal to title in inventions made in the performance of federal grants and contracts. The University will assert title to and attempt to license inventions made with federal government funds so that the Congressional purpose of fostering the development of industry in the United States will be furthered.

Patentable inventions not subject to a sponsorship agreement or University ownership under the preceding paragraph may be determined by the Intellectual Property Committee to be the employee's property. If the employee is determined to be the owner, the University will, on demand from the employee, issue a waiver of the University's rights.

The Committee may determine that the employee is a partial owner of the intellectual property with the University in cases where it would be unfair to determine that the property is wholly owned by either the University or the employee. In such cases the Committee shall establish respective percentages of ownership. If the Committee deems it to be in the best interests of the University to release its rights to the invention, it may do so. The Committee may place conditions on the release including a lump sum payment, a portion of the royalties, or other consideration to compensate for the use of facilities and materials.

The procedure for determination of ownership shall be as follows. The Intellectual Property Committee shall make its determination of ownership, or request additional time, within 45 days of full disclosure. If the Intellectual Property Committee asks for additional time, it must, in any event, make its determination within 35 days of its request for additional time. The employee will be notified of the decision of the Committee within 5 days of the Committee's determination. The employee shall have

30 days from the date of the mailing of the notice to appeal the Committee's decision. The appeal shall be heard by the Provost and Academic Vice President or his designee within 20 days of the notice of the appeal. The decision on appeal shall be issued within 30 days of the deadline for submitting materials. If the Intellectual Property Committee fails to notify the employee in writing of determination of ownership within 50 days of full disclosure or 80 days if additional time is requested, then the University's rights in the patentable property shall automatically become the property of the employee. Following this internal appeal process, the employee has recourse to settlement in the civil courts.

#### *Duty to Assign and Cooperate.*

After the determination by the Intellectual Property Committee and exhaustion of the employee's right of internal and external appeal, the employee shall execute documents of assignment to convey to the University, or its assignee, all of the employee's interest in the invention determined to be owned by the University and assist in obtaining, protecting, and maintaining patent rights.

When discoveries are determined to be owned in part by the University and in part by the employee, the University and the employee may negotiate an agreement apportioning rights to the property. However, on failure of the parties to reach an agreement, the following provisions shall apply: the property shall be assigned to the Washington State University Research Foundation or its assignee, and the royalties shall be divided between the University and the employee according to the Committee's determination of the percentage of ownership. The portion of royalties due to the University shall be divided according to the section on royalties below. The portion of royalties due to the employee shall be distributed to the employee free of the provisions of this policy, but shall be subject to WSURF administrative costs.

#### *Publication and Disclosure to Third Parties.*

Premature publication, public use, or disclosure of an invention can sometimes jeopardize the rights of the employee, or the University or its assignee to secure patent protection. Therefore, unless the Intellectual Property Committee has issued a waiver of University rights, the employee agrees that there shall be no publicity or disclosure concerning the invention until patent applications have been filed. Once an invention is identified as potentially patentable, all publicity, public reports, interviews, news releases, speeches, public disclosures or public demonstrations of the invention subsequent to the filing of the application shall have prior clearance in writing from the University or its assignee.

This section shall not be applicable to sponsorship agreements that impose different obligations on disclosure.

*Management Patents.*

Patents shall be assigned to and managed by the Washington State University Research Foundation. See below.

*Royalties.*

In adopting this policy statement the Washington State University Board of Regents recommended and the Board of Directors of the Washington State University Research Foundation adopted the following policy for distribution of royalties from patents:

Following the filing of a patent application on a particular invention which has been determined to be University property, the inventor will receive a \$500 payment from the WSURF. If the invention is determined to be owned jointly by the employee and the University or by the employee, the University, and one or more external agencies, unless the parties agree otherwise, the inventor shall receive a sum equal to \$500 multiplied by the percentage of the University's interest. Where several employees are responsible for the invention, the payment shall be shared among the coinventors.

Net royalty income received by WSURF shall be defined as one or the other of the following: (1) in the case of property administered by an agency other than the WSURF (such as the Battelle Development Corporation, Research Corporation, or Washington Research Foundation), the sum received that is subject to this policy less a 5% administrative charge to be retained by WSURF; or (2) in the case of property administered by WSURF, the amount received that is subject to this policy less a 40% administrative charge to be retained by WSURF.

Net royalty income received by WSURF shall be distributed according to the following schedule:

Cumulative Net Income	WSU Research Foundation		Unit (e.g., Department)
	Inventor	WSU Research Foundation	
\$1 - \$10,000	100%	0%	0%
\$10,001 - \$40,000	50%	20%	30%
Above \$40,000	30%	35%	35%

In the case of multiple inventors, the cumulative net royalty income shall be distributed equally among them unless their initial disclosure specified an unequal distribution.

Royalty income allocated to inventors goes directly to them as personal income.

*The Washington State University Research Foundation as Assignee and Patent Agent.*

Following review by the Intellectual Property Committee, the University will assign its interests in all patents and other intellectual property to the Washington State University Research Foundation for development. The assignment will take place under the agreement between the University and the WSURF. If the WSU/WSURF agreement is terminated, the University shall select a managing agent and execute the proper assignments to the agent.

Copies of the agreement between the University and the WSURF may be obtained from the Director of Patents, Copyrights and Trademarks.

Nothing in this policy shall be construed as abridging a faculty member's academic freedom in the classroom.

**COPYRIGHTS**

**Policy Objectives**

The University encourages the publication of scholarly works as an inherent part of its educational mission. In this connection, it acknowledges the right of faculty, staff, and students to prepare and publish, through individual initiative, articles, pamphlets, books, and other materials that are copyrighted by the authors or their publishers and that may generate royalty income for the authors.

The following statement of University policy on ownership and use of copyrightable materials is provided to clarify the respective rights and responsibilities of individuals and the University in this important area. The policy will be administered by the University's Intellectual Property Committee.

**Policy Statement**

University faculty, staff, and students retain all rights in copyrightable materials they create, except when the following special circumstances or contractual arrangements prevail:

1. There exist grant or contract limitations;
2. The work is commissioned by the University;
3. The creation of the work involves significant use of University personnel, funds, or facilities;

4. The work is patentable and the University may assert ownership under its patent policy;
5. There exists an agreement in writing to the contrary between the University and the creator of the work.

#### Guidelines

Interpretations and implementation of the University's copyright policy shall be in accordance with the following principles.

1. *Grant and Contract Obligations.* The University shall have the right to perform its obligations with respect to copyrightable works, data, prototypes, and other intellectual property under any contract, grant, or other arrangement with third parties, including sponsored research agreements, license agreements, and the like. Such arrangements may require, for example, that ownership vest in the sponsor, or that the material be published without copyright.
  2. *University-initiated or -directed Work.* The University may assert ownership rights in all cases in which the work is initiated or directed by the University (or one of its colleges, schools, departments, or other units). Normally work developed as a part of the author's regularly compensated duties (for example, work resulting from released-time arrangements for faculty or assigned tasks for staff members) will belong to the University. However, "University-initiated or -directed" specifically does not refer to a faculty member's general obligation to produce scholarly works.
- In the case of works created by nonemployees, the copyright may vest with either the University or the contractor, depending on the terms of the agreement negotiated with the contractor. University personnel shall therefore generally require contractors to agree in writing that ownership shall vest in, or be assigned to, the University. Units wishing to utilize nonemployees are encouraged to consult the Director of Patents, Copyrights and Trademarks concerning the treatment of copyrights.

3. *Significant Use of the University Resources.* It is the University's responsibility to protect the interests of the state of Washington. Uncompensated use of state resources in significant amounts by University employees for personal purposes is prohibited. However, the University will not construe the provision of office, library, laboratory, or computation facilities *per se* as constituting significant use of space or facilities, nor will it construe the payment of salary *per se* as constituting significant use of funds.

Whether the creation of a work has involved significant use of University personnel, funds, or facilities (e.g., clerical services, office supplies, or computer time) shall be determined by the head of the author's administrative unit (e.g., the department chair). Administrative heads are referred to section 35.35.1 of the *Business Policies and*

*Procedures Manual* of the University concerning the definition of significant use. (Note: This section of the *Business Policies and Procedures Manual* will be rewritten to conform with the present policy, particularly in areas pertaining to the distribution of royalty income.) They are encouraged to consult the Director of Patents, Copyrights and Trademarks for any needed clarification. It is the author's responsibility to inform the head of his or her administrative unit of any unit resources used in the creation of a work, and the administrative head's responsibility to inform the author of what constitutes significant use of those resources. When use is significant, the University may assert ownership rights. (This may entail, for example, reimbursement for use of facilities or a percentage of royalties. Normally the University will release rights when compensated.)

Materials developed by faculty members for courses may be used by them in the preparation of textbooks or other works. Under this policy the resulting works are the property of the faculty members, notwithstanding the fact that University facilities may have been used in the preparation of the course materials.

Determination of when use of University resources is significant is a matter of judgment that must be based on: practices in particular disciplines, schools, or departments; the degree of pressure for other uses of any scarce resources involved; and the general context. However, the University does not intend to hamper the free exercise of individual initiative and creativity in cases where the University does not incur significant real costs as a result of such work.

4. *Patentable Works.* Some works, particularly certain types of computer programs, may qualify for patent as well as copyright protection. An author, upon recognizing that one of his or her works is of this kind, is responsible for disclosing it to the Intellectual Property Committee for a determination of (i) ownership and (ii) whether the University wishes to seek patent protection should ownership be vested in the University. These determinations will be made by the Intellectual Property Committee following the procedures set out in the University's patent policy. If ownership of such a work is vested in the University under the patent policy, but the University decides not to patent the work, ownership and disposition of the work is then determined in accordance with this copyright policy.

5. *Written Agreements.* It is desirable to reach agreement in writing as to the rights of the University and of participants in a creative effort before work begins whenever (i) there is a question as to whether ownership of the materials created will lodge with the University or with the author(s), (ii) it is likely that the creation of the work will result in significant use of University facilities, or (iii) copyrightable materials are likely to result from the joint efforts of persons in academic departments and University service departments.

Administration of Policy

1. *Determination of Policy and Ownership in Unclear Cases.* Such determinations will be made in the University's Intellectual Property Committee and will follow the guidelines set out in the University's patent policy. Either the University or the author may initiate this review.
2. *Marketing of Materials Owned by WSU.* Please see section 35.35.1 of the University's *Business Policies and Procedures Manual*. (Note: This section of the *Business Policies and Procedures Manual* will be rewritten to conform with the present document, particularly in areas pertaining to the distribution of royalty income and the determination of ownership.)
3. *Distribution of Royalties.* See the following section of this document.
4. *General Advice and Assistance.* Contact the Director of Patents, Copyrights and Trademarks in the Patents, Copyrights and Trademarks Office, Research and Technology Park, zip 1802, telephone 335-2202.

Division of Royalties

When ownership of a work is vested in the University, the royalty income generated by the work shall be distributed according to the following schedule:

Cumulative Net Income	Author	WSU Research	
		Foundation	Unit (e.g., Department)
\$1 - \$10,000	100%	0%	0%
\$10,001-\$40,000	50%	20%	30%
Above \$40,000	30%	35%	35%

In the case of multiple authors, the cumulative net royalty income shall be distributed equally among them unless their initial disclosure specified an unequal distribution.

Royalty income allocated to authors goes to them directly as personal income.

Net royalty income to the Washington State University Research Foundation (WSURF) from patents, copyrights, and other intellectual properties administered by such agencies as Battelle Development Corporation, Research Corporation, or Washington Research Foundation, etc., or by WSURF itself, is defined as the sum received less a five percent administrative charge to be retained by WSURF.

Nothing in this policy shall be construed as abridging a faculty member's academic freedom in the classroom.