

UNIVERSITY OF MAINE SYSTEM
Policy and Procedures Manual

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GOVERNANCE AND LEGAL AFFAIRS

Section 209 Patents and Copyrights

Effective: 9/29/86

Last Revised:

Responsible Office: Legal Counsel

Policy Statement:

The University of Maine System is a public institution devoted to teaching, research, service and other scholarly activities. Its faculty, staff, and employed students carry on research and other activities supported by the University System from their own resources or by contracts or grants with outside sponsors. The Board of Trustees encourages and supports the development of intellectual property, which is defined as any copyrightable or patentable materials, inventions, or discoveries, resulting from scholarly pursuits. Procedures will be developed to define and establish the respective rights, equities, and obligations of the University System and its scholars and employees regarding that intellectual property. The University System recognizes the interests of all parties involved, provides the mechanism for making a proper and equitable distribution of benefits, and assists scholars in benefiting from their creative efforts. Recognizing the many circumstances in which copyrights or patents may be produced, the need for equitable division of income with its scholars, and the prudent exercise of public trust, the University System will provide clear procedures for the disposition of income for intellectual property. A University System Patent and Copyright Committee, consisting of seven persons recommended by University Presidents and appointed by the Chancellor, shall be established to review the procedures periodically and hear appeals, and when appropriate, make recommendations to the Chancellor.

Related Documents:

~~Administrative Practice Letter~~ - Patents and Copyrights

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BOARD POLICY:

I. INTRODUCTION

The University of Maine System is a public institution devoted to teaching, research, service and other scholarly activities. Its faculty, staff, and employed students carry on research and other activities supported by the University from its own resources or by contracts or grants with outside sponsors. This document defines and establishes the respective rights, equities and obligations of the University and its scholars and employees to any copyrightable or patentable materials, inventions or discoveries, (hereinafter referred to as intellectual property), resulting from their work.

II. OBJECTIVES

The objectives of this policy are:

- A. to increase the incentive to creative intellectual effort by those in the University community,
- B. to establish principles for determining the rights of the University, scholars and sponsors with relation to intellectual property,
- C. to provide the mechanism for making public the results of research and other scholarly activities, while safeguarding the interests of the University, authors and inventors, and
- D. to recognize the right of authors and inventors to realize tangible benefits from their intellectual property.

III. DEFINITIONS

The following definitions apply to the application of this policy:

- A. "University" means the University of Maine System, in its entirety or at any of its campuses or organizational components including the Maine Public Broadcasting Network (MPBN).
- B. "Product of University Research" refers generally to intellectual property arising out of duties or responsibilities for which an individual is compensated by the University. It includes:
 1. inventions,
 2. designs,
 3. models,
 4. works of authorship,
 5. any strain, variety or culture of an organism, or any portion, modification, translation or extension of these items, and

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6. other legally protectable material, including know-how and trade secrets.
7. processes,
8. mineral discoveries.

C. "Copyrightable Material" includes:

1. books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals,
2. lectures, musical or dramatic compositions, and unpublished scripts,
3. films, film strips, charts, transparencies, and other visual aids,
4. video and audio tapes and cassettes,
5. live video or audio broadcasts,
6. programmed instruction materials,
7. computer software. The term "computer software" encompasses computer materials in the broadest sense, including programs, user's manuals and other accompanying explanatory materials and computerized data-bases. It includes, for example; microcode, subroutines, operating systems, high level languages application programs, etc., in whatever form expressed (e.g., machine or assembly language, source or object code, etc.) or embodied (e.g., chip architecture, ROM, disk or tape storage, program listings, etc.),
8. paintings, sculptures and photographs, and
9. other materials or works which qualify for protection under the copyright laws of the United States or other protective statutes whether or not copyrightable thereunder.

D. "Incidental Use of University Resources": certain facilities of the University, including the libraries, are generally accessible to the public; use thereof shall not, in and of itself, create an equity position for the University for the purposes of this policy.

E. "Significant use of University Resources": significant use shall be regarded as more than incidental use of University facilities such as computer centers, laboratories, classrooms, audiovisual or telecommunications equipment. It shall also include the use of any unique equipment or facilities not ordinarily available to the general public.

IV. RESPONSIBILITIES OF THE PARTIES

A. RESPONSIBILITIES OF THE RESEARCHER:

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Responsibility for timely disclosure of intellectual property subject to this policy rests with the author or inventor who shall take all reasonable steps, including the execution of assignments where necessary, to permit prompt evaluation of the intellectual property and perfection of patent or other rights.

It is the responsibility of the inventor to disclose fully to the Committee the circumstances surrounding the invention including the names of all those within or outside of the University who participated in the invention. Employees of the University who believe that they have invented items outside the scope of this policy shall not file, or permit others to file in their name, patent applications without providing at least thirty days notice and a statement of the circumstances of the invention to the University through its designated office. Upon request, additional information as to the nature and circumstances under which the item was developed and a copy of the invention disclosure shall be provided.

Scholars planning to engage in consulting or business activities, and those charged with approving such plans on behalf of the University are responsible for ensuring that any related agreements with external entities are not in conflict with this policy or other commitments involving the University.

The University must preserve any basis that may exist for protecting items subject to this policy. In some cases, tangible property belonging to the University, including but not limited to models, devices, designs, computer programs, cell lines, antibodies, recombinant materials, chemical compounds, compositions, formulations, plant varieties, and records concerning inventions or discoveries, constitutes a portion of that basis. Therefore, written approval must be obtained before tangible property associated with products of University research is transferred to any person or entity for commercial purposes.

B. RESPONSIBILITIES OF THE UNIVERSITY:

When the University makes a determination to exercise its rights to intellectual property, it will promptly make appropriate efforts to protect them legally and with the assistance of the scholar it will search out and initiate negotiations with prospective licensees, or take other appropriate steps to bring the development into commercial use.

If the University chooses neither to exercise its rights through pursuit of legal protection and commercial development or otherwise, nor to transfer the rights to another party, nor to dedicate the rights to the public, they shall be transferred or waived to the scholar, if so requested in writing.

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If the University has chosen to protect an item, but does not arrange for its commercial development or dedication to the public within a reasonable time, the scholar may make a written request for transfer or waiver of rights from the University. The Patent and Copyright Committee will either grant the request or will advise the scholar of the University's plans for the intellectual property; in addition to the retention by the University of a nontransferable, royalty-free license, appropriate conditions agreed to by the scholar and the Committee shall be applied to any transfer or waiver.

The University shall treat disclosures of intellectual property subject to this policy as confidential and shall make reasonable efforts to avoid loss of rights due to lack of appropriate documentation or to improper or premature disclosure or to publication without proper copyright notice, but it will not be liable in regard to any such loss.

All releases, agreements or other instruments intended to be binding on the University of Maine System shall be signed by a University officer authorized by the Board of Trustees to execute agreements on its behalf.

V. GENERAL PRINCIPLES

Scholars who during their association with the University create intellectual property shall cooperate with the University in defining the rights to the intellectual property which result as a consequence of their research or other scholarly activities by promptly providing the designated campus office with a report describing the circumstances under which the intellectual property was conceived and reduced to practice, with particular attention to the following:

- A. naming the sponsor, if any, of the project or program,
- B. stating whether the intellectual property is within the scholar's normal area of activities and responsibilities at the University, and
- C. indicating the extent to which equipment or facilities or materials provided by the University were employed in the work which led to the creation of the intellectual property.

The campus President shall be responsible for providing an outline for the reporting of intellectual property.

VI. DETERMINATION OF RIGHTS, EQUITIES AND OBLIGATIONS

It is the policy of the University to recognize the interests of all parties involved, to provide the mechanism for making a proper and equitable distribution of benefits, and to assist scholars in benefiting from their creative efforts.

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A. INDIVIDUAL EFFORTS:

Intellectual property resulting from research or other scholarly work conducted wholly at the expense of the scholar, on the scholar's own time, without use or with only incidental use of University facilities, equipment, or materials; or outside the individual's normal field of activities and employment responsibilities are the property of the scholar and the University asserts no interest and undertakes no responsibility with respect to such property. It shall be the responsibility of the scholar to demonstrate that these criteria hold. In such cases the University, if requested to do so, will waive any claims to such intellectual property.

It is not intended that this policy will change the traditional relationship between the University and authors of textbooks and other scholarly and artistic works. Therefore, except in those cases in which the production of books and artistic works is a part of a sponsored program or of specifically assigned duties, copyrights in textbooks, monographs, papers, musical compositions, works of art, or unpublished manuscripts, will be the sole and exclusive property of the creator.

B. UNIVERSITY-ASSISTED EFFORTS:

Intellectual property resulting from research or other scholarly work involving more than incidental use of University facilities, equipment or materials, presumes an equity interest on the part of both the scholar and the University. Ownership shall reside with the University with the scholar having a right to share in any resulting income. The University may waive its interest to permit the property to be exploited at the inventor's expense. In such cases, a royalty-free license shall be granted to the University for its own scholarly and educational purposes in recognition of the use of its facilities.

If the University does not waive its interest, the property will be subject to the provisions of this policy.

C. UNIVERSITY-ASSIGNED EFFORTS:

Intellectual property which results from research or other work conducted by scholars which has been specifically assigned by the University, or which results from University financing either through time of the scholar or through the direct and significant use of University facilities, equipment, or materials, must be submitted to the University for determination of ownership and disposition. In some cases such work

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will be assigned to a competent agency, firm, or foundation with which the University has a publishing, evaluation or exploitation agreement.

Faculty involvement in text book preparation not specifically assigned by the University is a special case. Even with incidental use of University facilities, the University asserts no ownership interest and does not sponsor publication or commercial exploitation.

Further, it is not the intent of this policy that a faculty member's general obligation to produce scholarly and creative works constitutes a specific assignment as defined above.

D. OUTSIDE SPONSORSHIP:

Rights with respect to intellectual property which result from research or other scholarly work, financed wholly or partially by industrial, philanthropic or other organizations, or by individuals, shall be handled in accordance with the terms of the contract, grant or other agreement governing such work. The project director responsible for the research should inform those working on the project of their rights under such contracts, grants or other agreements before initiation of a project or program.

Most sponsors of University research are willing to agree to an equitable arrangement regarding the exploitation of discoveries arising from research they have sponsored. Proper provisions relating to the rights and equities of the scholar and the University should be included in all such agreements. The University will provide assistance through a locally designated campus office.

E. FEDERAL GOVERNMENT SPONSORSHIP:

Scholars are obligated to report to the appropriate government agency all intellectual property derived from research financially supported by any government agency. The ensuing determination of the government's rights and interests may result in:

1. the government acquiring and reserving to itself principal and exclusive rights, in which event any exploitation of the intellectual property rests wholly with the government, or
2. the government determining that the public interest requires that the intellectual property be disclosed in the open literature. In this case, no copyright or patent action can be taken, or

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3. A release of the intellectual property to the University (through special petition or under an institutional agreement between the governmental agency and the University, or under applicable law), if it is determined that it is in an area in which public interest does not require that the government reserve to itself principal and exclusive rights. In this event, the University may handle the intellectual property in either of the following ways:

(a) it may act to obtain an assistance agreement through a competent agency, firm or foundation with which the University has a publishing, evaluation and exploitation agreement. The government retains rights to a royalty-free, non-exclusive, irrevocable license throughout the world under any copyright or patent which may be issued on intellectual property sponsored under governmental programs, to use the intellectual property for government purposes, and any rights granted by the University are subject to this reservation, or

(b) it may, on the advice of or rejection of the intellectual property by a competent agency, firm or foundation, or on the advice of or rejection of the intellectual property by the University Patent and Copyright Committee, or both, take no further action. In this case no additional action can be taken (unless the government or the University reconsiders and does so).

VII. DISPOSITION OF INCOME

The many circumstances in which copyrights or patents may be produced at the University, the need for equitable division of income with its scholars, and the prudent exercise of public trust require a clear University policy for the disposition of income from intellectual property. The following policy applies to the four categories, described above.

A. "INDIVIDUAL EFFORTS":

The University will assert no claims on income realized from copyrights or patents developed from the individual efforts of its employees as defined above.

B. UNIVERSITY-ASSISTED OR UNIVERSITY-ASSIGNED EFFORTS:

Income realized from copyrights or patents resulting from University-assisted or University-assigned work under this policy shall be divided as follows:

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1. 15% of gross income to the scholar,
 2. 5% of gross income to the scholar's department or other administrative unit, and
 3. 80% to the University.

If more than one individual contributes to the production of the income, the 15% share shall be divided equally among them, unless a written agreement providing for some other division is filed with the University prior to the application for copyright or patent.

C. SPONSORED EFFORTS:

Income realized from copyrights or patents developed as a result of a sponsor-supported effort shall be allocated in accordance with the terms of the contract, grant or other agreement. Any income paid to the University shall be divided as follows:

1. 15% of gross income to scholar,
2. 5% of gross income to the scholar's department or other administrative unit, and
3. 80% to University.

If more than one individual contributes to the production of the income, the 15% share shall be divided equally among the scholars, unless a written agreement providing for some other division is executed prior to the application for copyright or patent.

The income allocated to the University shall be used to underwrite the administrative costs of the patent and copyright program and to further the teaching, research and public service missions of the University in accordance with established campus budgeting procedures.

VIII. ADMINISTRATION

A. The administration of the policies set forth in this document is the responsibility of the Chancellor through a University System Patent and

Copyright Committee, consisting of seven persons recommended by campus Presidents and appointed by the Chancellor. A chairperson from among the members shall be elected by the members of the committee by a simple majority. Four of the members shall constitute a quorum.

B. This Committee will:

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1. Hear appeals, and when appropriate, make recommendations to the Chancellor.
 2. Periodically review the policy statement with a focus on:
 - (a) Recommending alterations in policy
 - (b) Clarification of statements of policy
 - (c) Implementation of policy
 - (d) Administration of existing patents and licenses on behalf of the inventors/authors
 3. Approve all third party agreements for patent-related assistance.
 4. The University System Patent and Copyright Committee shall report annually all income realized from copyrights, patents and licenses arising from intellectual property created by University scholars.
- C. Each campus shall appoint a Patent and Copyright Committee (either ad hoc or standing) for the purposes of implementing the policies and procedures described herein.
- D. The Campus Patent and Copyright Committee will:
1. review applications from scholars for University sponsorship of patents or copyrights or for waivers of University interests in intellectual property,
 2. determine the relative equities or rights held by the University, its scholars and sponsors, if any,
 3. authorize application for patent or copyright,
 4. release patent or copyrights to the scholar if deemed by the Committee to be of limited commercial value or under unusual circumstances, subject to granting royalty-free rights to the University,
 5. negotiate licenses and other agreements concerning the commercialization of intellectual property,
 6. foster communications with other campus committees on matters of mutual concern.
 7. assist appropriate University officers in negotiating agreements concerning rights to intellectual property created as a result of research or other scholarly activities funded by contracts, grants or other agreements, and
 8. make annual reports and recommendations to the University System Patent and Copyright Committee.
- E. Appeal of a committee decision shall be to the President of the campus, and then to the University System Patent and Copyright Committee.

IX. OTHER PROVISIONS

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- A. If the Patent and Copyright Committee waives University interest, or if the individual receives no report on an application within 90 days of the date of its submission to the Patent and Copyright Committee, the intellectual property shall be released to the inventor or author.
 - B. Whenever the University determines that it has no proprietary interest in intellectual property or whenever the University releases the same to its scholars, they shall agree not to use the University's name in any attempts of further commercialization.
 - C. The University or the scholar may freely assign their rights under any patent or copyright to a third party. Timely notification of such action will be made to the other party.
 - D. The principles and policies set forth in this document assume that no scholar will use University facilities, equipment, or materials in any way for the purposes of providing consulting services to agencies, firms or other organizations without University endorsed agreements. When consulting is done in conformity with University policy, the governing agreements shall specify the extent of University participation in intellectual property arising therefrom.
 - E. The Patent and Copyright Committee shall report annually all income realized from copyrights, patents and licenses arising from intellectual property created by the University's scholars.
 - F. Any changes to these principles and policies shall be made by the Board of Trustees.
 - G. This policy supercedes all previous University policies and procedures related to patents and copyrights.