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Intellectual Property Policy

Note: This policy becomes effective on July 1, 2017, and replaces the **Charles River Campus Patent Policy and the **Medical Campus Patent Policy**, which remain in effect until June 30, 2017.*

I. Purpose

In the course of research, scholarship, education, and other activities, Boston University faculty, staff, and students create patentable inventions, copyrightable works, and other forms of intellectual property that merit legal protection and have financial as well as scientific and scholarly value. The University seeks purposeful translation of such intellectual property to societal good whenever possible. The University is committed to timely assessment of legal protection and potential societal benefit of University intellectual property and to sharing equitably the rights and royalties resulting from intellectual property licensing.

The purpose of this policy is to define the rights and responsibilities of the University and its faculty, staff, and students with respect to ownership and administration of intellectual property.

II. Covered Parties

This policy applies to all University faculty, staff, and students and relates to all forms of intellectual property subject to legal protection in the United States and/or internationally.

III. Defined Terms

A. Intellectual property means and refers to all forms of technology and expression whose ownership is subject to legal protection in the United States and/or internationally, including but not limited to patents, copyrights, mask works, trademarks and service marks, 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 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.

B. Inventor: A member of the Boston University Community who participates in the conception of a patentable invention.

C. Author: A member of the Boston University Community who authors or co-authors a copyrightable work.

D. Boston University Community: Faculty, staff, and students at Boston University.

E. Boston University Resources: Funds, space, personnel, or facilities used to support research and scholarship, including direct funding such as gifts, contracts, grants, and University-allocated funds; laboratory space or shared research facilities; and supervision or employment, including student employment, on any such University-funded scholarship or research. Use of classroom resources, support for educational program activities (e.g., for class projects), and library resources shall not be deemed significant use of Boston University Resources for the purposes of this Policy.

IV. General Policy

A. Ownership

1. Intellectual property created by faculty or staff, or by students working on University research or other University projects, is owned by the University if it is created either:

(a) within the scope of University employment, including work under University grants and contracts with third parties; or

(b) with significant use of Boston University Resources.

2. If the intellectual property is created outside the scope of University employment and without any significant use of Boston University Resources, the individual will own the intellectual property.

B. Application of Policy to Specific Circumstances

1. Ownership of an invention shall be determined by reference to the date of invention and to principles of inventorship which, in turn, shall be determined according to United States law.

2. The University recognizes and affirms the tradition in higher education that academic works such as books and articles, lectures, visual materials, and other teaching materials are owned by the faculty member authoring them rather than the employing educational institution, even if they otherwise come within the scope of Section A.1 above. Faculty ownership of such academic works may, however, be affected by the terms of agreements with third-party sponsors, referred to in Section B.6 below, or by agreements between faculty and the University with respect to special projects such as the creation of online courses or other digital education offerings, referred to in Section B.7 below. Use of such academic works is otherwise subject to the University's **External Professional Activity Policy** and **Policy on Faculty Involvement in University Digital Courses**.

3. Where faculty academic works covered in Section B.2 above are incorporated into educational resources designed for ongoing departmental classroom use in a particular school or college (such as syllabi maintained by the School of Medicine), the University shall have a perpetual, nonexclusive, royalty-free license to use to such academic works for such purposes.

4. If intellectual property is made by a student as part of student coursework at the University, the rights to that intellectual property are ordinarily owned by the student in accordance with Section A.2 above. The University will retain ownership when intellectual property arises from the student's participation in sponsored work under Section A.1 above. The University may also retain ownership under the terms of an agreement with the student, such as an agreement regarding financial assistance, a research fellowship, or other student employment agreement, or a special agreement as described in Section B.7 below.

5. Where there is disagreement between the individual and the University as to ownership rights (e.g., whether they are subject to Section A.1 or A.2), the Vice President and Associate Provost for Research shall conduct a review of the case and render a determination as to ownership. The burden of demonstrating that intellectual property was created outside the scope of University employment and without any significant use of Boston University Resources is on the individual. Under Section V below, the decision of the Vice President and Associate Provost may be appealed to the University Provost and Chief Academic Officer.

6. 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.

7. The University and an individual faculty member, staff member, or student may negotiate specific written agreements for special projects such as University publications, digital courseware, or distance-learning curricula. Such agreements may reallocate rights or otherwise alter application of this Policy.

8. Members of the Boston University Community who enter into consulting agreements or other private agreements with parties outside of the University must ensure that such agreements contain no requirement to assign or otherwise transfer rights in any intellectual property owned by Boston University under this Policy. Arrangements with other research institutions that involve dual appointments, visiting scientist agreements, and other arrangements that may require exceptions to this Policy require prior University written approval by the Vice President and Associate Provost for Research.

9. Royalties or other proceeds from intellectual property owned by the University will be shared with individuals as set forth in Section E. below.

10. The University recognizes that faculty should have a significant role in the determination of how intellectual property will be publicized, commercialized, developed, and disseminated. Accordingly, the University will, in the absence of compelling institutional interest to the contrary, permit faculty the freedom to make their University-owned inventions and copyrightable works readily accessible by placing them in the public domain, or allowing them to be distributed via open source, creative commons, or similar open distribution methods, provided that doing so does not violate the terms of any existing University agreements or government regulations.

11. Research at Boston University should be widely and openly published and made available through broad dissemination or publication of research results. In accordance with **University Data Protection Standards**, final research data is generally considered to be classified as public data unless there are specific requirements to maintain the confidentiality of research data, such as when a researcher is bound to protect the confidential information of a collaborating company or when the data relates to human subjects.

C. Signing of Intellectual Property Agreement

All members of the Boston University Community who are employed in a research capacity are required to sign the Boston University Intellectual Property Agreement upon hire. (**Appendix A.**) Individuals employed at other institutions who are given faculty appointments at Boston University for the sole purpose of teaching and who are not conducting any research activities or developing any copyrightable works involving Boston University Resources are not required to sign the Intellectual Property Agreement.

D. Disclosures, Legal Protection, and Licensing

The University will provide a centralized administrative office that manages intellectual property disclosures, patent applications, copyright registrations, and patent licensing. This office, the Technology Development office (TD), will establish and maintain efficient processes for patentability assessment, license opportunity assessment, patent and copyright application filing, patent portfolio management, and licensing of patents, copyrights, and other intellectual property to third-party entities, including University spin-out companies.

Members of the Boston University Community shall disclose any potentially patentable invention that they make to the Technology Development office promptly and in reasonable detail through a centralized online system. In the disclosure, the inventor must indicate whether the inventor believes that ownership falls into Section A.1 (University owned) or A.2 (Inventor owned) of the Policy definition of ownership (Section IV.A). The Technology Development office will make decisions about whether to pursue patent protection for any invention in a timely manner, normally within ninety (90) days.

Members of the Boston University Community shall similarly disclose intellectual property other than patentable inventions, including copyrightable software, in cases where the author/creator deems the intellectual property to have commercial potential or otherwise require licensing or transfer to public use other than by publication or placement in the public domain.

The Technology Development office will assess the ownership category proposed by the individual inventor/author. In cases where the proposed ownership category is disputed, the Technology Development office will forward a written summary of the basis for the disagreement to the individual and to the Vice President and Associate Provost for Research, who will render a determination as to ownership. As set forth in Section V below, the individual will have a right to appeal the decision of the Vice President and Associate Provost to the University Provost and Chief Academic Officer.

For patentable inventions deemed to fall into Section A.1 (University owned), the Technology Development office will make a decision regarding pursuit of patent protection on behalf of the University. The Technology Development office will consider whether the invention is likely to be awarded a patent if one is pursued, whether there is adequate prospective societal benefit to warrant patent protection (e.g., economic value, likely licensing opportunity), and whether there are any other circumstances (e.g., contractual obligations, governmental regulations, expert opinion) that might affect a decision to pursue patent protection.

In the event that the Technology Development office declines to pursue patent protection for an invention, it will notify the inventor promptly. Subsequently, upon written request of the inventor, the University will assign its ownership rights to the inventor, subject to the University's obligations to sponsors and applicable provisions of law.

The Technology Development office will maintain an accessible database of University disclosures, patents, copyrights, and other intellectual property and licenses, and will pursue licenses with a long-term focus on serving the public good. In connection with Boston University's endorsement of the Statement of Principles and Strategies for the Equitable Dissemination of Medical Technologies, signed by the University in November 2009, the University will seek to advance the intent and goals of the Statement and the interest of protecting global health interests when licensing health care innovations.

The University will endeavor to license its intellectual property in ways that transfer technology for public use. If necessary, the University will vigorously defend and enforce its intellectual property rights through appropriate business and legal channels. In keeping with recommendations of the Association of American Universities, however, Boston University will seek to avoid selling or licensing patents to patent assertion entities whose sole business strategy is to extract fees or licenses through threat of patent infringement rather than to foster active use of the technology or enable the development of new products and services.

E. Royalties

The University and any faculty or student inventor or author will divide the net proceeds (gross proceeds less the University's costs for such activities as obtaining intellectual property protection/registration, production, marketing, distribution, litigation, etc.) from the sale or licensing of patents or copyrights as follows:

Division of net proceeds:

1. To the inventor/author: 1/3
2. To the University: 1/3
3. Equally to the academic units who supply the intellectual home and research support for the faculty member: 1/3. In many cases, this portion is divided between the academic school/college and an all-University laboratory/center. If the laboratory is totally embedded in a school/college then the funding goes to the school/college.

The designation of which schools, colleges, and centers should be included in any royalty distribution will be determined primarily by their connection to the inventor or author through their provision of Boston University Resources used in conceiving and developing the intellectual property. In case of disputes about appropriate designation of schools, colleges, and centers, the University Provost will resolve the matter. If more than one inventor or author is involved, the individual share will be divided between them equally unless they agree to a different arrangement. If the invention or copyrightable work that is associated with revenue generation was developed with support from a sponsored research program and the sponsor regulates the distribution of income, such specific regulations will take precedence over University policy with respect to distribution of the net proceeds.

This Policy shall not govern distribution of proceeds with respect to University digital course materials; such distribution shall be governed by the **Policy on Faculty Involvement in University Digital Courses**.

V. Responsible Parties

The Vice President and Associate Provost for Research will be responsible for establishing and maintaining procedures and administrative support needed to implement this Policy.

Conflicts or disagreements among members of the Boston University Community with respect to this Policy will be administered by the Vice President and Associate Provost for Research, who will establish and maintain procedures to resolve disagreements such as those related to intellectual property rights, patenting, copyright registration and licensing, and distribution of royalties. Decisions by the Vice President and Associate Provost for Research may be appealed to the University Provost.

A. University Intellectual Property Committee

The Vice President and Associate Provost for Research will establish an Intellectual Property Committee, with membership comprised of faculty and staff appointed by and reporting to the Vice President and Associate Provost. The Committee will be responsible for reviewing this Policy and recommending new or revised operational procedures to improve, implement, and support the Policy. To aid the Boston University Community in complying with this Policy or resolving issues arising under it, the Committee will provide guidance and consultation to the Vice President and Associate Provost for Research as needed.

VI. Related Policies and References

Policy on Faculty Involvement in University Digital Courses

External Professional Activity Policy

Data Protection Standards

Statement of Principles and Strategies for the Equitable Dissemination of Medical Technologies

Two important federal regulations that pertain to University inventions and patents at the time of the writing of this Policy are:

- Bayh–Dole Act or Patent and Trademark Law Amendments Act (**Pub. L.** 96-517, December 12, 1980)
- Leahy–Smith America Invents Act (AIA) (Pub. L. 112-29, September 16, 2012)

VII. History

This Policy supersedes the Boston University Medical Center Patent Policy and Agreement dated August 1, 2000; and the Patent Policy/Charles River Campus dated November 12, 1991.

Appendix A: Intellectual Property Agreement

Intellectual Property Agreement

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