

THE UNIVERSITY OF ARIZONA
INTERIM INTELLECTUAL PROPERTY POLICY
Effective August 15, 2002

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This Policy supplements the Intellectual Property Policy of the Arizona Board of Regents (Board) as applied to the University of Arizona (University), and guides the management of intellectual property at the University.

A. GENERAL STATEMENT

The Arizona Board of Regents encourages University faculty and staff members to undertake creative research endeavors and to add new scholarship to the well of beneficial information available to the public for its instruction and use. Scholarship may be manifest through teaching and publications, and in disclosures of intellectual property to the Office of Technology Transfer for formal protection. Employees should disclose any public dissemination of newly created potentially commercializeable intellectual property prior to publication with the Office of Technology Transfer to ensure formal protection is not more appropriate or necessary before other public dissemination is effected.

Although intellectual property developed by Employees in the course and scope of their employment is presumed to belong to the Board, this Policy provides for the close participation by the employee in protecting and enhancing the value of the intellectual property, and in sharing in its dissemination and rewards. The IP Official and the Office of Technology Transfer will have the necessary discretion in implementing this Policy, consistent with the terms and provisions of the Board Intellectual Property Policy (Board IP Policy), for the greatest benefit of the public, the University and its creative employees.

B. DEFINITIONS

1. IP Official: The IP Official is the Vice President for Research who is appointed by the University President to be in charge of intellectual property matters. Certain intellectual property management responsibilities may be delegated to the Director of the Office of Technology Transfer (OTT) by the IP Official or by this Policy. Trademark Licensing for the University is handled by the Office of Trademark & Licensing.
2. Employee: For purposes of this Policy, the term employee includes all University faculty, staff, professional and administrative personnel (both part-time and full-time), student employees, graduate assistants and associates. Persons with adjunct, emeritus or "no salary" appointments; visiting faculty, scholars, artists, and engineers; and other individuals not normally considered employees, academic or otherwise, will be considered employees for the purposes of this policy.
3. Fund for Promotion of Research: The Fund for Promotion of Research is a University account administered by the Vice President for Research to promote research, develop intellectual property, and manage technology transfer. It is funded by the University share of net fees and royalties received from the licensing or sale of Board-owned intellectual properties, except trademarks. A separate account for patent filings (Patent Fund) will be established within the Fund for Promotion of Research, and will be funded by the 15% administrative fee specified in Paragraph B.7 below.

4. Intellectual Property: Intellectual property includes works of authorship, inventions and discoveries whether or not subject to protection by patents, copyrights, trademarks, and trade secrets. For purposes of this Policy, Tangible Research Property (defined below) is included in the definition of Intellectual Property. As defined here, Intellectual Property also includes any new forms of Intellectual Property receiving legal protection that may be added to the above categories during the time this Policy is in effect.
5. Intellectual Property Committee (IP Committee): The IP Committee is a University committee of not fewer than five persons and composed of faculty and staff. The IP Official appoints the members, with at least half of the appointments based on recommendations made by the Faculty Senate Chairman. The Committee considers proposed changes in intellectual property policy and makes recommendations to the President through the IP Official. The Committee also hears appeals by employees as outlined in ABOR IP Policy.
6. Invention: An invention is the result of conceiving and reducing to practice some innovation that can be described, defined, and reproduced. Not all inventions are patentable; some may be obvious, some may be unintentional copies of others' inventions, and some may be intentionally withheld from the patent system to prevent the required publication of the invention that necessarily accompanies the prosecution or the issuance of a patent.
7. Net Income: Net income means gross revenues, including fees and royalties, received from the commercialization of a given intellectual property less a 15% fee for the University Patent Fund and then less all unreimbursed costs incurred by the University in obtaining or maintaining intellectual property protection, domestic or foreign.
8. Print Intellectual Property: This includes all intellectual property other than software or other electronic or digital works.
9. Software and other Electronic/Digital Works. This includes software and other technologies used to support the capture, storage, retrieval, transformation, and presentation of electronic or digital data and information or to interface between electronic or digital forms and other communications and information media. Examples include, but are not limited to, software; course lecture video or audiotapes; electronic publications; electronic textbooks and interactive textbook supplements; Internet-based and on-line courses; web pages; multimedia works; and distance learning materials. As used herein, software means a set of statements or instructions -- lines of code -- used directly or indirectly in a computer to bring about a certain result.
10. Tangible Research Property. Tangible Research Property (TRP) means tangible materials used or produced in the course of University research projects, examples of which include (1) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (2)

plants protected by the Plant Variety Protection Act, and (3) non-patented drugs protected by the Orphan Drug Act. Certain types of TRP can be licensed in a fashion similar to intellectual property. For purposes of this Policy, TRP is included in the definition of intellectual property and is subject to the provisions of this Policy.

C. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

1. Board-Owned Intellectual Property: In accordance with the Board IP Policy, the University of Arizona manages all Board-owned intellectual property developed at the University or by its employees (as defined herein), including the following categories:
 - a. Results from research carried on by or under direction of any employee and having all or part of the attendant costs paid from University funds or from funds under the control of or administered by the University or the Board, including Sponsor-Supported Projects (see Board IP Policy, Paragraph C.1); or
 - b. Is made by any employee as a direct result of his or her duties with the University or in the course and scope of employment (see Board IP Policy, Paragraph C.2); or
 - c. Has been developed in whole or in part by an employee or other person through an effort that makes significant use of University resources or facilities unless such resources or facilities are available without charge to the public or the applicable use fee (not including tuition) has been paid. The University does not consider the ordinary use of University resources such as the libraries, one's office, desktop computer and University computer infrastructure, or secretarial staff and supplies, to be significant use of University resources for purposes of vesting the Board with ownership in intellectual property (see Board IP Policy, Paragraph C.3).

Discussion: Determining ownership of intellectual property does not depend on the person's physical location. For example, if a chemist is working on a new chemical structure and a related idea comes to him/her while showering at home, the intellectual property is owned by the Board. But a chemist working in a home workshop, creating a new wooden toy, is the owner of that intellectual property, although such intellectual property should be disclosed to the IP Official. In general, decisions concerning intellectual property ownership are based on common sense. That is, if it is reasonable and logical to assume the employee's discovery was made without any influence of the University or its resources, then ownership is the employee's; otherwise, it is owned by the Board.

2. Individual-Owned Intellectual Property: The University acknowledges that the Board makes no claim of ownership to intellectual property that is not within the scope of Paragraph C.1 above. For example, an employee in the music department who develops software to track little league players and document their capability/performance would own the copyrights to those materials. In contrast, if the employee had been instructed to create software to recruit music students the property would

belong to the Board.

3. Sponsor-Supported Efforts: The rights to intellectual property produced as a result of work supported partially or fully by an external agency and for which a contract is on file with the Vice President for Research will be determined by the terms of the specific contract. If no contract is on file, rights to intellectual property created as a result of sponsored research will reside in the Board.
4. Student-Owned Intellectual Property: Students own the intellectual property they develop as a result of class work and not otherwise within the scope of Paragraph C.1 above. Students own the copyrights for their theses and dissertations, but ownership of other intellectual property described in these publications, including software and patentable inventions, will be determined according to this Policy and the Board IP Policy.
5. Visiting Faculty, Scholars, Artists and Engineers: The Board owns Intellectual Property created by visiting faculty, researchers, and scientists. The IP Official may, however, make exceptions on a case-by-case basis and consistent with this Policy (see Paragraph D.2 below) and the Board IP Policy (Board IP Policy, Paragraph C.7).
6. Employee-Excluded Works: Subject to the Board retaining an irrevocable, paid-up, non-exclusive license to use the intellectual property for education, research, and public service, including the right to incorporate such works into University works, the IP Official may release all claims of Board ownership to the following intellectual property:
 - a. Print Intellectual Property: The IP Official will release to the creator of print intellectual property all claims of Board ownership where the print intellectual property falls within the scope of Section C.4 of the Board IP Policy. With regard to Scholarly Works, the Board does not presently claim copyright ownership of traditional print publications in academia, including course notes, textbooks and scholarly works, or publications authored by employees. An exception to this is "works made for hire" where the preparation of such materials was specifically directed by a University administrator and University funds were provided expressly for their development. The Board does not claim copyright ownership of creative artistic works created by employees.
 - b. Software and Electronic/Digital Works. Contingent upon the Board retaining a limited right of reversion, the IP Official may release to the creator of software or electronic/digital works all claims of Board ownership where (1) the works would qualify for release under Paragraphs C.4.a-c of the Board IP Policy but for its electronic/digital format; (2) one of the other factors for Board ownership under Section C of the Board IP Policy does not apply; and (3) the employee does not intend, at the time of release, to commercialize the works (i.e., no intent to earn a profit from the work beyond recovering reasonable costs and expenses, including reasonable consulting fees). For purposes of this section, the term "not for commercial application" in Paragraph C.4.c of the Board IP Policy means the employee does not intend to commercialize

the work.

If an employee plans to commercialize any software and electronic/digital works released to him or her under Paragraph C.4 of the Board IP Policy, the intellectual property in the commercialized works immediately will revert to Board ownership and will be managed by the University in accordance with the terms of this Policy and the Board IP Policy.

7. Employee Use of Software and Electronic/Digital Works: Subject to the rights retained by the Board and the University in Paragraph C.5 above, employees may make limited use of software and electronic/digital works, independent of copyright ownership determination, as follows:
 - a. Use at the University - An employee may use software and electronic/digital works he or she develops or creates in the normal course of employment at the University, including the right to make changes to the works and to distribute the works to students, faculty, and other personnel at the University for teaching, research and other noncommercial University purposes.
 - b. Academic use outside the University - Subject to receiving any necessary approval, an employee may use software and electronic/digital works at other academic or not-for-profit research institutions for noncommercial purposes as part of ordinary scholarly exchanges, including visiting professorships and guest lectures, as long as the activities comply with University policies on conflict of interest and conflict of commitment (including provisions requiring approval by the appropriate dean or department head), and as long as the activities do not include or allow commercializing the software and electronic/digital works.

The appropriate department head or dean must approve in advance the use of any Board-owned software and electronic/digital work by an employee teaching or creating any course or courseware outside the University. For software and electronic/digital works released to the employee by the University, the employee may make the work freely available for academic and scholarly use outside the University without authority or permission from the University as long as the University's name is not used in connection with such works other than to identify the employee as an employee at the University.

- c. Commercial use outside the University - For Board-owned software and electronic/digital works not released to the employee, the employee must obtain prior approval from the appropriate department head or dean before teaching or creating any course or courseware using the software and electronic/digital works for any commercial enterprise, and must obtain prior approval from OTT or the IP Official before commercializing software and electronic/digital works created or used at the University. Any such use must be consistent with University policies on conflict of interest, conflict of commitment, and use of the University's name.

For software and electronic/digital works released to an employee, that employee may

commercialize the works outside the University without permission of the University as long as the University's name is not used in connection with the works other than to identify the employee as an employee at the University.

The University will not commercialize software and electronic/digital works without the knowledge and input of the employee(s) who created the works in question.

- d. Use after departing the University - An employee who leaves the University may use any software and electronic/ digital works that he or she created while at the University as long as the use is at another academic or not-for-profit research institution, and limited to teaching, research, and other noncommercial purposes. With respect to software and electronic/digital works released to a former employee, that employee may make commercial use of and create new works based the software and electronic/digital works as long as the employee does not use the University's name in connection with the works other than to identify himself or herself as a former employee.

D. PROCEDURES

1. Disclosure of Intellectual Property:

- a. Within 30 days of creating any intellectual property falling within Section C above (except Paragraph C.2), the creator will file an Invention or Copyrightable Work Disclosure form (available at <http://www.ott.arizona.edu/invdiform.htm>) with the head of his or her department. The department head will transmit the disclosure to OTT within 10 days and send an information copy to the dean of the college or other appropriate unit head. The department head will append to the disclosure a statement setting forth his or her opinion concerning the scientific, technical and economic merit of such intellectual property; the desirability of obtaining patent, copyright or trade secret protection; an estimate of the commercial potential; and a general description of the University facilities or resources used in the development of the intellectual property.
- b. The employee who makes a disclosure is responsible for notifying all persons involved in creating and developing the intellectual property of the disclosure and ensuing events, especially those events related to further development (i.e., the protection and subsequent licensing or sale of the property).
- c. The principal investigator is responsible for notifying all persons involved in creating and developing the intellectual property when the terms of a contract grants a sponsor the rights to technology resulting from the sponsored research.

2. Ownership Determination: The IP Official, in consultation with OTT, will determine the ownership of intellectual property within 10 days of OTT receiving a disclosure. If the Board is deemed to own

the property, OTT, or its designated agent, will have 120 days to decide whether to attempt to commercialize the disclosed intellectual property and an additional 10 days thereafter to inform the creator of the property of this decision.

- a. At the request of the employee, OTT will acknowledge in writing that the Board holds no interest in intellectual property determined to be owned by the employee. On mutually agreed upon terms, the employee may assign employee-owned intellectual property to the University for commercialization.
 - b. At the request of the employee, OTT will release to the employee intellectual property determined not to merit or warrant exploitation by the University, with certain rights retained by the University and certain restrictions on further development imposed on the employee (Board IP Policy, Paragraph D.2.a).
 - c. Intellectual property owned by a sponsor pursuant to the terms of the research contract will be assigned to the sponsor.
 - d. Intellectual property owned by the Board may be patented, copyrighted or otherwise legally protected by the University. The University may commercialize intellectual property rights using its own resources or it may make an agreement with one or more outside entities or intellectual property management organizations to undertake such activities. If the University has not taken steps to commercialize the intellectual property within two years of the determination of ownership, the employee who created the intellectual property may thereafter request a release or license agreement for such intellectual property from OTT with certain rights retained by the University and certain restrictions on further development imposed on the employee (Board IP Policy, Paragraph 2.D.a).
 - e. OTT will inform the employee/creator on a regular basis of the progress of protection efforts and commercialization of intellectual property disclosed by that employee.
3. Dispute Resolution: If an employee disagrees with any interpretation or decision made by the IP Official, the employee may ask the IP Committee to review the matter. If requested, the IP Committee will review the interpretation or decision of the IP Official as required by the Board Policy (Board IP Policy, Paragraph I.)
 4. Intellectual Property Income Distribution: Employees who create intellectual property that is disclosed pursuant to this Policy and that is determined to be owned by the Board are entitled to share in the net income earned from the commercialization of that intellectual property according to the Invention Income Distribution Policy, attached hereto as Exhibit A, unless provided otherwise by contract with that employee. The University share of the net income earned will be deposited in the Fund for the Promotion of Research. Income earned from the licensing of University trademarks is

not subject to this Policy. If multiple employees are entitled to share in the distribution, the IP Official will not release any employee distribution income until all entitled employees have provided the IP Official with a written agreement signed by all such employees, indicating the distribution shares for each employee. Such agreements may include employees not involved in the creation of the intellectual property, but must contain the signature of all named inventors.

Where the University assigns its intellectual property to a research sponsor or outside organization (see Paragraph D6), the assignee will pay the University the fully burdened overhead expenses (110% as of January 1, 2002) related to the assigned intellectual property. The Office of Vice President for Research receives 46.8% of any overhead money paid by the assignee, with the remaining 53.2% to be distributed pursuant to the Invention Income Distribution Policy attached hereto as Exhibit A. If the University assigns its intellectual property to an Arizona state agency, the assignee will pay the University 50% after overhead expenses related to the assigned intellectual property, with the payment to be distributed pursuant Exhibit A.

5. Patent, Trademark, Copyright Application: The employee who creates intellectual property owned by the Board is required to cooperate fully with the University in the application for legal protection of intellectual property when requested to do so by OTT or the IP Official. All costs involved in obtaining and maintaining legal protection, domestic and foreign, will be borne by the University, a sponsor or licensee, or a contracted management agent.
6. Assignment of Title to Research Sponsor: The University may accept a grant or contract from an organization with title to resulting intellectual property assigned to the sponsor or that gives the sponsor an exclusive option for a limited period of time in to negotiate a license. The terms and conditions of such a license must be consistent with the Board IP Policy. OTT will negotiate the license on behalf of the University and must approve any such agreement in advance. The IP Official will use his or her best efforts to consult with the creator and principal investigator in the negotiation process, including, among other things, providing a copy of the negotiated agreement before its final execution. The principal investigators are responsible for notifying everyone involved in work supported by the grant or contract of the terms of any such agreement.
7. Employee Financial Interest in Private Organization: Notwithstanding any other provisions of this section, a grant, contract or any other form of agreement between the University and any organization containing a provision assigning title is subject to final approval of the University's Conflict of Interest Committee (Institutional Review Committee) if the employee has any financial interest in the contracting organization or any entity engaged in a business relationship with the contracting organization. An employee has a financial interest in an organization if he or she serves as an owner, officer, director, agent, associate, partner, trustee, consultant, holds any position of management, or is otherwise employed by the organization; or is a stockholder owning 3% or more of the total stock outstanding in any class.

Any time an employee establishes or maintains a financial interest in a private entity that contracts

with the University for research or that desires to obtain a license from the University for University technology, that employee must (i) submit a Conflict of Interest and Commitment disclosure form to the Institutional Review Committee for approval and (ii) submit an Enabling Disclosure form (<http://www.ott.arizona.edu/enabling.htm>) to OTT for review, approval, and submission to the Board for Board approval. Approval by the Board for the creation of any organization or any substantial interest in an organization under applicable Arizona law does not exempt any agreement between the University and that organization from the provisions of this paragraph, nor from other applicable conflict of interest or commitment rules or policies.

In those cases where the employee holds a financial interest in a company that licenses from the University technology developed by that employee, that employee will not receive a personal share of the licensing income received by the University from that company for that technology, but that employee's share will instead be distributed among the other University accounts designated in the Income Distribution Policy.

8. Employee Conflict of Interest: Employees are subject to and will abide by the University Conflict of Interest and Commitment Policy.
9. Employee Consulting: A University policy on consulting, other than one encouraging consulting, does not take into account the distinct differences between and among disciplines and the colleges that encompass those disciplines. Therefore, individual colleges will adopt a consulting policy that encourages consulting activity but balances that activity with commitments to the University, college and the individual units in the college. It is the policy of the University of Arizona:
 - a. To encourage consulting where and when appropriate to the discipline, the unit, and the college; and
 - b. To encourage colleges to discuss and to adopt policies that are consistent with disciplinary standards and consistent with the mission of teaching, research, and service in the college and the University.

The Board will not claim ownership to intellectual property that is the product of employee consulting where the consulting agreement was written in accordance with college and University consulting policies that have been pre-approved by the IP Official.

EXHIBIT A
INVENTION INCOME DISTRIBUTION POLICY

Under the Arizona Board of Regents (Board) Intellectual Property Policy, employees and students or others who conceive and/or develop intellectual property subject to the Board Policy must disclose that intellectual property. If Board retains title to the intellectual property and income is created, the creator(s) will receive a minimum of 50 percent (50%) of the first \$10,000, net of any direct costs, such as literature searches, legal fees or patent protection, incurred by the University. A minimum of 25 percent (25%) of income beyond the first \$10,000 net to the University will be paid to the inventor(s).

The University of Arizona invention income distribution schedule outlined below exceeds the Board's minimums. The fifteen percent (15%) for the Patent Fund and University unreimbursed expenses incurred in creating the income are reimbursed before any distribution calculations are made. Income listed below is Net income as defined in this Policy.

Step	Income \$	Distributed to	Percent
1	First 10,000	Creator	100
2	Next 40,000	Creator	50
	Total 50,000	Creator Discretionary Account	30
		Fund for Promotion of Research	20
3	Next 450,000	Creator	40
	Total 500,000	Creator Discretionary Account	25
		Fund for Promotion of Research	25
		Department Account	5
		Dean's Account	5
4	Next 500,000	Creator	35
	Total 1,000,000	Creator Discretionary Account	20
		Fund for Promotion of Research	30
		Department Account	10
		Dean's Account	5
5	1,000,000 and Beyond	Creator	25
		Creator Discretionary Account	20
		Fund for Promotion of Research	40
		Department Account	10
		Dean's Account	5

EXHIBIT B SUPPLEMENTAL GUIDANCE

This supplemental guidance provides additional definitions to aid in the understanding and use of the University's Intellectual Property Policy. The information below is for instructional purposes only and does not create new legal rights or responsibilities nor does it supercede any provisions of this Policy or that of the Board of Regents.

1. Copyright: Consistent with 17 U.S. Code, copyright protects an original work of authorship fixed in any tangible medium of expression from reproduction, distribution, use, display or performance without the permission of the owner. Copyrighted material may include, but is not limited to, website content and format, lecture and class notes, exams, computer software, mask works, artwork, music, technical articles, books and other literary works. Copyright protects the expression of an idea, but not the idea itself. For example, a copyrighted set of plans for building a solar device provides exclusionary rights regarding the reproduction and sale of the plans, but the purchaser of the plans may build and sell the solar device, assuming that the device is not protected by a patent. In addition, copyright does not protect raw data or facts, though it does protect the creative presentation of data and facts.
2. Data: Data includes, but is not limited to, lab notes, results of analyses, research notes, research data reports, and research notebooks.
3. Mask Work: A type of intellectual property protected under federal law that consists of a series of related images representing the three-dimensional pattern of metallic, insulating, and semiconductor materials in a semiconductor chip product.
4. Patent: Consistent with 35 U.S. Code, a U.S. patent is an instructional document obtained through application to the U.S. Patent and Trademark Office, and provides negative exclusionary rights in the United States. The owner of a patent can prevent others, for a period of years, from making, using or selling the invention. An issued patent must teach one who is familiar with the field the best means for producing, constructing or using the patented product or process.
5. Trade Secret: Consistent with the Uniform Trade Secrets Act, certain technology may be licensed to industry as trade secrets. The University is authorized to maintain trade secret protection only if the trade secret belongs to and is disclosed by an outside sponsor (see Board IP Policy, Paragraph B.4). When public disclosure would inhibit a company's willingness to invest the necessary funds for product development and commercialization, OTT, in consultation with the employee and the IP Official, may license intellectual property as a trade secret. Knowledge formalized as a trade secret cannot be disclosed in any open forum as long as it is intended to be maintained as a trade secret. For purposes of this Policy, trade secrets will be treated as patented and copyrighted technologies with respect to licensing and royalty distribution.

6. Trademark: Consistent with federal and state law, trademarks and service marks identify an organization as the source of a product or service. Symbols and logos of the University are trademarks and service marks belonging to the Board, for example, and may not be used by third parties without a proper license and specific approval of the IP Official or the University's Office of Trademarks & Licensing.