

**THE UNIVERSITY OF DAYTON**

**INTELLECTUAL PROPERTY POLICY  
AND PROCEDURES**

**June 17, 1996**

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Form 1	Confidentiality Agreement
Form 2	Intellectual Property Rights Agreement
Form 3	Technology Disclosure Form - Inventions
Form 4	Technology Disclosure Form - Software
Form 5	Waiver Request
Form 6	Conflict Avoidance Statement
Form 7	Materials Transfer Agreement

## **EXECUTIVE SUMMARY**

The University of Dayton Intellectual Property Policy and Procedure is a comprehensive document which encompasses all aspects of intellectual property management, from development and ownership through protection and commercialization, including distribution of royalties. This policy provides an incentive to University authors and inventors while recognizing the University's fundamental rights in intellectual property resulting from the creative efforts of those utilizing University resources. The document comprises seven sections: Introduction; Definitions and Background; Policy Statements; Technology Management and Commercialization; Income Distribution; Faculty, Student, Staff, and Visitor Obligations; and Administration. Forms and Agreements referred to throughout this document are included in the Appendix.

In the Introduction, research is acknowledged as an essential activity to develop new knowledge, encourage the spirit of inquiry, and promote scholarship. This activity may result in the development of technology which could contribute significantly to economic, social, and cultural progress. "Technology" encompasses technical innovations, inventions and discoveries, and writings, including computer software; "intellectual property" rights are the principal rights governing the ownership and disposition of technology.

In Definitions and Background, "intellectual property" is defined as the tangible or intangible result of research, development, teaching, or other intellectual activity. The intangible categories, for which definitions and background information are provided, include, among others, patents, copyrights, trademarks or service marks, mask works, and trade secrets. Tangible research property includes but is not limited to biological materials; computer software, data bases, integrated circuit chips, prototypes and circuit diagrams; analytical procedures, laboratory methods; and so forth.

The section entitled Policy Statements includes subsections that address scope, policy objectives, and rights in intellectual property. The scope of the policy extends to the college, schools, departments, and Research Institute of the University of Dayton, as well as all faculty, staff, students, visitors, and others participating in University programs. The policy objectives emphasize technology transfer as a means to benefit society; encourage research; provide an administrative system to enable the commercialization of intellectual property; provide an equitable disposition of the interests in intellectual property among the developer, the University, and, where applicable, the sponsor; provide incentives to developers; safeguard intellectual property; and, finally, fulfill the terms of research grants and contracts. Rights to intellectual property are determined on the following principles. The University's ownership is based on significant use of University-administered resources by the developers of intellectual property; the creation of a "work

for hire," as defined by copyright law; and the case of contracted services. Ownership subject to sponsored research agreements is determined in accordance with the terms of such agreements. Inventor/author/originator ownership occurs when there are independent works; traditional works (such as journal articles, textbooks, reviews, works of art, and musical compositions); and works resulting from consulting or other outside activity. Students will generally own copyrights in theses; the University will own trademarks and service marks.

Technology Management and Commercialization outlines the major activities of the Technology Commercialization Office (TCO). These activities include encouraging the submittal of invention disclosures and other forms of intellectual property, evaluating intellectual property for commercial value, obtaining proprietary protection for technology with commercial potential, marketing technology to potential licensees, and developing license agreements and other types of transfer agreements with industry. Procedures for disclosure of intellectual property and review of disclosures by the Technology Disclosure Review Committee are also detailed in this section. Guidance is provided in areas such as protection of rights, waiver of rights by the University, licensing of University rights to inventors/authors, and conflict of interest or commitment. Specific information is provided on asserting and registering copyrights, trademarks and service marks, and mask works. Lastly, tangible research property management, distribution, control, and commercialization procedures are outlined.

Income Distribution states that income will be distributed to the inventor/author, as well as the University, to recognize the creative ability of the inventor/author and encourage the prompt disclosure of all technology. Distribution is based on "net income," which is defined as the gross income, less (1) an allowance of 20 percent (maximum) to cover the operating expenses of the TCO, and (2) patenting and other legal costs and University development costs.

The section entitled Faculty, Student, Staff, and Visitor Obligations states that individuals, through their employment by the University, their participation in sponsored research projects, or their use of University-administered funds or facilities, thereby accept the principles of ownership of technology as stated in this policy, and establishes the requirement that these individuals sign the Intellectual Property Rights Agreement (Form 2 in the Appendix).

Finally, Administration defines the roles of the Intellectual Property Administrator, the TCO, the Office of Contracts and Grants Administration, and the Intellectual Property Committee, with regard to University of Dayton intellectual property. The Intellectual Property Administrator, appointed by the President and responsible to the Vice President for Graduate Studies and Research, is responsible for administering the Intellectual Property Policy. The TCO's goals are to (a) facilitate the transfer of the technology developed at the University to public use and benefit; and (b) where consistent with (a), provide an additional source of unrestricted income to support research and education at the University through the commercialization of technology. The Office of Contracts and

Grants Administration is responsible for the negotiation, execution, and administration of all University agreements with external sponsors, and for ensuring that the sponsor's rights to technology are protected. The Intellectual Property Committee, appointed by the President, advises the Vice President for Graduate Studies and Research, and assists the University Intellectual Property Administrator.

## **SECTION 1 INTRODUCTION**

Research is recognized by the University of Dayton (UD) as an essential activity to develop new knowledge, encourage the spirit of inquiry, and promote scholarship in all areas of learning. As a result of such research, technology may be developed by faculty members, professional and technical staff members, students, and visitors to the University. This technology could contribute significantly to economic, social, and cultural progress.

The material set forth in this document covers the ownership, management, and commercial development of technology developed by UD faculty, staff, and students as well as others participating in UD programs. The term "technology" is broadly defined in this document to include technical innovations, inventions and discoveries, and writings and other information in various forms including computer software.

The principal rights governing the ownership and disposition of technology, known as "intellectual property" rights, are derived primarily from legislation granting patent, copyright, trademark, and integrated circuit mask work protection.

## **SECTION 2 DEFINITIONS AND BACKGROUND**

### **2.1 INTELLECTUAL PROPERTY**

Intellectual property, for the purpose of this policy, is defined as the tangible or intangible result of research, development, teaching, or other intellectual activity. Intellectual property may include the following categories.

- a. Inventions, discoveries, or other new developments that are appropriate subjects of patent applications, or that may be treated as trade secrets.
- b. Written materials, sound recordings, videotapes, films, computer programs, computer-assisted instruction materials, works of art (including paintings, sculptures, and musical compositions), and all other material which may be copyrightable.
- c. Trademarks and service marks.
- d. Mask works.
- e. Tangible research property such as biological materials including cell lines, plasmids, hybridomas, monoclonal antibodies, and plant varieties; computer



software, data bases, integrated circuit chips, prototype devices and equipment, circuit diagrams, etc.; and analytical procedures, laboratory methods, etc. All such tangible research property may or may not be patentable or copyrightable.

The five categories above are not mutually exclusive; a given article of intellectual property may include aspects of all five.

## 2.2 PATENTS AND PATENT RIGHTS

A patent is a grant issued by the United States Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling an invention within the United States, its territories, and its possessions for a period of 20 years from the filing of the patent application. The period of 20 years is exclusive of certain regulatory delays such as those sometimes imposed by the Food and Drug Administration or those involved in Patent and Trademark Office Appeals.

Patents may also be granted in foreign countries. Procedures for filing, regulations for patentability, and term of patent vary considerably from country to country.

To be patentable in most countries, an invention must be new, useful, and nonobvious. In the United States, a grace period of 12 months from the first written public disclosure, public use, or sale of an invention is allowed to file a patent application. In most foreign countries, an invention is unpatentable unless the application is filed **before** public disclosure (written or oral). However, **if** one has filed in the United States prior to public disclosure, the applicant has 12 months to file in most non-U.S. countries without losing filing rights. It is now possible to file provisional patent applications in the U.S. to guard against loss of right by early publication, but a regular U.S. patent application must be filed within 12 months of the provisional filing if patent protection is to be obtained.

## 2.3 COPYRIGHTS

Under federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

In contrast to a patent which protects the "idea," copyright covers the "artistic expression" in the particular literary work, musical work, computer programs, motion pictures, video or audio recordings, photographs, sculptures, and so forth, in which the "expression" is embodied, illustrated, or explained, but does not protect the underlying "idea."

As provided in copyright law, a copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly. For an individual author, copyright protection of a work extends for the author's life plus 50 years. For employers, copyright protection of a work extends for 75 years from the date of publication.

## 2.4 TRADEMARKS AND SERVICE MARKS

A trademark or service mark is a word, name, symbol, or device (or any combination) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others. In the United States, trademark ownership is generally acquired through use of a term to identify the origin of goods or services. Trademark or service mark ownership is not dependent upon federal or state registration, but upon use of the mark. Registration of trademarks and service marks may be obtained on both the state and federal levels. To apply for a federal registration of a trademark or service mark, an organization must use it in interstate commerce. However, effective November 1989, legislation enables organizations to file for interim trademark protection based on intent to use a particular term.

## 2.5 MASK WORKS

A mask work is a series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product. Under the Semiconductor Chip Act of 1984, mask work protection extends for ten years and gives the owner of the qualifying mask work exclusive rights to its exploitation. Mask works are registered with the United States Copyright Office. Failure to apply within two years of the initial commercial exploitation results in the termination of the exclusive rights.

## 2.6 TRADE SECRET

The law of trade secret may be applied to almost any secret which is used in business and gives the owner of the trade secret a competitive edge over others. It is used to protect valuable proprietary information and is a commonly used form of protection for software. Unlike patents, copyrights, and trademarks, there is no federal trade secret statute. Trade secret laws are determined by the individual states but generally adhere to similar principles. The most important aspect of this type of protection is that of secrecy. The protection will remain legally valid only as long as a trade secret is maintained. To maintain protection while a trade secret is being used, it is desirable to bind those individuals having access to the secret by a contractual agreement not to disclose it. Such agreements are called nondisclosure or confidentiality agreements (see Form 1 in the Appendix).

# SECTION 3

## **POLICY STATEMENTS**

### **3.1 SCOPE**

The University of Dayton Intellectual Property Policy and Procedure is applicable to its college, schools, departments, and Research Institute as well as all faculty, staff, students, visitors, and others participating in University programs. This policy covers all intellectual property conceived, first reduced to practice, written, or otherwise produced by faculty, staff, students, or visitors to the University using University funds, facilities, or other resources.

### **3.2 POLICY OBJECTIVES**

The fundamental objectives of the University's policy on intellectual property include the following:

- a. to facilitate the transfer of knowledge and technology and to use such knowledge and technology to the general benefit of society;
- b. to encourage research, scholarship, and a spirit of inquiry thereby generating new knowledge;
- c. to provide an administrative system to determine the commercial significance of discoveries and new developments, and to assist in bringing these into public use;
- d. to provide for the equitable disposition of interest in new intellectual property among the developer, the University, and, where applicable, the sponsor;
- e. to provide incentives to developers in the form of personal development, professional recognition, and financial compensation;
- f. to safeguard intellectual property so that it may receive adequate and appropriate legal protection against unauthorized use; and
- g. to fulfill the terms of a research grant or contract.

### **3.3 RIGHTS IN INTELLECTUAL PROPERTY**

Rights in intellectual property, made or created by UD faculty, students, staff, and others participating in UD programs, including visitors, are as stated in the following subsections.

#### **3.3.1 University Ownership**

### 3.3.1.1 Significant Use of University-Administered Resources

When intellectual property is conceived or developed by faculty, students, staff, visitors, or others participating in UD programs (“UD associates”) through the significant use of UD funds or facilities, UD will own the intellectual property and any associated copyrights, patent applications, and patents. If the intellectual property is not subject to a sponsored research or other agreement giving a third party rights, the issue of whether significant use was made of UD funds or facilities will be determined by the Intellectual Property Administrator based on recommendations by the appropriate dean/department chair or Research Institute division head. UD presumes that significant use of UD funds or facilities is made whenever an invention, discovery, improvement, or other form of intellectual property is conceived or developed by a UD associate which pertains to or results from employment with UD or association therewith. Therefore, the significant use criterion may apply even when UD funds or facilities are not directly employed in the creation of the intellectual property. It is presumed in such instances that creation of the intellectual property relies on the knowledge and expertise acquired through the UD associate’s relationship with UD, and in such cases, title to the intellectual property is appropriately vested in UD.

Textbooks, manuals, or training materials developed in conjunction with class teaching are excluded from the "significant use" category, unless such materials were developed using UD-administered funds paid specifically to support the development of such materials.

The use of commonly provided resources, including libraries, offices, classrooms, and clerical support, does not constitute significant use of UD funds and facilities.

### 3.3.1.2 Works for Hire

Ownership of Intellectual Property created as a "work-for-hire" by operation of the copyright law or created pursuant to a written agreement with UD providing for transfer of copyright or ownership to UD will vest with UD.

A "work-for-hire," as defined by law, is a work product created in the course of the author's employment. Copyright of the work product in these situations belongs to the employer. For example, results of work assigned to staff programmers or writers of University publications are considered to have been created in the course of the author's employment and are the property of UD. UD shall own all works for hire.

Under the Copyright Act, copyright of commissioned works of non-employees is owned by the author and not by the commissioning party unless there is a written agreement to the contrary. All UD personnel are cautioned to ensure that independent contractors agree in writing that ownership of the commissioned work is

assigned to UD, except where special circumstances apply and it is mutually agreed in writing that the author will retain ownership.

#### 3.3.1.3 Contracted Services

All UD personnel responsible for obtaining contracted services which may result in the creation of intellectual property, other than copyrightable works, are cautioned to ensure that independent contractors agree in writing that ownership of such intellectual property shall be retained by UD, except where special circumstances apply and it is mutually agreed in writing that the independent contractor will retain ownership.

#### 3.3.2 Ownership Subject to Sponsored Research Agreements

Ownership of Intellectual Property developed in the course of or pursuant to a sponsored-research or other agreement will be determined according to the terms of such agreement.

With regard to patents, research contracts sponsored by the Federal Government are subject to statutes and regulations under which UD acquires title in inventions conceived or first reduced to practice in the performance of the research. UD's ownership is subject to a nonexclusive license to the government and the requirement that UD retain title and take effective steps to develop the practical applications of the invention by licensing and other means.

With regard to copyrights, normally, research contracts sponsored by the Federal Government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may consist of title to such material vesting solely in the government, but more often consist of a royalty-free license to the government with title vesting in UD.

When a work is created under the terms of a sponsored-research agreement, authors of copyrightable works should be aware that there may be contractual terms relating to the form of the report, advance notice to the sponsor before publication, and the like.

UD personnel and visitors should contact the Office of Contracts and Grants Administration in the Research Institute for information or assistance regarding interpretation of research contract terms. The terms of such sponsored-research agreements apply not only to intellectual property created by faculty and staff, but also to that created by students and visitors, whether or not they are paid by UD, who participate in performing research supported by such agreements. It is essential, therefore, that all individuals participating in the research be made aware of their obligation to assign rights to UD by signing the Intellectual Property Rights Agreement as described in Section 6 and provided as Form 2 in the Appendix.

### 3.3.3 Inventor/Author/Originator Ownership

#### 3.3.3.1 Independent Works

Inventors/authors will own inventions/materials that are:

- a. not developed with the significant use of funds or facilities administered by UD,
- b. not created as a "work-for-hire" by operation of copyright law and not created pursuant to a written agreement with UD providing for a transfer of copyright or ownership to UD, and
- c. not developed in the course of or pursuant to a sponsored-research or other agreement.

The University makes no claims to inventions/materials discovered or developed by faculty, staff members, or students entirely on their own and without the use of University funds or facilities. To clarify the inventor's/author's rights to such inventions/materials and comply fully with the requirements of sponsoring agencies, all inventions/materials conceived and reduced to practice or developed by faculty, staff members, or students during their employment with the University shall be reported to the Technology Commercialization Office (TCO) in the Research Institute for determination of the degree of University interest.

#### 3.3.3.2 Traditional Works

Traditional products of scholarly activity which have customarily been considered to be the unrestricted property of the author/originator will be owned by the author/originator. Such traditional products include but are not limited to journal articles, books, reviews, works of art including paintings and sculptures, and musical compositions. The University does not claim any ownership rights to such traditional works and specifically disclaims any potential right to do so under the "work for hire" provisions of the U.S. Copyright Act. In addition, the author/originator of such traditional works is responsible for compliance with applicable copyright laws.

The application of patent and copyright laws to computer software is evolving. Currently, there is not an adequate body of law to guide the determination of the appropriate status of computer software. Therefore, computer software is expressly excluded from the definition of traditional works.

#### 3.3.3.3 Consulting

Faculty and staff members engaged in consulting work or other outside activity should ascertain that intellectual property provisions in their agreements are not in conflict with their obligations to the University or the policy statements contained in this document. In cases of conflict of interest on patentable matters, the University reserves the ultimate right to determine the final disposition of the patent rights involved. Faculty and staff members should make their obligations to the University clear to those with whom they make such agreements, and should ensure they are provided with a current statement of the University of Dayton Intellectual Property Policy and Procedures.

#### 3.3.4 Theses

Students will own copyright in theses which do not:

- a. involve research for which the student received financial support in the form of wages, salary, stipend, or grant from funds provided under a sponsored-research agreement which imposes copyright restrictions; and/or
- b. involve research performed in whole or in part utilizing equipment or facilities provided to UD under conditions which impose copyright restrictions.

Where copyright ownership is retained by the student, however, the student must grant to UD royalty-free permission to reproduce and publicly distribute copies of the thesis. As noted in Section 2.3 herein, a thesis copyright covers the expression of the ideas (or intellectual property) and not the ideas themselves. Normally, ownership of the intellectual property described in theses will vest in the University through the significant use provision of Section 3.3.1.1 herein; therefore, where students own copyright in theses, the intellectual property contained in the theses, such as software code and patentable subject matter, is subject to Section 3.3.1 above.

#### 3.3.5 Trade and Service Marks

Trade and service marks relating to goods and services developed at UD will be owned by UD.

## **SECTION 4 TECHNOLOGY MANAGEMENT AND COMMERCIALIZATION**

### **4.1 INTRODUCTION**

The University encourages bringing forward to public use and benefit technology developed in the course of University research. Various options are available to the University for transitioning its technology to the public sector. In many cases, publication of research results will be sufficient to transfer UD technology to the public. In other cases, it is necessary for UD to grant license rights to industry to encourage industry to invest its resources to develop products and processes for use by the public. This section sets forth the policies and procedures for identifying commercially valuable technology developed by the University and for developing the various relationships and agreements necessary to transfer this technology to the public.

### **4.2 RESPONSIBILITY**

The TCO of the Research Institute is responsible for facilitating the transfer of UD technology to the public use and benefit. The TCO encourages the submittal of invention disclosures and other forms of intellectual property, evaluates intellectual property for commercial value, obtains proprietary protection for technology with commercial potential, markets the technology to potential licensees, and develops license agreements and other types of transfer agreements with industry.

### **4.3 DISCLOSURE AND REVIEW**

University employees, students, and visitors, as well as others participating in University programs, who believe they may have created an invention or other item of intellectual property are obligated to disclose its nature and background to the TCO. This obligation of disclosure does not apply to traditional works, as defined in Section 3.3.3.2. In cases for which ownership of the intellectual property appears outside the equitable interests of the University, the University will formally disclaim any right of ownership to the intellectual property involved.

Intellectual property should be disclosed to the TCO by the submittal of a Technology Disclosure Form (see Appendix - Form 3 is for inventions, Form 4 is for software). When submitted, the Technology Disclosure Form will initiate action by the TCO to investigate the patenting (or other methods of protection) and marketing of the technology. Upon submittal, the Technology Disclosure Form is logged in by the TCO and copies of the form are distributed to the Technology Disclosure Review Committee. This committee then meets with the inventor/author to discuss the items submitted and evaluate their commercial potential. Following the submittal of the Technology Disclosure Form, notice of the initial disposition of the invention or other form of intellectual property should be sent to the inventor/author, normally within 60 days. The



University has an obligation to decide whether commercialization appears appropriate for each item submitted and to communicate this decision to the inventor/author. This obligation should normally be satisfied within six months. The terms of sponsored-research and other agreements normally create obligations with respect to the reporting of inventions, technical data, and copyrightable works such as software. In particular, inventions and copyrightable works developed under sponsored research should be promptly reported to the TCO by submitting the Technology Disclosure Form. The TCO will forward a copy of the Technology Disclosure Form to the Office of Contracts and Grants Administration which is responsible for discharging UD's obligations to research sponsors.

#### 4.4 COMMERCIALIZATION

The TCO will pursue the licensing of technology by researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, developing a business plan, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties and other income to the inventors/authors in accordance with this policy.

##### 4.4.1 Approaches

The University will commercialize a technology on its own when it appears that such commercialization will be of economic benefit to the University or if the University is required to do so under the terms of a research agreement with a sponsoring agency. When it is determined that technology in which the University has an interest should be developed by an outside agency, the University will obtain such services through appropriate agreements with such agencies. If the University determines it has no interest in a technology, it shall formally waive its rights to the technology. If the technology was developed under a research agreement, this waiver shall not be granted until it has been cleared with the sponsoring agency. Upon receipt of such a waiver, inventors/authors shall be free to develop the technology at their own expense.

##### 4.4.2 Inventor/Author Assistance

With few exceptions, the support and cooperation of the inventor/author is critical to licensing success.

##### 4.4.3 Inventor/Author-Owned Technology

UD faculty, staff, or students as well as third parties not affiliated with UD who wish to pursue the development of their independently-owned technology through the TCO may offer such technology for evaluation by submitting a Technology Disclosure Form. The TCO will evaluate the commercial potential and determine whether or not the technology will be accepted for licensing by the TCO. Any such technology accepted for licensing by the TCO will be processed in accordance with this policy and any income

shared with the inventor/author whether faculty, staff, student, or third party not associated with the University will be in accordance with this policy.

Faculty, staff, and students are equally free to choose some other mechanism for commercializing their independently owned technology. However, prior to such commercialization they should ensure that the technology is not subject to a sponsored-research or other agreement, does not constitute a work-for-hire, or does not result from significant use of funds or facilities administered by UD. If any of these conditions might apply, the inventor/author should request from the TCO an appropriate license to exercise such rights or a waiver of UD's rights as set forth in this Section 4. A waiver request is Form 5 in the Appendix.

#### 4.4.4 Commitment of Future Inventions

In general, it is the policy of UD not to commit future inventions to licensees even when improvements to technology are anticipated. Some narrowly drawn exceptions may occasionally be appropriate to handle subordinate patents and well-defined derivative works for licensed software.

#### 4.4.5 General Statement on Conflict of Interest or Commitment

The University reserves the right to require any employee to take a leave of absence in the event of an unavoidable conflict of interest or commitment related to the commercialization of intellectual property. Such leave of absence shall be without pay and shall be in conformity with University policy for personal leave.

### 4.5 PATENTS

#### 4.5.1 Protection

Although patent protection is sometimes sought for various noncommercial reasons, such as professional status, UD will not seek protection for inventions which are not commercially attractive, even if the invention is intellectually meritorious, unless otherwise requested by the sponsor. UD will normally seek patent protection on inventions in order to pursue commercial licensing and to comply with the terms of sponsored-research agreements.

*Any publication which describes an invention even in minimal detail prior to filing for a patent may preclude patenting in foreign countries and may also preclude protection in the United States unless a patent is filed within one year of publication.*

The implications of publication upon patent rights should be discussed with the TCO and a decision on patent filing must be reached promptly so that publication will not be delayed. The University reserves the right to delay publication of any University-

owned intellectual property for up to six months to allow for patent filing or other forms of protection.

#### 4.5.2 Evaluation

Once a Technology Disclosure Form is submitted to the TCO, the Technology Disclosure Review Committee will meet with the inventor(s) as a first step in the evaluation process. In many cases, contact with industry will also be made as a part of the process.

#### 4.5.3 Sponsored Programs

If the invention was developed under a sponsored-research project, the TCO will inform the Office of Contracts and Grants Administration of the submittal of the Technology Disclosure Form and will ask this Office to notify the sponsor of the invention. The sponsor will be further advised that the University is evaluating the commercial potential of the invention and will advise, in due course, of the University's election-to-file decision. After the Technology Disclosure Review Committee has met with the inventor and has decided on disposition of the invention, the TCO will inform the Office of Contracts and Grants Administration of the election-to-file decision and will ask this Office to so inform the sponsor. Under the Code of Federal Regulations (37CFR, Part 401), the University has two years following submittal of the invention to make its election-to-file decision. After a decision to retain title is made, the University has one year to file a patent application. The Office of Contracts and Grants Administration may be contacted for information about the specific patent terms of individual research agreements. The intellectual property clauses in industrially sponsored projects vary, but normally the University will seek to retain title to inventions made on such contracts and to provide for the negotiation of license rights with the sponsor.

#### 4.5.4 Waiver of UD Rights

When it has the right to do so, UD may, if requested by the inventor and at its discretion, waive its rights to the invention in those situations where UD believes that a waiver would enhance the transfer of technology to the public, is consistent with UD's obligations to third parties, and does not involve a conflict of interest as set forth below. By waiving its rights to the invention, UD agrees not to exercise its contractual rights to the technology, thereby clearing the way for the UD inventor to seek ownership. Inventors may request that UD waive its rights to the invention by submitting the letter that is Form 5 in the Appendix.

In the case of Federal agency sponsorship, inventors may directly petition the agency for a release of rights to themselves. However, Federal research agreements are generally subject to a uniform patent law which provides that universities take title to resulting inventions subject to certain obligations concerning exploitation in the public interest, Federal approval of any assignment of ownership, preferences for licensing,

retention by the Federal government of certain license rights, and march-in rights. Decisions by Federal sponsors to permit individual inventors to acquire ownership are generally made on a case-by-case basis with the Federal Government retaining for itself those rights previously discussed.

In the case of industrial sponsorship, UD will seek approval of the sponsor prior to releasing its ownership rights in favor of the inventor.

#### 4.5.5 Licensing of UD Rights to Inventors

UD faculty, staff, or student inventors may request a license to commercially develop their UD-owned inventions where such licensing would enhance the transfer of the technology, is consistent with UD obligations to third parties, and does not involve a conflict of interest.

#### 4.5.6 Conflict of Interest or Commitment

Any of the following factors may signify a conflict of interest which will be taken into account prior to waiving or licensing UD's rights to inventors under this subsection (Subsection 4.5) or to authors under Subsection 4.6:

- a. an adverse impact on UD's educational responsibility to students,
- b. an undue influence on the employment commitment of the inventor/author to UD in terms of time or direction of effort,
- c. a detrimental effect on UD's obligation to serve the needs of the general public, and/or
- d. potential conflict of interest as defined in UD's policies and procedures.

If the inventor/author holds or will shortly acquire an equity or founder's stock position in a small, tightly controlled company independent of the inventor's/author's association with UD and a license is granted to the company by UD, the inventor/author will be required to sign a Conflict Avoidance Statement (see Form No. 6 in the Appendix).

## 4.6 COPYRIGHTS

### 4.6.1 Asserting and Registering

Copyright protection of books, articles, and publications is sought in order to recognize authorship and protect the integrity of the work. It is also essential in order for UD to license copyrightable materials to commercial book publishers and others, and to comply with the terms of sponsored-research agreements.

A copyright is established at the time expression is fixed in a tangible medium. To maintain the copyright for the period prescribed under the copyright statute, notice of copyright must be affixed to the copyrightable material. Failure to affix the proper notice will cause the copyright to be lost after a certain period of time has elapsed following the first publication of the work.

The following notice is to be applied on UD-owned works to protect the copyright:

Copyright © 19XX The University of Dayton  
All rights reserved.

The date in the notice should be the year in which the work is first published. No notice other than the foregoing is to be used for UD-owned works.

Further, for added copyright protection, certain works should be registered with the United States Copyright Office using its official forms.

Questions concerning copyright notices and registration should be brought to the TCO.

#### 4.6.2 Commercialization by the TCO

Copyrightable works owned by UD are normally licensed through the TCO except where other arrangements are made in accordance with this policy. Copyrightable material not owned by UD also may be licensed through the TCO when submitted under a Technology Disclosure Form to the TCO by its author and accepted for licensing by the TCO.

Computer software in which UD acquires rights may be either patented or copyrighted and made available by UD for commercial purposes through the TCO under various forms of patent or copyright licenses. Authors and their departments/divisions will share in royalties earned from licensing as further set forth in this policy. In those instances where the authors desire to distribute commercially licensed software for research purposes, such licensing must be coordinated with the TCO (see Subsection 4.9.1).

#### 4.6.3 Waiver of Rights to UD Authors

When it has the right to do so, UD may, if requested by the author and at UD's discretion, waive its rights in those situations where UD believes that a waiver would enhance the transfer of technology to the public, is consistent with UD's obligations to third parties, and does not involve a conflict of interest as set forth above. By waiving its rights, UD agrees not to exercise its contractual rights to the technology, thereby clearing the way for the UD author to seek ownership. Authors may request that UD waive its rights by submitting the letter that is Form 5 in Appendix A.

Federal research agreements vary widely with respect to rights in copyrightable technical data and computer software but, in general, universities have the right to copyright and control distribution of most materials. Several major agencies retain a large degree of control over computer software and will relinquish control only under limited circumstances.

In the case of industrial sponsorship where the sponsor acquires license rights, UD will seek approval of the sponsor prior to releasing its ownership rights in favor of the author.

#### 4.6.4 Other Forms of Author Control

Where consistent with UD's obligations to third parties, UD faculty, staff, or student authors, with the agreement of their Research Institute division head or academic department chair and all their co-authors, may request a license from the TCO to commercially develop their UD-owned works, may request to have the works openly distributed through royalty-free licenses, or may request that the works be placed in the public domain.

##### 4.6.4.1 Licensing to Authors

Authors may request control of the copyrighted material through a grant of commercial license rights.

Consistent with the public interest, UD may grant the request for author control but retain title to the work with the right to use it for internal purposes, the right to the payment of appropriate royalties, and the right to withdraw such licensing rights in three years if the authors have not achieved effective dissemination as agreed. In addition, such arrangements will be subject to UD's Conflict of Interest and Commitment policies as stated in Subsection 4.5.6 and in UD's policies and procedures.

Where such requests relate to major projects that typically involve multiple authors and long development periods, determining the most effective course for dissemination will require discussion and special negotiation with the TCO.

UD will respond to author requests made under this policy within 90 days. However, in those cases where the work, generally software, is not sufficiently developed to allow proper assessment, UD may require an additional development period to respond to author requests.

#### 4.6.4.2 Public Domain

Authors may request that otherwise copyrightable material, including computer software, be placed in the public domain if such action will promote widespread use, for example, by providing a means to establish a new standard such as a computer operating system.

In responding to a request for public domaining, UD will weigh the advantages of improved access, the complexity of the work, whether it is ready for effective public use, whether its quality can be maintained, and the author's reasons for seeking this mode of dissemination.

### 4.7 TRADEMARKS AND SERVICE MARKS

#### 4.7.1 Asserting and Registering

A trademark or service mark may be used to protect those names and symbols associated with certain UD activities and events, and with certain technology developments such as computer programs. Prior to registration for trademark protection, the designation "TM" after a trademark or "SM" after a service mark will give adequate notice of a claim of ownership. The designation "®" for a trademark may only be used after Federal registration.

The use of trademarks and service marks to protect UD-owned technology will be administered by the TCO. The use of trademarks and service marks to designate

UD as the origin of a product, event, activity, service, or the like may be instituted only at the direction of the Office of the Sr. Vice President for Administration. *Trademark protection carries with it certain obligations on the part of the holder of the trademark or service mark.* Therefore, requests for use and registration of trademarks or service marks on behalf of UD must be referred to the TCO or the Office of the Sr. Vice President for Administration as appropriate.

#### 4.7.2 Use of Trademarks and Service Marks

Trademarks and service marks owned by UD are to be licensed through the TCO or the Office of the Sr. Vice President for Administration. Any exceptions to this procedure must be approved in advance by the Provost.

### 4.8 MASK WORKS

#### 4.8.1 Asserting and Registering

Protection of a mask work commences with the registration of its initial commercial exploitation. If registration for protection has not been made within two years of the initial commercial exploitation, mask work protection may be lost and the work entered into the public domain.

To protect mask work rights, the following notice is to be applied on all UD-owned semiconductor chip products which incorporate mask works:

Mask work "M" or (M) The University of Dayton

Questions concerning mask work notices and registration should be brought to the TCO.

#### 4.8.2 Commercialization

Mask works owned by UD are to be licensed through the TCO. Any exceptions to this procedure must be approved in advance by the Intellectual Property Administrator. Mask works not owned by UD also may be licensed through the TCO when offered for licensing by the developer of such mask work and accepted by the TCO.

### 4.9 TANGIBLE RESEARCH PROPERTY

#### 4.9.1 Management

Tangible research property (TRP) such as biological materials and computer software are frequently patented or copyrighted as appropriate and then licensed for commercial purposes. However, these and other forms of TRP, including those under



commercial license, generally are simultaneously distributed solely for research purposes either under simple letters of understanding or more formal licenses.

The following subsections deal only with dissemination of TRP for research and other noncommercial purposes. Commercial licensing of TRP is covered in Subsection 4.9.2.

#### 4.9.1.1 Distribution for Scientific Research

In keeping with the traditions of academic science and its basic objectives, it is the policy of UD that results of scientific research be promptly and openly made available to others. Since the traditional modes of dissemination through scholarly exchange and publication are not fully effective for most TRP, it is UD policy that those research results which have tangible form also be promptly and openly made available to other scientists for their scientific research, unless such distribution is inappropriate due to factors such as safety or the need to more fully characterize or develop the TRP prior to distribution, or unless such distribution is incompatible with other obligations.

#### 4.9.1.2 Control of TRP

Where TRP is developed in the course of research which is subject to the terms of a sponsored-research or other agreement, control over its development, storage, distribution, and use is the responsibility of the principal investigator, who will consult with the Office of Contracts and Grants Administration. In other cases, significant use of University resources will be presumed; thus, control over TRP rests jointly with the laboratory director or department head and the TCO. The responsibility for control includes determining if and when distribution of the TRP is to be made beyond the laboratory for scientific use by others in accordance with the terms of this policy.

#### 4.9.1.3 TRP with Potential Commercial Value

Scientific exchanges should not be inhibited due to potential commercial considerations. However, TRP may have potential commercial value as well as scientific value; therefore, the principal investigator who wishes to make TRP available for scientific use in a manner which does not diminish its value or inhibit its commercial development should seek guidance from the TCO.

The normal mechanism for TRP commercialization is through licensing agreements as set forth in Subsection 4.9.2.

#### 4.9.1.4 TRP Identification

Each TRP item should have an unambiguous identification code and name sufficient to distinguish it from other similar items developed at UD or elsewhere. The TCO should be consulted for assistance in developing appropriate identification systems.

#### 4.9.1.5 Distribution of Biological TRP to Research Colleagues

Biological materials are, in many cases, patentable and licensed for commercial purposes under various types of patent licenses. They are also a form of tangible research property which can be distributed for commercial and/or research purposes with or without patent protection.

Biological TRP owned by UD may usually be distributed for research purposes only, with minimal conditions attached. Any such distribution is subject to an agreement by the recipient that commercial development, commercial use, or further transfer of the biological materials is not to be undertaken. An example of such an agreement for use of biological materials may be found in the Appendix to this policy (see Form No. 7, Materials Transfer Agreement). In addition, the principal investigator may wish to control subsequent use, for example, by requiring recipients to follow a specific research protocol in the use of the biological materials.

When distributing biological TRP to research colleagues outside the laboratory, costs of the materials and handling may be recovered from the recipient and returned to the account which funded those costs. When costs are charged for TRP distribution, adequate documentation must be maintained for audit purposes.

If there is a possibility of biohazard or other risk associated with the transport, storage, or use of a particular biological TRP, or if the recipient is likely to use the TRP for clinical research, the TCO should be contacted for advice on the appropriate form of disclaimers of liability and indemnities.

If the biological TRP was developed under a sponsored-research agreement, the Office of Contracts and Grants Administration should be contacted to advise on possible contractual obligations with respect to the TRP prior to its distribution for noncommercial purposes. Distribution of biological TRP which is part of a patent or patent application should be coordinated through the TCO.

#### 4.9.1.6 Distribution of Computer Software for Research Purposes

Distribution of UD-owned computer software to colleagues for research purposes must be coordinated with the TCO if the software has potential commercial value, if the principal investigator wishes to control subsequent use, or if it is subject to the terms of a sponsored-research agreement.

The TCO will provide wording for the distribution agreement necessary to preserve commercial value, and will arrange for trademark and copyright registration as appropriate.

#### 4.9.1.7 Other TRP

Distribution of TRP, other than biological TRP, should follow the procedures outlined in this policy for computer software.

#### 4.9.2 Commercialization

It is UD's policy that any commercial distribution of UD-owned TRP be handled only through the TCO, unless arrangements are made for independent development by the inventors/authors. Software should be submitted to the TCO in the same fashion as a patentable invention, for which the first step is preparation and submission of a Technology Disclosure Form (see Form 4 in the Appendix).

If TRP developed by UD as a result of research activities is to be distributed to outside users for commercial purposes, the distribution agreement must contain provisions (negotiated by the TCO) covering the terms under which the property may be used, limits on UD's liability for the TRP or products derived therefrom, and other conventional license agreement terms including those relating to any intangible property rights (such as patents) which also may be associated with the use of the tangible property.

## **SECTION 5**

### **INCOME DISTRIBUTION**

#### 5.1 GENERAL

To recognize the creative ability of the inventor/author and encourage the prompt disclosure of all technology, the University shares a portion of the net income received from the commercialization of technology with the inventor/author.

Net income is derived by subtracting from the gross income, first, 20 percent of the gross income to cover the operating expenses of the TCO and, second, the following costs:

- a. patenting costs, including preparation and filing of patent applications, patent prosecution, and patent maintenance;
- b. legal costs associated with patent interferences and infringement;
- c. legal costs associated with copyright registration and other forms of intellectual property protection;
- d. legal costs associated with the development of licenses and other agreements; and
- e. University costs associated with the development of the technology.

A reserve account will receive the deduction from gross income for operating expenses of the TCO. This reserve account will be reviewed every five years and the deduction will be adjusted as appropriate. The Intellectual Property Administrator will determine and approve how these reserve funds are expended.

Fiscal year net income for each licensing or technology transfer case is defined as the difference between the cumulative net income as of the end of that fiscal year and the cumulative net income as of the end of the previous fiscal year. If this difference is greater than zero, the fiscal year net income received from technology commercialization for each case shall be distributed once annually on an individual case by case basis according to the schedule shown in Table 1.

**Table 1**  
**Net Income Distribution Schedule**

Distribution I	Return to Inventors/Authors	50% of Net Income
Distribution II	Return to President	25% of Net Income
Distribution III	<u>Step 1.</u> Return to Inventors'/Authors' Research Institute Division or Academic Department	25% of Net Income up to a maximum of \$100,000 per fiscal year and a cumulative maximum of \$250,000
	<u>Step 2.</u> Return to Research Institute or College or School	The portion of the 25% of Net Income which is in excess of the limits set in Step 1, provided this amount doesn't exceed:  (a) For the College or School \$200,000 per year or \$400,000 cumulative.  (b) For the Research Institute \$400,000 per year or \$800,000 cumulative
	<u>Step 3.</u> Return to President	The portion of the 25% of Net Income which is in excess of the limits set in Step 2.

An illustration of the accounting of the income and expenses and the allocation of the inventor's/author's share of net income (Distribution I) for a hypothetical licensing case is presented in Table 2. The same mathematical procedure is used to determine the return for Distributions II and III. Regarding Distribution III, expenditures of net income distributed to a Research Institute Division or Academic Department under this policy shall be made in accordance with University policies and procedures governing the expenditure of University funds. Net Income allocated to Distributions II and III will be used for research and education purposes in accordance with 37CFR, part 401.

Net royalties or other income received under agreements with technology development agencies (e.g., Research Corporation) will also be allocated in accordance with the above schedule.

In some cases, UD may accept equity shares in a licensee in addition to or in lieu of royalties or other cash payments. In such cases, UD may elect to (1) request the licensee to distribute shares of stock directly to the inventors/authors or (2) have all shares of stock issued to UD by the licensee and distribute to the inventors/authors their cash share upon liquidation of the stock by UD. Whether shares of stock are issued directly to the inventors/authors or the cash value of the stock is shared with the inventors/authors shall be at the sole discretion of UD. This determination will be made by the Intellectual Property Administrator.

In those cases where the technology is developed under a research agreement with a government or private agency that includes conditions on the distribution of royalties or other income, the inventors'/authors' share will be subject to the terms of these agreements. Where coinventors/coauthors are involved, the inventors'/authors' portion of the revenues shall be shared equally unless an agreement between the inventors/authors establishes a different distribution. In cases where the inventors/authors cannot agree on the distribution, and the amount to be distributed is less than \$200,000, the allocation will be determined by the Intellectual Property Administrator whose decision will be final. In cases where such distribution exceeds \$200,000, the Intellectual Property Administrator will make a recommendation to the Provost for final review and decision.

Distribution of the net income share to inventors/authors continues after termination of the inventors'/authors' employment with UD. Upon the death of the inventor/author, distribution of the net income share will be made to the inventor's/author's estate or heirs.

## 5.2 REVENUE DISTRIBUTION - SPECIAL CASES

In some cases, allocation of Distribution I funds to individuals may be impractical or inappropriate, for example, where the intellectual property was developed as a laboratory project or where the authors/inventors are not easily identifiable. The Intellectual Property Administrator, in consultation with the principal investigator (or Research Institute division head/academic department chair if not under a sponsored-

research agreement) will review the circumstances of development when such situations have been identified. In any situation when revenue distribution to individuals is not recommended, distribution of the inventors'/authors' share of the net income (Distribution I) will be directed to Distributions II and III on a pro-rata basis, that is, the allocation percentage for Distribution I will be zero, and the allocation percentages for Distributions II and III will each be twice that shown in the distribution schedule of Section 5.1.

## **SECTION 6 FACULTY, STUDENT, STAFF, AND VISITOR OBLIGATIONS**

### **6.1 GENERAL POLICY**

It is the policy of UD that individuals, through their employment by UD, their participation in a sponsored-research project, or their use of UD-administered funds or facilities, thereby accept the principles of ownership of technology as stated under this policy. In furthering such undertakings, all participants must sign the Intellectual Property Rights Agreement in accordance with the policy stated in Subsection 6.2.

### **6.2 INTELLECTUAL PROPERTY RIGHTS AGREEMENT**

#### **6.2.1 Who Must Sign**

The Intellectual Property Rights Agreement must be signed by individuals at UD who:

- a. receive support from sponsored-research or UD-funded projects; or
- b. otherwise may be in a position to make, conceive, or reduce to practice inventions or otherwise develop technology (1) under sponsored-research or UD-funded projects, whether or not salary or other support is received from such projects, or (2) through the use of significant UD-administered funds or facilities, or (3) within the scope of their employment; or
- c. otherwise are required to sign by the appropriate supervisor.

The UD Intellectual Property Rights Agreement is Form 2 in the Appendix. Note that this requirement specifically extends not only to UD personnel but also to visiting scientists and fellows or others.

#### **6.2.2 Administration**

The Director of the Research Institute, the Deans of each school or the college, and the appropriate Vice President or Director of each non-academic area are responsible for ensuring that the Intellectual Property Rights Agreement is signed by all

faculty, students, staff, and visitors who are required to sign as specified in Paragraph 6.2.1 above. The TCO will monitor compliance with this requirement. The Intellectual Property Rights Agreement should be signed in triplicate with one copy retained by the signatory, one copy retained in the administrative unit files, and one copy sent to the TCO.

Intellectual Property Rights Agreement forms may be obtained from the TCO which will assist with any questions which arise in connection with such agreements.

## **SECTION 7 ADMINISTRATION**

### **7.1 INTELLECTUAL PROPERTY ADMINISTRATOR**

The administration of the Intellectual Property Policy shall be the responsibility of the Intellectual Property Administrator, appointed by the President and responsible to the Vice President for Graduate Studies and Research. The Administrator's duties include the following:

- a. recommend and implement the intellectual property policy of the University,
- b. chair the Intellectual Property Committee,
- c. recommend appropriate legal action to enforce the University's intellectual property rights, and
- d. arbitrate any disputed issues related to intellectual property or the interpretation of this policy and recommend resolutions.

### **7.2 TECHNOLOGY COMMERCIALIZATION OFFICE**

The UD TCO has two principal goals. The first is to facilitate the transfer of technology developed at UD to public use and benefit. The second, where consistent with the first, is to provide an additional source of unrestricted income to support research and education at UD. The TCO will work with the UD developers of technology and with industry. However, it will do so in a manner which does not interfere with the normal flow of technical and academic information through publications, conferences, and consulting.

### **7.3 OFFICE OF CONTRACTS AND GRANTS ADMINISTRATION**

The Office of Contracts and Grants Administration is responsible for the negotiation, execution, and administration of all UD agreements with external sponsors of research grants and contracts, and for ensuring that the sponsor's rights to technology



developed under external grants and contracts are protected. The Office of Contracts and Grants Administration and the TCO are available to assist all principal investigators and sponsored-research program administrators in the negotiation and interpretation of intellectual property terms of grants and contracts.

#### 7.4 INTELLECTUAL PROPERTY COMMITTEE

A University Intellectual Property Committee shall be appointed by the President. This Committee will advise the Vice President for Graduate Studies and Research, and assist the University Intellectual Property Administrator. The Committee will include representatives from those fields of technology generally served by the TCO. This Committee may from time to time elect to create a subcommittee of experts in a specific technology whose function will be to recommend policy that relates to the exploitation of that technology.