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## Policy Information

**Effective Date:**

October 14, 2014

**Policy Number:**

TLA-100

**Responsible Unit:**

Tech Launch Arizona

**Phone:**

(520) 621-5000

## Purpose and Summary

This University of Arizona Intellectual Property Policy (the “Policy”) explains, supplements, and implements the Arizona Board of Regents (ABOR) Intellectual Property Policy (6-908) for the University of Arizona (University). In the event of any inconsistency between this Policy and ABOR Intellectual Property Policy (ABOR IP Policy) or applicable state or federal laws, the provisions of both ABOR IP Policy and applicable law prevail.

The ABOR IP Policy establishes the basic rights and obligations relating to Intellectual Property created by employees, students, and others connected to the University. This Policy provides an explanation of some of the key aspects of the ABOR IP Policy, and also provides additional detail and implementation regarding Intellectual Property creation, ownership, disposition, and transfer at the University.

## Scope

This Policy applies to “Covered Individuals,” defined below, which is purposefully a broad term that covers many individuals connected with the University in various ways. ***However, ABOR does not claim ownership of all Intellectual Property created by all Covered Individuals, as further explained in this Policy. One purpose for defining Covered Individuals broadly is to***

***encourage and allow any such individual to contact Tech Launch Arizona with questions regarding their Intellectual Property rights and responsibilities, even in cases where ABOR does not own the Intellectual Property.***

## **Definitions**

**“Course and Scope of Employment”:** The ABOR IP Policy specifically defines when Intellectual Property is created “in the course and scope of employment.” Basically, it includes activities described in the employees’ job descriptions and activities within their field of employment. It specifically includes research and instructional activities.

**“Covered Individuals”:** The following types of employees are Covered Individuals:

- Instructors; lecturers; senior lecturers; principal lecturers; assistant professors; associate professors; professors; professors of practice; research professors; clinical professors; Regents' Professors; persons with visiting, adjunct, joint, emeritus, research, clinical, or other such title; and other employees who are designated in their Notice of Appointment as holding a faculty position
- Service and academic professional employees, administrators, and student employees
- Classified staff
- Graduate and undergraduate students
- Affiliates, associates, and volunteers
- Other individuals who agree to be subject to this IP Policy or University policies generally

**“Digital Work”:** All works of authorship or other forms of creativity produced or converted into digital or electronic form or used to capture, store, retrieve, transform, or present any information in digital or electronic form including, without limitation, software (including source and object code), course lecture video or audiotapes, mobile applications, electronic textbooks, interactive textbook supplements, Internet-based and online courses, web pages, multimedia works, and distance learning materials.

**“Intellectual Property”:** The ABOR IP Policy defines Intellectual Property as all forms of legally recognized intellectual property, including copyrights, patents, trade secrets, trademarks, and plant variety protection, together with any associated or supporting technology or know-how. For the purpose of this Policy, “Intellectual Property” also includes tangible research property such as research tools, prototypes, and records used or produced in the course of University research projects. Examples include (a) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (b) plants protected by the Plant Variety Protection Act, (c) non-patented drugs protected by the Orphan Drug Act, (d) prototype instrumentation or devices, and (e) research records and documentation.

**“Intellectual Property Committee (IP Committee)”:** 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 Chair of the Faculty Senate, and with inclusion of one member of the Research Policy Committee. The IP Committee hears appeals by Covered Individuals as outlined in Section D and the ABOR IP Policy. The IP Committee may also consider changes in IP Policy proposed by the Faculty Senate and make recommendations to the President through the IP Official. The IP Committee may recommend changes in the IP Policy to the Faculty Senate through the Research Policy Committee.

**“IP Official”:** The Vice President of Tech Launch Arizona, as appointed by the University President.

The IP Official manages ABOR-owned IP through Tech Launch Arizona.

**Public Disclosure** includes any nonconfidential written or oral disclosure that describes an invention, information, or research activities. Examples are a publication, industry meeting, conference, or even an informal discussion with non-University colleagues.

**“Significant Use of University Resources”:** The ABOR IP Policy specifically defines what constitutes “significant use of University resources.” Although the definition is detailed, it is logical—it does not cover simple use of a University-provided laptop or office space, for example, but generally does cover what is done on University time or in furtherance of University-related activities, such as research.

The remaining capitalized terms used throughout this Policy are defined in context.

## Policy

### A. General Statement

The University is dedicated to teaching, research, and dissemination of knowledge for the benefit of the public. The University highly encourages University faculty and staff members to undertake creative and scholarly works and to develop new and useful materials, devices, processes, and other Intellectual Property, some of which may have potential commercial value. These activities contribute to the public welfare, provide educational opportunities for students, contribute to the professional development of the individuals involved, and enhance the reputation of the University.

Intellectual Property that is developed by Covered Individuals in the course and scope of their employment, or that makes significant use of ABOR or University resources, is presumed to belong to ABOR, and Tech Launch Arizona’s primary purpose is to provide services and support to Covered Individuals related to such Intellectual Property. Consistent with that purpose, this Policy provides for the close participation by Covered Individuals in protecting and enhancing the value of the Intellectual Property, and in sharing in its dissemination and rewards. The Intellectual Property Official and Tech Launch Arizona will have the necessary discretion in implementing this Policy, consistent with the terms and provisions of the ABOR IP Policy, for the greatest benefit of the public, the University, and Covered Individuals.

### B. Ownership Rule and Exceptions

The ABOR IP Policy establishes ownership rights of Intellectual Property created by Covered Individuals at the University. This section is intended to explain, confirm, and supplement the ABOR IP Policy, but is not intended to (and does not) change it.

- 1. General Ownership Rule:** The ABOR IP Policy distinguishes between different types of Intellectual Property. To understand which Intellectual Property is ABOR-Owned IP and which is Excluded IP, it is important to understand the distinction between an *idea* (e.g., an invention, discovery, procedure, process, system, concept, or method) and the *expression of an idea* (in a paper, publication, or other documentation). On a very basic level, this is the difference between a *patent*, which protects ideas, inventions, and discoveries that meet specific legal criteria, and a *copyright*, which protects particular tangible expressions, such as a publication or a photograph, but does not provide any protection for the ideas embodied in such expression.
  - a. Excluded IP:** ABOR does not claim ownership of the copyright (i.e., the tangible

expression) in "Scholarly Works," "Fine Art," or "Student Works" created by Covered Individuals. All of these terms (Scholarly Works, Fine Art, and Student Works) are specifically defined in the ABOR IP Policy. Excluded IP includes, without limitation, scholarly publications, textbooks, journal articles, syllabi, course materials and notes, research bulletins, monographs, books, play scripts, theatrical productions, poems, music, movies, art, and instructional materials that are created by a Covered Individual, usually a faculty member or a student, at his or her own direction and with only incidental use of University resources. This means that Covered Individuals who are authors of Scholarly Works, Fine Art, or Student Works may publish, reproduce, distribute, perform, and display their works without prior authorization of or interference by the University. But note that the *ideas* embodied are presumed to be ABOR-Owned IP, as set forth in the following paragraph.

- b. *ABOR-Owned IP*: ABOR *does* claim ownership of, and Covered Individuals assign to ABOR, all right, title, and interest to all other Intellectual Property not specifically excluded under paragraph B.1.a that is created in the *course and scope of employment* at the University or with *significant use of ABOR or University resources*. This is true regardless of whether the Intellectual Property is in the form of a patent, copyright, or any other type of Intellectual Property, except for the specific circumstances outlined above for Excluded IP. If a particular Intellectual Property does not clearly fall into one of these categories, or if a Covered Individual does not know whether a particular Intellectual Property is ABOR-Owned IP or Excluded IP, a Covered Individual may consult the IP Official or Tech Launch Arizona as set forth in this Policy.

The rest of this Section outlines some common examples and explanations of ABOR-Owned IP and Excluded IP, but is not meant to—and does not—cover every situation. The determination of ownership of Intellectual Property in any particular case will depend on the facts and circumstances of that particular situation. It does not depend solely on the person's physical location or job description, and sometimes requires careful analysis and consideration.

2. **Research Projects and Results:** All Intellectual Property that is created by Covered Individuals in the course of performing research projects that are supported partially or fully by the University or any external agency (usually either a private company or a federal agency, in either case referred to as a "sponsor") is ABOR-Owned IP, regardless of the form or type of Intellectual Property. Sometimes ABOR agrees to grant the sponsor certain ownership and/or license rights in such ABOR-Owned IP. If that is the case, that agreement governs Intellectual Property ownership. The University works with the principal investigator of such a research project when negotiating these agreements with sponsors. The principal investigator or manager of a research project is responsible for notifying all persons who may create Intellectual Property regarding the ownership and other terms and conditions relating to such Intellectual Property, as set forth in the applicable agreement.
3. **Clinical or Instructional or Research Work:** Intellectual Property that is created by Covered Individuals and that relates to their clinical, instructional, or research work is considered ABOR-Owned IP, except if it constitutes Excluded IP as set forth in Section B.1 above. This includes tangible research property, such as lab notebooks, data, research tools, prototypes, records, or written results.
4. **Visiting Faculty:** Visiting faculty who have a formalized relationship with the University are considered Covered Individuals, as set forth in the definition above. If a Covered Individual engages with an informal visitor or other guest in a way that involves discussion or collaboration regarding Intellectual Property or significant use of University resources, Covered Individuals are highly encouraged to work with Tech Launch Arizona to define and clarify the parties' respective Intellectual Property rights and responsibilities. These

individuals should work on research projects only with a specific written agreement in place that includes terms governing Intellectual Property rights.

5. **Student Works:** Students are Covered Individuals under this Policy, even though in most situations ABOR does not claim ownership of their Intellectual Property. The ABOR IP Policy specifically defines what constitutes “Student Works,” and excludes these from ABOR IP Ownership. Basically, if a Student is acting in his or her capacity as a student (rather than as an employee) and does not make significant use of University Resources, ABOR does not claim ownership of that Intellectual Property. Note that many students are employed or paid by the University in some capacity—often as graduate students under a sponsored research project or department- or faculty-controlled funding. Any such students will be treated the same way as faculty and other University employees for the purposes of this Policy and the ABOR IP Policy with respect to the paid work they perform. Students may be requested to grant rights in Student Works to ABOR or others as a condition of having access to certain class projects, research projects, collaborations, or other programs of the University.

Additionally, per the ABOR IP Policy, ABOR does not claim copyright ownership in Students’ dissertations intended to fulfill degree requirements. This means that students are free to publish, distribute, copy, modify, publicly perform, and publicly display their dissertations at their own discretion. But any inventions, ideas, software, or other ideas described in a dissertation is considered ABOR-Owned IP if the student was an employee or made significant use of University resources during creation, and therefore any use or transfer of such Intellectual Property must be through Tech Launch Arizona.

6. **Digital Works:** Because of the added potential for commercial application or potential patentability, and the added likelihood that Digital Works require significant use of University resources, such as production equipment and services, Covered Individuals who create Digital Works should engage in a discussion with Tech Launch Arizona to determine whether the Digital Work is ABOR-Owned IP or Excluded IP as described in Section B.1.
7. **Departmental Works:** Any Intellectual Property where the creation was directed or authorized by a University administrator or where University-administered funds were provided for development is considered ABOR-Owned IP.
8. **Trademarks:** Trademarks and logos related specifically to particular ABOR-Owned IP are handled by and through Tech Launch Arizona just like other Intellectual Property that is ABOR-Owned IP. However, the Office of Trademarks & Licensing handles trademark ownership and licensing for the University’s core marks and logos, and other University marks and logos. However, the Office of Trademarks and Licensing handles trademark ownership and licensing for the University’s core marks and logos, and for other University marks and logos, including the conditions for use on retail products and services. Anyone desiring to use the University’s name, trademarks, or logos must obtain prior written approval.
9. **Consulting:** The University encourages Covered Individuals to engage in consulting relationships, provided that these consulting relationships do not create a conflict of interest or conflict of commitment or violate any other policies of the University or ABOR. With respect to Intellectual Property, ABOR will not claim ownership of Intellectual Property that is created in the course and scope of performing consulting activities so long as the following conditions have been met:
  - a. The Covered Individual-consultant has complied with all applicable conflict of interest and other policies with respect to the consulting activities;
  - b. No ABOR-Owned IP is used in the consulting activities unless specifically licensed by Tech Launch Arizona, even if the Covered Individual-consultant is the creator of such ABOR-Owned IP;
  - c. The Covered Individual-consultant uses his or her best efforts to define in writing the scope of the consulting activity and to keep the consulting activity completely separate

from his or her University duties and activities. This means, among other things, that the Covered Individual engaging in the consulting activity will not share information, documentation, materials, facilities, or equipment (University's or consultant's) unless such sharing is expressly authorized in writing by all parties;

- d. The Covered Individual-consultant acknowledges that, if a conflict arises, the obligations under University and ABOR Policies will control; and
- e. The Covered Individual-consultant will make it clear to all relevant parties that his or her primary commitment is to the University, and that the University is not responsible in any way for the activities of the Covered Individual while engaged in consulting activities.

10. **Start-up Companies:** Tech Launch Arizona will work with Covered Individuals to help make a determination as to whether commercialization of certain ABOR-Owned IP should be done through license by ABOR to a start-up company. In appropriate situations, Tech Launch Arizona works with Covered Individuals in the creation of start-up companies in the following ways:

- a. Negotiating in good faith to grant a license of certain ABOR-Owned IP to a start-up company;
- b. Assisting the start-up company in creating a summary business plan that sufficiently identifies the resources and steps necessary to commercialize ABOR-Owned IP;
- c. Helping to identify ways to obtain the capital necessary to commercialize ABOR-Owned IP; and
- d. Assisting in finding a sufficiently experienced and available management team capable of raising capital and executing the business plan.

Note that, similar to consulting relationships, there are conflict of commitment, conflict of interest, and other policies that Covered Individuals must comply with before engaging in activities related to start-up companies.

## C. Disclosure, Publication, Use, Other Terms and Conditions

1. **Disclosure:** All Covered Individuals who create or direct the creation of any Intellectual Property that may be considered ABOR-Owned IP will disclose such Intellectual Property to Tech Launch Arizona promptly after creating such Intellectual Property, on the form available on Tech Launch Arizona's website. It is the responsibility of each Covered Individual who creates or directs the creation of ABOR-Owned IP to report to Tech Launch Arizona as soon as possible after creation (but in any event *before* publication), but there are also substantial benefits to reporting early and comprehensively, as set forth below. After disclosure, Tech Launch Arizona will work with the Covered Individuals to determine whether and to what extent the Intellectual Property is ABOR-Owned IP, and will also assist the Covered Individual in determining appropriate next steps with respect to such Intellectual Property, particularly in terms of publication, registration or other protection, and potential commercialization.
2. **Publication:** Publication is highly encouraged by the University, especially as it relates to Scholarly Works and other information that will benefit the public. The University demonstrates its dedication to publication by agreeing not to assert copyright ownership rights to Scholarly Works, Fine Art, and Student Works (as described in detail in the ABOR IP Policy and Section B.1 above). However, there is one important caveat—Covered Individuals are encouraged to consult with Tech Launch Arizona *before* publicly disclosing anything that describes or discusses an idea, method, process, formula, invention, research activities, or any other potentially patentable information, since Public Disclosure of a patentable invention prior to filing for a patent application may preclude the availability of patent protection. Patents are the primary mechanism to protect ideas, so it is a good practice to disclose any

potentially patentable information (as described above) to Tech Launch Arizona prior to Public Disclosure.

3. **Registration:** With respect to all ABOR-Owned IP, the University (or, in some cases, a sponsor or licensee of the University) is responsible for obtaining and maintaining legal protection for such Intellectual Property. This includes directing all activities associated with filing for and receiving a patent or copyright registration, and paying all costs and attorney fees associated with such filings. Tech Launch Arizona will work with the Covered Individual(s) who created the Intellectual Property (“Contributors”) to decide whether and how to protect the Intellectual Property (i.e., whether to apply for a patent, to register a copyright, or use other protection measures). If there is more than one Contributor, all Contributors will have the right to be involved in the process equally or Contributors can delegate this responsibility to one individual or come up with a different allocation. Any such delegation or allocation must be expressly conveyed to Tech Launch Arizona; otherwise equal control and equal allocation among all Contributors will be assumed.
4. **Commercialization and Revenue Distribution:** The University will work with the Contributors of Intellectual Property to determine whether and how to commercialize the Intellectual Property. The IP Official will ensure that all commercialization and licensing activities will comply with the requirements set forth in the ABOR IP Policy applicable to such activities. If and when the Intellectual Property generates revenue, such revenue will be distributed in accordance with the revenue distribution schedule set forth in Exhibit A. [1]
5. **Use of ABOR-Owned IP:** A Covered Individual who created ABOR-Owned IP may use such ABOR-Owned IP in the normal course of employment at the University, or at other universities, including the right to distribute to students, faculty, and other personnel, solely for noncommercial teaching and research purposes. Use of ABOR-Owned IP for any other reason requires prior written authorization or license from the IP Official or Tech Launch Arizona.
6. **Use of Excluded IP at the University:** Covered Individuals grant the University a right to use any Excluded IP created by Covered Individuals for teaching, research, and other noncommercial University purposes. Covered Individuals will not use Excluded IP in activities involving ABOR-Owned IP without an agreement approved by the IP Official that explicitly defines the arrangement for such use. In such a case, other ABOR or University policies and conditions may apply, including conflict of commitment and conflict of interest policies.
7. **University Name:** Covered Individuals may not use the University’s name or logo in any commercial context without prior authorization, other than to identify his or her employment relationship with the University.
8. **Cooperation:** Covered Individuals will fully cooperate with the University with respect to the ownership and transfer of such ABOR-Owned IP including, without limitation, cooperating with Tech Launch Arizona throughout the process of determining ownership rights; patenting and commercializing the Intellectual Property, if applicable; and executing all documentation necessary to establish, maintain, perfect, license, or assign such Intellectual Property. This assistance includes, without limitation, giving timely feedback and responses to the University or its counsel, executing necessary documentation, working with counsel, and other similar assistance.

## **D. Ownership Determination; Disputes**

1. **Ownership Determination Procedures:** Upon disclosure, or at any other time at the request of a Covered Individual, Tech Launch Arizona will assess whether the Intellectual Property at issue is ABOR-Owned IP or Excluded IP. If the Intellectual Property is ABOR-Owned IP, then Tech Launch Arizona will work with the creators of such Intellectual Property regarding when publication is appropriate as well as registration, commercialization, and other issues related to the ABOR-Owned IP. If the Intellectual Property is Excluded IP, then ABOR does not claim

ownership rights in such Intellectual Property, but it is still subject to Section C above.

2. **Written Request.** A Covered Individual may request, via an application in writing, a written determination of whether a particular Intellectual Property is considered ABOR-Owned IP or Excluded IP by submitting such a request to the IP Official. In the application, the Employee will include the following information:
  - a. A description of the Intellectual Property, including a characterization of whether and why it should be considered ABOR-Owned IP versus Excluded IP;
  - b. A description regarding the use of University facilities or resources involved in the creation of the Intellectual Property;
  - c. The interest of any other party in the Intellectual Property, such as co-authors, research sponsors, and commissioning parties;
  - d. The circumstances surrounding creation of the Intellectual Property, including funding sources and direction/management;
  - e. The potential use and application of the Intellectual Property; and
  - f. Any other information relevant to the University's determination, as reasonably requested by the IP Official after receipt of the application.

The IP Official will respond reasonably promptly to applications for written determination of ownership of Intellectual Property.

3. **Decisions Regarding ABOR-Owned IP.** If Tech Launch Arizona determines it is not in the best interest of ABOR and the University to pursue protection of ABOR-Owned IP, it will notify the creators and will work with the creators in good faith to determine appropriate next steps—usually either to wait for additional research/work to be performed on the Intellectual Property; to release the Intellectual Property to the creators as their Excluded IP; or in extreme cases, to abandon the Intellectual Property. If the invention is released to the Contributor(s) as their Excluded IP, the release will be in writing, setting forth the parameters of the release, and will be subject to all the requirements of Excluded IP as set forth above (e.g., grant back license to the University for its educational and research purposes, rights of sponsors, etc.).
4. **Interpretation of Policy:** The IP Official will have primary responsibility for interpreting this Policy. If a Covered Individual disputes any decision or interpretation of this Policy, the Covered Individual or the IP Official or President may request the IP Committee to review the IP Official's decision or interpretation. All requests for determinations and decisions must be in writing and submitted within 30 days of when the issue arises. The following types of decisions of the IP Official are not subject to review: decisions regarding patenting or other protection of Intellectual Property, and decisions regarding payment of patent or other expenses related to Intellectual Property. The IP Committee will review all relevant information submitted to it and will make its recommendation concerning the disputed decision to the President of the University or his/her designee, who will make the final decision.

## **Related Information\***

[ABOR Intellectual Property Policy 6-908 \[2\]](#)

[Exhibit A \[1\]](#)

## **Revision History\***

Replaces previous Intellectual Property Policy, effective May 3, 2005



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**Source URL:** <http://policy.arizona.edu/research/intellectual-property-policy>

**Links**

[1] <http://policy.arizona.edu/exhibit-abor-owned-ip-revenue-distribution>

[2] <https://public.azregents.edu/Policy%20Manual/6-908-Intellectual%20Property%20Policy.pdf>