



# POLICY MANUAL

## GENERAL

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**Number 327**

**Subject: Intellectual Property and Creative Works**

**Covered Employees: University Employees**

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### 327.1 UNIVERSITY CREATIVE WORKS

#### 1.1 Introduction

Creative works, such as discoveries, writings, instructional material, art works, know-how, tangible research properties, and inventions frequently result from University employee involvement in teaching, research and service activities. Creative works generally have certain intellectual property rights associated with their creation and existence.

Pursuant to employment law, employers, including the University, generally own the work product of employees created within the scope of employment. A significant exception to employer ownership based on historical practice within educational institutions and supported by the University is that teachers own their instructional creations.

The University supports academic freedom principles including the right to freely publish scholarly works and research results that are not subject to confidentiality obligations.

The University is entrusted with the responsibility of administering its own intellectual property in the best interests of the public.

#### 1.2 Policy

Except as provided herein, the University acquires and retains all rights to all creative works of its employees created within the scope of their employment. University as used in this policy includes the Utah State University Research Foundation. Except as

provided herein, the University also acquires and retains all rights to all creative works of non-University employees, including students, created through the substantial use of facilities, equipment or materials owned or paid for by the University.

(1) Faculty Scholarly Works

The University waives its rights to acquire and retain the Scholarly Works of its faculty. For purposes herein, Scholarly Works shall be independent of the medium of expression (written, audio, electronic, etc.) and shall mean instructional materials, (including textbooks, courseware, tests and lecture notes), journal articles, works of art, literary works and musical works. This waiver for faculty Scholarly Works does not apply to any creative work or intellectual property:

- a) specifically commissioned in writing by the University; or
- b) subject to any obligation of the University to a third party.

Even when points a) and b) do not apply, if significant university resources (other than faculty time and faculty office space and office equipment) will be used for the creation of a scholarly work, the University may initially require a written agreement specifying ownership and use of the work prior to making those resources available. Agreements must be approved by those who are responsible for the resources. Circumstances which may require initiation of such an agreement include, but are not limited to, extensive use of:

- a) Resources needed to create the work.
- b) Resources needed to distribute the work.
- c) Resources needed to market the work.

Agreements will differ, but should specify one or more of the following:

- a) Ownership of the work and apportionment of revenues and/or expenses arising from creation, development, distribution, or commercialization of the work.
- b) Rights and conditions for University use of the work, including provisions if the faculty member leaves the University.
- c) Rights and conditions for sale of the work to third parties.
- d) Rights and responsibilities for modifications of the work.
- e) Use of the University's name or logo in connection with the work.

Unless otherwise agreed, the University makes no claim to ownership of inventions, improvements or discoveries developed pursuant to a consulting or other agreement between University employees and non-University sponsors provided:

(2) Works resulting from employees acting as independent contractors or consultants.

Unless otherwise agreed, the University makes no claim to ownership of creative works and intellectual property developed pursuant to an agreement between University employees acting independently of the University and non-University sponsors provided:

(a) the services are performed within the University Consulting Policy (# 377) and in compliance with applicable law; and

(b) there is no transfer of University, creative works or intellectual property by the University employee without written permission of the University; or

(c) the University approves in writing the intellectual property provisions of the consulting agreement.

(3) Works created outside the scope of University or USU Research Foundation employment.

Unless otherwise agreed, the University makes no claim to ownership of a work created by an employee outside the scope of his or her University or USU Research Foundation employment (see Utah Employment Inventions Act UCA 34-39).

(4) Student Works

The University waives any rights it may have to acquire and retain the following works created by a student:

Dissertations, theses, courseware, class reports, journal articles, works of art, literary works and musical works.

This waiver for student works does not apply to creative work or intellectual property:

a) specifically commissioned in writing by the University; or

b) developed as part of a university administered or sponsored project; or

c) subject to any obligation of the University to a third party.

Even when points a), b), and c) do not apply, if significant university resources (other than faculty time and faculty office space and office equipment) will be used for the

creation of a scholarly work, the University may initially require a written agreement specifying ownership and use of the work prior to making those resources available. Agreements must be approved by those who are responsible for the resources. Circumstances which may require initiation of such an agreement include, but are not limited to, extensive use of:

- a) Resources needed to create the work.
- b) Resources needed to distribute the work.
- c) Resources needed to market the work.

Agreements will differ, but should specify one or more of the following:

- a) Ownership of the work and apportionment of revenues and/or expenses arising from creation, development, distribution, or commercialization of the work.
- b) Rights and conditions for University use of the work, including provisions if the faculty member leaves the University.
- c) Rights and conditions for sale of the work to third parties.
- d) Rights and responsibilities for modifications of the work.
- e) Use of the University's name or logo in connection with the work.

In all cases, the University reserves a royalty free, non-exclusive right to use student works for purposes of University archival and academic reference and for research purposes. The University authorizes student employees to publish (subject to reasonable delays to accommodate patent application filings) those works created within the scope of their employment which works are also part of their dissertation or thesis.

#### (5) Assignment of Interest

Employees and students may elect to assign their interest in works not otherwise owned by the University to the University in order to facilitate commercialization efforts or support specific academic or research programs.

### **1.3 Procedures**

#### (1) Disclosure.

All creative works and intellectual property covered by this policy, which may have commercial potential, excluding creative works and intellectual property covered in 327.1.2 (1) (faculty scholarly works), 327.1.2 (3) (works created outside scope of

employment) and 327.1.2 (4) (student works), shall be disclosed by inventor(s) and author(s) to the University Office of Technology Commercialization on forms provided.

(2) Processing of intellectual properties.

(a) Documentation. University employees and users of University resources agree to execute necessary documentation to effectuate the provisions of this policy. If the University does not have rights to the disclosed intellectual property, the University will indicate the same in writing to the inventor or author.

(b) Sponsor rights. The Sponsored Programs Office in cooperation with the Office of Technology Commercialization will be responsible to assure that the intellectual property provisions of sponsored research agreements are satisfied.

(c) Inventor or author rights.

- Within ten weeks 120 days of receipt of the disclosure, the inventor(s) or author(s) will be notified in writing by the Office of Technology Commercialization of the decision regarding the disposition of the intellectual property.

- Inventors and authors are entitled to royalty sharing as provided herein.

- A monetary award of \$1,000 in total shall be distributed to the inventor(s) of an intellectual property upon which a patent is obtained by the University.

(d) University rights. The University retains the right to:

- commercialize University-owned intellectual property;

- receive an assignment of title from the inventor(s) or author(s) in the name of the University or its designee, and

- the right to assign responsibility for the management and/or marketing of intellectual property rights.

If the University abandons commercialization efforts after it formally retains an intellectual property, then the inventor or author will be properly notified in writing, and all rights shall revert to the inventor or author, unless there are obligations to a third-party sponsor. However, if the University or its representative has incurred expenses in the development and commercialization of the intellectual property, these expenses are to be paid by the inventor or author under a separate agreement to be negotiated between the inventor or author and the University regarding recovery of costs or in sharing in royalties after the inventor or author receives commercial gain.

(3) Licensing

The University may dispose of University intellectual property as it deems appropriate. The University may grant an exclusive license if it is determined that such a grant is required in the public interest to encourage the marketing and eventual public use of the intellectual property.

#### (4) Royalties

a) From gross royalty income, deductions are taken for cumulative expenses (typically patent filing fees) that are directly assignable to the work. An additional deduction, to total 15% of cumulative royalties after expenses, also will be taken to help defray administrative costs of the Office of Technology Commercialization.

b) After deductions, the University distributes the remaining incomes as follows:

1) income (after deductions) from 0 to \$500,000:

- 50% to the inventor\*
- 25% to the generating unit(s)\*\*
- 25% to the University\*\*\*

2) income (after deductions) from \$500,000 to \$2,000,000.

- 40% to the inventor\*
- 30% to the generating unit(s)\*\*
- 30% to the University\*\*\*

3) income (after deductions) over \$2,000,000.

- 40% to the inventor\*
- 20% to the generating unit(s)\*\*
- 40% to the University\*\*\*

\* Co-inventors split the inventor's share in proportion to their relative contributions, unless otherwise agreed to among themselves. Payments to inventors/authors are paid directly to them, and are not employment consideration.

\*\* When more than one generating unit is involved, the inventor(s) shall designate the distribution to them, based on their support of the work. The generating unit's share is disbursed by the dean(s), director(s), and department head(s).

\*\*\* The university share is used to provide university-wide research support, as determined by the President upon advice from the Vice President for Research.

(c) Disagreements regarding royalty distributions are reviewed and resolved by the Director of the Office of Technology Commercialization; appeals can be made to the Vice President for Research.

## (5) Agreement

The policies set forth above constitute an understanding that is binding on University employees and non-University employees as a condition of their employment and/or participation in University programs or their use of funds, space, or facilities for such activity.

### **1.4 Responsibilities**

(1) The Vice President for Research is responsible for the disposition of

University intellectual property excluding:

- certain University trademarks which are administered by the Vice President for Business and Finance; and
- certain Scholarly Works which are administered by the Provost.

(2) The Office of Technology Commercialization, under the direction of the

Vice President for Research, is responsible for the administration of University intellectual property. The Director of Technology Commercialization is responsible for the administration and licensing of University intellectual property.

(3) It is the responsibility of each University employee to fully comply with applicable law and policy including the Conflict of Interest Policy (#307)

## **327.2 USE OF COPYRIGHTED WORKS**

### **2.1 Policy**

The University recognizes that United States copyright law, in conformance with its constitutional foundation, grants special and exclusive, but limited rights to authors as an incentive to create and distribute their works. These rights are limited to insure that they do not impose an undue obstacle to education and the free exchange of ideas.

It is the policy of the University to respect this balance by providing: explanations of copyright law which outline protected rights of copyright holders; guidelines which offer an overview to the potential of "fair use" rights in specific educational settings; and a service which facilitates both the determination of possible "fair use" and the obtaining of permission including payment of fees for educational uses that may otherwise not be allowable under "fair use."

It is the responsibility of each University employee to fully comply with applicable copyright law. Prior to using any material, University employees shall determine whether the use violates any copyright or whether it falls within certain criteria obviating the need for permission including the "fair use" exceptions. University employees are financially

responsible for copyright infringement unless use is authorized by the University through the University bookstore copyright permission service.

## **2.2 Procedures**

University employees may use the University Copyright Service provided through the University Bookstore to seek copyright permission from copyright holders. The Bookstore serves as a central clearinghouse for copyright permission services. The Bookstore can provide assistance in determining the need for copyright permission and, where necessary, obtain permission and ensure the reproduction and timely delivery of materials.

## **2.3 Responsibilities**

It is the responsibility of each University employee to fully comply with applicable copyright law.

### **327.3 USE OF NON-UNIVERSITY WORKS**

#### **3.1 Policy**

It is the responsibility of University employees to ensure that their usage of non-University intellectual property is with appropriate authorization by the intellectual property owner. This includes, but is not limited to, patent infringement, disclosure of confidential information, trademark infringement and copyright infringement.

#### **3.2 Procedures**

Prior to any use of non-University intellectual property by University employees, the University employee shall determine whether the use violates any intellectual property rights of third parties. If there is a reasonable likelihood of violation, the employee will obtain appropriate permission before using such intellectual property including the disclosure of confidential information.

#### **3.3 Responsibilities**

It is the responsibility of University employees to ensure there is no unauthorized use by employees of non-University works. It is further the responsibility of University employees to ensure the confidentiality of third-party information in the possession of University personnel provided it is appropriately submitted to the University pursuant to the Utah Governmental Records Access and Management Act (GRAMA).

### **327.4 GENERAL UNIVERSITY TRADEMARKS**

See section 510.

