

Intellectual Property

Policy: INTELLECTUAL PROPERTY

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Revised:

Responsible Party: Office of the Provost

BOR Policy: 401.2 Invention and Patent
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1. INTRODUCTION AND PURPOSE_

The university implements the intellectual property policies of the **Board of Regents**. This policy adopted by the university governs the intellectual property rights of the university and its faculty and incorporates the requirements of the various intellectual property policies of the **Board of Regents**.

2. OWNERSHIP OF COURSE MATERIALS_

Educational materials created for classroom and learning programs, including electronic media such as syllabi, assignments, and tests, shall remain the property of the author or creator.

Exceptions are: (1) those cases in which the production of such materials is a part of a sponsored program and (2) those cases in which substantial university resources were used in creating educational materials.

"Substantial university resources" includes but is not limited to provision of staff time, equipment, funds, release time from assigned duties, or an allocation of resources not normally available to faculty. Academic year salaries, office, usual library resources, usual secretarial and administrative staff resources, or usual computer equipment, among other things, are not

regarded as constituting “substantial use of university resources”.

a. COURSEWARE

The university makes no claim to **copyright** ownership for noncommissioned courseware initiated and completed by university-employed authors, but, for works within the scope of the author’s university employment, will claim the royalty-free nonexclusive right to use such courseware in university programs.

b. ELECTRONIC COURSE MATERIALS

Any electronic course materials created or developed by faculty with the use of substantial university resources shall be considered the property of the Montana University System.

This policy applies to electronic course material whether or not it was, is or may be eligible for copyright or patent. However, faculty who develop electronic course material that is considered property of the university shall assist the university to secure and protect a patent or copyright on the material if such protection is sought by the university.

The mere communication or preservation of traditional classroom or course material in an electronic medium does not bring that material within the ambit of this policy. Rather, this policy is intended to cover material created for or designed to be used in conjunction with a course, or a part thereof, delivered by means other than personal, face-to-face interaction between the instructor and the student.

c. DIVISION BY INCOME

Generally, any net income derived from university owned electronic course materials shall be divided, 50 percent to the author(s) and 50 percent to the university. However, the university may retain 100% of the net income from electronic course material developed at the express direction of the university or in return for specified payments or other consideration.

Net income, for the purposes of this policy, means gross income minus costs of development and promotion, realized from the sale or licensing of the electronic course material.

d. VARIANCE BY CONTRACT

The president may approve a contract that either reduces the university’s ownership rights or reduces the university’s share of net income if, in the president’s judgment, the contract is in the best interests of the university. If the university’s ownership rights are reduced or the university’s share of net income is reduced to below 50%, the president shall inform the commissioner of the contract and shall indicate the reason for approving it.

e. RELINQUISHMENT OF UNIVERSITY RIGHTS

The university may for fair value and upon the approval of the president, relinquish its rights to electronic course material to the author(s) or any other person or entity. Such a right may be relinquished for no consideration only if the president concludes that there is not a likelihood of the campus benefiting from the retention of the right in question.

Any agreement relinquishing such rights shall retain for the university a perpetual, royalty free right to use, reproduce, and revise the material without restriction for the university’s own educational or research purposes, unless the president concludes that retention of such rights is not in the campus’ best interests and documents that conclusion in writing.

3. LIMITATION ON USE OUTSIDE THE UNIVERSITY_

Faculty who create or develop the electronic course material subject to Section 2 may not use the material in conjunction with teaching conducted on behalf of any entity other than for departments of the Montana University System unless prior permission is granted in writing by the president or the Commissioner of Higher Education, which permission shall not be unreasonably withheld.

This limitation applies to the specific electronic format of the course and does not limit the faculty member's right to use facts, theories, opinions or other items of substantive course content in another setting.

4. COPYRIGHT_

a. SPONSORED RESEARCH

Works which are produced by a faculty member in connection with an approved and sponsored research project are treated in accordance with the agreement negotiated with the sponsor. In the absence of such agreement or to the extent such an agreement does not fully address ownership of works produced, such works shall be treated in accordance with Section 2.b and 2.c

b. ASSIGNED WORK

When a faculty member is

- **assigned work or responsibilities for the specific purpose of developing computer programs, visual aids, manuals, public relations material, printed or recorded copyrightable works, or**
- **assigned work or responsibilities, or uses university facilities, equipment, and/or assigned time, for the purposes of developing computer programs, or other electronic/digital copyrightable works,**

the works produced pursuant thereto and all royalties therefrom shall be the property of the university.

Assignment of the copyright shall be indicated either on the individual employment contract or in a separate document countersigned by the employee. Should the university and the faculty member agree to a division of royalties, such division must be included in the contract or in a separate document countersigned by the faculty member. If the campus does not wish to copyright the work, the employee may obtain a written release from the president and may then copyright the work in his/her own name. Upon written request for release by the faculty member, the campus will respond within thirty (30) days.

c. OTHER WORKS

When a faculty member develops copyrightable works other than those defined in paragraphs a or b above, he/she shall have sole right of ownership and disposition of such works. When such works are produced, developed or authored through the use or with the aid of campus facilities, personnel or other resources, the campus must be reimbursed for the fair market value of the use of any such facilities, personnel or resources, except those considered part of the normal academic environment including library facilities. Manuscripts or works of art designed for publication in media where no remuneration is given the author(s) are exempt from this reimbursement requirement.

5. PATENTS_

All faculty shall adhere to the following procedures with respect to patentable inventions or discoveries. The purpose of these procedures is to define the relationships among the inventor,

the university and outside sponsors of research. This policy shall not include copyrights.

a. OWNERSHIP

All patentable inventions made by faculty in connection with their assigned duties and/or by the use of the university's facilities, shall be considered the property of the university under the following circumstances and to the following extent:

- i. Wholly the property of the university if the person (or persons) responsible for the invention was employed by the university specifically for that purpose.**
- ii. To the extent specified in the contract of employment or separate agreement between the university and employee relating to a specific work assignment.**
- iii. To the extent recommended by the university patent management officer and approved by the president if research or endeavors directly resulting in the discovery or development of the invention or marketable product involved use of university time, materials, property, or facilities.** For the purposes of this paragraph, university time, materials, property, or facilities includes time, material, property, or facilities paid from funds administered by the university including funds from sponsored research and federal and state grants or contracts. **Provision of normal academic environment, including library facilities, does not constitute grounds for equity by the university in a discovery or invention.**
- iv. Under all other circumstances individual employees are free to secure, under the patent laws of the United States, the exclusive right to their inventions if not owned by the university.**

b. INVENTORS RIGHTS AND DUTIES

Faculty retain the right and responsibility for recognizing in their work inventions that may reasonably be marketable; and in every case, complete freedom of publication in both time and scope shall be maintained, unless agreements with outside sponsors provide otherwise as indicated below. Investigators will participate in work under such outside agreements only after they have informed themselves of such provisions and have accepted these provisions. Any employee to whom the conditions set forth in Section 4.a above applies who, either alone or in association with others, makes an invention shall promptly disclose the invention in writing to the university patent management officer in a format acceptable to the university. And as to any such invention that vests with the university, the employee shall promptly execute all contracts, agreements, waivers, or other legal documents necessary to vest all rights to the invention in the university and to facilitate protection, licensing, and development of the invention.

With the exception of those inventions developed under agreements with outside sponsors, **the patent management officer or committee shall inform the inventor(s) in writing whether it plans to secure the patent or release the discovery to the inventor(s) within eighteen (18) months of submission of an invention disclosure.** In the case of the release of the invention or **in case of failure by the patent management officer to communicate in writing within eighteen (18) months, the inventor(s) is free to secure the patent, pay all fees, and receive all benefits therefrom.**

c. SUBMISSION TO PATENT MANAGEMENT OFFICER

i. Invention Outside the University

If an invention is made and/or developed without university support of a significant degree, all rights remain with the inventor. Such inventions may be voluntarily submitted for consideration by the university, but the inventor is under no obligation to do so. Provision of a salary or desk to an inventor by the university does not, in itself, constitute significant support. However, any invention by an employee related to an area in which they participate in research under university auspices

must be reported to the university so that the question of whether the university has provided sufficient support can be decided by the patent management officer. This decision may be appealed to the system invention committee.

ii. Invention With University Support

If an invention is made and/or developed with university support of a significant degree in time, money, materials, or facilities, the inventor must submit a full disclosure of the invention to the Patent Management Officer. Additionally, a copy of any manuscript submitted for publication shall simultaneously be submitted to the patent management officer, if the author considers that it may contain marketable inventions. The patent management officer may advise, but not require, deferral of publication in order to protect the patent rights of the university and the inventor.

d. PROSECUTION OF PATENTS

i. Time Limits

If the university deems that a patent should be prosecuted, the prosecution shall be carried out diligently and without expense of any kind to the inventor. The parties to this agreement recognize the need to file the patent application and develop the patent as fast as possible.

The time limits expressed herein represent the maximum time allowed, but every effort should be made to complete the process faster than the time limits specified.

The inventor must assign to the university any interest in the patent equivalent to the property interest which the patent management officer determines to belong to the university. The preliminary patent search must be started within nine (9) months from the date the matter is presented to the university or the university forfeits all right to the invention. If no patent application is filed within a total elapsed time of eighteen (18) months following disclosure, all patent rights revert to the inventor(s) unless other agreement is executed between the inventor(s) and the unit.

ii. Options Available to the University

The inventor has an obligation to offer the university the opportunity to develop the invention for commercial use if the invention was made under university auspices. The university may:

(1) Elect to acquire title to the invention by assignment and in this case will undertake (unless inappropriate) the timely filing of patent applications, patent prosecution development, and marketing of the invention and shall bear all related costs. If the university desires to accept such an assignment after competent peer review, the inventor shall be obligated to make such an assignment. The inventor shall, in this instance, receive on an annual basis, 50 percent of all net income, defined as gross royalties or other payments, including any recovery of damages obtained by the university, but less external costs incurred by the university in obtaining and protecting the patent rights and less any direct costs of development; or

(2) Cause the invention to be assigned to some patent management organization, such as research corporation or the university's research foundation if one exists. The domestic patent rights, foreign patent rights, or both, may be assigned to the patent management organization. The inventor shall receive on an annual basis 50 percent of all net royalties and other income received by the university from the patent management organization; or

(3) Decline to accept any rights to the invention by assignment or otherwise, in which case all rights revert to the inventor, unless otherwise specified in a sponsored research agreement. If a dispute arises concerning the origin of an invention or patentable discovery or any aspect of patent policy, the dispute shall be presented to the MUS invention committee for final disposition.

e. INVENTION DEVELOPED UNDER AGREEMENT WITH OUTSIDE SPONSOR

If the invention was made or developed under an agreement with an outside sponsor, the rights with respect to the invention shall be governed by provisions of that agreement. If not provided otherwise by the sponsoring agreement, the inventor's share of royalty or other income received from an outside sponsor shall be limited to the share he/she would have received had the university supported the research entirely. If the sponsor determines that invention rights are left with the department, the university may elect to pursue one of the options listed in Section 5.d. unless state or federal law requires otherwise.

f. DISTRIBUTION OF UNIVERSITY-RETAINED INVENTION-RELATED INCOME

In order to provide invention incentive and capability to university personnel, the university's share of invention income will be distributed as follows.

Of the university-retained share of net royalty or other income for any given invention, defined as gross receipts, less external expenditures for that invention and less the inventor's personal share two-thirds of the first \$30,000 per year, one-half of the next \$30,000 per year and one-third of the remainder will be designated through the university budget or financial office to support the work of the inventor while employed by the university and/or to promote discoveries at the university.

The rest will be distributed to a designated fund and will be used to support and expand research at the university. Such distribution to support the inventor's work, derived from any given invention, will terminate after eight (8) years from the first sale of products embodying that invention, and any earned monies after this date will go to a designated fund.

g. DEVELOPMENT OF INVENTIONS

If the inventor becomes dissatisfied with the development of the invention as carried out by the university, or with the university's delay in reaching a decision, an appeal may be made to the system invention committee, in which the inventor may urge specific changes in the proposed course of action undertaken by the unit, or if the university has been assigned rights to the invention, may ask that the invention rights be reassigned to a patent management organization such as research corporation or all rights be reserved to the inventor.

If after a period of three (3) years from the acquisition of the issued patent by the university the invention has not been marketed, all rights revert to the inventor, unless an agreement with any outside sponsor precludes such reversion.

h. STUDENT MEMORANDUM OF UNDERSTANDING

A [form MOU regarding student and faculty/university patent rights and copyrights](#) is available..

The memorandum of understanding describes student rights and obligations with regard to the university's proprietary interests, copyright, and patent rights when engaged in activities for private companies or working under a grant or contract.