

## Intellectual Property, Patents, and Copyrights

### POLICIES

**Issued:** March 25, 2017

**Responsible** Provost and Senior Vice President for Academic

**Official:** Affairs

**Responsible** [Office of Research and Sponsored](#)

**Office:** [Programs](#)~~College of Graduate Studies~~

#### Policy Statement

It is ~~within the mission of~~ [the policy of](#) APSU to facilitate ideations and innovations. Specific resources such as facilities, staff-support, funding, and many others are intentionally leveraged to support the ideations and innovations that later may become commercial products. Therefore, this policy ~~provides~~ [outlines](#) guidelines that provide incentives for innovators and ~~provide~~ fair treatment of APSU.

#### Purpose

The purpose of this policy is to:

- (1) encourage inventions, discoveries, and the production of copyrightable materials by APSU employees;
- (2) facilitate the utilization of such discoveries and materials to the benefit of the public, the University, and APSU employees; and
- (3) provide for the equitable sharing of any proceeds derived from the commercial exploitation of inventions, discoveries, and copyrightable materials in which, pursuant to this policy, the University is determined to have an interest. Individuals covered by this policy must exercise care to determine whether the University has a legitimate claim to an interest in any inventions, discoveries, or copyrightable materials and to report such interest to the President or designee. Nothing in this policy is intended to inhibit the usual kinds of research and publication proper to and expected of APSU employees. Due prudence should be exercised by individuals who wish to avoid possible claim

by the University of an interest in their inventions, discoveries, and copyrightable materials.

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### Procedures

#### ~~Affected Individuals~~ [Applicability](#)

All employees of the University and ~~graduate~~ students receiving financial and/or facilities support from the University are subject to the provisions of this policy. The intellectual property of inventions, discoveries, and the production of copyrightable materials is described herein. It is the intent of this policy to provide protection for both the individual and the University by recognizing the talents and efforts of the individual and the environment and facilities/resources of the University.

This policy is considered a material part of the conditions of employment for every employee of the University and a material part of the conditions of enrollment and attendance at the University by students. It is also the policy of the University that individuals (including visitors) participating in a sponsored research project and/or making significant use of University resources accept the principles of ownership of intellectual property as stated in this policy unless an exception is approved in writing by the University. All University creators of intellectual property shall execute appropriate assignment and/or other documents required to determine ownership and rights as specified in this policy.

This policy should not be interpreted to limit the ability of University personnel to seek or participate in outside consulting activities that are separate and apart from the University and do not use University Resources. See *Outside Employment Policy*.

## Definitions

### Definitions

-A. Author. The person or persons responsible for creation of a copyrightable work.

B. Distance Education. Has the same definition as provided in Policy 2:013 Distance Education.

C. Collective Work. Work such as a periodical issue, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole. (17 U.S.C. § 101).

D. Compilation. A work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. The term compilation includes collective works. (17 U.S.C. § 101).

#### E. Copyright

1. Under Federal law, copyright applies to any original works of authorship fixed in any tangible medium of expression. (17 U.S.C. § 102(a)).

2. Generally, the owner of a copyright has the exclusive rights to reproduce the work, to prepare derivative works, to distribute copies by sale or other transfer of ownership, and to publicly display or perform the work. (17 U.S.C. § 106).

F. Fair Use. The Copyright Act provides for some exceptions to the exclusive rights of the copyright owners.

1. One of these exceptions permits fair use of a copyrighted work for purposes such as teaching, scholarship, or research. (17 U.S.C. § 107).

2. The four (4) factors to be considered in determining fair use are:

a. The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

b. The nature of the copyrighted work;

c. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

d. The effect of the use upon the potential market for or value of the copyrighted work.

G. Gross Income. Proceeds from the production, sale, lease, or licensing of intellectual property; dividends derived from equity received in consideration for the sale, lease, or licensing of intellectual property; or, proceeds from the sale of equity received in consideration for the sale, lease, or licensing of intellectual property.

H. Intellectual Property. Includes all copyrightable works, inventions, ideas, novel devices, composition of matter, articles of manufacture, beneficial biological materials, processes, and the improvements thereto.

I. Invention. Any discovery, invention, new use or application, process, composition of matter, article of manufacture, know-how, design, model, technological development, or biological material.

J. Inventor. The person or persons responsible for conception of an idea or ideas leading to an invention.

K. Joint Work. A work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole. (17 U.S.C. § 101).

L. Net Income. Gross income minus the direct costs associated with patent prosecution, copyright registration, commercialization, defense, maintenance, and administration of intellectual property.

M. Scholarly Works. Include, but are not limited to, articles written for publication in academic journals, textbooks, works of art, musical compositions, dramatic works, and literary works. Theses and dissertations are not, for the purposes of this policy, scholarly works. Works by non-faculty employees shall not, for the purposes of this policy, be considered scholarly works.

Materials created as course materials for online or distance education courses are not scholarly works.

N. Scope of Employment. Activities which have been assigned to an employee by his/her supervisor or which grow out of, or are related to, the intellectual area of pursuit for which an employee has been hired, or which fall within the employee's job description.

O. Significant Use. Includes but is not limited to the use by any individual of specialized, research-related facilities, equipment or supplies, provided by the University for academic purposes; more than incidental use of University staff personnel, including but not limited to Graduate Assistants; or more than incidental use of a researcher's own on-the-job time. Significant use does not include customary and ordinary expenses relative to the University member's assignment, including office and/or laboratory space, library facilities, utilities, ordinary access to computers and networks, secretarial services, or salary except for those situations where the funds were paid specifically to support the development of an invention(s) and/or work(s).

P. Work. Any copyrightable material, including, but not limited to, literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; sound recordings; architectural works; computer software or databases; circuit diagrams; architectural and engineering drawings; and lectures.

Q. Work Made for Hire. A work created by an employee within the scope of his/her employment or a work created by a third party under contract with APSU and which contract specifically provides that the contract is a work for hire or that the resulting deliverable (the work) is the property of, or is assigned to, APSU.

R. Commissioned Work. A work made for hire if it is specially ordered or commissioned under a written contract signed by the two (2) or more parties. (17 U.S.C. § 101, § 201 (b)).

**Determination of the University's Interest in**

The University shall have an interest in any invention, discovery, or copyrightable materials resulting from any one of the following factors:

## Inventions, Discoveries, and Copyrightable Materials

- (1) Work Made for Hire or UUniversity sponsorship of the project leading to the discovery or development of materials. All university employees or students receiving UUniversity sponsorship of ~~the~~ projects potentially leading to the discovery or development of materials must make the Office of Research and Sponsored Programs (ORSP) aware of their activities in writing prior to project implementation. Please review the left-side header, “Disclosure” below. ~~The President, or designee, will inform in writing any affected APSU employees of such assignments prior to their inception.~~
- (2) Significant use of the University's facilities, services, or equipment, ~~with the exception of libraries~~. Significant use of the University's facilities, services, or equipment shall be defined to include a cost to the University in the amount of ~~\$1,000~~3,000 or more (in constant 2017~~21~~ dollars). ~~In determining the cost to the University customary, ordinary, and necessary expenses relative to the University member's assignment (office and/or laboratory space, utilities, secretarial services, incidental use of equipment, etc.) and any portion of the University member's salary will be excluded.~~
- (3) Work Made for Hire or sSponsorship of the project through the University by agencies or persons outside the University. ~~The President, or designee,~~ ORSP will review all agreements and contracts to determine the University's and the individual University member's interests in inventions, discoveries, and copyrightable materials and inform affected APSU employees, in writing, of the findings. ~~Affected individuals should endeavor to have an accurate understanding of their interests resulting from their participation in sponsored projects.~~

### (4) Scope of Employment.

a. APSU will have sole ownership of intellectual property created by its non-faculty employees within the scope of employment.

b. The University should ensure that the job description for each relevant non-faculty position includes the creation of or the assistance with the creation of distance education materials.

1. The University should also be certain to add to the employment contract, either on initial hire or with contract

renewal, language which specifies that such works are made in the scope of employment.

2. In cases where there is a new assignment to the employee, an agreement in writing signed by both the employee and the University should be completed.

#### (5) Commissioned Work

a. Under the copyright laws, (17 U.S.C. § 101, § 201) a work specially ordered or commissioned is owned by APSU if the parties expressly agree in a written instrument signed by both parties that the work will be considered a work made for hire.

b. Commissioned work is limited by the copyright law to contribution to a collective work, part of a motion picture or other audiovisual work, a translation, a supplementary work, a compilation, an instructional text, a test, answer material to a test, or an atlas. (17 USC § 101, Work for Hire definition).

### Individually Owned Intellectual Property

#### Individually Owned Intellectual Property

(1) If no University interest is determined as outlined ~~above in numbered paragraphs 1, 2, and 3 of this section~~, the inventions or discoveries and copyrightable material, including scholarly and creative works, in the form of books, textbooks, manuals, musical or dramatic compositions, architectural designs, paintings, sculptures, monographs, literary works, computer programs, or other works of comparable type developed by institutional members in conjunction with or aside from their University employment are the property of the individual. For clarity, the University wishes to encourage scholarly works and will not assert an interest in scholarly works and creations related to the faculty member's professional field. These include:

a. faculty authored textbooks;

b. scholarly writing;

c. art works;

d. musical compositions;

e. dramatic and non-dramatic literary works.

(2)-To protect their interests, prudent individuals are advised that they should be prepared to prove that their inventions, discoveries, or copyrightable materials were not sponsored by or through the University's facilities, services or equipment.

(3) Joint Ownership.

1. Inventions and works may be created through the joint efforts of two (2) or more faculty members or of faculty and non-faculty employees working in the scope of their employment or working under contract to provide services.

2. Anyone who contributes the kind of expression protected by the copyright law is a joint author, if the contribution is intended to be part of an integrated whole, or a joint inventor, if the work of each contributes patentable subject matter to the invention as a whole.

3. APSU will be the sole owner of any invention or work if the invention or work were created by employees of APSU or by parties under contract with APSU to provide the invention or work (i.e. Work Made for Hire).

4. APSU and the faculty member may be joint owners of the final product if a faculty member works independently but incorporates work done as Work Made for Hire by University employees and/or contractors.

5. At the beginning of a project involving multiple contributors, the contributors shall agree in writing signed by all contributors to their intentions. Absent a written document of division of royalties, the University members shall divide their share pro-rata based on participation.

(4) Students. The University does not make claim to traditional academic copyrightable work made by students while satisfying regular course requirements. The University shall have, as a condition of awarding the course credit or degree, the royalty-free right to retain, use, and distribute, including by electronic and digital technologies now known or developed in the future, on a non-commercial basis, copies of the academic copyrightable work, together with the right to require its publication for archival use. When a student undertakes a project involving significant University resources, Intellectual Property, research team collaboration, or work for an outside body, the University retains the right to claim ownership of any Intellectual Property

produced by the student which was created through significant use of University resources.

### **Applications for the Titles of Patents and Copyrights**

The President, or designee, may seek and hold patents and copyrights in the name of the University, assign its rights, and execute royalty-sharing agreements. The University's share of income accruing from patents and copyrights (net of costs incurred for obtaining, licensing, or administering the patents and copyrights) shall be deposited in a designated account. Funds in this account are to be initially used ~~solely~~ for the enhancement of research and instructional programs, but may be reallocated by the President.

### **Disclosure**

Prior to seeking patents, copyrights, or commercial exploitation, APSU ~~employees-personnel~~ shall disclose to ~~the President, or designee,~~ ORSP all potential inventions, discoveries, and copyrightable materials, which are derived from work supported by or through the University, or which involved a significant use of the University's resources. ~~The University does not make claim to traditional academic copyrightable made by students while satisfying regular course requirements. The University shall have, as a condition of awarding the course credit or degree, the royalty free right to retain, use, and distribute, including by electronic and digital technologies now known or developed in the future, on a non-commercial basis, copies of the academic copyrightable work, together with the right to require its publication for archival use. When a student undertakes a project involving significant University Resources, Intellectual Property, research team collaboration, or work for an outside body, the University retains the right to claim ownership of any Intellectual Property produced by the student which was created through Significant Use of University Resources.~~

~~APSU students Graduate assistants are responsible for disclosure if inventions, discoveries, and copyrightable materials directly result from classwork or programs of study, or if significant University resources were utilized.~~

Inventors should particularly note that certain acts (for example, enabling disclosure of the Invention in an academic journal, a paper, a poster presented at a conference, or offering to sell rights in the invention before a patent application has been made) can bar an inventor from obtaining patent protection. An inventor contemplating public disclosure of activities prior to filing a disclosure must contact the ORSP prior to engaging in those disclosure activities.

## Advisory Committee on Patents and Copyrights

[APSU employees and students are strongly encouraged to consult with ORSP to address any questions.](#)

A committee of faculty and staff experienced in research, innovation, and the production of copyrighted materials shall be established at the University [when necessary](#). The committee shall consist of at least five members, three of whom shall be selected from the faculty in a manner to be determined by the Faculty Senate President.

Responsibilities and general process guidelines for the Advisory Committee are as follows:

- (a) The Committee shall advise the President, or designee, in all matters relating to this policy.
- (b) The Committee shall conduct such investigation, as may be necessary, to assess the rights and responsibilities of all parties, in a timely manner.
- (c) The Committee will receive from [ORSP](#) ~~the President, or designee,~~ referral of any disclosure made by APSU employees concerning inventions, discoveries, and copyrightable materials as described in the Disclosure section of this policy.
- (d) The Committee shall seek to determine the extent to which the invention, discovery, or copyrightable materials resulted from University or other sponsorship, or involved a significant use of the University's resources. The Committee may advise the President, or designee, as follows:
  - (1) If the Committee establishes that no University or external sponsorship or no significant use of institutional resources were involved, it shall advise the University to waive all claims.
  - (2) If the Committee establishes that University sponsorship, external sponsorship, or significant use of the University's resources were involved, it shall so advise the President, or designee.
  - (3) If the Committee establishes that external sponsorship was involved, it shall determine the terms of the sponsorship agreement as it relates to patents and copyrights and advise the President, or designee, and those providing disclosure of such terms. Where the terms of the external sponsorship do not provide for the disposition of patents and

copyrights, the University policies shall be followed.

- (4) In cases where the University requires the assignment of patents and copyrights to it, or when the University assigns its rights to the person disclosing discoveries or copyrightable materials, and when University sponsorship or significant use of the University's resources were involved, the Intellectual Property and Commercialization Committee shall recommend to the President, or designee, a royalty-sharing arrangement. The recommended agreement should take into account contributions by the individual(s) and the University.

- (e) A copy of the Committee's recommendations to the President, or designee, will be made available to all affected APSU employees [and students](#) in a timely manner as to not jeopardize the interests of all parties; this spirit of this statement is to protect potential revenues and not to hinder transparency or allow for malpractice.

[\(f\) For inventions made in the course of a project funded in whole or in part by the federal government, the Bayh-Dole Act \(37 CFR 401\) imposes certain reporting requirements associated with the technology transfer process. The ORSP is responsible for compliance with these requirements.](#)

### **Roles of the President [and ORSP](#) Relative to Patents and Copyrights**

The ~~President, or designee,~~[ORSP](#) will receive disclosure from APSU employees [and students](#) concerning inventions, discoveries, and copyrightable materials as described in the Disclosure section of this policy. The [ORSP will advise the President and initiate the Advisory Committee.](#) Following disclosure, the below process is applicable:

- (1) The President, or designee, shall [endeavor to](#) refer the disclosure to the Intellectual Property and Commercialization Committee within five (5) working days and request its study and recommendations.
- (2) The Committee shall, in due diligence, endeavor to make a recommendation in ten (10) working days to the President, or designee.
- (3) On receiving recommendations from the Advisory Committee, the President, or designee, shall inform the Committee and the employed individual(s) who has interest in the patent or copyright as follows:

- (a) If the Committee recommends that the University waive all claims, the President, or designee, will indicate within fifteen (15) working days whether the University waives all claims.
- (b) If the Committee advises the President, or designee, that University sponsorship, external sponsorship, or significant use of the University's resources were involved, the President, or designee, will indicate within fifteen (15) working days whether the University intends to hold and pursue its rights.
- (c) If the Committee advises the President, or designee, of a royalty-sharing arrangement, the President, or designee, will indicate within fifteen (15) working days whether the University accepts the recommended arrangement.

In evaluating inventions, discoveries, and copyrightable materials, filing patents and copyrights applications, and licensing and administration of patents and copyrights, the University may obtain outside services from independent patents and copyrights assistance organizations. Should an outside service be used to evaluate the merits of a royalty-sharing arrangement, then the Committee and the impacted individual(s) will be notified within fifteen (15) working days and they shall be party to the recommendations of the 3<sup>rd</sup> party. The intent of this paragraph is to give guidance and transparency when using an outside source of expertise.

- (d) In considering a royalty-sharing agreement, the President, or designee, will take into account contributions by the individual and by the University. The shares of the parties are to be based on the relative contributions of the parties to the invention, discovery, or copyrightable materials developed. The royalties shall be shared, net of the costs of obtaining, licensing, and administering the patents and copyrights, and the agreement shall be approved by the President, or designee.

- (e) If the content of materials developed by an APSU employee or student, and for which, the University holds a copyright, is changed during the period of the original copyright, the authors shall have the options of being credited, or not credited, for the materials retained. Such action shall not abrogate any royalty-sharing agreement.
- (f) Nothing in this policy shall preclude agreed upon contractual arrangements between the University and an APSU employee(s) or students wherein either party may agree to waive rights to patents, discoveries, or copyrightable items.
- (g) For intellectual property, in which the University is deemed to have an ownership interest, following a decision by the President to seek patent protection, copyright registration, and/or commercialization of the intellectual property, the ORSP will arrange to have those activities undertaken.
- (h) All APSU employees and students shall cooperate with the University in obtaining patents and copyrights, including the execution of all necessary documentation.
- (i) If the University notifies the Inventor(s)/Author(s) that the University does not intend to pursue commercialization of the Intellectual Property, then the Inventor(s)/Author(s) is free to patent or copyright it, subject to the rights of the U.S. Federal Government or other external sponsor, and any other joint inventor/creator. The Bayh-Dole Act (35 USC 200-212; 37 CFR Part 401) restricts the commercialization of all inventions conceived or first actually reduced to practice in the performance of a federal grant, contract, or cooperative agreement. If the University decides to not pursue commercialization of inventions that are the result of research funded in whole or in part by a federal agency, the right to commercialization passes to the federal agency that sponsored the research. The Inventor(s)/Author(s) shall be notified within 180 days of the date of submission of the disclosure to APSU

that the University has begun to proceed with commercialization or that he or she is free to obtain and exploit a patent or other Intellectual Property in the Inventor(s)/ Author(s) own right. In such case, however, the University does not relinquish its right to publish any of the data associated with the Intellectual Property, providing that the University had an interest in the IP. If the University decides not to further pursue protection or commercialization of the IP, it shall negotiate an Invention Release Agreement and assign all other rights therein to the Inventor(s)/Author(s), subject to the rights of the U.S. Federal Government or other External Sponsor, and any other joint Inventor(s)/Author(s).

**Appeal Procedures**

No decision by the President relative to this policy will be considered final for a period of thirty (30) days. Any affected APSU employee or student may initiate an appeal of a pending decision during that time by informing the President of that intention in writing. Ain informal hearing date will be set by the President, or designee, -within twenty-one (21) days of the receipt of the appellant's notice of intent. Both the President, or designee, and the appellant(s) will be permitted to have counsel and present witnesses. The President will inform the appellant of the final decision within fourteen (14) days after hearing the appeal. A final decision by the President may be appealed to the APSU Board of Trustees.

**Income from Intellectual Property**

**Revision Dates**

APSU Policy 2:047 (previously 5:019) – Rev.: March 25, 2017  
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**Subject Areas:**

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>				

**Approved**

President: signature on file

Collaboration