

Intellectual Property, Patents, and Copyrights

POLICIES

Issued: March 25, 2017

Responsible Official: Provost and Vice President for Academic

Official: Affairs

Responsible Office: College of Graduate Studies

Policy Statement

It is within the mission 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 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.

Contents

Procedures

- Affected Individuals
 - Determination of the University's Interest in Inventions, Discoveries, and Copyrightable Materials
 - Applications for the Titles of Patents and Copyrights
 - Disclosure
 - Advisory Committee on Patents and Copyrights
 - Roles of the President Relative to Patents and Copyrights
 - Appeal Procedures
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Procedures

Affected Individuals

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.

Determination of the University's Interest in Inventions, Discoveries, and Copyrightable Materials

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

- (1) University sponsorship of the project leading to the discovery or development of materials. 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 or more (in constant 2017 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) Sponsorship of the project through the University by agencies or persons outside the University. The President, or designee, 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.

If no University interest is determined as outlined in numbered paragraphs 1, 2, and 3 of this section, the inventions or discoveries and copyrightable material 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. 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.

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 used solely for the enhancement of research and instructional programs.

Disclosure

Prior to seeking patents, copyrights, or commercial exploitation, APSU employees shall disclose to the President, or designee, all 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. 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.

**Advisory Committee on
Patents and Copyrights**

A committee of faculty and staff experienced in research, innovation, and the production of copyrighted materials shall be established at the University. 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 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 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.

**Roles of the President
Relative to Patents and
Copyrights**

The President, or designee, will receive disclosure from APSU employees concerning inventions, discoveries, and copyrightable materials as described in the Disclosure section of this policy. Following disclosure, the below process is applicable:

- (1) The President, or designee, shall 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 3rd 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, 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) wherein either party may agree to waive rights to patents, discoveries, or

copyrightable items.

- (g) All APSU employees shall cooperate with the University in obtaining patents and copyrights, including the execution of all necessary.

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 may initiate an appeal of a pending decision during that time by informing the President of that intention in writing. A hearing date will be set by the President within twenty-one (21) days of the receipt of the appellant's notice of intent. Both the President and the appellant 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.

Revision Dates

APSU Policy 2:047 (previously 5:019) – Rev.: March 25, 2017
APSU Policy 2:047 – Rev.: August 1, 1986
APSU Policy 2:047 – Issued: October 3, 1983

Subject Areas:

Academic	Finance	General	Human Resources	Information Technology	Student Affairs
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Approved

President: signature on file
