

Appointments to Endowed Chairs and Named Professorships shall be included in the quarterly personnel report provided to the Board of Regents.

Reference: BRUN, Minutes, 70, p. 47 (December 8, 2011).

## **RP-4.4 Intellectual Property**

### **RP-4.4.1 Ownership of Intellectual Property**

Central to the University of Nebraska's mission is the creation, preservation, and dissemination of knowledge.

The University of Nebraska is committed to providing an environment that supports the research, teaching, and service activities of its faculty, students, and staff. As a matter of principle and practice, the University encourages all members of the University community to publish their articles, books, and other forms of scholarly communication in order to share openly and fully their findings and knowledge with colleagues and the public. This Policy is intended to promote and encourage excellence and innovation in scholarly research and teaching by identifying and protecting the rights of the University, its faculty, staff, and students.

Patent and copyright ownership and their associated rights are concepts that are defined by federal law. This Policy and the University's patent policies are structured within the context of those federal laws. The University's patent policies have been in operation within the University for many years and are hereby incorporated into this Policy.

The long standing academic tradition that faculty own the copyright to academic, scholarly and educational works resulting from their research, teaching, and writing is the foundation of the copyright policy described in this document. Exceptions to this rule may result from contractual obligations, from employment obligations, from certain uses of University facilities, or by agreement governing access to certain University resources. This Policy is intended to clarify many of these situations.

As used in this Policy, "University" shall refer to the University of Nebraska or one of its campuses and shall include any organization of the University whose primary purpose is to facilitate technology transfer and commercialization of the University's Intellectual Property. "Intellectual Property" shall include, but is not limited to patentable inventions, mask works, tangible research property, trademarks, and copyrightable works, including software.

This Policy is included in the terms of employment of all University employees. Admission as a student at the University constitutes an agreement to abide by the terms of this Policy.

#### **1. General Policy Statement**

The prompt and open dissemination of the results of research undertaken at the University of Nebraska and the free exchange of information among scholars are essential to the fulfillment of the University's obligations as an institution committed to excellence in research, education, and service. Matters of ownership, distribution, and commercial development nonetheless arise in the context of technology transfer, which is also an important aspect of the University's commitment to public service. The University of Nebraska as a public institution has a responsibility to recognize the State's contribution of tax support for research and creative activity by devoting an appropriate share of the products of that research to the further benefit of the University as a whole. The University must also recognize the intellectual contribution of Authors and Inventors, the need to provide incentives for enhanced intellectual activity, and the role such incentives play in recruiting and retaining creative individuals at the University.

"Author(s)" and/or "Inventor(s)" are defined herein as faculty, staff, and other persons employed by the University of Nebraska, whether full or part-time; visiting faculty and researchers; and any

other persons, including students, who create or discover Intellectual Property using University resources, as those terms are subsequently defined.

## 2. Early Disclosure and Incentives for Creative Effort; Use of the University's Name

### a. Early disclosure and incentives to create

This Policy is a framework to provide guidance in understanding the relationship between the University and those persons engaged in creative efforts at the University. In some instances, the result of the creative effort will be the property of the University, while in others some or all of these rights of ownership shall belong to the Author or Inventor. Where ownership rests with the University, the University will seek to recognize and provide incentives for those persons who make significant contributions to the University's mission.

In some instances it may be difficult to foresee with certainty whether Intellectual Property created in a particular context is the property of the University or the employee. In such instances, the employee is encouraged to disclose in writing the nature of any creative endeavor that has potential commercial applications as soon as possible to the employee's immediate administrative supervisor. This disclosure will provide an opportunity to discuss incentives, seek any necessary interpretation of this Policy, and secure the University's support for the creative endeavor.

### b. Use of University's name

The University has an interest in how its name is used and an interest in protecting the value of that name. Individual Authors or Inventors cannot alone decide whether a project should be associated with the University's name. An employee of the University may identify his or her affiliation with the University, but without prior written approval, may not otherwise suggest the University's participation or endorsement of the conclusions of any study or research. Similarly, the University's name may not be used, without prior written permission, in association with the sale or commercialization of the products of research by University employees. Again, early written disclosure will facilitate agreement between interested parties.

## 3. Ownership of Intellectual Property; General Provisions

### a. Applicable to all technologies and media

The issue of ownership of Intellectual Property resulting from activities of University employees arises in a number of different contexts involving a variety of creative works. Increasingly, University employees utilize new technologies and media to create new inventions, to improve the educational process, and to enhance the delivery and exchange of information. This Policy is intended to apply to all creative works, except patentable subject matter, regardless of the media in which they are distributed or the nature of their technological manifestation, now known or later developed.

### b. Patent policies not affected

Notwithstanding anything otherwise stated in this Policy, ownership of patents shall be determined in accordance with University patent policies in Section 3.10 of the *Bylaws of the Board of Regents of the University of Nebraska* and Regents Policy 4.4.2, or as those patent policies may from time to time be amended.

It is essential, however, that Authors and/or Inventors understand that early publication of their patentable research results without notification to the University can compromise the

University's patent rights in the research, and by implication, the Authors' and/or Inventors' royalty interest therein. Therefore, if an Author or Inventor wishes to publish research results which involve patentable subject matter, the Author or Inventor should first submit a patent disclosure to the University patent administrator and also disclose the existence of the pending publication so as to allow for the appropriate filings to preserve the University's patent rights.

c. Residual Authors' or Inventors' Rights

Notwithstanding the University's ownership of any particular Intellectual Property, the University shall not engage in any activity which unreasonably interferes with an Author's or Inventor's ability to continue the creative process. Therefore, except in such instances where the University can show that its interests will be significantly compromised, an Author or Inventor, while still in the employ of the University, shall be permitted to make revisions to and develop new works based upon the original creation. Except to the extent that an Author or Inventor may have a right to receive income based upon royalties or other fees generated from a work, this Policy provides no portability of other rights to University-owned Intellectual Property should the employment relationship between the University and the Author or Inventor terminate. However, in many cases it may prove possible for the University to grant a royalty-free license or an appropriate royalty-bearing license to the Author or Inventor to continue to use the techniques or other aspects of a creative work, even when the Author or Inventor is no longer employed by the University.

Comment

When a faculty member leaves the employment of the University, the University will continue to honor the terms of any agreement it has with the faculty member regarding University-owned Intellectual Property. For example, the University may agree to pay a faculty member a royalty for the development of a University-owned distance learning program. If the faculty member leaves, the University will continue to pay in accordance with the agreement with the faculty member. The faculty member may not, however, take other rights of ownership in the Intellectual Property, unless it is agreed to by separate written license agreement between the faculty member and the University.

d. Classification of creative works

The ownership of Intellectual Property created by a University employee is determined by the nature of the activity resulting in the Intellectual Property. Under this Policy, Intellectual Property not governed by Section 3.b (Patent Policy) is classified as either:

- 1) an Independent Work governed by Section 4;
- 2) a University Supported Work governed by Section 5;
- 3) an Institutional Work governed by Section 6; or
- 4) a Contractual Work governed by Section 7.

The ownership of Intellectual Property produced by non-employees, including students, arising out of activities associated with the University is governed by Sections 8 and 9 of this Policy.

Comment

The intent of this section is to categorize all works which may contain Intellectual Property rights into one of the listed categories and to allocate the Intellectual Property rights accordingly. Thus any work must be in only one category. It should be understood that the determination of whether a work is an Independent Work, a University Supported Work, or an Institutional Work depends on the context in which the work is created. Any of these works may be transformed into a Contractual Work by an agreement between the University and the Author or Inventor.

#### 4. Independent Works

##### a. Independent Works Defined; Ownership

An Independent Work is a work that is not:

- 1) a University Supported Work, pursuant to Section 5;
- 2) an Institutional Work, pursuant to Section 6; or
- 3) a Contractual Work, pursuant to Section 7.

A University employee as the Author or Inventor of an Independent Work owns the Intellectual Property rights in that work.

##### Comment

It is the policy of the University of Nebraska that faculty shall own all rights to materials prepared and developed at their own initiative, without the use of any University resources, and not pursuant to an approved agreement. The University does not claim ownership of books, articles and other scholarly publications, or to popular novels, poems, musical compositions, or other works of artistic imagination that are created by the personal effort of faculty, staff and students and which do not make use of University resources.

#### 5. University Supported Works

##### a. University Supported Work defined

A University Supported Work is a creative work developed in whole or in part with the customary use of University resources. "University resources" means all tangible resources provided by the University of Nebraska to Authors or Inventors, including salary, office, lab, studio space and equipment; computer hardware, software, and support; secretarial service; research, teaching, and lab assistants; supplies; utilities; funding for research and teaching activities; travel; and other funding or reimbursement.

##### b. Ownership of University Supported Works that do not involve use of substantial University resources

By long-standing tradition and the contemporary need to remain competitive in recruiting and retaining a creative faculty, the faculty own the copyright and other rights associated with Traditional Works of Scholarship. "Traditional Works of Scholarship" are defined as works reflecting research or creativity which, within the University, are considered as evidence of professional advancement or accomplishment. Such works result from scholarly endeavors, and include instructional materials, journal articles, research bulletins, monographs, books, plays, poems, and artistic works, and do not involve substantial use of University resources as described in Section 5.c of this Policy. Accordingly, except for (1) University Supported Works involving use of substantial

University resources, and (2) patents, patentable subject matter, trade secrets and commercially viable discoveries and inventions governed by the patent policies described in Section 3.b of this Policy, the faculty member shall own the copyright and have the right to register the same and to receive royalties or other income from a University Supported Work, including books, films, cassettes, CDs, software, works of art, or other material. However, such ownership and rights are subject to the requirements of Section 3.11 of the *Bylaws of the Board of Regents of the University of Nebraska* prohibiting a faculty member from having a financial interest in or receiving compensation from the sale of educational materials used by students of the University, except royalties on books or other educational material from publishing houses of standing.<sup>1</sup> In addition, the following specific rules apply to University Supported Works for which the faculty member owns the copyright:

- 1) Research Materials. Materials such as lab notebooks and research files shall remain the property of the individual responsible for directing the project, except when agreements governing Contractual Works described in Section 7 require otherwise. However, should such an individual depart the employ of the University or otherwise terminate responsibility for directing the project, he or she shall provide the University with such copies of the research material as may be reasonable in order that the University may protect its rights in any Intellectual Property as well as that of the departing Author's or Inventor's colleagues.
- 2) Instructional Materials. "Instructional Materials" are other than Institutional Works, the primary use of which is for the instruction of students. Such works include textbooks, syllabi, lectures, lecture notes, and study guides. Instructional Materials developed by a faculty member in the process of delivering a course of instruction to students shall be the property of the faculty member. However, in the absence of a specific written agreement, and with the exception of books or other educational materials covered by Section 3.11 of the *Bylaws of the Board of Regents*, no royalty, rent or other consideration shall be paid to a faculty member when Instructional Materials are used at the University. Should the Author of Instructional Materials depart the employ of the University, he or she will provide the University with copies of the Instructional Materials (not including lecture notes) and shall grant the University a non-exclusive, royalty free license thereto, when it is determined by the University that such Instructional Materials are necessary to carry out the educational programs of the University. Recordings of lectures shall be the property of the faculty lecturer, unless the recording is an Institutional Work or a University Supported Work Involving use of substantial University resources.

c. Ownership of University Supported Works involving use of substantial University resources

- 1) Notwithstanding Section 5.b, in circumstances in which use of substantial University resources is involved in the creation of a work, the University shall own the work, including the right to obtain a copyright and the right to royalties or other income. Circumstances involving use of substantial University resources include:
  - a) substantial University financial, staff, or other assistance;
  - b) extensive use of special or rare University holdings, such as museum collections;

- c) significant use of voice or image of students or staff in a product (other than the author or inventor), or substantial creative contribution by staff or students to the preparation of a work or product; or
- d) use of the name or insignia of the University or any of its units (other than for purposes of identification of individual faculty members) to identify or to promote the distribution of a work or product, or other identification or promotion that implies the approval or endorsement by the University or one of its units.

Comment

The references in subparagraph a) to “substantial University financial staff or other assistance” and in subparagraph b) to “special or rare University holdings, such as museum collections” mean the use of University funds, facilities, equipment, or other resources significantly in excess of the norm for educational and research purposes in the department or unit in which the creator holds his or her primary appointment. The University does not regard the provision of an employee’s salary, office, usual library resources, usual facilities and equipment, and office staff, or personal computers as constituting “substantial use of University resources” unless such resources were made available specifically to support the development of a work to be owned or acquired by the University or was previously designated by the University as a substantial University resource. The reference in subparagraph to c) to “substantial creative contribution by staff and students” means providing original ideas or new techniques that are essential to the creation of the product or significantly improve its value. For example, devising a new way to test one of the major hypotheses in a study would normally count as such a contribution, but providing ordinary research assistance or conducting standard data analysis would not.

- 2) When the responsible Dean or Director determines that any of the circumstances involving use of substantial University resources described above in subparagraph 1) of this Section 5.c obtain, the University will accord to the Author a non-exclusive, royalty free license to use the work for non-commercial purposes. Further, and in keeping with the University’s strong desire to promote creative efforts, the University will negotiate in good faith with the Author to determine the extent to which the Author should share in the rights to royalties or other “ownership” rights to such work.

Comment

The allocation of rights for University Supported Works in Section 5 is modeled after the policy of Harvard University. It attempts to distinguish between traditional works of scholarship for which faculty members hold the copyright and those works created with substantial University involvement. Where the University is involved to a greater extent than ordinarily prevails, the University should be entitled to share in the economic returns of resulting works and to receive reimbursement for its additional costs. It is recognized that the determination of whether a particular project involved substantial university involvement may not always be clear. In such circumstances it is important that the faculty member make early disclosure to the Dean or Director and that, if an interpretation of this policy is required, the procedures adopted in Section 13 be initiated.

6. Institutional Works

- a. Institutional Works defined

An Institutional Work is a work created at the specific instigation of the University and under the specific direction of the University, by a person acting within the scope of his or her University employment. Institutional Works are often referred to in copyright law as works-made-for-hire. A creative work produced on the initiative of a faculty member pursuant only to the general obligation of faculty members to engage in research or creative activity is not an Institutional Work, but may be a University Supported Work involving use of substantial University resources as described in Section 5.c of this Policy or a Contractual Work as defined and described in Section 7 of this Policy. However, Institutional Works may include creative works generated within a specific project initiated by the University. Institutional Works also include committee minutes, internal memoranda, business files, personnel files and other business records created in the ordinary course of the general administration of the University.

#### Comment

Institutional Works are works that are created at the initiative of the University. In addition to works related to the general administration of the University, such as committee reports, minutes, and business files, an Institutional Work may include more traditional creative works. For example, the products of a University initiated program in distance learning where an employee or numerous employees are assigned the specific task of creating instructional content would be Institutional Works.

#### b. Ownership of Institutional Works

The University owns all rights to Institutional Works. However, in keeping with the University's strong desire to promote creative efforts, the University may determine that the Author or Inventor should share in the rights to royalties and other rights in Institutional Works discussed in this Policy. The Author or Inventor should engage in early written disclosure to the University of the potential for any valuable Intellectual Property rights associated with Institutional Works in order to facilitate agreement regarding such shared rights. Failure to do so will be an important factor in assessing whether the Author or Inventor is entitled to share in any financial returns from the work.

#### 7. Contractual Works (Sponsored Research)

Ownership of the Intellectual Property rights in creative works developed in the course of or pursuant to a sponsored research program or other contractual arrangement will be determined according to the terms of such program or contract, provided that the program or contract was approved by the University. If the program or contract does not provide for the allocation of Intellectual Property rights, such rights will be determined by the other provisions of this Policy. Notwithstanding other provisions of this policy, the University may elect to enter into a contract with an individual employee regarding the creation of specific intellectual property.

#### Comment

University personnel and visitors should contact the office on their campus responsible for sponsored programs for information or assistance regarding drafting or interpretation of research contract terms. The terms of such sponsored research agreements apply not only to inventions made by faculty and staff, but also to those made by students and visitors, whether or not paid by the University, who participate in performing research supported by such agreements. Care should be taken to assure that any contract for sponsored research is approved and signed by a University administrative officer having proper Authority to approve and sign such a contract on behalf of the University.

Patents: Research contracts sponsored by the Federal Government are subject to statutes and regulations under which the University acquires title to inventions conceived or first reduced to

practice in the performance of the research. The University's ownership is often subject to a non-exclusive license or grant of other rights to the government and the requirement that the University retains title and take effective steps to develop the practical applications of the invention by licensing and other means.

Contracts with outside research sponsors are negotiated on a case-by-case basis with ownership and other rights to the discovery of any patentable invention determined in the course of the negotiations.

Copyright: Normally, research contracts sponsored by the Federal Government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may sometimes place title to such material exclusively in the government, but more often consist of a royalty-free license to the government with title vesting in the University.

When a work is created under the terms of a sponsored research agreement, Authors of copyrightable works should be aware that there may be contractual terms relating to the form of the research report, advance notice to the sponsor before publication, and other limitations or obligations.

#### 8. Ownership of Works Produced by Non-employees

According to federal law, copyright of commissioned works of non-employees is owned by the Author and not by the commissioning party, unless there is a written agreement to the contrary. All University personnel are cautioned to ensure that independent contractors agree in writing that ownership of commissioned work is assigned to the University, except where special circumstances apply and it is mutually agreed that the Author will retain ownership.

#### 9. Ownership of Copyrights in Theses, Dissertations and Other Student Works

The ownership of copyrights in student works is governed as follows:

##### a. Theses, Dissertations and Other Student Works

Students will own the copyrights to their theses, dissertations, and other student works; however, a student must, as a condition to a degree award, grant royalty-free non-exclusive permission to the University to store copies of such works for archival purposes and to reproduce and publicly distribute copies of his or her thesis or dissertation within the University education and research missions; provided however, that should the student identify any legitimate proprietary interest the student may have in the work, or should the University determine that it has an ownership interest in any patentable or otherwise protectable Intellectual Property interest in the work, the University shall then delay any public access to the work for up to one year following the presentation of the work, in order for the student to consult with the University regarding the protection of the proprietary interest. Copyright ownership of theses or dissertations generated by research that is performed in whole or in part by a student with the support of a sponsor or grant shall be determined in accordance with the terms of the sponsored research or grant agreement, or in the absence of such terms, the copyright shall be owned by the University.

##### b. Software, Patentable Subject Matter and Non-Copyright Intellectual Property

Software, patentable subject matter, and other Intellectual Property (other than copyright as described in Section 9.a and Section 9.c of the Policy) contained or disclosed in theses, dissertations and other student works shall be subject to and governed by the policies that apply to University employees.

c. Student Writings Other Than Theses or Dissertations

Students shall own the copyrights to all student writings not commonly referred to as theses or dissertations and to other creative expressions required in the course of class assignments. The University shall retain the right to keep original examination scripts and to possess a copy or record of other student works for purposes of assigning grades, maintaining archival materials, and record keeping.

Comment

In cases where a dissertation or thesis contains patentable or otherwise protectable subject matter belonging to the University, the students and faculty involved with the project have a duty to disclose the existence of the thesis or dissertation to the University office responsible for patent matters. The students and/or faculty members should also contact the campus Dean for Graduate Studies regarding the shelving of the thesis or dissertation with the University's Library. The campus Dean can provide for the secured storage of the thesis or dissertation for up to one year so as to preserve the patent or other rights of the University in the subject matter of the thesis or dissertation.

10. Intellectual Property Rights for Multiple Creating Parties

Due to the nature of current research practices and multi-media creations, it is common for more than one individual to claim part of the recognition as Author or Inventor for a particular creation. In such instances, participating Authors or Inventors are strongly encouraged to define their respective rights to the creation in a written agreement, signed by all of the contributing parties. Misunderstandings between the contributing parties can be avoided if such agreements are entered into as early as is practicably possible. Should the co-Authors or co-Inventors fail to so agree in writing, it is presumed that any benefits to be shared by them shall be shared equally.

11. Ownership of Trade and Service Marks

Ownership of trademarks shall be governed by the provisions of this Policy. Thus, trademarks that are Independent Works will be owned by the Author; trademarks that are Institutional Works will be owned by the University; ownership of trademarks that are University Supported Works will be determined by the provisions of Section 5 of this Policy; and ownership of trademarks that are Contractual Works will be determined by the provisions of Section 7 of this Policy. Note however, that the University owns many valuable trade and service marks, most of which are registered with the appropriate state or federal agencies. Any trade or service marks derived from or based upon University-owned marks shall belong to the University.

12. Assignment of Property Rights by the University

The University may assign to the Author or Inventor any rights of ownership it may acquire pursuant to this Policy.

13. Resolution of Ambiguities and Policy Interpretation

Should any issue arise regarding interpretation of this Policy, for example, whether Use of Substantial University resources has occurred or will occur, the issue shall be referred to the Author's or Inventor's Dean, Director, or similarly situated administrator. After reviewing the relevant facts, such administrator shall recommend a resolution to the Vice Chancellor responsible for research, sponsored programs and technology transfer (e.g. Vice Chancellor for Research or Vice Chancellor for Academic Affairs). Any campus may establish a committee of peers to review the facts and circumstances surrounding any particular interpretation of this Policy and make recommendations to the Vice Chancellor. The Chancellor will make the final

decision on all interpretations under this Policy, based on the recommendation of the Vice Chancellor. The Chancellor's decision will be final with respect to the University.

14. Supplemental Income from Commercial Applications

This Policy on ownership rights in no way alters the ability of an Author or Inventor to receive supplementary income from the University under any separate policy, as a result of the commercial application of Intellectual Property created by the Author or Inventor.

15. Review of Policy

This policy will be reviewed periodically and revised as deemed necessary to accommodate new technologies and to incorporate changes warranted by experience with its administration.

Reference: BRUN, Minutes, 63, p. 167 (July 28, 2001).

#### **RP-4.4.2 Patent and Technology Transfer Policy**

Section 3.10 of the *Bylaws of the Board of Regents* provides that it is the policy of the Regents to encourage the commercialization of inventions and discoveries arising from research activities of the University, and when appropriate, the pursuit of patents or other intellectual property protection, as a method of bringing recognition and remuneration to the University's inventors and to the University itself. This Patent and Technology Transfer Policy is adopted for the purpose of providing general policy regulations to implement Section 3.10 of the *Bylaws of the Board of Regents*:

1. Ownership of Inventions Resulting From Performance of Duties of Employment; Prompt Disclosure to University

Each invention<sup>1</sup> by a member or members of the faculty or staff of the University resulting from performance of duties within the scope of University employment, or resulting from the use of University personnel, property, facilities, or other University resources, except where such use is minimal,<sup>2</sup> shall be solely owned by the University. Questions concerning whether a use of University resources is minimal shall be resolved in accordance with the process set forth in Section 9 of this Policy. Each such invention and any improvement(s) made thereto while under the employment of the University shall be promptly disclosed in writing to the designated campus patent and technology transfer administrator (the "Administrator").<sup>3</sup>

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<sup>1</sup>For purposes of this policy, the term "invention" shall mean patent able inventions or discoveries, computer software, trade secrets and all other intellectual property not addressed under Regents Policy 4.4.1.

<sup>2</sup> The determination as to whether any use of University personnel, property or facilities is or was "minimal" under this policy shall be made based on the following considerations:

- a) Whether the invention was conceived of or reduced to practice pursuant to an employee or faculty member's job duties;
- b) Whether any funding for the work leading to the conception or reduction to practice of the invention was provided by or facilitated through the University;
- c) Whether any University facilities were utilized in the conception or reduction to practice of the invention, and if so, the extent of such use; and
- d) Whether any University students or staff were utilized in or contributed to the conception or reduction to practice of the invention.

<sup>3</sup>The Bayh-Dole Act of 1980, 35 U.S.C. §§ 200-212, allows Universities and other non-profit organizations to retain title to federally-funded inventions and requires that strict reporting requirements be met. It is therefore critical that inventors provide a prompt and thorough disclosure to the University so that the University can properly evaluate the disclosure and elect to either retain or decline title to such inventions in a timely manner.