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Procedure for: All Campuses
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This policy addresses the rights to, interests in, and protection and transfer of, intellectual property created by University of South Carolina faculty, staff, and students. The policy is intended to encourage and reward research and scholarship that results in the creation of intellectual property, and to recognize the rights and interests of the inventor or creator, the public, the external sponsor, and the University. It is acknowledged that the public and the University derive significant benefit from such creative activities and it is, therefore, in the University's interest to reward such activities.

I. GUIDANCE

This section provides guidance to faculty, staff, students, and administrators concerning the intent, goals, and interpretation of this policy and includes definitions of key terms or phrases.

A. Basic Principles

The following principles are intended to serve as a guide to this policy's interpretation and application.

1. Academic Freedom and Preeminence of Scholarly Activities

The academic missions of teaching and scholarship have preeminence and this policy is not intended to diminish the right of faculty members to disseminate the results of their research and creative activity for scholarly purposes. However, it is generally in the best interest of the inventor/creator and the University to identify and protect the by-products of scholarly activity that may have commercial value. Accordingly, the inventor/creator is obligated to disclose such by-products to the University in a timely fashion.

2. Equity and Fair Play

This policy applies to all faculty, staff, and students equally, whether or not a particular intellectual property is patentable, and regardless of the specific characteristics of a given discipline, or the level of funding, facilities, or technical support available for the creative effort. Under the principle of fair play, it is intended that the inventor/creator and the University will mutually cooperate and that no one will be allowed to deliberately create or exploit inadvertent exceptions to this policy to his or her own advantage. If, in a given instance, it is suspected that this principle of fair play has been violated, the policy contains within it a procedure for redressing the grievances of that particular case.

3. Mutual Trust and Good Will

In the event of future controversies regarding the rights to intellectual property, the transfer and commercialization of a particular property, or the interpretation of this policy, all parties should know that mutual trust and good will were fundamental tenets in forging the policy and that all members of the University community should be guided in their actions by those tenets.

4. Faculty Governance and Review

Faculty members, through their majority representation on the Intellectual Property Committee (IPC) play a primary role in the establishment and periodic revision of this policy, and in the review and recommendation of dispute resolutions arising under it. As referenced in this policy, and outlined in greater detail in the Faculty Manual, the IPC is established by the Faculty Senate, it has a majority of members who are faculty, and it is chaired by a faculty member.

5. Mutual Participation in Licensing Decisions

The inventor/creator shall play an active role in the entire licensing process, particularly in cases where the inventor has no external financial interest in the licensee. Where the inventor has external interests in the licensing of a property, participation in licensing decisions shall be consistent with State and Federal conflict of interest regulations and University policy.

B. Definitions

1. Intellectual Property

The term "intellectual property" as used herein is broadly defined to include inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative or artistic works that have commercial value. Intellectual property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

2. **Invention**
The term invention as used in this policy, shall mean any inventive idea and/or its reduction to practice which relates to: new processes or methods of producing a new and useful industrial result; any composition of matter, including chemical and biological compounds; any new devices; any new plant; any new design in connection with the production or manufacture of an article, any new computer hardware and/or software programs; any knowledge supporting these inventive ideas, systems, devices, compositions, programs or processes; and any new use or improvement of existing systems, devices, compositions, programs or processes.

3. **Creator (of intellectual property)**
The creator is an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.

4. **Reduction to practice (of an invention)**
Reduction to practice involves creating the necessary conditions in which the idea or design of an invention can be practically realized or made to work. It is the movement of an idea or design from theory to practice.

5. **Owner (of intellectual property)**
The owner is the entity (person or organization) that owns the intellectual property. The owner may be the inventor/creator or, more commonly, it is an organizational entity that supported the inventor/creator's work by providing resources, facilities, or salary.

6. **Assignment (of ownership)**
The act of transferring to another all or part of one's property, interest, or rights.

7. **Scope of Employment**
The range of activities encompassed by one's employment. 'Scope of employment' refers to those acts done while performing one's job.

8. **Substantial use (of university resources or facilities)**
The term "substantial use of University resources" means use of University funds, programs, equipment, space or other physical assets that goes above and beyond those customarily and currently provided to employees as part of their ordinary conditions of employment. In general, the use of University funds or external funds administered through the University, the use of students or employees as support staff to develop the work, or the use of specialized or unique facilities, laboratories, and equipment, or other special subventions provided by the University, would be construed as "substantial use" unless

specifically approved as an exception. The University does not construe the use of ordinary office space, library facilities, ordinary access to personal computers and networks, or salary, as constituting "substantial use".

9. Royalties

Royalties are compensation for rights in Intellectual Property and are usually expressed as a percentage of revenue received by the licensee from sales of a product.

II. INTELLECTUAL PROPERTY DEVELOPMENT AND TECHNOLOGY TRANSFER

A. Relation to the University's mission

The University recognizes that one aspect of its mission, as a public institution devoted to teaching, research, and service, is the application of knowledge to problems of general public interest. Therefore, the University encourages and rewards activities on the part of its faculty, staff, and students that may lead to the development of intellectual property and to the transfer of beneficial technologies to the private sector.

B. Objectives

The objectives of the intellectual property management activities of the University are: (a) to help attract resources to support its faculty, staff, and students in activities that may lead to intellectual property development; (b) to provide services to faculty, staff, and students to enable them to identify and protect intellectual property; (c) to facilitate, in cooperation with the inventor/creator, the efficient transfer of technology from the University to the private sector in service of the public interest; and, (d) to promote local and national economic development.

C. Intellectual Property Office (IPO)

It is the University's policy to maintain and support an Intellectual Property Office (IPO) with a fulltime Director. The IPO's mission is to help University faculty, staff, and students identify, protect, and commercialize intellectual property assets so that these assets can be used to benefit society and to spur regional and national economic development. The IPO shall follow the mandates of the Bayh-Dole Act. The Bayh-Dole Act enables the University to retain the entire right, title, and interest in government funded inventions to universities and businesses operating with federal contracts for the purpose of further development and commercialization.

D. Intellectual Property Committee (IPC)

It is the University's policy to maintain and support the Intellectual Property Committee (IPC). As described in the Faculty Manual, the IPC is a standing committee of the Faculty Senate. The University acknowledges the IPC as the advisory body to the IPO, the Chief Research Officer, and the Provost, on all matters involving intellectual property. The University makes use of the IPC from time to

time to review intellectual property management and technology transfer policies and procedures and to make recommendations to the Chief Research Officer regarding potential revisions to those policies and procedures. The University also acknowledges the IPC as the University body charged with overseeing the rights and obligations of USC faculty, student, and staff inventors/creators, and with recommending resolutions to disputes regarding the interpretation of those rights and obligations.

III. INTELLECTUAL PROPERTY PROCEDURE

A. Disclosure of Intellectual Property

In order for the University to identify, protect, and commercialize intellectual property that emanates from the work of its faculty, staff, and students, it is University policy that the inventors shall disclose all intellectual property in confidence to the University. Public release in any form, such as publication in a peer reviewed journal, presentation at a professional meeting or seminar, or press release, may have the effect of consigning the intellectual property to the public domain, thereby precluding the University and the inventor from pursuing patent protection. Therefore, such disclosures must be made promptly and prior to any public release of information about the invention.

B. Ownership

The University owns all intellectual property that is conceived or reduced to practice by University faculty, staff, or students as a result of (a) research that makes substantial use of USC resources or facilities, (b) activities that fall within the inventor's scope of employment with the University, whether or not USC resources or facilities are used, or (c) work supported by funds that are administered through USC. In cases where an inventor believes that an invention was conceived or reduced to practice independently of USC, the University makes available a procedure wherein the inventor can make a claim of ownership. The IPC serves as the body from which the inventor or the IPO can obtain an impartial review regarding issues of ownership.

C. IPO Due Diligence

The University IPO shall use "due diligence" in assisting faculty, staff and student inventors, to protect, and commercialize intellectual property developed as part of their association with the University. The University's due diligence obligation shall include a review of requirements of sponsorship agreements, if any, a preliminary market analysis, and an explanation of options for commercialization. The IPO shall provide ongoing feedback to the inventor about University actions relative to the status of the invention.

D. Options for Commercialization

In general, the University provides the following options for the commercialization of a technology as noted below. After consultation with the inventor, the IPO will

choose the option. The option chosen is intended to be that which best serves the mission of the University, including the objectives of this policy, and which is consistent with the available technology transfer resources of the University. Preferences expressed by the inventors are actively sought and given strongest consideration. Options for commercialization include but are not limited to the following:

1. **Licensing Third Parties**
   The University may license University-owned intellectual properties to external entities for further development and commercialization. The University will bear the costs of licensing the intellectual property. If the IPO cannot, or decides not, to proceed in a timely manner to patent and/or license an invention, the IPO may reassign ownership to the inventors upon their request and to the extent possible under the terms of any agreements that supported or related to the work.

2. **Licensing Business Entities in Which an Inventor Holds an Ownership or Management Interest**
   The University may enter into license agreements with business entities in which the inventor holds an ownership interest. Such licenses will be comparable to those negotiated with unrelated third party licensees. The terms may include royalty payment, equity interest, or a combination thereof, as consideration to the University of South Carolina Research Foundation for the license. The emphasis in structuring license agreements with inventor-employee start-up companies will be on helping the company become viable. Where the inventor-employee chooses to accept the expense and risk of protecting and marketing the technology in lieu of using the University's resources and services to do so, terms that reflect the inventor’s increased acceptance of responsibility and risk will be acceptable to the University. The IPO will maintain guidelines applicable to faculty or other university employees interested in starting such a company.

3. **Reassignment of Ownership to Inventors**
   Subject to the provisions described below, if the inventors wish to market, protect, and license intellectual property on their own with minimal University involvement, the University may reassign its right of ownership to the inventor(s). Normally, where the intellectual property is to be commercialized via a business in which the inventor holds a financial or management interest, the option described in 2, above would be used. The assignment shall be subject to the terms of any agreements that supported the related work. The return to the University for a reassignment of ownership will consist of recovery of any University patent and licensing expenses and up to 15% of royalties, equity, or other value received by the inventor(s) through subsequent licensing or reassignment. In exceptional cases, the Chief Research Officer in consultation with the appropriate school or college may make modifications in this rate of return.

E. Distribution of Revenue from Royalties or Sale of Equity Interest

In cases where the University of South Carolina is the owner of the intellectual property, it is the University's policy to distribute a substantial portion of net revenues to the faculty, staff, or student inventors/creators as personal income.

1. Goals of Revenue Distribution

The University's goals for revenue distribution are: (a) to create a strong incentive for faculty participation in technology transfer activity by providing revenues for the continued support of inventor/creator(s)' research, (b) to support further investment in research and educational activities generally, (c) to share revenues directly with inventor/creator(s) in the form of personal or bonus income, and (d) to fulfill the obligations of federal regulations. It is the University's intent to encourage intellectual property development and technology transfer activities.

2. Revenue Distribution Plan

The University shall maintain a revenue distribution plan that is comparable to those of other Universities of equivalent size, nature, and scope. Accordingly, after recovery of University expenses, including those for patent protection, marketing, development, and licensing, the inventor/creator's share of aggregate net revenues resulting from royalties and/or sale of equity interests will be 40%. The Chief Research Officer will determine how the remaining 60% will be distributed.

F. Ownership Claims of the Inventor

In cases where an inventor believes that his/her invention was conceived or reduced to practice independently of the University, the inventor can submit such claims to the IPO as part of the standard disclosure process. In claiming ownership, the burden of proof is with the inventor to document that the invention (a) was not conceived or reduced to practice as part of an activity within the inventor's scope of employment as a University employee, (b) that it was conceived and reduced to practice on his/her own time, and that (c) the inventor did not make substantial use of University resources, facilities, or grant funds administered by the University. Grounds for ownership claims may also be based on documentation from the inventor that the University did not uphold it's due diligence obligations to pursue commercialization in a timely fashion as described in Section III.C.

1. Documenting a Claim of Ownership

In support of his/her ownership claim, the inventor shall submit to the IPO at the time of disclosure all relevant documentation, which may include the following University documents:

(a) An approved "Outside Professional Activity Form" in the case of faculty inventors (or equivalent form in the case of staff). This form indicates that the work was performed as an approved outside professional

or consulting activity without substantial use of USC facilities or resources. The form should be signed by the inventor's University supervisor. In the case of faculty, the form should be signed by the relevant Department Chair and Dean.

(b) **A "Conflict of Interest Form" in the case of faculty inventors (or equivalent form or statement in the case of staff or students).** This form provides evidence that work on the invention is not in conflict with the inventor's position, affiliation, scope of employment, or work role at USC.

(c) **A signed statement from the inventor declaring that the invention is not dependent on work previously carried out at USC.** This statement should document that the invention is not dependent on work previously carried out by the inventor or others at USC, whether or not such work was previously disclosed, and that it is not within the inventor's normal scope of employment or role as a USC faculty member, employee, or student.

(d) **Other relevant documentation may be submitted as appropriate to the circumstances.**

2. Review Procedure

Upon receipt of supporting documentation, the ownership claim will be promptly reviewed by the IPO.

(a) **If the IPO believes that the inventor has a valid claim** of ownership the IPO Director assigns ownership in writing to the inventor. **If the IPO disputes the inventor's claim** of ownership, the inventor can either (a) accept the IPO decision, in which case the University retains ownership, or (b) obtain a review of the case by the IPC.

(b) **Review.** If the inventor opts for an IPC review, both the inventor and the IPO Director must immediately submit all relevant documentation to the IPC. The IPC then reviews the documentation, conducts a hearing if necessary, and renders a recommendation, usually within 30 working days after receipt of all documentation. The IPC can recommend (a) that the original IPO decision be upheld with the University retaining ownership, or (b) that ownership be assigned to the inventor. In either case, the IPC Chair communicates the Committee's recommendation in writing to both the inventor and the IPO. If the IPC finds in favor of inventor ownership, the IPO Director then can either (a) accept the IPC's recommendation and assign ownership to the inventor, reversing the original decision, or (b) let the original decision stand. If the IPO chooses to let the original decision stand, the inventor then has the right to appeal that decision as described in **paragraph (c)**, below.

(c) **Appeal.** Following review and recommendation of the IPC, the inventor may appeal the matter to the Chief Research Officer and the Provost. The Chief Research Officer and Provost will then promptly review all documentation, render a joint decision, and communicate their decision in writing, usually within 30 working days, to the inventor, the IPO Director, and the IPC Chair. The joint decision of the Chief Research Officer and Provost is final. In unusual or difficult cases where the Chief Research Officer and Provost cannot agree on a resolution, the President shall be consulted and will serve as the tie-breaker.

G. The review and appeals process described in section III.F.2, above, will be used by both the inventor/creator and/or the IPO for resolving any disagreements concerning intellectual property, whether or not those disagreements pertain to ownership. For example, issues may arise regarding the further development, sponsorship, or licensing of intellectual property, where ownership is not under dispute.

IV. COPYRIGHT POLICY

A. General Policy Statement

Copyright is the ownership and control of the intellectual property in original works of authorship, which are subject to copyright law. It is the policy of the University that all rights in copyright shall remain with the creator unless the work (a) is a work-for-hire (and copyright vests in the University under copyright law), (b) is supported by a direct allocation of funds through the University for the pursuit of a specific project, (c) is commissioned by the University, or (d) is otherwise subject to contractual obligations.

B. Books, Articles, and Similar Works, Including Unpatentable Software

In accord with academic tradition, except to the extent set forth in this policy, the University does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. Such works include those of students created in the course of their education, such as dissertations, papers and articles. The University claims no ownership of popular nonfiction, novels, textbooks, poems, musical compositions, unpatentable software, or other works of artistic imagination, which are not institutional works or the services of University non-faculty employees working within the scope of their employment.

C. Institutional Works

The University shall retain ownership of works created as institutional works as described in Section IV 1 of this policy. Institutional works include works that are supported by a specific allocation of University funds or that are created at the direction of the University for a specific University purpose. Institutional works also include works whose authorship cannot be attributed to one or a discrete number of authors, but rather result from simultaneous or sequential contributions over time by

multiple faculty and students. For example, software tools developed and improved over time by multiple faculty and students where authorship is not appropriately attributed to a single or defined group of authors would constitute an institutional work. The mere fact that multiple individuals have contributed to the creation of a work shall not cause the work to constitute an institutional work.

Institutional works shall belong to the University and shall be handled under the same procedures outlined above for patents.