

Appendices are not officially a part of the Faculty Manual. They are approved by Faculty Senate as guidelines.

PATENT AND COPYRIGHT POLICY

PATENT AND COPYRIGHT

Purpose and Scope

Patents. Although the search for commercially exploitable inventions is not a specific function of the university, a discovery leading to an invention may be a by-product of creative endeavor undertaken for other purposes. When such a discovery is made, it is the desire of the university to assist the inventor in evaluating, patenting, and exploiting his/her discovery. The purpose of this policy is to delineate procedures to encourage inventors to report discoveries with patent potential and to assist them while safeguarding the interests of all concerned parties. This policy pertains to all students, whether undergraduate, graduate, or postgraduate, part-time and full-time members of the faculty and staff, all other agents and employees of the university, and all other individuals who have made substantial use of the resources of the university.

It is the explicit intent of this policy to exclude any university claim to a discovery resulting from endeavor not supported by the university or endeavor to which the university's contribution is negligible. To safeguard against any future dispute as to university support, each discovery must be submitted for review in accordance with these procedures. A written opinion of the university will be provided the inventor to include, when appropriate, release of any university claim to the discovery.

Nothing herein will conflict with any agreement executed by the university with an outside agency. Outside sponsorship, particularly by federal agencies, usually involves agreement on patent matters, and each principal investigator will ensure that he/she and any fellow investigators understand such agreement. The Office of Sponsored Programs and Research will endeavor to obtain patent agreements with terms as favorable as possible for university personnel and will ensure that the inventor understands the final agreement.

Copyrights. The university places special emphasis on assistance to faculty for the development of instructional materials and other literary materials. The application of new technology to instruction and the creation of literary works often require expensive and complex equipment which cannot be owned or operated economically by individual faculty members or by regular departments on campus. In these cases the university often provides the necessary resources (or contracts for these resources). In addition, the development and

production of educational or instructional materials, media materials, and literary or other materials often require specialized skills. Because data about the learning process, teaching modes, and new concepts in education are increasing very rapidly, it is difficult for faculty to remain abreast of such developments without assistance. Therefore, many faculty utilize university consulting specialists and other types of support to bring themselves up to date. New instructional materials and other literary creations, consequently, may reflect a collaborative effort involving faculty members and other individuals or units on campus.

This policy governs the ownership, use, distribution and rights to income produced by these and other university-commissioned materials but specifically does not apply to materials or resources which are not university-commissioned (as defined in a later section of this policy statement). This policy applies to educational, literary, and media materials (regardless of medium utilized) provided the copyrightable material meets the university-commissioned test.

Administration

Committee. The university Patent and Copyright Committee (hereafter called the committee) consists of three members appointed by the President and six members of the faculty elected for terms of three years, with two members elected annually. The committee will select its own chair. At any time the chair may call upon any member of the university to appear before the committee to augment its expertise.

The committee will consider individual cases prescribed herein and be the patent and copyright advisory body within the university. It will report to the Provost.

Review Procedures. Any student, whether undergraduate, graduate, or postgraduate, or any faculty or staff member, or any agent or employee of the university, or any individual who has made substantial use of the resources of the university, who believes he/she has a new invention, e.g., discovery, computer program, process, method, use or combination, whether patentable or not, or a university-commissioned copyrightable work, shall bring it to the attention of the committee through its chair. Within a reasonable time period, usually thirty days after receiving such notification, the committee will convene to consider the invention or work. In considering the invention or work, the committee may consult with and receive advice from the university's counsel. Within ninety days following the initial meeting, the committee will make a determination of disposition of the case within the options of this policy and report its findings and recommendations to the Provost in writing. The committee, if it deems appropriate, may recommend changes in the equities set forth herein. The committee will also take reasonable steps to ensure that any joint inventors or authors (including students) are identified and, when appropriate, will recommend distribution of income among the inventors or authors. (Author[s] is used to designate the person[s] responsible for producing a copyrightable work.)

Patent Policy

Documenting a Discovery

When an individual believes he/she has conceived an invention, he/she should prepare a written and dated memorandum (disclosure statement) describing the invention (which serves as one proof of the date of conception). This memorandum, however, should be only supplementary to the careful keeping of regular laboratory notebooks. Included as a part of the memorandum should be the names of all inventors, drawings, sketches, and other pertinent data to illustrate the principle of operation of the invention and its performance. The inventor should date and sign each page of his/her notebook and the memorandum, including all sketches and data sheets. Two witnesses, who are thoroughly capable of understanding the invention and who are not joint inventors of nor interested in it, should also date and sign each page. Because priority of filing a patent application is often a decisive factor in awarding a patent, it is important that the notebook be kept current and the disclosure document be prepared as soon as possible, since these records can be relied upon as corroboration of dates of conception and reduction to practice.

The law provides that the inventor is not entitled to a patent if his/her invention has been described in a printed publication any where in the world more than a year before his/her patent application is filed. Since extensive developmental work is often required before a patent application can be filed, an inventor should consider the desirability of delaying publication for a reasonable period of time.

The disclosure memorandum should be submitted to the chair of the committee for review in accordance with the procedures below.

Invention Categories. The committee will determine that the discovery belongs to one of the following categories.

Category 1. The discovery resulted from endeavor to which the university did not contribute or contributed insignificantly. In these cases the university relinquishes any equity, and the inventor is at liberty to dispose of his/her discovery as he/she sees fit. The inventor may elect to submit his/her discovery through the university to a patent development organization with which the university has entered into agreement.

A determination that a discovery belongs in Category 1 would indicate the inventor did not receive financial support from university resources other than salary and related benefits, did not use time during which he/she was released from duties, had no assistance from other faculty members, staff, or students unless clearly shown to be on their own time, and made no use of university facilities, supplies, or equipment. Further, it would indicate that the inventor's association with the university was not a major factor in obtaining non-university support. A Category 1 discovery could also result from university support which is judged by the committee to be insignificant.

Category 2. The discovery resulted from endeavor supported by non-university agencies but with university sponsorship. In most cases a degree of university support will be evident, although in some instances association with the university as a factor in obtaining outside support may be the only university contribution. In cases in this category, the university reserves the right to patent and exploit the discovery, subject to such limitations as may be imposed by prior agreement with the external sponsor. Federal regulations require written invention disclosures and written assignments of such inventions made under

programs sponsored in whole or in part by the federal government. Forms for the inventions, disclosures and assignments may be obtained from the committee or from the System Legal Department.

Category 3. The discovery resulted from endeavor supported by the university. In these cases the university reserves the right to patent and exploit the discovery.

Developing Marketable Discoveries

In each case where the university support is evident (Category 2 or Category 3), the university reserves the right to assume full title to the discovery, to obtain a patent, and to exploit the invention. Sometimes it will not be to the best interest of the university or the Carolina Research and Development Foundation to assume this responsibility, weighing the complexity and cost involved against probable returns.

In the event the university or the Carolina Research and Development Foundation declines to assume the responsibility for development, the inventor will have the option of proceeding independently or using the services of a patent development organization with which the university has entered into agreement. The decision by the inventor to proceed independently will release the university or the Foundation from any further responsibility, but for its contribution to the discovery the university or the Foundation will receive a share of any income realized from commercial exploitation. This share of income will be determined at the time that either the university or the Foundation declines to assume responsibility for development.

Patent Development Organizations

The university has entered into formal agreements with, among others, The Battelle Development Corporation (BDC) and Research Corporation. Under each agreement the university may submit for evaluation such discoveries as it wishes. If the evaluation is favorable, BDC will provide the further development necessary to bring the invention to a point where it may be advantageously licensed. Research Corporation does not develop discoveries, nor does it provide funds to others for such development but rather relies on licensing established industrial concerns to do this at their own expense. Both organizations will accept title to the invention and proceed to obtain patents and to negotiate licenses. Any resulting income is divided among the organization, the university, and the inventor.

Normally, the inventor will recommend the organization to use in developing the discovery. The agreements between the university and the two organizations are filed in the Office of Sponsored Programs and Research where they are available for review, and members of the committee and of the Office of Sponsored Programs and Research may be consulted.

Latent Discoveries

Frequently, an external agency will solicit materials or devices from a university project for investigation by the agency staff for any patentable discovery. Such a solicitation shall be referred to the committee which will determine whether there is any apparent

discovery which should be developed under this policy. The committee will also determine whether proposed arrangements with the soliciting agency are reasonable from the point of view of the university and university personnel involved. It will submit a written report to the Provost who will take appropriate action.

Equity

The equity in any marketable invention is expressed as a percentage of income. Nothing herein shall conflict with an agreement signed by the university as a condition to receiving support from an external sponsor.

1. In cases in which the inventor proceeds independently, but in which the university or the Carolina Research and Development Foundation has established an interest (Category 2 and 3), the university or the Carolina Research and Development Foundation will receive a maximum of 15 percent of income after deducting from income any expenses of litigation and expenses including, but not limited to, research and development expenses, patent expenses, and licensing expenses.
2. In cases in which Research Corporation assumes responsibility, after first deducting any expenses of litigation consented to by the university, 42 percent of royalty income will be retained by the Corporation in accordance with the terms of the agreement. The first \$1,000 of the balance will be paid to the inventor, and any balance beyond \$1,000 will be divided equally between the university and the inventor. All costs of filing and prosecuting U.S. and foreign patents and for negotiating and administering licenses are paid by Research Corporation out of its 42 percent share of the royalty income.
3. In cases in which The Battelle Development Corporation assumes responsibility, 50 percent from income will be paid to BDC after deducting amounts from income necessary to reimburse BDC for its expenses including, but not limited to, research and development expenses, patent expenses, and licensing expenses. The first \$1,000 of the balance will be paid to the inventor, and any balance beyond \$1,000 will be divided equally between the university and the inventor.
4. In cases in which the university or the Carolina Research and Development Foundation assumes responsibility, 25 percent of income will be paid to the inventor after deducting from income any expenses of litigation and expenses, including but not limited to, research and development expenses, patent expenses and licensing expenses.

With a Category 1 discovery (no university interest), the inventor may elect to use the services of a patent development corporation, submitting his/her discovery through the University. In these cases the distribution of income between the university and the inventor will be adjusted in favor of the inventor.

Copyright Policy

Definition of University-Commissioned Educational and Other Literary Materials and Media Materials

1. The University of South Carolina recognizes the right of all employees to engage in the uncommissioned creation of scholarly, pedagogical, and artistic works subject to copyright and to copyright such works and to receive royalties from their use. Uncommissioned activities are defined as those which do not receive substantial aid from the university or from an outside agency through university channels. The university does not normally construe the provision of office and library facilities and modest routine secretarial assistance as constituting substantial aid, nor does it construe the payment of salary as substantial aid except in situations where the funds are paid specifically to support the development of original materials subject to copyright. Scholarly books and articles, textbooks resulting from usual teaching activities, painting, musical compositions, graphic art, and media materials are all examples of work that may be uncommissioned.
2. The university gains a right to materials subject to copyright when such materials result from activity commissioned by the university or by an outside agency through university channels. The substantial aid that constitutes a commission may be in the form of directly allocated funds or of university facilities and resources. Educational, literary, and media materials which may be commissioned by the university include, but are not limited to, the following:
 - a. books, periodicals, lectures, or other productions prepared for oral delivery and the notes to same, study guides, texts, syllabi, workbooks, bibliographies, and tests;
 - b. programmed instructional materials;
 - c. a work or works of art or models or designs for a work or works of art;
 - d. slides, transparencies, charts, maps, photographs, drawings, prints, pictorial illustrations, labels, and other graphic materials, photographic or similar visual materials and film strips;
 - e. computer programs;
 - f. dramatic productions, musical productions or music compositions of any length or description;
 - g. three-dimensional works of a scientific, technical, or instructional character;
 - h. three-dimensional materials and exhibits;
 - I. motion pictures;
 - j. recorded video and audio tapes or live transmission;
 - k. contributions to or component parts of any of the above, including notes, drafts, models, story outlines, scripts, shooting scripts, production outlines, out-takes;
 - l. combinations of the above and other types of materials; e.g., multimedia and

- m. other instructional or educational, literary, and media packages;
 - m. reproductions of any of the above in any quality and in any form.
3. Faculty members, students, or staff members having questions as to whether educational, literary, and media materials they are preparing or planning to prepare should be considered university-commissioned must petition their department heads who will in turn notify the Patent and Copyright Committee of the circumstances surrounding the project. The petition should contain brief descriptions of the materials to be produced, the resources to be utilized, and a statement concerning the time to be devoted by the author/creator to its preparation. The committee may wish to call a hearing to further investigate the production of the piece of work in accordance with the Review Procedures in the section on "Administration." The findings of the committee and the Provost are subject to appeal as outlined in this section.

Ownership and Copyright

The legal title to all university-commissioned educational, literary, and media materials as defined in above shall be vested in the University of South Carolina with the following exception: materials produced on grants from the federal government or other outside sponsors shall be subject to the conditions of the contract or grant (to be negotiated solely by the university) with respect to ownership, distribution, use, and other residual rights of and to such materials. All such materials shall bear the required statutory notice of copyright naming the university as the copyright proprietor. The university will advance the copy rights on those materials deemed by legal counsel to be eligible for new copyright. After consultation with the author, the university may at its discretion use, assign, transfer, license, lease, or sell all or part of its legal rights in educational, literary, and media materials.

Pre-Production Agreement

Since conditions of production, use, and final disposition will vary from time to time, prior to the beginning of production authors/creators and the university will develop written agreements to define the rights and responsibilities of the parties. Such agreements are subject to the guidelines set forth herein and will be complete and specify any or all exclusions. The university legal staff will be consulted so that appropriate contractual details may be worked out, and a final copy of all contracts shall be maintained on record in the legal office.

Internal University Use

"Internal" is defined as all University of South Carolina campuses and extensions by television or otherwise. All use of university-commissioned materials by any unit of the university for instruction or other purposes will be subject to the following conditions:

1. Use internal to the university requires approval of the college, department, or individual primarily responsible for the materials, so long as said materials are used within the context of their intended use. Use out of such context

requires special permission of the creator and his/her department.

2. The contribution of the faculty member, student, or staff member involved in the production of university-commissioned materials must be explicitly recognized and noted by the user.

External Use

After consultation with the author, the university as owner and copyright holder may at its discretion assign, license, transfer, lease, sell, or otherwise convey all or part of its rights in university-commissioned materials. Charges to external users will be negotiated solely by the university or its assignees with such users. It is possible that differing fees to other State agencies, nonprofit educational users, consortium users, and others will be a result of these negotiations. In any case, the university has the exclusive right to set per unit prices, package prices, and conditions under which sale, lease, reproduction, or use of materials is authorized.

Revision

Revision of university-commissioned material which does not require substantial university resources may be made at any time by the faculty member, student, or staff member involved subject to the approval of the member's department.

The responsible faculty member may recommend to the university and other users the discontinuance of distribution and/or use of materials which he/she deems no longer appropriate or which he/she judges to be detrimental to his/her professional reputation. Mutual agreement by both parties is required for revision or discontinuance in such cases. After a significant period of non-use (at least three years), materials which have not been revised shall be reviewed by the authoring faculty member, student, or staff member, and the university unit or units most directly involved in their production and the authoring faculty member, student, or staff member may request their withdrawal, erasure, or destruction. The university, in its sole discretion, may require such withdrawal, erasure, or destruction, and its decision in that regard shall be final.

Equity

With the exception specified below, the university shall not make any payment to the university-employed faculty member, student, or staff member involved in the production of university-commissioned educational, literary, and media materials for production and internal use other than the compensation which he/she regularly receives from the university.

1. Exceptions on payments for internal use of materials:
 - a. At the discretion of the department chair, faculty will normally be accorded released time at a declining level through the stages of planning, production,

and presentation, including the first and subsequent semesters of utilization. Faculty eligible for released time include the responsible faculty member and other faculty members assigned to work on the project by department or its functional equivalent.

- b. If the faculty member, student, or staff member leaves the university, further internal use of the materials upon reasonable terms shall be provided for and payments to his/her estate for such internal use of the material shall continue to be made, subject to terms of pre-production agreements.
- c. A faculty member, student, or staff member not on assignment to the university (e.g., during summer sessions or on leave) but appearing in or involved in producing educational, literary, or media materials may be provided compensation when such materials in which he/she personally and prominently appears are used. Compensation will be mutually agreed upon in the pre-production agreement by the faculty member, student, or staff member and the department involved, based upon (1) the amount of continual responsibility of the party involved for monitoring, revision of lessons, or supervision of the work of the course if known; (2) whether the course is completely or partially recorded; (3) the extent to which the participating faculty member, student, or staff member's time and creative efforts have been previously compensated; and (4) any other relevant factors.

2 The university shall have the perpetual right to market or license external use of university-commissioned materials. The financial benefits of external distribution shall be shared by the department or functional equivalent; the responsible faculty member, student, or staff member; and the institution, with a negotiated portion designated for outside or non-university production sources as required.

- a. The division of income accruing to the university under this policy shall be: 25 percent to the faculty member, student, or staff member (to be divided equitably if there is more than one originator); 25 percent to the department and/or other functional unit which authorized and supported the development and production of the materials; 25 percent to the Instructional Development Fund; and 25 percent as general university income. The monies distributed to the department and/or other functional units and to the Instructional Development Fund shall be used to encourage further educational and instructional activities by the faculty.
- b. Exceptions to distribution percentages and/or payment provisions may be made for incentive purposes but must be negotiated in preparation agreements.

3 If the university licenses an external agency to produce or market the materials, the total royalties shall be negotiated between the university and the external agency. The net income from royalties accruing to the university shall be divided among the faculty member, student, or staff member, the university, and the department in the same proportions as previously delineated.

4. It is expected that the share of each department (or functional equivalent) will be devoted to (1) teaching load adjustment necessitated by production, or (2) development of new course materials or other educational, literary, and media works and/or the revision or upgrading of the original materials.
5. The distributions above shall be continuing except in the case of termination or death (see 7 below.)
6. The foregoing does not apply to "work-for-hire" arrangement or to the production of copyrightable materials as an assigned duty.
7. The institution's right to use materials will continue regardless of the employment status of the responsible faculty member, student, or staff member. The author/creator's share in external distribution revenues shall remain the same for a ten-year period and shall accrue to his/her heirs in the event of termination or death.

Protection and Liability

Protection. The university shall be responsible for the investigation of recorded allegations of unauthorized use or infringement of copyrighted materials. Where legal action is deemed necessary by the university, in its sole discretion, to enforce copyrights, the university agrees that all costs and expenses incidental to such actions shall be borne by the university and any proceeds of litigations in excess of costs shall be shared between the parties in the proportions set forth previously (as applicable) when final adjudication of the legal action is rendered.

Liability. The faculty member, student, or staff members responsible for the creation of university-sponsored educational, literary, and media materials shall obtain appropriate releases from individuals prominently appearing in or giving support to the materials, giving all necessary rights to the university. Form releases may be obtained from the System Legal Department. All original releases must be filed with the university's legal counsel.

Before any external use is made of university-sponsored material, the faculty member, student, or staff member authoring or creating the material shall certify in writing to the university that to the best of his/her knowledge materials used therein do not infringe or violate any existing copyright or other personal or property right of any legal or natural person. If this statement proves false due to misrepresentation or negligence, the faculty member, student, or staff member shall indemnify and hold harmless the university for all costs and expenses to which it has been subjected as a result of such representation made herein.

In the event that others allege violations of personal or property rights by the university, or by the faculty member, student, or staff member, or producer of university-sponsored educational and other literary materials, the university will assume responsibility for defense of any litigation and the satisfaction of any judgment rendered against the university, faculty member, student, or staff member. (This provision is subject

to the conditions set out above.)

Consultant Activity

A member of the university staff may be permitted to do professional work of an expert character outside the university and to receive pay therefor when the work in question contributes to the professional development of the faculty member. No such outside work shall be undertaken except on the prior approval of the dean of the school or college concerned and prior authorization of the Provost. The university reserves the right to declare a conflict of interest at any time. Laboratories, equipment or other facilities of the university generally are not available to university employees for consulting work. Patent and copyrights for approved consultant activities are matters to be decided between the faculty member and the outside agency. If, however, university facilities are used, an interest of the university is thereby established, and agreement as to patent and/or copyright matters should be resolved before undertaking the project. Conversely, when the university hires a consultant, specific prior arrangements should be made in the consultative agreement for protection of the university's rights. The Patent and Copyright Committee should be consulted for assistance in resolving these questions.

In cases where a university employee is hiring a consultant to be paid from a university grant or contract, such consulting is subject to the funding agency's regulations imposed within the grant or contract document. Further, if the consultant to be hired is a State employee, remuneration for such activities is governed by the university's policies on extra compensation and the State's policy on dual employment.