

University Policy: Intellectual Property Policy

Policy Category: AU Community

Subject: Copyright, patent, and intellectual property ownership

Responsible Executive: Provost

Office Responsible for Review of this Policy: Office of the Provost

Supplemental Documents: NA

Related University Policies: Principal Investigator's Handbook; Faculty Manual

I. SCOPE

This Policy applies to all faculty, staff, and students at American University.

II. POLICY STATEMENT

American University is committed to creating an environment that supports and encourages innovation and development of work product, original content, discoveries, and inventions in research, scholarship, education, journalism, and other activities. As part of these activities, faculty, staff, and students create patentable inventions, copyrightable works, and other forms of intellectual property that warrant protection and may have financial as well as scientific and scholarly value. This Policy defines the rights and responsibilities of the University and its faculty, staff, and students with respect to ownership and administration of intellectual property.

III. DEFINITIONS

- A. Classroom.** Classroom is a space devoted to instruction, including a regular classroom facility, a virtual platform setting, a laboratory, and a field site/location, that is formally utilized for learning in connection to an academic course led by a member of the faculty.

- B. Exceptional use of university resources.** Exceptional use of university resources occurs when the University has provided substantial support specifically for production of the work or the invention with resources of a degree or nature not routinely made available to faculty. This may include unusual reduction of teaching, service, or similar university activities, and other significant institutional funding in

support of the work's or the invention's creation; or free use of specialized university facilities outside of classroom settings. Routine use of office space, laboratory space, equipment and resources commonly available to faculty in a particular discipline, office equipment, library materials or materials stored on a server, or university-provided computing resources (including online learning systems) is not considered exceptional use of university resources. Works or inventions created on faculty sabbaticals and during approved research leave are considered routine and do not in and of themselves fall under exceptional use of university resources.

- C. Inventions.** Inventions is a term that is meant to cover tangible or intangible inventions, including but not limited to any device, discovery, process, method, machine, manufacture, composition of matter, or improvement thereof, which is or may be patentable, whether or not reduced to practice.
- D. Inventor(s).** Inventor means an individual or individuals who conceives and demonstrates proof-of-concept, reduces to practice, or otherwise establishes the novelty and utility of an invention.
- E. Scholarly, Professional, and Creative Work.** Scholarly, Professional, and Creative Work includes a pedagogical, scholarly, literary, or artistic work created by a faculty member (including full-time, part-time, and adjunct faculty members) as part of traditional academic activity. Such Scholarly, Professional, and Creative Works include, but are not limited to, books; journal articles; articles; reviews; course syllabi; tests; course assignments; monographs; scholarly papers; musical compositions; works of art; photographs; computer programs; databases; unpublished manuscripts; online publications; blogs; podcasts; audio recordings; recordings or transcriptions of lectures, class sessions, or performances; instructional materials made by faculty hosted on learning management systems and other online learning platforms; and data sets generated regarding the above.
- F. Sponsored Programs.** Sponsored Programs mean activities that are externally funded and which include a formal funding instrument such as a grant, contract, or a cooperative agreement between the University and the sponsor. Sponsored Programs involve transactions that include a specified statement of work and a related, reciprocal transfer of something of value.
- G. Works.** Works mean any literary, dramatic, artistic, audio-visual, and musical material or works, and all other works that would qualify as copyrightable or copyrighted works.

IV. POLICY

A. Patentable Inventions

1. Inventions by Faculty Members

A faculty member who creates an invention wholly on their own time and without use of University funds or facilities will own all the rights to the invention. An invention will be owned by the University under the following two separate exceptions:

a. Written Agreement

An invention created pursuant to the terms of a written agreement shall be owned by the University provided that the terms of the written agreement specifies the University as the owner of the invention.

b. Exceptional Use of University Resources

An invention created with exceptional use of university resources shall be owned by the University unless there is a written agreement providing otherwise. The Vice Provost for Research or designee will determine, if applicable, whether an invention has been created through exceptional use of university resources at the time when the faculty inventor submits the Invention Disclosure Form as referenced in Section IV(B)(1). The Vice Provost for Research or designee shall inform the faculty inventor of the decision. If the faculty inventor disagrees with the determination that the use of university resources is exceptional, they may file a written appeal to the Chair of the Faculty Senate's Committee on Faculty Grievances within fourteen days (14) days after the Vice Provost of Research's determination as set forth in Section IV E(2).

If a faculty inventor who owns the rights to an invention wishes for the University to assist in perfecting and commercializing the invention, the faculty inventor may disclose the invention and assign ownership to the University pursuant to this Policy.

2. Inventions by Students

A student who creates an invention in a class, as a co-curricular activity, or independently will own all the rights to the invention. An invention made by a student inventor will be owned by the University if it is either: (a) specified in a written agreement between the University and the student inventor; or (b) created or made by a student inventor as university employee, either as a work-study or regular employee, as part of their assigned duties.

If a student inventor is involved in assisting faculty with creating an invention or is involved in creating an invention as part of their graduate research assistantship, then the faculty should have a written agreement with the student that clearly states the ownership interest of the student in the invention. If the student is a significant contributor to the invention, then the assumption is that they should be considered as a co-inventor and share appropriately in rights to the invention.

3. Inventions by Staff

A staff member who creates an invention wholly on their own time and outside the scope of their university employment will own all the rights to the invention. An invention made by a staff inventor will be owned by the University if it is either: (a) specified in a written agreement between the University and the staff inventor; or (b) created or made within the scope of University employment, including work under University grants and contracts with third parties.

4. Inventions Related to Sponsored Programs

The ownership of an invention with funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements, shall be determined by written agreement between the University and the third party.

5. Inventions by Independent Contractors

An invention created for the University by independent contractors, excluding under Sponsored Programs, shall be owned by the University. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized university official, including but not limited to a provision that the University shall own the invention produced by the independent contractor.

B. Disclosing, Protecting, and Licensing Inventions

1. Faculty, staff, and students shall disclose a patentable invention that may be owned by the University as described in this Policy to the Vice Provost for Research or designee promptly and in reasonable detail by submitting the Invention Disclosure Form. Use of this form has the effect of initiating the process of review, including but not limited to determining any patentability and commercialization potential regarding the invention.
2. The Vice Provost for Research or designee will review and decide whether to pursue patent protection for any invention in a timely manner, normally within ninety (90) days.
3. If, after a reasonable time for evaluation, the University fails to pursue or positively elects not to pursue a patent, the inventor may elect to pursue the patenting and commercialization of a potential patentable invention without assistance from the University. In this event, the Vice Provost for Research or designee must be so notified in writing and the plans for doing so briefly described. The Vice Provost for Research or designee shall notify the inventor as to the University's intent with regard to the invention, including, if appropriate, the assignment of rights to the individual. An inventor who obtains a patent, under the terms of this Section, without assistance from the University shall be entitled to all royalties and other

income resulting from the patent. It is expected that in pursuing patents, individuals will make arrangements that best serve the public interest, and the Vice Provost for Research will be available to advise inventors on this issue.

4. Notwithstanding Section IV (B) of this Policy, whenever research or a related activity is subject to a written agreement between an external sponsor and the University that contains restrictions as to the disposition of the invention, any invention shall be handled in accordance with such written agreement. All participants in externally sponsored research accept the conditions in the agreement between the University and the external sponsor in agreeing to participate in the Sponsored Programs. In negotiating with sponsors, the Vice Provost for Research or designee should strive to obtain the greatest obtainable rights for the inventor and the University consistent with the public interest and this Policy.
5. If the University elects to pursue a patent, the inventor who created the invention shall assist the University in preparing and prosecuting patent applications. Inventors are required to execute all contracts, assignments, waivers, patent applications, and other documents necessary to carry out the provisions of this Policy in a timely manner.
6. In cases in which the University elects to pursue a patent, the University will also be responsible for licensing, marketing, and distributing the invention. The University will consult with the inventor on licensing opportunities and will share in royalties received by the University pursuant to Section IV (B)(7) of this Policy.
7. The University and the inventor will share in royalties received by the University for the invention. Net royalties are defined as gross royalty income less actual expenses incurred by the University in administration of the invention, including but not restricted to legal fees, patent maintenance fees, and marketing expenses. The University shall share with inventors the net royalties received by the University as follows: (a) thirty-three and one-third percent to the inventor; (b) thirty-three and one-third percent to the academic unit, department, or center that supported the creation of the invention; and (c) thirty-three and one-third percent to the Office of Research. Where there is more than one inventor, the inventor share of net royalties shall be divided equally unless the inventors have unanimously agreed otherwise in writing. The Vice Provost for Research shall have authority to resolve any unusual circumstances and may make exceptions to the net royalty distribution rules after consulting the affected parties. In all circumstances, the University and the inventor may negotiate other arrangements.

C. Copyrightable Works

1. Works by Faculty Members

a. Scholarly, Professional, and Creative Work by Faculty:

In accordance with academic tradition, and unless specified by the Policy, the University does not claim ownership to Scholarly, Professional, and Creative Works, and copyright ownership of the Scholarly, Professional, and Creative Work will be owned by the faculty member who created the work. If such Scholarly, Professional, and Creative Work embodies an invention, the faculty member will disclose the invention to the University in accordance with Section IV (B).

When multiple faculty members create a Scholarly, Professional, and Creative Work, the faculty members will be joint copyright owners of the work unless there is a written agreement to the contrary.

In consideration of the University not claiming ownership (unless specified by this Policy) to Scholarly, Professional, and Creative Work, faculty members grant the University a non-exclusive, perpetual royalty-free license to use work created for ordinary teaching use (including but not limited to syllabi, tests, assignments, reading lists, and course descriptions) for educational, research, internal, archival, or administrative purposes.¹ This non-exclusive license ensures that, as a knowledge-generating and -sharing institution, the University will not be left, on the departure of a faculty member, without institutional history, a base of knowledge about how courses were taught, and the kind of ordinary information that helps manage transitions and keeps continuity in a particular course or program. Appropriate attribution should be made in uses of substantial intellectual contributions where it is reasonable and appropriate.

The non-exclusive license described in the above paragraph of the Policy does not grant the University permission to use a faculty member's work created for ordinary teaching use for commercial purposes beyond the use stated in this Policy or in another instructor's course. The University must obtain the express written consent of the copyright holder for such use. Faculty members are also encouraged to disseminate their work for the public good, using wherever possible open-access methods, and to promote American University.

The following are two separate exceptions to faculty ownership of Scholarly, Professional, and Creative Work:

i. Written Agreement

¹ A non-exclusive license does not grant the University any intellectual property rights in the works. All copyright in such works remains with the faculty. The non-exclusive license simply gives the University permission to use the work for the use stated. In addition, the University's non-exclusive license granted does not get transferred to a third party. This means that a third party does not have any permission to further distribute the work if they gained access to it. The third party still must get permission from the copyright owner(s).

When Scholarly, Professional, and Creative Work is produced pursuant to the terms of a written agreement, the agreement shall specify ownership in the work.

ii. Exceptional Use of University Resources

Copyright ownership of Scholarly, Professional, and Creative Works produced with exceptional use of university resources shall belong to the University unless there is a written agreement providing otherwise. Whether an individual work has been created through exceptional use of university resources shall be determined initially by the Vice Provost for Research or designee in consultation with the dean or their equivalent of the academic unit in which the faculty member has principally been involved, or from which they have received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty in that department or unit. At the time that exceptional resources are approved, the Vice Provost for Research or designee shall inform in writing that faculty member of their decision.

If the faculty member who created the work disagrees with the determination that the use of university resources is exceptional, they may file a written appeal to the Chair of the Faculty Senate's Committee on Faculty Grievances within thirty (30) days after the Vice Provost for Research or designee's determination as set forth in Section IV (E)(2).

If the Vice Provost for Research or designee fails to assert copyright ownership rights when an exceptional use of university resources is authorized, the faculty member will be presumed the copyright owner.

b. Administrative Works by Faculty

The copyright ownership of any work by faculty, excluding Scholarly, Professional, and Creative Work, that is made at the express direction of a supervisor, prepared pursuant to the specific provisions incorporated within a position description, or prepared in the performance of any administrative duty shall belong to the University.

c. Recordings in the Classroom

Faculty may give permission to students to make recordings in the classroom for personal use or for ordinary learning purposes pertaining to that class. Faculty may make recordings in the classroom for any educational purpose. If either faculty or students want to use classroom recordings for any other purpose, they need permission in advance from the Provost or their designee

and the copyright-holder of the recording. The University may also authorize recording of course content for students registered with the Academic Support and Access Center (“ASAC”) who have a documented disability and for whom ASAC has approved recording of course content as a reasonable accommodation.

2. Works by Students

Students own the copyright to the academic work they produce unless there are exceptional circumstances. In such cases, a written agreement is required. Academic work includes class papers, theses, dissertations, artistic and musical works, and other creative works made by university students.

Work produced by students as university employees, either as a work-study or regular employee, as part of their assigned duties is owned by the University.

If a graduate research assistant is involved in assisting faculty with producing Scholarly, Professional, and Creative Work as a part of their assistantship, the faculty should have a written agreement with the student that clearly states the copyright interest of the student in the work. If the student is a significant contributor to the work then the assumption is that they should be considered as a co-author, co-inventor, or co-creator and share appropriately in rights to the work.

3. Works by Staff

Work produced by staff members within the scope of their employment is considered work-for-hire and the University owns the copyright to the work produced, unless there is a written agreement between the parties providing otherwise.

4. Works Related to Sponsored Program Research

The copyright ownership of any work developed using funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements, shall be determined by written agreement between the University and the third party.

5. Works by Independent Contractors

Work produced for the University by independent contractors, excluding Sponsored Program Work, shall be considered work-for-hire and shall be owned by the University. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized university official, including but not limited to a provision that the University shall own copyrighted works produced by the independent contractor.

6. Independent Works by University Staff

The University does not claim ownership of intellectual property that is produced by staff on their own time and that is outside the scope of their employment, nor does it claim ownership of intellectual property produced without exceptional use of university resources, except as specifically provided in the Policy on Ownership of Copyright for American University.

7. Other Works by Written Agreement

To maintain flexibility and to anticipate new forms of work not specifically covered by this Policy, the University may vary from this Policy by written agreement. The written agreement should be in place at the beginning of a specific project, should specify the scope of the work covered, the compensation, if any, and should allocate the ownership and use of the products resulting from the work.

E. Administration of the Policy

1. The Vice Provost for Research shall be responsible for establishing and maintaining procedures and administrative support needed to implement this Policy.
2. The University shall use the Faculty Senate's Committee on Faculty Grievances ("Committee") to review faculty disputes of exceptional use of university resources and to make recommendations to the Provost. If a faculty member disputes the determination that the use of university resources is exceptional as specified in Section IV (A)(1)(b) or Section IV(C)(1)(a)(ii) the faculty member may seek resolution of the dispute by filing a written request with the Chair of the Committee. Within forty-five (45) days after the Committee receives the initial written request, the Committee shall report its findings and conclusions to the Provost in writing along with a written recommendation for disposition of the matter. However, the Provost shall have the authority to extend reasonably this period should the Committee need additional time. Copies of such findings, conclusions and recommendations shall be provided to all parties. On receipt of such findings, conclusions and recommendation, the Provost shall issue a written decision in the matter. The Provost's decision shall be final.
3. If a staff member (including a student employee) has a question about whether a work was produced within the scope of their employment, they should discuss the matter with their direct supervisor. Any decisions regarding ownership of a work by a staff member will be referred to the appropriate vice president or Provost who oversees the division in which the staff member works. The appropriate vice president or Provost shall issue a written decision in the matter and that decision shall be final.
4. This Policy incorporates the University's conflict of interest policies, including the Code of Business Ethics, Financial Conflicts of Interest, and Section 26 (Professional Guidelines) of the AU Faculty Manual and Section 24 of the WCL Faculty Manual. Specifically, faculty with full-time appointments, during their employment at the University, should not use (or permit others to use) their works or inventions in ways

that compete with the University; are to the disadvantage of the University and its legitimate interests; or create a situation that would put the University at a competitive disadvantage unless prior written permission is obtained from the Provost or designee. For example, if the faculty member receives written approval of the college dean or director and the Provost or designee to teach at another college or university, then this approval also grants the faculty member permission to use their works in the teaching of the course. This provision does not apply to works created in conjunction with professional activities in conformance with University norms such as, but not limited to: sharing syllabi or other course materials with colleagues at other non-profit educational institutions; ordinary outside consulting; participation in professional or scholarly organizations; scholarly presentations and publications; pursuit of future employment opportunities; and public service.

5. The University, faculty, staff, and student agree to execute all papers and to perform such other proper acts as may be deemed necessary to secure the rights described in this Policy.

6. Nothing in this Policy shall be construed to preclude the University and faculty, staff, and students from entering into written agreements governing the use, licensing, or sharing of licensing revenues with each other with respect to works, whether such works are owned by the University, the faculty, staff, or students under this Policy.

V. EFFECTIVE DATE(S) AND REVISIONS:

This Policy is revised effective July 7, 2021.

This Policy was approved January 29, 2009.