



## Intellectual Property Policy

Effective Date: August 31, 1964

Approval: January 8, 2015;  
University President

Maintenance of Policy: Intellectual  
Property Administrator

**PURPOSE:** This policy is a comprehensive document which encompasses all aspects of intellectual property management, including development and ownership; protection and commercialization; and distribution of royalties. This policy provides an incentive to University authors and inventors while recognizing the University's fundamental rights in intellectual property resulting from the creative efforts of those utilizing University resources.

**SCOPE:** This policy is applicable to the college, schools, departments, and Research Institute, as well as all faculty, staff, students, visitors, and others participating in University programs. This policy covers all intellectual property conceived, first reduced to practice, written, or otherwise produced by faculty, staff, students, or visitors to the University using University funds, facilities, or other resources.

**POLICY:** Research is recognized by the University of Dayton (UD) as an essential activity to develop new knowledge, encourage the spirit of inquiry, and promote scholarship in all areas of learning. As a result of such research, technology may be developed by faculty members, professional and technical staff members, students, and visitors to the University. This technology could contribute significantly to economic, social, and cultural progress.

The fundamental objectives of the University's policy on intellectual property include the following:

- a. to facilitate the transfer of knowledge and technology and to use such knowledge and technology to the general benefit of society;
- b. to encourage research, scholarship, and a spirit of inquiry thereby generating new knowledge;
- c. to provide an administrative system to determine the commercial significance of discoveries and new developments, and to assist in bringing these into public use;
- d. to provide for the equitable disposition of interest in new intellectual property among the developer, the University, and, where applicable, the sponsor;

### REFERENCE DOCUMENTS:

1. University of Dayton Intellectual Property Policy and Procedures and Appendix: Forms and Agreements
  - a. Nondisclosure Agreement
  - b. Intellectual Property Rights agreements
  - c. Technology Disclosure Form - Inventions
  - d. Technology Disclosure Form - Software
  - e. Waiver Request
  - f. Conflict of Avoidance Statement
  - g. Materials Transfer Agreement

### APPLICABLE REGULATIONS:

1. 35 U.S.C. Patents
2. 17 U.S.C. Copyrights
3. 15 U.S.C.37 CFR, *See Specifically:* Bayh-Dole Act; 37 CFR 401;
4. OMB A-124; FAR 52.227-11 Patent Rights - Ownership by Contractors (Dec 2007) & 52.227-14 Rights in Data - General (Dec 2007);
5. OMB A-110

### POLICY HISTORY:

Approved in its original form: August 31, 1964 (Title: Patents and Copyrights Policy);

Approved as amended: November 13, 1978;

Approved as amended: December 16, 1994 (Title: Intellectual Property Policy and Procedures);

Approved as amended: June 17, 1996

Approved as amended: January 8, 2015

**POLICY (continued):**

- e. to provide incentives to developers in the form of personal development, professional recognition, and financial compensation;
- f. to safeguard intellectual property so that it may receive adequate and appropriate legal protection against unauthorized use; and
- g. to fulfill the terms of a research grant or contract.

**OWNERSHIP RIGHTS IN INTELLECTUAL PROPERTY**

Rights in intellectual property, made or created by UD faculty, students, staff, and others participating in UD programs, including visitors, are as stated in the following subsections.

**University Ownership**Significant Use of University-Administered Resources

When intellectual property is conceived or developed by faculty, students, staff, visitors, or others participating in UD programs ("UD associates") through the significant use of UD funds or facilities, UD will own the intellectual property and any associated copyrights, patent applications, and patents. If the intellectual property is not subject to a sponsored research or other agreement giving a third party rights, the issue of whether significant use was made of UD funds or facilities will be determined by the Intellectual Property Administrator based on recommendations by the appropriate dean/department chair or Research Institute division head. UD presumes that significant use of UD funds or facilities is made whenever an invention, discovery, improvement, or other form of intellectual property is conceived or developed by a UD associate which pertains to or results from employment with UD or association therewith. Therefore, the significant use criterion may apply even when UD funds or facilities are not directly employed in the creation of the intellectual property. It is presumed in such instances that creation of the intellectual property relies on the knowledge and expertise acquired through the UD associate's relationship with UD, and in such cases, title to the intellectual property is appropriately vested in UD.

Textbooks, manuals, or training materials developed in conjunction with class teaching are excluded from the "significant use" category, unless such materials were developed using UD-administered funds paid specifically to support the development of such materials.

Course materials developed for teaching courses delivered fully online shall be excluded from the "significant use" category unless such materials were developed using UD administered funds paid specifically to support that development. In that case, such materials will be co-owned by the creator and the University, unless an alternative agreement is reached between the creator and academic unit. The formal development of online course materials initiated by departments or units, supported by UD resources, and intended for purposes beyond the efforts of a single faculty member for his or her own teaching constitutes significant use. Textbooks, manuals, training materials, and other course materials for courses that are not delivered fully online are excluded from the "significant use" category unless such materials were developed using UD administered funds paid specifically to support that development.

The use of commonly provided resources, including libraries, offices, classrooms, and clerical support, does not constitute significant use of UD funds and facilities.

Works for Hire

Ownership of Intellectual Property created as a "work-for-hire" by operation of the copyright law or created pursuant to a written agreement with UD providing for transfer of copyright or ownership to UD will vest with UD.

**POLICY (continued):**

A "work-for-hire," as defined by law, is a work product created in the course of the author's employment. Copyright of the work product in these situations belongs to the employer. For example, results of work assigned to staff programmers or writers of University publications are considered to have been created in the course of the author's employment and are the property of UD. UD shall own all works for hire.

Under the Copyright Act, 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 UD personnel are cautioned to ensure that independent contractors agree in writing that ownership of the commissioned work is assigned to UD, except where special circumstances apply and it is mutually agreed in writing that the author will retain ownership.

**Contracted Services**

All UD personnel responsible for obtaining contracted services which may result in the creation of intellectual property, other than copyrightable works, are cautioned to ensure that independent contractors agree in writing that ownership of such intellectual property shall be retained by UD, except where special circumstances apply and it is mutually agreed in writing that the independent contractor will retain ownership.

**Ownership Subject to Sponsored Research Agreements**

Ownership of Intellectual Property developed in the course of or pursuant to a sponsored-research or other agreement will be determined according to the terms of such agreement.

With regard to patents, research contracts sponsored by the Federal Government are subject to statutes and regulations under which UD acquires title in inventions conceived or first reduced to practice in the performance of the research. UD's ownership is subject to a nonexclusive license to the government and the requirement that UD retain title and take effective steps to develop the practical applications of the invention by licensing and other means.

With regard to copyrights, 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 consist of title to such material vesting solely in the government, but more often consist of a royalty-free license to the government with title vesting in UD.

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 report, advance notice to the sponsor before publication, and the like.

UD personnel and visitors should contact the Office of Contracts and Grants Administration in the Research Institute for information or assistance regarding interpretation of research contract terms. The terms of such sponsored-research agreements apply not only to intellectual property created by faculty and staff, but also to that created by students and visitors, whether or not they are paid by UD, who participate in performing research supported by such agreements. It is essential, therefore, that all individuals participating in the research be made aware of their obligation to assign rights to UD by signing the Intellectual Property Rights Agreement distributed yearly by the Office of Technology Partnerships.

**Inventor/Author/Originator Ownership****Independent Works**

Inventors/authors will own inventions/materials that are:

POLICY (continued):

- a. not developed with the significant use of funds or facilities administered by UD,
- b. not created as a "work-for-hire" by operation of copyright law and not created pursuant to a written agreement with UD providing for a transfer of copyright or ownership to UD, and
- c. not developed in the course of or pursuant to a sponsored-research or other agreement.

The University makes no claims to inventions/materials discovered or developed by faculty, staff members, or students entirely on their own and without the use of University funds or facilities. To clarify the inventor's/author's rights to such inventions/materials and comply fully with the requirements of sponsoring agencies, all inventions/materials conceived and reduced to practice or developed by faculty, staff members, or students during their employment with the University shall be reported to the Technology Partnerships Office (TPO) in the Research Institute for determination of the degree of University interest.

Traditional Works

Traditional products of scholarly activity which have customarily been considered to be the unrestricted property of the author/originator will be owned by the author/originator. Such traditional products include but are not limited to journal articles, books, reviews, works of art including paintings and sculptures, and musical compositions. The University does not claim any ownership rights to such traditional works and specifically disclaims any potential right to do so under the "work for hire" provisions of the U.S. Copyright Act. In addition, the author/originator of such traditional works is responsible for compliance with applicable copyright laws.

The application of patent and copyright laws to computer software is evolving. Currently, there is not an adequate body of law to guide the determination of the appropriate status of computer software. Therefore, computer software is expressly excluded from the definition of traditional works.

Consulting

Faculty and staff members engaged in consulting work or other outside activity should ascertain that intellectual property provisions in their agreements are not in conflict with their obligations to the University or the policy statements contained in this document. In cases of conflict of interest on patentable matters, the University reserves the ultimate right to determine the final disposition of the patent rights involved. Faculty and staff members should make their obligations to the University clear to those with whom they make such agreements, and should ensure they are provided with a current statement of the University of Dayton Intellectual Property Policy and Procedures.

Theses

Students will own copyright in theses which do not:

- a. involve research for which the student received financial support in the form of wages, salary, stipend, or grant from funds provided under a sponsored-research agreement which imposes copyright restrictions; and/or
- b. involve research performed in whole or in part utilizing equipment or facilities provided to UD under conditions which impose copyright restrictions.

Where copyright ownership is retained by the student, however, the student must grant to UD royalty-free permission to reproduce and publicly distribute copies of the thesis. Normally, ownership of the intellectual property described in theses will vest in the University through the significant use provision herein; therefore, where students own copyright in theses, the intellectual property contained in theses is usually owned by UD pursuant to this policy.

Trade and Service Marks

Trade and service marks relating to goods and services developed at UD will be owned by UD.

POLICY (continued):

**RESPONSIBILITY FOR ENFORCEMENT, REMEDIES, SANCTIONS**

INTELLECTUAL PROPERTY ADMINISTRATOR

The administration of the Intellectual Property Policy shall be the responsibility of the Intellectual Property Administrator, appointed by the President and responsible to the Vice President for Research. The Administrator's duties include the following:

- a. recommend and implement the intellectual property policy of the University,
- b. chair the Intellectual Property Committee,
- c. recommend appropriate legal action to enforce the University's intellectual property rights, and
- d. arbitrate any disputed issues related to intellectual property or the interpretation of this policy and recommend resolutions.

TECHNOLOGY PARTNERSHIPS OFFICE

The UD Technology Partnerships Office (TPO) has two principal goals. The first is to facilitate the transfer of technology developed at UD to public use and benefit. The second, where consistent with the first, is to provide an additional source of unrestricted income to support research and education at UD. The TPO will work with the UD developers of technology and with industry. However, it will do so in a manner which does not interfere with the normal flow of technical and academic information through publications, conferences, and consulting.

OFFICE OF CONTRACTS AND GRANTS ADMINISTRATION

The Office of Contracts and Grants Administration is responsible for the negotiation, execution, and administration of all UD agreements with external sponsors of research grants and contracts, and for ensuring that the sponsor's rights to technology developed under external grants and contracts are protected. The Office of Contracts and Grants Administration and the TPO are available to assist all principal investigators and sponsored-research program administrators in the negotiation and interpretation of intellectual property terms of grants and contracts.

INTELLECTUAL PROPERTY COMMITTEE

A University Intellectual Property Committee shall be appointed by the President. This Committee will advise the Vice President for Research, and assist the University Intellectual Property Administrator. The Committee will include representatives from those fields of technology generally served by the TPO. This Committee may from time to time elect to create a subcommittee of experts in a specific technology whose function will be to recommend policy that relates to the exploitation of that technology.