

FLORIDA	OFFICIAL
POLYTECHNIC	UNIVERSITY
UNIVERSITY	POLICY
Subject/Title: Intellectual Property	
FPU Policy Number: FPU-1.0061P	
<input checked="" type="checkbox"/> New Policy <input type="checkbox"/> Major Revision of Policy <input type="checkbox"/> Minor Technical Revision of Policy	
Date First Adopted: June 3, 2015	
Date Revised:	
Responsible Division/Department: President's Office	
Initiating Authority: Randy K. Avent, President	

A. APPLICABILITY

This policy is applicable to all units of the University including its colleges, departments, centers, institutes and labs; all University employees, students and other individuals who utilize University Resources (as defined below); and all intellectual property, as broadly defined in Section 1004.23, Florida Statutes and in this policy.

Applicable law and/or the terms of any sponsored research or other agreements undertaken by the University or one of its units in good faith shall govern in the event the law or such agreements differ from the provisions of this policy.

B. AUTHORITY

The President or designee is authorized to administer this policy and to implement further policies and procedures within the framework provided herein to encourage and facilitate technology development and compliance with this policy.

C. POLICY STATEMENT

The University is dedicated to teaching, research, and the pursuit of knowledge for the benefit and use of society. An inherent objective of the University is to encourage creative activity and nurture innovation by recognizing and rewarding individuals who engage in such endeavors. The University recognizes that the natural outgrowth of research, scholarly, and other University activities conducted by faculty, staff, students and others may result in the development of inventions and discoveries of commercial importance. Consequently, it is incumbent upon the University to seek assurance that any intellectual property and related rights arising from research, scholarly, and other University activities are administered consistent with the public interest. Because the protection of intellectual property can often enhance the potential for investment and commercialization, the University seeks to protect the property rights of those ideas and discoveries that arise out of the activities of its faculty, staff, students, and others where it appears necessary or beneficial to do so.

This policy is intended to facilitate the development and transfer of University technology to the marketplace for the public benefit, while encouraging the prompt and open dissemination of research results by securing publication rights and availability of University technology for

educational purposes and providing recognition to individual creators by achievement of a fair and equitable distribution of royalty income.

As a condition of employment, all University employees are immediately bound by this policy. Furthermore, to provide full disclosure and acknowledgment of rights, the University requires, as a condition of employment, that all University employees acknowledge in writing their duty to recognize and adhere to this policy. University students and others working on sponsored research projects or utilizing significant University Resources (defined below), are likewise bound to, and required to acknowledge in writing their duty to recognize and adhere to this policy.

D. LEGAL CONSIDERATIONS

Pursuant to the Bayh-Dole Act of 1980 and subsequent amendments, universities are granted ownership of intellectual property created under government-funded work and are charged with commercializing those inventions for the public good. This policy is meant to encourage and enable technology development and for the benefit of the public. Adequate recognition of and incentive to potential creators of intellectual property through the sharing of the financial benefits resulting from the transfer and development of patentable inventions and other marketable forms of intellectual property encourages the creation of such intellectual property. At the same time, the University's share in the financial benefits provides funds for further research at the University. Consistent with the Bayh-Dole Act, the University is committed to sharing the intellectual and financial benefits resulting from the work of its employees.

Inventions that arise pursuant to programs receiving federal funds, whether such funds provide full or partial support in funding the research, are subject to the federal government retaining rights to the use of that property. Under Bayh-Dole, the federal government has provided universities the right to retain title to such inventions provided that, in return for this election right, the university assumes specific obligations in handling these inventions. Specific requirements, as prescribed by the federal government, include: election of title by the university within two (2) years of invention disclosure; obligation of due diligence in seeking legal protection and in licensing the technology; providing the federal government a non-exclusive, royalty-free license to use the invention either on its own or through a government contractor; required written agreements with university employees under which the employee agrees to prompt disclosure of inventions and to execute any documents necessary to obtain patent protection. The federal government also retains the right to assert a claim against an invention or patent in the event an institution fails to fulfill its responsibilities in accordance with federal regulations.

In addition to such obligations assumed by the University through its acceptance of federal research funding, the University often enters into research-related agreements (e.g., sponsored research agreement, material transfer agreement, participation agreement, service agreement), which typically will include legally binding terms governing Intellectual Property rights generated by participating researchers. The University must be able to fulfill these obligations, which often involve the disclosure, management, development and commercialization of intellectual property generated by participating University Creators.

E. DEFINITIONS:

- 1. “Intellectual Property”** includes inventions, industrial designs, trade secrets, mask works, tangible research material, copyrightable works and related trademarks.
- 2. “Inventions”** include any potentially patentable concept and/or reduction to practice of a discovery, invention, process, composition of matter, method of doing business, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, computer software or databases, or extension of these items, any mark used in connection with these items. An invention also includes material, other than copyrightable Works, that is used to assist or enhance instruction.
- 3. “Student”** includes any full or part-time degree or non-degree seeking individual who is enrolled at the University in an undergraduate or graduate course. Students employed by the University shall be a University employee under the terms of this policy.
- 4. “Tangible Research Material”** means unique research products or tools, such as biological materials or chemical compounds, whether or not patentable.
- 5. “Trade Secrets”** include information and/or data reasonably kept confidential and that has existing or potential economic value.
- 6. “University Creator”** includes all University employees, both part and full-time, researchers, visitors and others individuals participating in University programs, research and/or utilizing University Resources.
- 7. “University Resources”** includes the use of University funds, facilities, equipment, personnel, materials, or technological information, and includes such support provided by other public or private organizations when it is arranged, administered or controlled by the University.
- 8. “Works”** include copyrightable computer software and databases, audio and visual material, circuit diagrams, compilations of the works of others, architectural and engineering drawings lectures, musical or dramatic compositions, motion pictures, choreographic works, multimedia works, web pages, sound recordings, pictorial or graphic illustrations or displays, and any creative expression of a mark used in connection with these items. A work also includes copyrightable material that is used to assist or enhance instruction.

F. OWNERSHIP OF INTELLECTUAL PROPERTY

- 1.** University Creators retain ownership of Intellectual Property that they develop, provided such Intellectual Property is:
 - (a) not developed in the course of or pursuant to a sponsored research or other agreement; and
 - (b) not created as a “work-for-hire” by operation of copyright law and not created pursuant to a written agreement with the University providing for a transfer of copyright ownership to the University; and
 - (c) not developed with significant use of University Resources, as further described herein.
- 2.** Ownership of all other Intellectual Property immediately vests with the University upon creation, conception and/or reduction to practice in the following circumstances:

- (a) Intellectual Property is made or created by University Creators pursuant to a sponsored project agreement to which the University is a party;
- (b) Copyrightable works are created as a “work-for-hire” or pursuant to a written agreement with the University providing for the assignment of any Intellectual Property rights to the University;
- (c) Intellectual Property is developed by a University Creators with the significant use of University Resources.

3. University Creators own Intellectual Property that is developed on their own personal, unpaid time, in the absence of any sponsored project agreement or other agreement giving rights to the University, and without significant use of University Resources.

G. SIGNIFICANT USE OF UNIVERSITY RESOURCES

1. When Intellectual Property is developed by University Creators with the use of significant University Resources, the University owns such Intellectual Property. Provided the Intellectual Property is not subject to a sponsored project, or other agreement granting third party rights, the issue of whether or not a significant use of such University Resources occurred will be determined by the President or designee.

2. Textbooks developed in conjunction with teaching a University course are excluded from the “significant use” category (see “Scholarly Works” section below) and are not considered a “work-for-hire,” unless the textbook was developed using University personnel to support the textbook development or University administered funds were paid specifically to support the textbook development.

3. Generally, Intellectual Property will not be considered to have been developed using significant University Resources provided:

- (a) only a minimal amount of unrestricted funds has been used (e.g., amounts less than five hundred dollars (\$500) shall be presumed “minimal”); and
- (b) the Intellectual Property does not fall within an area of research that is subject to a sponsored research agreement for which the Creator is a participant or contributor; and
- (c) only a minimal amount of time has been spent using significant University facilities (e.g., time less than ten (10) hours shall be presumed “minimal”) or only insignificant facilities and equipment have been utilized (note: incidental use of office, library, machine shop facilities, and of traditional desktop personal computers are examples of facilities and equipment that are not typically considered significant); and
- (d) development of the Intellectual Property occurred during personal, unpaid time of the University Creator.

H. SCHOLARLY WORKS

1. In keeping with academic tradition, the University does not claim ownership of copyrights in scholarly books and textbooks, articles and other scholarly publications, nor popular novels, musical compositions, or other works of artistic imagination provided such works are:

- (a) created by the personal effort of the University Creator;
- (b) created without the significant use of University Resources; and
- (c) not subject to the terms of a sponsored research or other agreement.

I. STUDENT INTELLECTUAL PROPERTY

1. The University respects the long-standing tradition that students own their academic work. In general, any Intellectual Property (including theses and dissertations, inventions, discoveries, creations and new technologies) conceived or first reduced to practice by a student at the University as a work product (e.g., homework assignments, laboratory experiments and special and independent study projects) of a “for credit” course will be owned by the Student Creator. Generally, undergraduate and graduate Students own any Intellectual Property that they create through enrollment in a University course for academic credit. However, the University owns such Intellectual Property when one or more of the following apply:

- (a) When there is collaboration between a Student and University employee(s) to create works as part of a sponsored research project or faculty development activities.
- (b) In certain courses or special projects where a Student is presented with the opportunity to participate in a project or activity in which the ownership of any resulting Intellectual Property must be assigned either to the University or to a sponsoring entity as a condition of the Student’s participation.
- (c) When the Student is employed by the University, in which case the terms applicable to University employees shall apply.

2. Although a student retains copyright ownership to his/her thesis or dissertation or other Student-created Works, the Student grants the University permission to use, reproduce and publicly distribute copies of those Works.

J. SPONSORED STUDENT PROJECTS

1. Students are never obligated to participate in projects or activities that require the assignment of the Student’s Intellectual Property to the University or another entity. In these situations, Students must always be presented with two options to choose from:

- (a) participate in a project or activity that does not require the Student to assign his/her Intellectual Property; or
- (b) participate in a project or activity that requires the Student to assign his/her Intellectual Property.

2. A Student's grade and/or evaluation of performance in a University course shall not be affected by the Student's decision to participate or not to participate in projects or activities requiring the assignment of the Student's Intellectual Property. Students should consider that the assignment of Intellectual Property is a binding legal agreement and that they have the right to seek independent legal advice at their own expense prior to signing any agreement.

3. Student project results are not the work of the University and any references either internally or to third parties shall clearly identify the source of the student project results as student research performed at the University without subsequent independent evaluation.

K. INTELLECTUAL PROPERTY AGREEMENT

All individuals who participate in funded research activities or utilize University Resources shall be bound to, and must sign the *University Intellectual Property Agreement Form*. This obligation extends to all University Creators. The processing of a University appointment will not and cannot be completed until this agreement is signed and submitted to the Office of Human Resources, which shall be responsible for collecting and maintaining signed agreements for all individuals required to do so pursuant to this policy.

L. OUTSIDE CONSULTING AGREEMENTS

1. University employees who are consulting for, visiting, or collaborating with other entities may be asked by other entities to sign documents (e.g., consulting agreements, facility access arrangements, and non-disclosure/confidentiality agreements). Such third party agreements often contain language conferring rights to inventions arising from access to information or facilities and the signing of such agreement may conflict with an individual's existing obligations to the University. It is the responsibility of each individual to ensure that the terms of any consulting or other agreements with a third party does not conflict with his/her commitment to the University (see *University Regulation FPU-6.008 Outside Employment and Outside Activities*). A University employee should make the nature of his/her obligations to the University clear to any third party for whom he or she expects to consult or collaborate with. Specifically, the scope of the consulting services should be distinguished from the scope of any individual's University research commitments.

2. The University will not negotiate any outside consulting agreements on behalf of any employee or student; however, any questions regarding a University policy or regulation may be directed to the General Counsel's Office.

M. INTELLECTUAL PROPERTY DISCLOSURE

1. University Creators must disclose Intellectual Property in writing to the University promptly and completely upon creation or discovery, even if the University Creator does not believe the University has rights to such Intellectual Property under the provisions of this policy.

2. The terms of sponsored research and other related agreements normally impose obligations with respect to the reporting of inventions, technical data, and copyrightable works, such as software. In particular, Intellectual Property that is developed under federally or privately sponsored research must be promptly disclosed to the Provost or designee in order to accomplish required reporting actions.

3. Disclosure is made to the Provost or designee on the *University Invention Disclosure Form* within a reasonable time of creation. The disclosure must contain sufficient detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation and technical characteristics relating to the disclosed Intellectual Property. The disclosure must also provide information pertaining to any publication or submission for publication, sale or offer of sale, or public use of the Intellectual Property. Thus, the University Creator has the responsibility to update the Provost or designee in a timely manner of any developments involving publication, sale or use of which the University Creator may become aware of after the initial disclosure, and must take all reasonable efforts to make the initial disclosure to the University well in advance of any publication, sale or public use.

N. INTELLECTUAL PROPERTY OWNERSHIP DETERMINATION

If the University Creator claims an ownership interest in Intellectual Property or has a question about whether an assignment must be made to the University, the Intellectual Property should be disclosed to the Provost or designee and the claim or question clearly stated. The University, through the Provost or designee will provide a determination of rights within a reasonable time following submission, generally not to exceed thirty (30) days from the date of disclosure.

O. INTELLECTUAL PROPERTY EVALUATION

The President or designee will evaluate all Intellectual Property disclosures for their commercialization potential and to determine the appropriate means for protecting and promoting the development of the technology, with the assistance and cooperation of the

University Creator(s). The President or designee will provide a timely response to the University Creator(s), generally not to exceed sixty (60) days from the date of disclosure, and may engage outside evaluators and other consultants to review the disclosure, as well as to assist in the licensing, commercialization and protection of the Intellectual Property.

P. INTELLECTUAL PROPERTY PROTECTION

When a patent application is deemed appropriate, University counsel will work with the creator(s) to prepare a patent application. The University Creator(s) shall provide a reasonable level of assistance in this process during the initial preparation of the patent application, the prosecution of the patent application and with subsequent patents that claim priority to the initial patent. This assistance shall survive the employment of the University Creator(s) with the University and the University Creator(s) shall execute all necessary paperwork to perfect rights in the patent(s) for the benefit of the University. Upon submission, the Intellectual Property Disclosure Form will initiate action by the President or designee to investigate the patenting (or other methods of Intellectual Property protection) and marketing of the technology, unless accompanied by a letter from the University Creator(s) requesting other action be taken by the University.

Q. COMMERCIALIZATION OF UNIVERSITY INTELLECTUAL PROPERTY

The President or designee may determine it appropriate to pursue the licensing of University Intellectual Property to promote the likelihood that the Intellectual Property will provide a benefit to the public in accordance with the mission of the University. The President or designee will pursue the licensing by researching the market, identifying third parties to support development and/or commercialization, entering into discussions with potential licensees, negotiating appropriate licensing or other agreements, monitoring progress, and distributing net royalty income that is generated to the University Creator(s) in accordance with this policy. Licensing agreements will generally entail a nonrefundable license fee, patent expense reimbursement, a royalty percentage and minimum royalty payments, development and reporting milestones and a requirement of licensee diligence, providing march-in rights where a licensee does not perform diligently pursuant to the terms of the license. When it is appropriate to do so, the University may accept an equity position in partial lieu of cash royalties. For Trade Secrets including, but not limited to, databases, technical data, manufacturing processes and methods having commercial value, the University Creator(s) may request the University to license said Trade Secrets to outside industry.

R. REQUEST TO LICENSE UNIVERSITY INTELLECTUAL PROPERTY

University Creators may request a license from the University to commercially develop their Intellectual Property where such licensing would enhance the transfer of the technology, is consistent with University obligations to third parties, and does not involve a conflict of interest. When Intellectual Property is not subject to a sponsored research or other agreement, but has been developed using significant University Resources, the President or designee may, at his/her discretion and consistent with the public interest, license the Intellectual Property to the University Creator(s), exclusively or nonexclusively, on a royalty basis. Such license will include the payment of appropriate royalties, in accordance with the agreement terms and will require diligence in developing and disseminating the technology. The University Creator(s) must demonstrate technical and financial capability to commercialize the Intellectual Property, and the President or designee shall have the right to terminate the license if the University Creator(s) does not achieve effective dissemination within a reasonable amount of time. If the University grants such request, the University Creator(s) may be required to assume the costs of filing, prosecuting, and maintaining any patent rights.

S. REQUEST TO UNIVERSITY TO COMMERCIALIZE INTELLECTUAL PROPERTY

University Creators may request that University pursue the commercial development of Intellectual Property owned by the University Creator(s). The President (or designee) will evaluate the commercial potential of any Intellectual Property and determine whether or not the University will accept it for licensing. If the University has determined to pursue commercialization, the University Creator(s) will be required to assign his/her ownership of the Intellectual Property to the University. The terms of such assignment will be negotiated between the University and the University Creator(s).

T. WAIVER OF UNIVERSITY INTELLECTUAL PROPERTY RIGHTS

1. If the University decides to waive its rights in the disclosed Intellectual Property, the University Creator(s) may proceed to protect such Intellectual Property as he, she or they may wish. If sponsored funds supported the work leading to the creation or discovery of such Intellectual Property, any such waiver is subject to any governing provisions in the sponsoring agreement. Waiver of such rights by the University is contingent upon a perpetual, nonexclusive, royalty-free grant to the University to use or practice the Intellectual Property for educational and research purposes, unless otherwise agreed to in writing.

2. Should the University decide to waive its rights as provided for herein, the University Creator shall disclose any potential conflict of interest arising from his/her ownership of the Intellectual Property when proposing University research activities that could reasonably appear to influence the financial value of such Intellectual Property.

U. ASSIGNMENT OF UNIVERSITY INTELLECTUAL PROPERTY

In the event the University has not pursued commercialization of the Intellectual Property within one hundred and twenty (120) days of receipt of the disclosure, the University Creator who intends to pursue commercialization of the Intellectual Property may submit a written request to the General Counsel's Office for the Intellectual Property to be reassigned to the University Creator. To the extent the Intellectual Property is not subject to any sponsored project or other agreement, and provided that all other University co-Creators, if any, consent to the request, the President or designee shall reasonably consider such a request. Any waiver or assignment of Intellectual Property rights by the University shall be limited only to the substance disclosed by the University Creator(s) in the Intellectual Property Disclosure Form and is subject to the grant of a perpetual, nonexclusive, royalty-free grant to the University to use or practice the Intellectual Property for educational and research purposes, unless otherwise agreed to in writing.

V. ROYALTY DISTRIBUTION

1. The University will receive all royalty revenue that is generated from the commercialization of University Intellectual Property ("gross royalty revenue") and will deduct any outstanding costs incurred by the University to protect the Intellectual Property and, if appropriate, reasonable projected expenses that the University deems necessary to maintain the Intellectual Property ("net royalty revenue"). As a means to assure recognition of the efforts and contributions of the University Creator(s), the University will then distribute the total net royalty revenue as follows:

- (a) Sixty percent (60%) to the University Creator(s) in recognition of their contribution. In the case of University co-Creators, this distribution will be equally shared among all University co-Creators unless otherwise agreed to by the University co-Creators in writing;
- (b) Thirty percent (30%) will be designated by the Provost to support innovation and entrepreneurship programs and activities and distributed, in the discretion of the Provost, among any of the following units: a college, a University institute or center, a University laboratory and/or an academic department or program; and
- (c) Ten percent (10%) to the Sponsored Research Development Fund to be used to support University research programs and training activities.

2. Distribution of net royalty revenue will occur on a semi-annual basis. In the event the University acquires equity in the company in lieu or partial lieu of royalties for Intellectual Property, any Creator(s) receiving an individual equity stake in the company shall not be entitled to share in the University's equity stake. Otherwise, proceeds from the liquidation of the University's equity in the company will be distributed as royalty revenue in the manner described above. In the case of an irresolvable dispute over the terms of royalty revenue

distribution, such funds will be distributed in accordance with the terms herein as determined by the President or designee, whose decision shall be final.

W. RESPONSIBILITY TO ASSIGN INTELLECTUAL PROPERTY INTERESTS

1. The assignment of Intellectual Property rights to the University, as provided herein, is a condition of employment, enrollment, or access to University facilities. In the case of University ownership of Intellectual Property pursuant to this policy, the University Creator(s) hereby irrevocably assign to the University, all right, title and interest in and to the Intellectual Property and shall cooperate fully with the University in the preparation and prosecution of patent applications and patents. Any transfer of Intellectual Property rights shall be documented through the appropriate legal instrument, such as an assignment agreement, in a form consistent with applicable law and regulation.

2. Those who fail to sign and submit the *University Intellectual Property Agreement Form* may not be granted employment, or in the case of current employees, will be referred to the President. At the discretion and recommendation of the President or designee, the failure of an individual to comply with this requirement or any other requirements pursuant to this policy may result in sanctions up to and including termination or expulsion, as determined by the President in accordance with University policies and regulations.

X. POLICY IMPLEMENTATION

This policy, as currently set forth, and as it may change from time to time, constitutes an understanding that is binding on the University and individual University Creators. This policy shall take effect immediately upon adoption by the University.

Y. FORMS

- 1. University Intellectual Property Agreement Form (attached).
- 2. University Invention Disclosure Form (attached).

POLICY APPROVAL	
Policy No.: FPU-1.0061P	
_____	_____
Initiating Authority	Date
_____	_____
Policies & Procedures Review Committee Chair	Date
_____	_____
President/Designee	Date
Approved by FPU BOT, if required	_____
	Date

**EXECUTED SIGNATURE PAGES ARE AVAILABLE IN THE
OFFICE OF THE GENERAL COUNSEL**