



POLICY TITLE	Intellectual Property	Policy Number	136
Section	Governance, Organization, and General Information	Approval Date	August 10, 2006
Subsection	Intellectual Property	Effective Date	August 10, 2006
Responsible Office	Office of the Senior Vice President of Academic Affairs		

1.0 PURPOSE

1.1 The University encourages the development of inventions and other intellectual creations for the best interest of the public, creator, and research sponsor. This policy is intended to protect the respective interests of all concerned by ensuring that the benefits of such property accrue to the public, inventor, university, and to sponsors of specific research with appropriate degrees of protection, remuneration, return, and recognition. The University supports academic freedom principles including the right to publish scholarly works and research results. This policy is in accordance with Utah State Board of Regents' Policy R481 *Academic Freedom, Professional Responsibility, Tenure, Termination, and Post-Tenure Review*, Section 3.3 Academic Freedom, which states that a faculty member is entitled to "full freedom in research and in the publication of the results." Additionally, this policy develops the procedures that the University will utilize to address Regent's Policy 481, Section 3.3.2 Academic Freedom in Research, which states "research for pecuniary return should be conditional upon disclosure to and the consent of the officials of the institution."

2.0 REFERENCES

- 2.1 *Uniform Trade Secrets Act (UTSA)*
- 2.2 Utah State Board of Regents' Policy R481 *Academic Freedom, Professional Responsibility, Tenure, Termination, and Post-Tenure Review*
- 2.3 UVU 106 Policy *Special Purpose Organizational Units*

3.0 DEFINITIONS

- 3.1 **Campus Community:** Full- and part-time faculty and staff, visiting faculty members and researchers, full- and part-time students.
- 3.2 **Creators:** Individuals or groups of individuals who make a significant original, creative contribution to the conception and/or development of intellectual property.



3.3 Intellectual property: Work created through intellectual and/or discovery efforts of a creator that are generally protectable under patent (US Code), trademark (as recognized by federal and state laws), copyright (as defined in US Code), trade secret (as defined by the *Uniform Trade Secrets Act*), or other state and/or federal law. Intellectual property includes, but is not limited to, inventions, discoveries, trade secrets, trade and service marks, writings, art works, musical compositions and performances, copyrightable software, data and mask works, literary works, and architecture. Works through intellectual and/or discover efforts of a creator in other areas, including but not limited to multimedia works, and various other forms of electronic communications, are also considered intellectual property

3.4 Special unit: Laboratory, center, institute, or other unit designated through UVU Policy 106 *Special Purpose Organizational Units*.

3.5 Work for hire: -Created by an employee in the course of his or her duties, or a commissioned work in which the creator and commissioner agree the work is for hire.

4.0 POLICY

4.1 Ownership

4.1.1 The University owns intellectual property created by members of the campus community when the intellectual property is:

- 1) Created by an employee within the duties and scope of his or her employment; or
- 2) Created (a) on university time, (b) with the use of university facilities or (c) with state financial support; or
- 3) Educational material that involves significant university resource contributions (such as materials created through Distance Education); or
- 4) Commissioned by the University pursuant to a written contract; or
- 5) Work for hire.

4.1.2 Members of the campus community own intellectual property when the intellectual property:

- 1) Is unrelated to an individual's job responsibilities and the individual made no more than incidental use of university resources; or



2) Is embodied in a professional-, faculty-, researcher- or student-authored scholarly, educational (i.e., course materials, textbooks, tests and lecture notes, and other course materials), artistic, musical, literary, or architectural work in the author's field of expertise (scholarly works) unless such scholarly works are works for hire; or

3) Is software that is considered scholarly work; or has been released by the University to the creator in accordance with this policy.

4.1.3 The University does not assert ownership to works produced by those involved in a consulting project with non-university clients.

4.1.3.1 Intellectual property produced under grants or contracts from an external funding source shall be subject to conditions of the contract or grant with respect to ownership, distribution and use, and other residual rights.

4.1.3.2 Any student engaging in research or development of intellectual property under the supervision or direction of a member of the campus community, in connection with a program or activity subject to this policy, shall have no ownership interest in the resulting property but may be eligible to participate in the income distribution.

4.1.3.3 Neither the facilities nor the resources of the University may be used to create, develop, or commercialize intellectual properties outside the area of expertise for which the individual was hired; or to further develop or commercialize intellectual properties that have been released to an inventor.

4.1.3.4 Individuals not affiliated with the University or members of the University community who own intellectual property may elect to transfer all or part of their intellectual properties to the University for the purpose of facilitating commercial development. In the event the University agrees to accept management of the property, the property shall be assigned to the University and the assignor shall be entitled to the same distribution of revenues and other rights and responsibilities of other creators. Contact Development and Alumni Relations to determine the implications for a charitable donation.

4.2 Management and Protection of Intellectual Property

4.2.1 Disclosure

4.2.1.1 Before intellectual property owned by the University is disclosed to any outside party, to the public generally, or for commercial purposes, and before publishing same, the creator shall submit a reasonably complete and detailed disclosure of such intellectual property to the President, or office designated to manage intellectual property. Prior to, or in conjunction with, disclosure of intellectual property, the creator(s) shall obtain from all individuals who may be working on its development, a written waiver form assigning ownership and agreeing to non-

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disclosure. With respect to intellectual property owned by the University, the President, or office designated to manage intellectual property, shall decide how, when, and where the intellectual property is to be protected. The office designated to manage intellectual property will work closely with the creator(s) and the administrator(s) to develop a plan, with an appropriate timeline to commercialize and manage intellectual property. Outside counsel services may be contracted if approved by the Utah Office of the Attorney General.

4.2.2 Election Not to Assert Interest

4.2.2.1 If the President, or office designated to manage intellectual property, elects not to assert and exploit the University's interest, the Utah Office of the Attorney General and the creator shall be notified within 30 days after a decision is made not to assert ownership rights that the invention will be released to the creator. Thereafter, he or she will be free to obtain and exploit a patent or other intellectual property protection in his or her own right and the University shall not have any further rights, obligations, or duties.

4.2.3 Later Release of Invention

4.2.3.1 The President, or office designated to manage intellectual property, may elect to release an invention to its creator at any time after asserting university interest, with notice to the Utah Office of the Attorney General; however, such a release shall include provisions for the recovery of patent and licensing expenses.

4.2.4 Protection of Intellectual Property

4.2.4.1 With respect to intellectual property in which the University asserts an interest, the President, or office designated to manage intellectual property, shall decide how, when, and where the intellectual property is to be protected. Outside counsel services may be contracted, and approved by the Utah Office of the Attorney General.

4.2.5 Reimbursement of Licensing Costs and Allocation of Income

4.2.5.1 Costs incurred in the process of perfecting, transferring, and protecting university rights to the property on behalf of the University must first be recaptured from any royalties or other license payments received by the University prior to distribution of net revenues. An accurate accounting of all such costs with full disclosure shall be made available to the creator(s) upon request.

4.2.6 The following are guidelines for the distribution of the revenue from university-owned intellectual properties, unless otherwise specified by written agreement:

- 1) Creator(s) 50 percent



2) UVU 50 percent

4.2.7 University distribution may be as follows:

1) University 10 percent

2) School(s) or unit(s) of the creator(s) 15 percent

3) Office designated for the management of intellectual property 25 percent

4.2.8 For revenue to be disbursed in an alternate distribution than that above, a request for an exception must be negotiated among all concerned parties and a written contract agreed upon. When revenue exceeds \$1 million from any or all of its intellectual property during any fiscal year, an administrative review of the source of income will be activated. The President shall have discretion to reevaluate the allocation of the University's portion of the funds within university units in excess of this threshold.

5.0 PROCEDURES

5.1 The University does not generally engage in product manufacturing, company support functions, customer service, technology maintenance, or work for hire for the private sector. However, if a commercial activity such as manufacturing products, sale of products to end users or distributors, and/or providing customer support other than through the office designated for the management of intellectual property is deemed consistent with the educational mission and academic programs of the University, an approved special unit may be authorized (see UVU Policy 106 *Special Purpose Organizational Units*).

5.2 Creator(s) may designate all or a portion of their allocated income to fund continuing research and creative work activities (including equipment and supplies purchases; student, undergraduate researchers, and assistant wages or support; and research-related travel). The University at its own discretion, after reviewing its budgets, should have the ability, but not the obligation, to match such funding.

5.3 Income Distribution among Multiple Creators

5.3.1 If there are multiple creators, the creators will devise a formula, taking into account the relative contribution of each, to share the creators' portion of the distributed income. At or before the time of disclosure, an income distribution agreement must be signed by the creators and the distribution approved by the supervisor and/or administrators. Advice or assistance in negotiation of income distribution may be sought from the office designated for issues of intellectual property issues. Such agreements should be reviewed for current applicability every three years or when major changes in personnel or efforts occur. Recommendations for changes in



distribution are to be submitted to the office designated for the management of intellectual property for approval.

5.4 Schedule of Distributions

5.4.1 Net income distributions will be made quarterly.

POLICY HISTORY		
Date of Last Action	Action Taken	Authorizing Entity