

 UNIVERSITY of DENVER	UNIVERSITY OF DENVER POLICY MANUAL INTELLECTUAL PROPERTY		
<p><u>Responsible Department:</u> Research & Graduate Education</p> <p><u>Recommended By:</u> Senior Vice Provost for Research & Graduate Education</p> <p><u>Approved By:</u> Board of Trustees</p>	<p><u>Policy Number</u> ORSP 2.40.010</p>	<p><u>Effective Date</u> 6/28/2021</p>	

I. INTRODUCTION

The University of Denver recognizes and encourages the individual effort on the part of its employees, faculty and students leading to the creation of intellectual property. It is the University's intent to protect the rights of the individual, the University and the sponsoring entity (if involved), and to effectuate reasonable and appropriate sharing of the fruits of the enterprise in the event these creations have commercial value.

This policy is to facilitate and celebrate innovation within the University community for the purpose of enhancing the University's reputation and visibility. As well as contribute to the public good through economic development.

This policy applies to all University trustees, officers, faculty, visiting faculty, staff, students, postdoctoral fellows, research fellows, and individuals providing services to the University as contractors, visitors, and volunteers; and persons unaffiliated with or not employed by the University who participate in University research projects.

II. POLICY OVERVIEW

Rights in Intellectual Property made or created by University faculty, students, staff, and others participating in University research programs, including visiting researchers, are as follows:

A. In keeping with the academic traditions of the University where the Creator retains ownership to scholarly works, the Creator retains full ownership rights to the following Intellectual Property developed while affiliated with the University, regardless of the extent that University resources are used:

1. Books (including textbooks), articles (including journal articles), novels, and poems;
2. Musical works, dramatic works including any accompanying music, pantomimes, and choreographic works;
3. Pictorial, graphic, and sculptural works;

4. Motion pictures and other similar audio-visual works, and sound recordings;
5. Educational courseware and software (this does not include other types of software or databases).

In consideration of this relinquishment of potential Intellectual Property ownership rights, the University retains a perpetual, royalty-free right to use, without limitation, Creator-owned Intellectual Property, including the Intellectual Property listed in II.A.1-5 above, for research and educational purposes.

- B. Intellectual Property created by Students during the course of their usual studies or education (not including research activities) shall be owned by the Creator.
- C. Intellectual Property developed in the course of or pursuant to a sponsored research agreement shall be owned as specified in such agreement. In the absence of such terms, ownership of the Intellectual Property will vest with the University. For sponsored research agreements, the University prefers to retain a perpetual, royalty-free, non-exclusive license to the Intellectual Property.
- D. The University owns all copyrightable works created by an employee within the scope of such employee's employment (i.e., a "work for hire") or pursuant to a written agreement with the University providing for the assignment of such Intellectual Property to the University.
- E. Ownership of Intellectual Property developed with Substantial University Assistance, as defined in this Policy, will vest with the University.

III. PROCESS OVERVIEW

A. The Creator

1. The Creator of any Intellectual Property that is or might be owned by the University under this Policy should make reasonably prompt disclosure of the Intellectual Property to the University's Office of Intellectual Property and Technology Transfer. This disclosure should be made at a time when legal protection for the Intellectual Property is contemplated, and it should be before the Intellectual Property is either disclosed to the public or sold to preserve patent rights in multiple countries.
2. After the Creator discloses the creation of Intellectual Property owned or potentially owned by the University, the University's Office of Intellectual Property and Technology Transfer will determine the extent of the University's ownership rights in the Intellectual Property. This decision will be made in consultation with the Intellectual Property Advisory Committee, a group of faculty convened to provide faculty input to such decisions.

3. In the event the Creator disagrees with the determination of the Office of Intellectual Property and Technology Transfer regarding the ownership of the Intellectual Property, the Creator may appeal the determination in writing to the Senior Vice Provost for Research & Graduate Education.
4. When it is determined that the University owns the Intellectual Property, the Creator is expected to sign any documents necessary to perfect the University's ownership rights in the Intellectual Property and is expected to cooperate as needed to enable and support University efforts to (1) file patent applications, file trademark applications, register copyrights, and execute option or license agreements, and (2) pursue any other method to assert and protect ownership rights. In exchange for the Creator's cooperation, the Creator will receive a share of Income generated by the Intellectual Property, as provided below.
5. When the University has ownership rights in Intellectual Property, any Income received as a result of the commercial development of the Intellectual Property will be divided and distributed in one-third shares to each of the following:
 - a. The Creator;
 - b. The University department or division that supported the development of the Intellectual Property; and
 - c. The University's Office of Intellectual Property and Technology Transfer.
 - d. Unless otherwise agreed in writing, the Creator's one-third share of Income will be divided evenly among the University associated-individuals who created the Intellectual Property.

B. General Policy Provisions

1. Application of this Policy, as a condition of their employment, enrollment, or participation in University programs, or their use of funds, space, staff, or facilities, all employees of the University, whether appointed, non-appointed, full or part-time, and all faculty shall be bound by this Policy, unless stated otherwise in a written agreement between such person and the University. Faculty shall be included within the term "employee." This Policy shall also apply to all students of the University in whatever program or status.
2. Patent Matters. The Patent Policy of the University, which is separately stated and incorporated herein by this reference, governs all matters pertaining to Intellectual Property created by University faculty, employees, or students giving rise to patent rights, and sharing of income from commercial exploitation of those rights. The Patent Committee shall report to, and be responsible to, the Intellectual Property Committee.

3. **General Statement Regarding Non-Patent Matters.** The University acknowledges the right of faculty, staff, and students to generate a Work and its associated Intellectual Property in their ordinary daily pursuits to which they have sole ownership. This general statement of ownership is qualified by the Patent Policy of the University, the policy regarding substantial University assistance set forth below, and by the "work for hire" doctrine under U.S. copyright law.
4. **Substantial University Assistance.** The following guidelines shall be used to determine whether "substantial University assistance" is involved in the creation of a Work, thereby making the Work and its associated Intellectual Property the sole and exclusive property of the University:
 - a. **General Rule.** To qualify as "substantial University assistance," the University's participation in or support of the creative or developmental activity leading to a Work must be material, significant and beyond the resources normally provided to individual Employees, Staff Members, and Students. Without limiting the foregoing, the University does not regard the University's provision of normal and customary compensation, student financial aid, library resources, office or laboratory facilities, office staff or laboratory support, telecommunications facilities, individual personal computers, and ordinary and reasonable access to the University's computer network and websites or similar University provided electronic communication tools used for non-commercial scholarly pursuits, as constituting "substantial University assistance." It is recognized that the terms "normal" and "customary" as used herein are subject to change as technology and University operations evolve. Ordinarily, "normal" and "customary" will be defined through general published procedure or established University policy.

Examples:

- i. Substantial direction and guidance in development of materials.
- ii. Substantial use of University software designers, programmers or other information technology staff, or University computing or telecommunications facilities.
- iii. In the case of students, support or assistance beyond ordinary and reasonable classroom/laboratory resources provided in conjunction with a specific academic program.
- iv. Substantial use of any special or rare University holdings, such as museum collections, rare manuscripts or books or the like.
- v. Substantial use in the Work of voice(s) or image(s) of University Employees, Staff Members, or property.
- vi. Substantial use of University student assistance beyond that which is normal and customary for the department or division.

- vii.** Substantial creative or developmental contribution to the Work by Employees, Staff Members, or Students engaged in the course of their regular employment or academic program (other than Creator(s)).
 - viii.** The use in any Work of the University's name or insignia, or the name or insignia of any of its affiliate organizations (other than for the sole purpose of identification of individuals) to identify or promote any product, services or enterprise, or any other identification or reference in a Work that could reasonably be understood by members of the public to imply approval or endorsement by the University or any of its affiliate organizations. Any such use of the name or insignia of the University is strictly limited and governed by another University policy, to be separately published.
- 5.** Reputation, Goodwill, Competition. The University reserves the right to prohibit or limit the use and/or publication of any Work and the Intellectual Property therein for which it has contributed substantial University assistance, or any Work that is a "work for hire" owned by the University, if, in the University's sole judgment, such use or publication would adversely impact the University's goodwill, competitive position or reputation as an educational institution.
- 6.** Written Agreement Required. Whenever the element of "substantial University assistance" is perceived (by either the University or the Creator(s)) to be involved in the preparation of the Work or Derivative Work(s), the parties are required, in a timely fashion, to hold good faith negotiations toward a written agreement regarding University usage, Creator(s) usage, and commercial exploitation, and all other aspects of the proposed development and use of the Work. The following procedures shall apply:
 - a.** Filing of IP Disclosure Forms. The Inventor(s) or Creator(s) shall fill in an Invention Disclosure Form (for Patents), a Trademark Disclosure Form, or a Copyright Disclosure form available from the Office of Technology Transfer and submit it to the IP Manager.
 - b.** Negotiations. The Dean or Administrative Director of a particular University academic unit or administrative unit will facilitate the commencement of discussions toward an agreement with the Creator(s), in consultation with University counsel and the Senior Vice Provost for Research & Graduate Education. A University representative will be designated. All such agreements shall be reported to the Intellectual Property Committee. The Creator(s) and University may choose to be represented by legal counsel in such negotiations. A Creator may also be represented by a fellow employee

of the Creator's choosing.

- c. **Agreements.** If negotiations between the Creator(s) of a Work and the University lead to mutually acceptable terms and conditions, they shall be expressed in a written agreement. Any such agreements should protect the appropriate rights of the Creator(s) and the University, establish the party's share of any royalties or other income derived from the product and define the scope of use to be permitted by University and third parties. The Dean or Administrative Director, in consultation with the Vice Chancellor for Financial Affairs and the Senior Vice Provost for Research & Graduate Education, must approve all such agreements. In all circumstances involving substantial University assistance, the University will, at a minimum, retain the right in perpetuity to use the Work for its own institutional academic purposes. Similarly, Creator(s) shall retain the right, in perpetuity, to use the Work for reasonable personal (non-commercial) purposes and (by reference) in academic credentials.
 - d. **If No agreement is reached.**
 - i. **Anticipatory Situations.** In the case of a proposed project involving substantial University assistance (not yet commenced), either the University or the Creator(s) shall have the ability to decline to go forward with the project. In such circumstances, the University may also decline to permit University resources (beyond those normally provided) to be used by Creator(s).
 - ii. **Previously Commenced or Completed Projects.** If a Work and the associated Intellectual Property rights therein arise or are the result of a project involving substantial University assistance that has already substantially commenced, and if the Creator(s) and University are unable to reach Agreement, the provisions of this Policy regarding Commercial Exploitation and Sharing (Sections 7 and 8 below), shall apply.
7. **Commercial Exploitation.** As owner, the University shall have the exclusive right to commercially exploit any Work or Derivative Work(s) created with "substantial University assistance." Said right shall endure for a period of one year following the completion of the Work, or any of the Derivative Work(s), in a classroom usable or publishable form. If the University has declined to exercise its right within the one-year period, the University will assign ownership of the Intellectual Property Rights in the Work to the Creator(s), and the Creator(s) may proceed to commercially exploit and pursue other opportunities, provided that the University shall retain its right to reimbursement of expenses and royalty rights as set forth below in Section IV.H, and provided further that the University shall have, in its reasonable discretion, the rights to veto any proposed third party

commercial exploitation of any such work, if such arrangement would materially prejudice the University's reputation, goodwill, or competitive interests as set forth in Section IV.E above.

8. Sharing of Intellectual Property Income. As a general matter, the following apportionment of Net Income shall be considered the norm as it relates to commercial exploitation of the Works and Intellectual Property hereunder, except when the written agreement between the Creator(s) and the University states otherwise.

C. Income Distribution

INVENTOR: One-Third

DEPARTMENT/DIVISION: One-Third

UNIVERSITY: One-Third

For the purposes of this Policy, "Net income" shall mean the sum of any royalties, license fees or other receipts, minus administrative, marketing, licensing, legal, equipment, materials, contract services, travel, and any other appropriate related expenses incurred by University or the Creator(s) in the process of development, creation or protection of the Work, and the associated Intellectual Property therein, but exclusive of the University's ordinary and traditional tuition income from courses taught primarily on campus and primarily to a live audience of students. (Ordinarily, course material which rises to the level of a Work hereunder, developed by a faculty member Creator to be taught by that faculty member, may not be used by University for other purposes without the consent of the Creator.) Tuition income from courses taught primarily through distance learning programs will be considered income for this purpose, provided that the name and reputation of the University will be factored in as an additional expense, valued at not less than 25% of gross receipts. The Creator(s)' share of Net Income shall be divided pro rata among such Creator(s), unless they otherwise agree in writing and so notify the University. The Chancellor or the Provost, as appropriate, shall determine how the department/division share shall be disbursed. Such department or division funds will ordinarily be used for continuation of activities of the Creator(s) in the University context, as long as the Creator(s) remains with the University.

1. Work-For-Hire. Persons whose work product is owned by the University as work-for-hire (under the copyright law) generally are not entitled to share income under this Policy, but may be given a share if the appropriate University official or department determines that they have made an unusually significant creative contribution to the Work. Tasks performed by non-appointed employees in the ordinary course of business of the

University will be considered "Work-For-Hire," unless a specific written agreement stating otherwise is executed by the Employee and an Officer of the University.

2. **Sponsored Research.** Often, research or related activity is subject to an agreement between a Sponsor and the University that contains restrictions concerning copyright, or the use of copyrighted materials or other Intellectual Property resulting from the project. In such circumstances, the sponsorship agreement shall govern the allocation of property rights and income. In negotiating with Sponsors, the project directors and the University should strive to protect and advance the public interest, as well as to obtain reasonable latitude and rights for the individual author and the University, consistent with the public interest and this Policy.
3. **Legal Protection of University Intellectual Property.** If a Work and the Intellectual Property therein are owned by or licensed to the University under this Policy, the University's legal counsel shall investigate third party rights, conduct searches and clearances, file applications, and take such other steps as the University, in its sole discretion, deems reasonable and necessary to protect the rights of the University and the Creator(s). All University employees and students shall cooperate fully with University legal counsel and execute such documents as may be required in their capacity as Creator(s) hereunder. The University reserves the right to pursue multiple forms of legal protection in parallel fashion, if available. For example, the University may seek to protect a Work of computer software by copyright, patent, trade secret, and trademark. The University shall bear all costs or expenses of such protective processes, provided, however, the University shall then be entitled to full reimbursement thereof from the first revenues produced by the commercial exploitation of such Work and the Intellectual Property therein.
4. **Other Policy Considerations.** Nothing contained in this Intellectual Property Policy shall limit or abrogate the effect of other University policies regarding Fair Use of third-party materials, Privacy and Security in Electronic Communication, Conflicts of Interest, Faculty Appointment, Promotions and Tenure.

IV. DEFINITIONS

1. **"Creator"** means any person or persons, affiliated with the University or not, who make, conceive, reduce to practice, invent, author, or otherwise make a substantial intellectual contribution to the creation of Intellectual Property.
2. **"Derivative Work"** - shall mean a new "Work" which is based upon or which has evolved from the Work and which could not have been possible but for the Work.

"Work" as used herein shall including derivative works.

3. **"Employee" or "Staff Member"** - shall mean any person employed full or part-time by the University in any capacity.
4. **"Income"** means all proceeds received by the University for Intellectual Property that it assigns, sells, or licenses. Costs for any filings or drafting the license agreement are not to be deducted from Income before it is distributed as in III.E. Reimbursements of such costs by a licensee as a part of a licensee agreement is not considered "Income" for the purposes of this Policy.
5. **"Intellectual Property"** - shall mean the legal rights in and to a Work as provided by applicable statute, regulation, or judicial decision, including, without limitation, patent, copyright, trademark, service mark, trade secret, domain name registration, mask work, or plant variety protection certificate.
6. **"Sponsor"** - shall mean any external party, entity, or agency with which the University has an agreement for services or other compensation.
7. **"Sponsored Agreement"** - shall mean grants, contracts, subcontracts, and other agreements between a Sponsor and the University for the purpose of conducting research, instruction, training, and other activities at the University, or using University staff for compensation.
8. **"Student"** shall mean an undergraduate or graduate student enrolled in academic courses.
9. **"Substantial University Assistance"** means the substantial use of funds, resources, or facilities administered by the University. Substantial University Assistance is material and significant participation in or support (financial or otherwise) by the University beyond the participation and support typically provided to employees, students, or the general public. Substantial University Assistance involves more than (1) receiving normal and customary compensation or student financial aid; and (2) normal and customary access to library resources, office space, office computers, the University's computer and telecommunications network, or office staff or support.
10. **"University"** means the University of Denver.
11. **"Work"** - shall mean any invention, discovery, know-how, show-how, process, material, manuscript, original data, academic course or portion thereof, learning tool or aid, or other creative or artistic work and any expression or physical embodiment thereof, including, without limitation, any sound or visual recording, multimedia presentation, model, machine, device, prototype, design, drawing, apparatus, instrumentation, circuit, computer program, database, biological material or specimen, chemical compound, other composition of matter, plan,

record or laboratory notebook, whether now known or developed in the future.

Revision Effective Date	Purpose
<i>6/28/2021</i>	<i>Minor revisions</i>