

Texas Christian University
Intellectual Property Policy and Procedures
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Texas Christian University Intellectual Property Policy

I. Preamble and Objectives

Texas Christian University (TCU) has among its primary purposes teaching, research, and the expansion and dissemination of knowledge. TCU recognizes that commercially valuable intellectual properties sometimes arise in the course of research and other activities conducted by employees and students using University resources and facilities. The University has an interest in protecting such intellectual properties in order to:

- A. Serve the public good by promoting the disclosure, dissemination, and utilization of inventions which arise in the course of the University's research through established channels of commerce;
- B. Provide incentives to members of the University community who create such inventions; and
- C. Support further research and development by securing for the University a share in the proceeds of such inventions.

The TCU Intellectual Property Policy (hereinafter "Policy") has been established to provide for an equitable allocation of responsibilities and rewards among inventors, their departments and schools, the University, and any external organizations that have sponsored and financed research activities at the University. Under this policy, intellectual properties can be managed so as to further the University's mission, enhance the value of such properties, and maximize benefits to the University, inventors and authors. These policies and procedures apply to the reporting of inventions by investigators, prosecution of patent rights by the University, development of commercial applications, distribution of financial benefit and expense within the University, and distribution of a share of net income from inventions to the inventor(s).

II. University Ownership of Intellectual Property

Generally, and subject to more specific guidelines for each type of intellectual property listed later in this policy, TCU will assert ownership of intellectual property created by TCU personnel, including employees and students, under the following circumstances:

- A. Development required, among other things, use of TCU resources (e.g. facilities, equipment, funding, personnel). TCU may assert rights to patentable material and trade secrets derived from research carried out with any use of TCU's resources. TCU may assert rights to copyrightable material developed with substantial use of TCU resources.
- B. The creator was assigned, directed, or specifically funded by TCU to develop the material.
- C. Material was developed by administrators, staff members, or other non-faculty employees in the course of their employment duties and constitutes work for hire under U.S. law.
- D. Development of the intellectual property was funded by an externally sponsored research program or by any agreement which allocates rights to TCU.

III. Definitions

Key terms in this policy are defined below for the reader's convenience, and are intended to illustrate the different types of intellectual property. Intellectual property that does not fit within one of the definitions listed below but qualifies as one or more of these types of intellectual property under U.S. law is covered under this policy.

Intellectual Property means certain creations of the human mind that are granted legal aspects of a property right. These property rights include patents, copyrights, trademarks, trade secrets, and any other such rights that may be created by law in the future. Intellectual property shall consist of, for example and without limitation: inventions, creative works, patentable subject matter, copyrightable

materials, know-how, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, trade secrets and trademarks.

Patent means a grant issued by the U.S. or a foreign patent office that gives an inventor the right to exclude others from making, using, or selling the Invention within the United States or other geographic territories for a period of years from the date of filing of the patent application. Patentable intellectual property generally consists of inventions, whether this be a machine, an article of manufacture, a method of doing something, a chemical or DNA sequence or the method of its use, products of genetic engineering, or improvements to any of these things. Patent protection may also apply to plants and to ornamental designs of articles of manufacture.

Invention means any new or useful process or discovery, art, method, technique, machine, device manufacture, software, composition of matter, or improvement thereof.

Inventor(s) means any individual or individuals associated with the University who makes an invention.

Invention Disclosure means a form that reports and describes a new invention, signed by the inventor(s).

Copyright means an original work of authorship that has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Copyright includes a bundle of rights: the right to make reproductions of the work, the right to distribute copies of it, the right to make derivative works that borrow substantially from a copyrighted work, and the right to make public performances or displays of most works. Copyrightable intellectual property generally includes all creative works, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, musical compositions, photographs, paintings, sculptures, architectural works and any other materials that may be copyrightable under U.S. law (whether or not produced in the U.S.).

Author means a person who creates a copyrighted work.

Trademark means a word, name, symbol, or device (or any combination) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others. Items such as, but not limited to, names, seals, logos, mascots, etc. are examples of trademarks.

Trade Secret means information, including a formula, pattern, compilation, program, device, method, technique or process, which derives independent economic value from not being generally known or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. Trade secrets are a compilation of information that is not generally known or accessible and which gives a competitive advantage to its owner. Examples of this include, but are not limited to, the method of making a product or the ingredients which go into it, and customer and prospect lists.

Software means any computer program or database, or part thereof, designed to accomplish a task or allow a user to produce, manage, analyze, or manipulate a product, such as data, text, a physical object or other software. Software may be protected by patent, copyright, or trade secret.

Sponsored Research Agreement (SRA) means a contract between the University and a sponsoring organization that sets the terms and conditions for the conduct of a faculty research or training project. An SRA typically includes a description of the work to be performed, the terms of payment, ownership of intellectual property, publication rights, and other legal assurances. Sponsored programs funded by

private sponsors will generally provide for TCU to retain all intellectual property that arises in the course of the research program with the sponsor retaining an option to acquire commercialization rights through a separate license agreement. Government and nonprofit sponsors generally allow rights to intellectual property that arises from the research program to vest with TCU.

Royalties means all compensation of whatever kind received from the sale, license, or other transfer of intellectual property rights by the University to a third party. This includes, but is not limited to, percentage payments, up-front fees, milestone payments, shares of stock, and any other financial or in-kind consideration.

Intellectual Property Review Committee (IPRC) means the advisory body, appointed by the Chancellor and reporting to the Associate Provost for Research that shall advise on the interpretation and implementation of these policies. It shall be the function of the IPRC to advise the Associate Provost for Research with respect to 1) guidelines and procedures for implementation of the this policy; 2) interpreting and applying this policy in individual cases; 3) resolving disputes concerning the interpretation and application of this policy; and 4) recommending such changes in University policy, as may from time to time be desirable.

Associate Provost for Research means the person designated by the Vice Chancellor for Academic Affairs to perform the duties and administer the policies described herein.

Work Made For Hire: Intellectual property produced in the performance of a grant or contract or as a part of an employee's assigned work responsibilities.

IV. Ownership and Disclosure of Patents and Inventions

A. Ownership of Inventions

1. Any invention resulting from activities related to an individual's employment responsibilities or with support from University-administered funds, facilities, personnel, or other resources of TCU shall be assigned to the University. This applies to any TCU employee, (including without limitation faculty, administration, and staff members) or any student, who is engaged, whether or not for compensation, in University research work from which an invention or copyrightable work is developed.
2. An invention unrelated to an individual's employment responsibilities that is developed exclusively on his or her own time without any University funds, resources or facilities shall be owned by the inventor.
3. Ownership of an invention developed in the course of, or resulting from, work supported by a grant or contract with a governmental entity or a nonprofit or for-profit nongovernmental entity, shall be determined in accordance with the terms of the grant or contract or, in the absence of such terms, shall be owned by and assigned to the University, as otherwise provided in this policy.
4. TCU will assert ownership to patentable intellectual property when the creator was assigned, directed, or specifically funded by TCU to develop the material, or when the material was developed by administrators or staff in the course of their employment duties and constitutes a work for hire under U.S. law.

B. Disclosure of Inventions

The right of employees and students to publish the results of research remains inviolate, subject only to the terms of a grant or SRA funding the work. However, any public disclosure of an invention, such as a presentation, publication, or grant proposal, prior to filing a patent application, limits patent rights and reduces an invention's commercial value. It is important for the inventor to be aware of the potential harm of premature publication, which severely undermines the patentability of an invention. Because of

the great costs associated with bringing a product to market, companies are usually willing to develop technology only if it is protected by patents. Therefore, employees and students are encouraged to disclose their inventions as soon as they are reduced to practice and prior to sending out manuscripts or grant applications. The inventor should consult the Associate Provost of Research whenever he or she has a question about patent rights.

C. Disclosure Requirements

1. When an inventor conceives or reduces to practice an invention and judges that it may be valuable and serve the public good, that individual is required to promptly report the invention to the University, usually within 30 days of discovery or creation. Inventions must be fully disclosed to the Associate Provost for Research in good faith using the Invention Disclosure Form which may be found by following the “Intellectual Property” link on the TCU Research webpage (www.research.tcu.edu) or at <http://www.research.tcu.edu/default.asp?id=page&pid=sp219&parent=176>.
2. It is the inventor's responsibility to identify all co-inventors at the time of disclosure on the Invention Disclosure Form and to submit in writing, on the proper disclosure form, the percentage of any potential revenue each of the co-inventors shall receive. Should the inventors fail to agree on a division, the IPRC shall make a recommendation on such distribution to the Associate Provost for Research.
3. To protect and preserve the intellectual property rights defined in this policy and to comply with federal regulations, inventors shall execute assignments and other appropriate documents as may be requested by the Associate Provost for Research to perfect the University's ownership and rights to inventions.

D. Procedure for Determining Patent Protection and Commercialization

1. The Intellectual Property Review Committee (“IPRC”) shall review all invention disclosures, evaluate their patentability and potential commercial value, and make a recommendation to the Associate Provost for Research. A sufficient period of time will be provided to insure that adequate review and consideration is given to patentability and the identification of potential corporate sponsors. A majority of the members of the committee shall constitute a quorum.
2. The Associate Provost for Research shall make a determination whether the University should seek patent protection for an invention. That determination will depend upon the availability of funds and an assessment of the invention's commercial value. No inventor shall have a right to have an invention patented.
3. If the creator does not agree with the decision of the Associate Provost for Research, a written appeal may be submitted to the Provost within 30 days of notification of the decision. The Provost will respond within 10 working days. If the creator wishes to appeal again, a written appeal may be submitted to the Chancellor within 10 working days. The decision of the Chancellor is final in such matters.

E. Disposition of Inventions

TCU may dispose of its rights to inventions as follows:

1. By using such rights for the public good;
2. By commercially developing the rights; or
3. By releasing the rights to the inventor(s) on the conditions listed below in Section IV.G.

F. Commercial Development of Patent Rights:

1. Agreements that grant to companies the rights to commercially develop inventions are encouraged. The Associate Provost for Research is responsible for negotiating such agreements, on behalf of the University, and in close coordination with Inventors.

2. Inventors shall, whenever practicable, be advised and consulted on the progress of license negotiations, but in no event shall they have a right of approval to the legal or payment terms of any agreement. The University shall not have a duty to an inventor to secure a minimum royalty.

G. Release of Rights to Inventor:

1. If, upon final review, it is determined that the disclosure will not be patented, licensed or otherwise commercialized by the University, then the Associate Provost for Research shall cause ownership rights to be waived by the University in favor of the inventor or author.
2. Rights released to the inventor will be on the condition that the University receives a paid-up, nonexclusive license to use the invention for research purposes.
3. Once rights are released to the inventor, the inventor may pursue a patent at his or her own expense; University funds may not be used for this purpose.
4. Rights released to the inventor will be on the additional condition that expenses previously incurred by TCU will be reimbursed by the inventor if monies from subsequent commercial exploitation of the invention become available.

V. Copyright Ownership

TCU encourages the preparation and publication of copyrightable works that result from teaching, research, and scholarly and artistic endeavors by members of the faculty, staff and student body. Creative works that are protectable by copyright belong, under the general law, to an employer if they are created by an employee within the scope of his or her employment. In keeping with academic tradition, however, TCU does not expect ownership rights for pedagogical, scholarly, or artistic intellectual property, such as scholarly books, articles, and other publications (including those in electronic form), works of art, literature, and music compositions and recordings. Included are all copyrights in papers, theses and dissertations written as a student to earn credit in University courses or to satisfy University degree requirements.

The policy of allowing an employee or student who authors or contributes to a published manuscript, journal article, student thesis, textbook, or other scholarly work to own the copyright in that work is intended to accommodate the requirement of many publishers that copyright be assigned by the author(s) to the publisher before publication can proceed. Although TCU generally will allow faculty, staff, other employees, and students to own the copyright in pedagogical, scholarly, and artistic works, TCU still owns all other rights, such as patent rights, in any ideas or other matter described in such works.

A. University Ownership of Copyrightable Materials

Copyrights in works such as those described above are owned by their creators, despite the use of University resources, unless they fall within one of the exceptions listed below, in which case TCU may assert ownership rights in copyrightable intellectual property:

1. Development was funded as part of a sponsored program under an agreement that allocates rights to TCU.
2. A faculty member was assigned, directed, or specifically funded by TCU to develop the material, and TCU has negotiated an understanding or formal contract with the creator.
3. The material was developed for an institutional purpose in the course of employees' prescribed duties. These include works on which there have been simultaneous or sequential contributions over time by numerous faculty staff, or students.
4. The material was developed, among other things, with substantial use of University resources, such as use of staff time, networks, equipment, or direct funding that would not occur but for the development of the intellectual property.
5. The material is a non-pedagogical, non-scholarly, or non-artistic work created by TCU employees in the course of their employment, such as computer software, databases, user

interfaces, user or other technical manuals or documentation, and other computer-related materials.

6. The material was prepared for TCU business purposes. For example, TCU would own all rights to any writings, photographs, videos, or sound recordings made by TCU employees that are prepared for possible inclusion in an internal TCU resource, a TCU print publication, or on TCU's website.

B. TCU License for Teaching and Classroom Materials

Authors of copyrightable teaching and classroom materials developed for TCU courses or curriculum shall grant the University a non-exclusive, royalty-free, perpetual license to use, display, copy, distribute, and prepare derivative works so that TCU's continued use of such material for educational purposes would not be jeopardized.

C. University Assistance for Protection and Marketing of Independently-Owned Copyrightable Materials

Faculty, staff or students are not obligated to disclose the creation of copyrightable material, even when the product might have commercial value. Faculty, staff and students are, however, encouraged to disclose any copyrightable material that has commercial value to the extent that they may wish assistance in copyright protection and marketing in exchange for profit sharing with TCU. All disclosures should be made to the Associate Provost for Research. The procedures listed above in section IV.D. will be followed to determine whether University resources should be utilized to protect and market such copyrightable materials.

VI. Trademarks

Trademarks associated with any other form of intellectual property covered in this policy will be considered jointly owned by the creator and TCU unless otherwise specified.

VII. Trade Secrets

Trade Secret is a legal term referring to any information of knowledge, whether or not patentable or copyrightable, which is not generally known or accessible, and which gives a competitive advantage to its owner. Trade secrets are proprietary information. Making such knowledge widely known destroys its value as a competitive advantage. To the extent possible, and in keeping with TCU's objectives, such knowledge should be protected.

A. Determination of Rights to Trade Secret Subject Matter.

Except as set forth below, the creator of a trade secret shall retain his/her rights, and TCU shall not assert ownership rights. TCU will assert ownership rights to a trade secret developed under any of the following circumstances.

1. Development required, among other things, use of TCU resources (e.g. facilities, equipment, funding, personnel). TCU has rights to trade secret material derived from research carried out with any use of TCU's resources. However, trade secret material developed independently by the creator outside of normal duties associated with the creator's position and with no use of TCU resources is vested with the creator.
2. The creator was assigned, directed, or specifically funded by TCU to develop the material.
3. Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under U.S. law.
4. Development was funded by an externally sponsored program or by any agreement which allocates rights to TCU.

B. Disclosure Requirements:

1. TCU personnel, who alone or in association with others, create a trade secret with any use of TCU resources, are responsible for notifying TCU. Such notification shall be made when it can be reasonably concluded that the subject matter has been created, normally within 30 days of the creation.
2. Any employee with intellectual property falling into the trade secret category should contact the Dean or Vice Chancellor with administrative oversight of his or her unit for assistance in determining what form of protection should be sought. Some trade secrets are patentable or copyrightable. However, once disclosed, they are no longer secret and thus enjoy legal protection afforded under patent or copyright law. To enjoy perpetual protection, trade secrets must not be disclosed as part of the patent or copyright process. Disclosure of a trade secret, except when assigned or sold, voids its value as a secret.
3. Creators are also encouraged to seek advice of the Office of Sponsored Programs.
4. In order to protect intellectual property as trade secret, TCU will enter into a non-disclosure agreement with the employee prior to proceeding.

VIII. Distribution of Revenue

A. Activities related to the protection and marketing of University intellectual properties are intended to be self-supporting. Thus, the Associate Provost for Research is charged with the responsibility of using the University’s resources carefully, with a view to promoting the fiduciary interest of the institution as a whole. TCU is not obligated to protect or develop any Invention, copyrighted work, or other intellectual property unless it has made an explicit contractual agreement to do so. However, once it has made this agreement, distribution of any revenue that results from any invention, copyrighted work, or other intellectual property will be handled in the manner described below.

B. TCU assumes financial responsibility for intellectual property it owns. These responsibilities include, but are not limited to, assessment of the commercial value of inventions, costs of prosecuting patents and their administration, registering copyrights, marketing and licensing intellectual property, defense of infringement charges, and any litigation involving the intellectual property.

C. Income earned from the sale, licensing, or other transfer of intellectual property of the University shall be received solely by the University and shall, except where a grant or SRA specifies otherwise, be distributed successively as follows:

- 1) Reimbursement of all direct expenses related to protection and exploitation of the intellectual property, such as those listed in Section VII.B above.
- 2) Any remaining net revenues received by TCU for intellectual property subject to this policy shall be distributed as specified in table below.

	Creator	Lab of the Creator	Department of the Creator	College/school of the Creator	IP Pursuit Fund	University Research
≤ \$100,000	50%	10%		20%	10%	10%
> \$100,000	40%	10%	10%	25%	5%	10%

D. Net Revenue calculations are based on the total net revenue received over the life of the invention.

E. Where there is more than one inventor or author, distribution shall be prorated according to the contribution of each as may be agreed in writing between the parties, or, if an agreement cannot be reached, then the IPRC shall make a recommendation on such distribution to the Associate Provost for Research. The determination of the Associate Provost for Research may be appealed according to the procedures listed in section IV(D)(2-3).

F. Royalties are payable to inventors and authors only upon actual receipt by the University.

IX. Administration of the Intellectual Property

The Associate Provost for Research along with the Office of Sponsored Programs will be responsible for day-to-day management of all University intellectual property issues, and shall be empowered to negotiate the University's rights under these policies, unless otherwise stipulated as in the case of Trademarks. Intellectual property disclosable hereunder shall be disclosed to the Associate Provost for Research's Office, which will be responsible for timely review of all disclosures. The Office will confer with the Intellectual Property Review Committee for a review of the patentability and marketability of the intellectual property and shall be responsible for working with creators, for obtaining patent, copyright or other protection of intellectual property owned by TCU, and for contracting for marketing and licensing of all such intellectual property rights as appropriately directed by the Provost.

X. University Assistance with Independently-Owned Intellectual Property

TCU personnel who wish to pursue the commercialization of the independently developed and owned intellectual property through TCU may offer such intellectual property to TCU by disclosing the intellectual property to the Office of the Associate Provost for Research. The office will work with the Intellectual Property Review Committee to evaluate the commercial potential of the intellectual property and make a recommendation to the Provost regarding the acceptance of the intellectual property. Acceptance of such intellectual property by TCU will be made at the sole discretion of TCU and will require creator(s) to accept all provisions of this policy, including the assignment of right and income distributions.

XI. Copyright Infringement and Fair Use

Using the protected works of others in the creation of a new work, or in classroom teaching, will subject the author to infringement liability unless the use falls within the exceptions outlined in current copyright law. Fair use doctrine provides limited copying of copyrighted works without permission of the owner for certain teaching and research purposes. In determining fair use, the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used and the effect of the use upon the potential market for, or the value of, the copyrighted work will be considered. The last of these factors is considered most important in determining whether a particular use is fair. When in doubt, the user should obtain permission to use the material in question.

XII. Intellectual Property in Distance Education

Faculty members hold copyright in materials they create on their own initiative in the course of performance of their teaching responsibilities, regardless of the medium of delivery. TCU will own courses that are created, if creation of the course and/or its delivery means is the primary condition of employment. Faculty members have a responsibility to meet the reasonable needs of their currently enrolled students, including those addressed by the use of technologies that make materials readily accessible. Notwithstanding this responsibility, the creation and use of distance education materials intended for use beyond the current semester or for commercial purposes will be considered property owned jointly by the faculty member and TCU.

XIII. Intellectual Property Developed in Collaboration

Works created through the joint efforts of TCU faculty members and nonfaculty (staff, post-doc, etc.), within the scope of their employment will be considered owned by TCU. Works created by TCU faculty members and others outside the employ of TCU may result in ownership that is altered by agreement of the parties. Joint authors may choose to cooperate in the commercialization of their work, or to commercialize separately. A TCU faculty member may assign his or her rights in a joint project to TCU, assuming such assignment is not prohibited by a prior agreement and TCU agrees to accept the assignment.

XIV. Creator Equity Participation

TCU policy on Disclosure of Conflict of Interest does allow creators to receive equity in return for their contributions to companies as founders or consultants, as long as the creator discloses his/her equity position and is otherwise in compliance with the TCU Conflict of Interest requirements. In the event the creator receives equity from the company, and TCU has negotiated as licensor a royalty-bearing license, or an option for such a license, with respect to intellectual property, the creator shall agree to waive his or her share of Net Royalty Income received by TCU and it shall be retained by TCU.

XV. Texas Christian University Name, Trademark, or Seal

Use of the TCU name, trademark or seal on letterhead and business cards is standardized and regulated by the Office of Marketing and Communication. Any questions regarding the use of the TCU name, trademark or seal in circumstances other than the ones listed above should be referred to the Vice Chancellor for Marketing and Communications. Any questions regarding the use of the University name, trademark, or seal in circumstances other than the ones listed above should be referred to a University officer. Trademarks associated with any of the aforementioned intellectual property shall be the joint property of the creator and TCU. TCU will assist the creator of a product in registering and protecting a trademark associated with any property in which TCU has an assigned interest.

Approved by Chancellor's Cabinet, October 15, 2013.