

Intellectual Property

Original Implementation: April 9, 1988

Last Revision: July 26, 2016

Stephen F. Austin State University encourages participation by faculty, staff and students in scholarly research and creative activities that support and enhance teaching in its classrooms and laboratories. While research conducted at Stephen F. Austin State University is aimed at discovery and dissemination of knowledge, rather than profit from commercial application, the Board of Regents recognizes that questions regarding intellectual property rights may arise from such activities. The Board of Regents seeks through adoption of this policy to balance the interests of the public, the university and the inventor, author, or creator in intellectual property arising from research and creative activities conducted by employees of the university. The board further seeks to ensure that inventions, discoveries and creative works are used and controlled in an efficient and prudent manner which will result in maximum benefit to the public, the university and the inventor, author, or creator.

Applicability

This policy shall apply to all persons employed by Stephen F. Austin State University or a component thereof, and to anyone using facilities or funds subject to control or supervision by Stephen F. Austin State University. This policy, as amended from time to time, shall be deemed to constitute part of the conditions of employment of every employee, including student employees. Unless otherwise excluded, this policy shall apply to intellectual property of all types (including any invention, discovery, trade secret, technology, scientific or technological development, computer software, course materials, conception, design, creation or other form of expression of an idea) regardless of whether the intellectual property is subject to protection under patent, trademark, or copyright laws, or common law.

Copyright

1. Definitions

- a. Copyright is the ownership and control of the intellectual property in original works of authorship. Copyright ownership and the rights thereof are defined by federal law. It is the policy of Stephen F. Austin State University that all rights in copyright shall remain with the creator of the work unless otherwise subject to contractual legal obligations, or the work is a "work made for hire" as that term is defined by federal law. The university will not require faculty to produce "works made for hire" as part of their regular workload or as terms for continued employment unless the production of works made for hire were a part of the faculty member's original conditions of employment, agreement

to produce a “work made for hire” is made in advance between the university and faculty member, or as otherwise provided by university policy.

b. A "work made for hire" is:

If expressly agreed to by the parties in a written instrument, a work specially ordered or commissioned by the university shall be considered a “work made for hire”, including but not limited to a work for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, a course, or an atlas. An “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities. Multimedia courseware specially commissioned by the university shall be included as a work made for hire. “Multimedia courseware” is defined as interactive teaching aids created and deployed with electronic tools. They may incorporate text, graphic video, and audio elements and may be mounted for remote access on a file server or stored onto a removable storage medium for stand-alone distribution. Examples include but are not limited to distance education courses, electronic textbooks, hypertext modules, simulation software, and databases containing numbers, images, or text. Financial support for course development or course reductions offered by the university to aid with course development of on-campus or distance education courses will not by itself constitute a work made for hire unless agreement is reached prior to such arrangements that the resulting course will be a work made for hire.

2. Ownership

a. General

In keeping with academic tradition, the university does not claim ownership of copyrightable intellectual property created by faculty during the normal course of their employment unless otherwise agreed in writing. Such property includes but is not limited to: course content, syllabi, course materials, course computer enhancements, authored/created textbooks, books, articles, software, multimedia courseware, data sets in any format and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly study created on the faculty’s own initiative. Further, the university claims no ownership of faculty authored/created popular nonfiction, novels, poems, musical compositions, software or other works of artistic imagination which do not result from projects commissioned or assigned by the university. Unless evidence of excessive use or abuse of university funds or facilities exists, the university will convey, upon request and to the extent consistent with its legal obligations, the copyright in such works to the individual faculty creator(s) or author(s). Faculty members will make such decisions and take such steps to protect works they own, with their discretion. The university reserves the right to use for instructional and research purposes, without obligation to make payment therefore, any works created by

employees or students during their periods of employment or attendance and revisions or derivations of such works.

b. Sponsored Research Agreements

Copyright ownership of all material (including software) that is developed in the course of, or pursuant to, a sponsored research agreement (whether funded by a public or private agency or organization) shall be determined in accordance with the terms of the sponsored research agreement, federal law, or, in the absence of such terms, the copyright shall be negotiated with the author generally following the principles set forth in this policy.

c. Use of University Resources

- i. Copyright in all material (including software) that is developed with the significant use of funds, space, hardware, or facilities administered by the university, including but not limited to classroom and laboratory facilities, but without any obligation to others in connection with such support, resides in the university. The university recognizes and affirms the traditional academic freedom of its faculty to publish freely without restriction. In keeping with this philosophy, the university will not construe the provision of office, computer or library facilities as constituting significant use of university funds, except for those situations where the funds were paid specifically to support the development of such. Faculty development leaves, faculty development grants, mini-grants and research course reductions will not be construed as a significant use of university funds unless otherwise agreed to by the university and faculty member.
- ii. Copyright in works resulting from projects that are performed in whole or in part by any person with grants from funds administered by the university shall be determined in accordance with the terms of the support agreement, federal law, or, in the absence of such terms, shall be negotiated by the parties involved. The university will determine whether to register and enforce the copyright on works it owns.

d. Joint Works

Works, including the development or redevelopment of fully online courses, may be created through the joint efforts of faculty, employees working within the scope of employment, and/or others under contract to provide services. Such joint works are jointly owned by the faculty member and university. Ownership agreements shall be executed to memorialize the parties' intentions and avoid later confusion over ownership rights. Any of the joint owners may register and enforce the copyright in the names of all owners with accounting. In the absence of an agreement on the division of revenues, they will be shared pro rata after recouping costs.

e. Grandfather Clause for Ownership of Fully Online Courses

Agreements executed under the Intellectual Property Rights for Distance Education policy (deleted July 26, 2016) still apply.

3. Revenue Sharing

a. Works Not Owned by Stephen F. Austin State University

If the university does not claim ownership of an intellectual property, authors and creators of intellectual works not owned by the university may copyright the related work, publish it, register the copyright and receive any revenues which may result therefrom.

b. Works in Which Stephen F. Austin State University Has a Property Interest (Generally, Commissioned Works or Works Prepared in the Course and Scope of Employment)

- i. Royalty income received by the university through the sale, licensing, leasing or use of copyrightable material in which the university has a property interest will normally be shared with the author. Authorship for this purpose shall be determined by the president or his designee. Compensation and division of royalties, if any, will be negotiated by written agreement prior to commencement of work on the project or as soon thereafter as practical.
- ii. In the event that an author contributes a personal work to the university, a written agreement accepting such contribution shall be executed. The terms of the agreement shall include a statement governing the division of royalties between the university and the author.
- iii. In cases of extramural funding, the terms of the funding agreement shall govern the division of any royalties that may result from commercialization of materials resulting therefrom. In the event that the funding agreement vests royalty rights in the university, and does not provide any royalty share for the author, the terms of Copyright, Section 3.b.(i) shall apply. No such royalty payment to the author, however, may violate the terms of the funding agreement.

4. Use of University or Agency Sponsored Materials

- a. Prior to the use of a work in which the university has an interest, the author will consult with the university through appropriate administrators, or provide a reasonable opportunity for such consultation, with respect to its use.
- b. When unresolved questions on use occur, they shall be referred to the president or his designee for resolution.

5. Revision of Materials

Materials owned by the university under the terms of this policy shall not be altered or revised without providing the author a reasonable opportunity to assume the responsibility for the revision. If the author declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the president or his designee in consultation

with the appropriate department or office. This does not apply to the substantial redevelopment of fully developed approved online courses.

6. **Withdrawal of Materials**

- a. Materials owned by the university under the terms of this policy shall be withdrawn from use when the university, in consultation with the author, deems such use to be obsolete or inappropriate. No withdrawal or other discontinuance that would violate the terms of any licensing or other agreement relating to the materials shall take place.
- b. The university may release to the author(s) the right to any work copyrighted in the name of the university.

7. **Warranty**

Authors/creators must obtain appropriate permissions and releases necessary to avoid infringing or invading the personal rights of others. An author or creator of any work owned by the university under the terms of this policy warrants that, to the best of his/her knowledge, the work does not infringe on any existing copyright or other legal rights; that work not identified as quotations is the expression and creation of the author; that necessary permission for quotations and the like has been obtained; and that the work contains no libelous material or any material that invades the privacy of others.

8. **Notice of Copyright**

Although the law does not require copyright notice for legal protection, the university encourages that such notice be applied to all works.

All material owned by the university under the terms of this policy shall be protected by notice of copyright in the name of the university. The proper form of such notice is as follows:

© 20__, Stephen F. Austin State University. All rights reserved.

The date should be the year in which the work was completed or in which it was published, whichever is earlier. The name of the university should be spelled out in its entirety.

Works in the electronic environment are protected under copyright law just as print works are protected, from the moment of fixation in a tangible medium of expression. This is generally understood to include fixation in a central processing unit.

Patents

1. **Obligations**

- a. Employees and others who are subject to this policy by virtue of their employment or use of university services or facilities shall disclose to the president or his designee (dean with

copy to the general counsel) any invention or discovery (including those made under cooperative arrangements); provide complete information thereon; and cooperate with the university in protecting potential patent and know-how rights in accordance with Administration of Intellectual Property below.

- b. When an invention arises from a project specially commissioned by the university, created in the course of employment, or with use of university facilities or funds beyond the provision of office or library facilities, the inventor hereby assigns all rights, title and interest in and to any such invention to the university or its designee and shall assist the university or its designee in securing patent protection on the invention. The inventor shall, upon request, execute an invention agreement prior to commencement of the project, or as soon thereafter as practical.
- c. All parties privy to inventions, know-how, trade secrets, or other discoveries which may be patentable shall maintain such information in strict confidence, so as to protect the intellectual property (subject to internal disclosure as outlined above). Researchers, consultants, and other individuals hired on projects which may involve the development of patentable property shall execute a non-disclosure agreement. Notwithstanding this provision, all employees shall be subject to non-disclosure and confidentiality obligations on patentable or other trade secret information as a term and condition of employment.

2. **Sponsored Research**

- a. In cooperative undertakings sponsored by, or involving, third parties, provisions for the control of patents normally should be consistent with the general policy stated above. The provision of sponsored research funds shall trigger patents section 1.b. above. However, it is recognized that in some cases the interests of other organizations (federal, industrial, etc.) will justify modifications of the general policy. In those cases, the provisions with respect to patents shall appear in the applicable memorandum of understanding or agreement for the review and approval of the president. It is intended and provided that disclosed inventions will be identified and managed in accordance with patent policy and procedures.
- b. Nothing in this policy shall be interpreted as precluding the acceptance of a contract, grant, or agreement that provides for ownership of inventions and patent rights by the cooperating agency or organization.

3. **Royalties**

- a. After a deduction of fifteen percent (15%) for administrative costs, and a deduction for the cost of patenting, licensing, and protecting of invention and patent rights, the net royalties or other income arising from an invention or discovery shall be divided as follows:
 - i. Fifty percent (50%) to the inventor(s);
 - ii. Fifty percent (50%) to the university.
- b. Special facts concerning an invention may warrant a different distribution of royalties. Agreements with respect to royalties shall be in writing and signed by the president or his

designee. Any agreement which grants the inventor more than fifty percent (50%) of the net royalties shall require approval of the Board of Regents.

- c. In the event that a person contributes an invention to the university, a written agreement accepting the contribution shall be executed. The terms of the agreement shall include a statement governing the division of royalties between the university and the donor.

4. Use of Inventions and Discoveries

- a. Prior to the use of an invention or discovery in which the university has an interest, the employee responsible for the invention or discovery will consult with the university through appropriate administrators, or provide a reasonable opportunity for such consultation, with respect to its use. The university reserves the right to use for instructional and research purposes, without obligation to make payment therefore, any inventions or discoveries made by employees during their periods of employment and revisions or derivations of such inventions or discoveries.
- b. When unresolved questions on use occur, they shall be referred to the president or his designee for resolution.

Trademarks, Service Marks and Trade Names

1. Trademarks and service marks may be any work, name, symbol, or device, or any combination thereof adopted and used by the university in the sale or advertising of goods or services to identify and distinguish such goods and services from those sold by others.
2. Trade names include any names used to identify Stephen F. Austin State University and its services.
3. The president or his designee shall be responsible for protection and licensure of trademarks, service marks, and trade names used by or related to Stephen F. Austin State University.
4. No licenses shall be granted to commercial entities for use of trademarks or service marks in connection with inherently dangerous products, products of obscene or disparaging characteristics, health related products, and any other uses which in the opinion of the president or his designee would degrade the reputation or goodwill of the university.
5. Trademark licensing inquiries should be directed to the director of athletics for processing in accordance with the university's licensing program. If the licensing inquiry does not fall within the traditional licensing program, the request should be forwarded to the general counsel.

Trade Secrets

Trade secrets may be comprised, generally, of any formula, pattern, or device, or of information which gives one an opportunity to obtain an advantage over competitors who do not know or use it

in commercial applications. Trade secrets in which Stephen F. Austin State University maintains an interest shall be protected in accordance with the terms of sponsored research agreements or, if none exist, by any lawful means available to the university as determined by the president or his designee.

Disclosure of Intellectual Property

1. Each individual subject to this policy has a duty to disclose promptly, in writing, and prior to any disclosure either to the public or for commercial purposes, any intellectual property created or discovered by such individual. Disclosure shall be made to the president or his designee (dean with copy to the general counsel).
2. The president shall adopt policies and determine procedures for appropriate institutional review of such disclosures. The duty to disclose arises as soon as the individual has reason to believe, based upon his/her own knowledge or upon information supplied by others, that the intellectual property may be protectable under patent, trademark, or copyright law, or common law. Certainty about the protections to be afforded such intellectual property is not required before a disclosure should be made. Each individual subject to this policy shall execute such declarations, assignments, or other documents as may be necessary to protect the university's interest in such intellectual property.
3. Disclosure of equity ownership or management participation in a business entity that has an agreement with the university relating to research, development, licensing, or exploitation of intellectual property created or discovered by an employee shall be made in accordance with Equity Ownership and Management Participation below.

Equity Ownership and Management Participation

1. Ownership of any equity interest in a business entity that has an agreement with the university relating to research, development, licensing, or exploitation of intellectual property created or discovered by an employee shall be disclosed to the president or his designee. The president shall take any necessary steps to avoid injury to the university as a result of potential conflicts of interest arising out of such equity ownership.
2. No employee may serve as a director, officer, or employee of a business entity that has an agreement with the university relating to research, development, licensing, or exploitation of intellectual property in which the university has an ownership interest except upon request of, or prior approval by, the Board of Regents. Authorization to serve as a director, officer, or employee of such a business entity may be subject to one or more conditions established to avoid injury to the university as a result of potential conflicts of interest.
3. In accordance with Section 51.912 of the Texas Education Code, the names of all business entities that have an agreement with the university relating to the research, development,

licensing, or application of intellectual property in which employees own an equity interest, or for which such persons serve as director, officer, or employee, shall be reported to the governor and legislature on an annual basis. The university may accept equity interests as partial or total compensation for rights conveyed in agreements with business entities relating to intellectual property owned by the university. The university may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee as a part of an agreement between the university and a business entity relating to intellectual property created, discovered, or developed by the employee and owned by the university.

Disposition of Income

1. In the disposition of any net income accruing to the university or a component from patents, trade secrets, or copyrights, first consideration shall be given to the promotion of research.
2. In the disposition of any net income accruing to the university or a component from licensure of trademarks or service marks, first consideration shall be given to creation or enhancement of scholarship programs.

License Agreements

1. Agreements which grant a third party the right to make, use, or sell a patented invention, invention know-how, or trade secret that has been disclosed and assigned to, or is otherwise owned by, the university shall require approval by the Board of Regents.
2. Agreements which grant a third party the right to reproduce, sell or use a copyrighted work, trademark, service mark, or trade name in which the university owns an interest shall require approval by the president.

Administration of Intellectual Property

1. The president or his designee shall be responsible for administering this policy. Duties encompassed by this responsibility shall include filing appropriate registration forms and supporting documents with the Copyright Office, Library of Congress, or the Patent and Trademark Office, negotiating and drafting licenses and other royalty agreements, drafting necessary agreements for specially commissioned works, determining the applicability of this policy and appropriate law to intellectual property, and adoption of policies and procedures consistent with this policy statement and necessary for determination of ownership or protection of the university's interests in intellectual property. All referrals to the president or his designee, under this policy, shall follow established procedures and administrative channels of communication.
2. In determining the university's ownership interest in any intellectual property and measures necessary for appropriate protection or exploitation of such interests, the president or his

designee may utilize assistance from designated university committees, the general counsel, Texas attorney general, an appropriate private law firm or attorney, or corporations established for the purpose of managing intellectual property.

3. The responsibility for commercial marketing and licensure of intellectual property, and for maintenance of appropriate fiscal records, is assigned to the president or his designee.
4. All expenses of copyright registration, patenting and other forms of protection sought by the university shall be borne by the university, unless otherwise paid by a licensee through a negotiated licensing agreement. If the university fails or refuses to pursue within a reasonable period any registration of copyright or patent, or other protection, for intellectual property in which an employee has an ownership or royalty interest, the employee may independently pursue registration or other protection of such interest. All patents must be filed in the university's name, unless the university relinquishes all rights and interest to the intellectual property in writing, signed by the president. The individual shall be reimbursed for expenses related to such protective action, pursuant to a negotiated written agreement, if the university subsequently decides to assert and exploit the university's interests in the property.

Cross Reference: Tex. Educ. Code § 51.912; United States Code, Titles 17, 35

Responsible for Implementation: President

Contact for Revision: General Counsel

Forms: None

Board Committee Assignment: Academic and Student Affairs