



Policy Title:	Intellectual Property and Copyright Ownership
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SUMMARY:

The primary mission of universities is to create, preserve and disseminate knowledge. When that knowledge takes the form of Intellectual Property (IP), a university must establish a clear and explicit policy that will protect the interests of both its creators and the university while ensuring that society benefits from the fair and full dissemination of that knowledge. This policy addresses the ownership, disposition and use of IP which includes, but is not limited to, patents and/or inventions, copyrights (including computer software) and trademarks or trade secrets relating to Coastal Carolina University (University), its faculty, staff, students and others using University Resources as defined in Section III of this policy.

POLICY:

I. PURPOSE

The purpose of this policy is to set forth the terms and conditions whereby the University establishes and maintains its interests in IP created by or used at the University, taking into account laws governing patents, copyrights, trademarks and other forms of IP. This policy governs the ownership and protection of such property at the University.

This Policy covers all IP conceived, first reduced to practice, written, or otherwise produced by University-associated Faculty, Staff and/or Students using University funds, facilities or other resources, including but not limited to, technical expertise. This Policy also covers all IP conceived, first reduced to practice, written, or otherwise produced by external collaborators using University resources under a work-for-hire agreement, if not superseded by other contracts.

This Policy is intended to:

- Make clear the University's values and expectations regarding IP;
- Encourage and disseminate research, scholarship, creative activity and new discovery;
- Provide an infrastructure to guide the University community in bringing new discoveries and developments into use and to evaluate, protect, and manage

- their commercial significance;
- Provide for the equitable assignment of interests in IP between the Creator(s) and the University;
 - Provide incentives to Creators in various forms, including, but not limited to, professional development, recognition and financial compensation;
 - Initiate the process of safeguarding IP;
 - Provide a transparent process for commercialization opportunities; and
 - Enumerate employee-excluded works that are not subject to University ownership under the Policy.

II. SCOPE

This Policy applies to all persons employed by the University, to all students and to any other person or entity using facilities, staff or funds subject to control or supervision by the University, except as otherwise expressly stated herein.

III. DEFINITIONS

- A. Administrator- Associate Provost for Research
- B. Commissioned work- A commissioned work is a work produced for University purposes by individuals not employed at the University or by University employees outside their regular University employment.
- C. Contracted Facilities Work- A contracted facilities work is a work produced by non-University personnel or University personnel acting outside the course and scope of their employment, using designated University facilities pursuant to a written agreement.
- D. Copyright- Copyright is the intangible property right granted by Federal statute for an original work fixed in a tangible form of expression. Copyright provides the owner with the following exclusive rights in a work:
1. to reproduce;
 2. to prepare derivative works;
 3. to distribute by sale or otherwise;
 4. to perform publicly; and
 5. to display publicly.
- E. Creator(s)- Individual(s) who produce a work, invention, or process by their own intellectual or physical labor. When there is more than one Creator, the ownership of each Creator's contribution shall be considered separately pursuant to this policy.

- F. Employee - This includes permanent and temporary faculty, full- or part-time classified employees, administrative staff and students who are paid for specific work by the University. Students may be employees for some purposes and not for others. If they are paid as student assistants, for example, or given grants to do specific research, they will be employees for purposes of this policy. Students receiving general scholarship or stipend funds would not normally be considered employees for purposes of this policy.
- G. Intellectual property - This refers to anything or any portion of anything developed by anyone covered by this policy that fits into one or more of the following categories:
- a. A potentially patentable machine, article of manufacture, composition of matter or process, or improvement in any of these;
 - b. An issued patent;
 - c. A legal right that inheres in a patent;
 - d.
 - e. A trademark; or
 - f. Anything that is copyrightable.
- H. License- A contract in which a copyright owner grants to another permission to exercise one or more of the rights under copyright.
- I. Net Royalties or Other Income - This refers to the total value of any property received, including cash payments, in consideration for the sale, transfer, lease, licensing or other disposition of intellectual property in which the University has an interest, after subtracting the direct and identifiable expenses of the University in developing said intellectual property, securing a copyright or patent, and the direct expenses of marketing the same (excluding any indirect costs, such as overhead, from such calculation), and payment of any taxes on the same.
- J. Software- The source code and/or object code of computer applications and subroutine libraries. Software, for the purposes of this Policy, does not include Artistic Works in the form of computer-generated works of art or music or the content of other forms of works, such as traditional Scholarly Works, that are recorded in a Software medium.
- K. Sponsored Work- A sponsored work is a work first produced by or through the University in the performance of a written agreement between the University and an organization or agency (sponsor), which provides funding, equipment, or other support for the University to carry out a specified project in research, training, or public service pursuant to a written agreement. Sponsors include Federal, State, local, and other governmental entities as well as private industry, educational institutions, and private foundations. Sponsored works generally

include interim and final technical reports, software, and other works first created in the performance of a sponsored agreement. Sponsored works do not include journal articles, lectures, books or other copyrighted works created through independent academic effort and based on the findings of the sponsored project, unless the sponsored agreement states otherwise.

- L. Substantial Use of University Resources- The use of university funds, programs, equipment, space or other physical assets that exceeds that use customarily and currently provided to employees as part of the ordinary conditions of their employment. In general, the use of university funds or external funds administered through the university, the use of students or employees as support staff to develop an Invention, and the use of specialized or unique facilities, laboratories, and equipment, or other special subventions provided by the university, are construed as substantial use, unless the university specifically approves the use as an exception. For purposes of this policy, the university does not consider the use of ordinary office space, library facilities, ordinary access to university provided desktop, laptop, or tablet computers and networks, or salary, to be substantial use of university resources.
- M. Trade secret- Information kept secret by a business to maintain an advantage over competitors.
- N. Trademark- A Trademark or a Service Mark is a word, phrase, symbol or design (or any combination thereof) that identifies and distinguishes the source of goods or services.
- O. University Facilities- All real and personal property owned and operated by the University, including all buildings, structures and grounds, and the equipment and other appurtenances housed in or associated with those facilities. The use of University Facilities also recognizes the time and effort of university employees and students who facilitate and otherwise enable the use of those facilities.
- P. University Funds- Funds, regardless of source, that are administered under the control, responsibility, or authority of the University.
- Q. University Resources- University funds, facilities, or human resources
- R. Work- Any copyrightable material, such as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, pantomimes and choreographic works, pictorial or graphic works, and sculptural works.
- S. Work Acquired by Assignment or Will- The University may acquire copyrights

by assignment or will, pursuant to the terms of a written agreement or testament. The terms of such agreements should be consistent with this policy on Copyright Ownership and other University policies governing such acquisitions.

IV. ADMINISTRATION

- A. The Associate Provost for Research is hereby designated as the Administrator of this Policy. The Administrator will:
 - 1. Oversee the Policy and manage the IP disclosure and review process, resulting in a decision by the University to either claim an interest in IP or to waive some or all of those rights in favor the Creator.
 - 2. Determine whether the IP in which the University holds an interest is marketable, and, if so, take appropriate steps on behalf of the University for marketing the property, including transferring the University's rights to the Coastal Carolina University Research Foundation to manage the IP on behalf of the University.
 - 3. Establish guidelines and oversee the distribution of royalties or other income accruing to the University, alone or in partnership with Creator(s), as a result of the implementation of this policy.
 - 4. Transfer, where appropriate, any interest, which the University may possess, in patents, copyrights or other IP addressed in this Policy while ensuring compliance with state policy.
 - 5. In consultation with the Provost, annually compile and submit to the State Commission of Higher Education such information on its intellectual property as required.

- B. The University Research Council (URC) will serve as an advisory body to the Administrator of this Policy, as needed. The URC may:
 - 1. Review and respond to requests from the Administrator on the interpretation of the Policy, and make written recommendations;
 - 2. Review and recommend to the Administrator any adjustment of the University's plan for the dispersion of IP revenue.
 - 3. Participate in the dispute resolution process regarding IP, as described in section VIII.

V. OWNERSHIP OF INTELLECTUAL PROPERTY

- A. In general, the University owns IP that is conceived or reduced to practice by university faculty, staff, and students as a result of (a) activities that fall within the Creator's scope of employment with the university, whether or not university resources are used, (b) University research activities, or (c) activities involving the Substantial Use of University Resources. The following protocols provide guidance as to when the University will assert its interest in IP.

B. Copyrights

The University may retain its IP rights in Copyright or it may assign rights back to the Creator(s) or to an external entity sponsoring the development of the IP, depending on the following circumstances:

1. Unless otherwise indicated in a written agreement, the university retains all IP rights in Copyright for any Works derived from the Substantial Use of University Resources, Commissioned or Contracted Facilities Works, Sponsored Works, Works Acquired by Assignment or Will, or for Works in the form of Software (which is subject to federal privacy laws regarding all Software, code, and data with commercial value), or for any items not explicitly listed in section V.B.2, below.

2. Instructional, Scholarly, and Artistic Works for Hire

Under federal [Copyright law](#), the Creator of a work is the presumed owner, but ownership is given to the University when a work is created within the scope of employment, known as “work-for-hire”. For instructional, scholarly and artistic works for hire, the assignment of IP rights in Copyright depends on the nature of the Work and the position of the Creator.

i. Faculty

The University hereby assigns ownership of its Copyrights for faculty-created instructional, scholarly or artistic works to their faculty Creators, with the exception of Works derived from the items listed above in section V.B.1. This practice reflects the University’s commitment to encourage faculty to write and publish what they wish and have ownership of their copyrighted IP.

If the Instructional Works were used for, or created with the intention to be used for teaching by the Creator or others at the University, each faculty Creator grants the University a perpetual, nonexclusive, worldwide, royalty-free license to use their Instructional Works for the University’s teaching and educational purposes as well as for administrative purposes such as accreditation. This is particularly important when departments seek to use common materials to offer consistent content across multi-section or inter-related courses with multiple instructors.

ii. Staff

Any instructional, scholarly or artistic works created by Staff acting within the scope of their employment generally constitutes a work-for-hire, and the University asserts Copyright ownership in such works. Staff may freely use instructional, scholarly or artistic works developed at the University for educational and/or research purposes, but not for commercial purposes.

iii. Students

Students who are employed by the University, or have created Copyright eligible materials derived from the items listed in section V.B.1. will be treated as Staff per this Policy. Otherwise, Students will retain rights to

their instructional, scholarly or artistic works. For the purposes of this Policy, significant support from Faculty is sufficient to consider Copyright-eligible materials as Works derived from the Substantial Use of University Resources. Student Financial Aid, however, is not considered a use of University funds. If instructional, scholarly or artistic works were created by a student as a result of academic engagement at the University, the University retains a non-exclusive, worldwide royalty-free license to the Copyrighted works for the duration of the Copyright.

3. Copyright Ownership of Jointly Originated works

Copyright ownership of jointly originated works shall be determined by separately assessing the Category of Work of each originator pursuant to Section III of this policy. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

4. Release of University Copyright Rights

The University may release its ownership rights in copyrighted works to the originator(s) when, as determined by the Administrator, (a) there are no overriding or special obligations to a sponsor or other third party; and (b) the best interests of the University would be so served. Such release of ownership rights must be contingent on the agreement of the originator(s) that no further effort on, or development of, the work will be made using University resources and that the University is granted a free-of-cost, nonexclusive, worldwide license to use and reproduce the work for education and research purposes.

C. Student Ownership of IP

Absent a prior contractual agreement, the University will not claim an interest in intellectual property invented or created in connection with coursework by students who are not University employees, unless it is derived from the items listed in section V.B.1.

D. Other Contractual Obligations

Notwithstanding any other provision in this Policy to the contrary, nothing in the Policy will be construed to limit the University from entering into specific written agreements with any Faculty, Staff or Student or with external collaborators, including in connection with sponsored research and other agreements, that will specify different terms regarding the ownership, distribution and commercialization of IP. Such an agreement will supersede the terms of this Policy if:

1. The Creator is a party to such an agreement; or
2. The Creator explicitly or implicitly consented to the terms of such an agreement prior to the creation of the IP.

E. Without limiting the generality of the foregoing, a decision of a Creator to develop IP when the Creator knows, or should know, that such IP is subject to

an agreement will be considered consent to that agreement. However, continued employment or affiliation with the University is not, by itself, sufficient to establish consent as required by this section.

VI. DISCLOSURE OF INVENTIONS

- A. In order to identify and protect inventions with potential commercial value, University Creators who create IP under the scope of this Policy are required to notify the Administrator by completing the [Invention Disclosure Form and submitting it to](#) the Office of Sponsored Programs and Research Services (OSPRS). Public release of the IP in any form, such as publication in a peer reviewed journal, presentation at a professional meeting or seminar, or press release, may have the effect of making public the Invention, thereby precluding the university and the Creators from pursuing intellectual property protection. Therefore, Creators should promptly make the confidential disclosure to the university well in advance of any public release of information about the Invention. The disclosure should contain sufficient detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation and technical characteristics of the IP.
- B. If the Creator believes the IP was conceived or reduced to practice by independent efforts, they may attach a written claim of ownership to the Invention Disclosure Form. In claiming ownership, the burden of proof is with the Creator(s) to document that the Invention (a) was not conceived or reduced to practice as part of an activity within the Creator's scope of employment as a university employee, (b) that it was conceived and reduced to practice on his/her own time, and that (c) the Creator did not make Substantial Use of University Resources.
- C. OSPRS will conduct an initial review of the submitted Invention Disclosure Form for compliance and completeness. The Administrator will then initiate and conduct a review of the merits and marketability of the IP, resulting in a decision by the University to either claim an interest in its ownership or to waive some or all of those rights in favor of the Creator. If the University claims an interest, the notification will suggest the form of IP protection, if any, that should be considered, giving strong consideration to preferences expressed by the Creator(s). Forms of IP protection to be considered include:
1. Copyright: The Administrator, in consultation with the URC when necessary, will review Copyrightable University IP, including Software, disclosed to it. In other instances, the Administrator may consult with the Creator(s) to help ensure that proper notices are affixed to a work and that registration is made in a timely manner.
 2. Patent and Non-Patentable Material: The Administrator, in consultation with the URC when necessary, will review Invention disclosures and will consult

- with the Creator(s) and others as necessary to investigate IP protection routes and commercial potential. The Administrator will also assist in determining whether a patent application should be filed.
3. Trademarks: The Administrator, in consultation with the URC when necessary, will review Trademarks disclosed in the Invention disclosure and will investigate whether the Trademark will constitute an Invention, enhancing the commercial value of associated Inventions.
- D. The University will claim its interest in the IP by written notice from the Administrator to the Creator(s), generally within ninety (90) calendar days from the time written notification was received by the Administrator. The Administrator may extend the deadline if further examination of the IP is needed, or additional information is required. The Creator(s) shall be given written notice of any such extension, including the reason(s) for the extension, and any extension shall not exceed 60 calendar days, unless mutually agreed upon by the Administrator and the Creator(s).
- E. The contents of the IP disclosure will be confidential and not disclosed to others within or without the University, except as may be reasonably necessary in the following situations:
1. Disclosure by the Creator(s), in confidence, to legal counsel, accountants or other professionals assisting in the development or protection of intellectual property of the participants.
 2. Disclosure by the Administrator, in confidence, to the University's legal counsel, accountants, Provost, supervising Dean, or, through a non-disclosure agreement, other third party professionals with relevant expertise related to the IP topic, to assist in the development, interpretation, or protection of intellectual property in which the University may claim an interest.
 3. Disclosure by the Creator(s) or the Administrator, in confidence, to the University Research Council or Provost as part of the dispute resolution procedures of this policy.
 4. Disclosure as required by judicial process, including proper pretrial discovery.
 5. Reporting as required by statutory reporting requirements established by the General Assembly and implemented by the State Commission on Higher Education.
- F. The Creator(s) will have the responsibility to update the Administrator in a timely manner of any developments involving publication, sale or use of which they become aware after the initial disclosure
- G. If the Administrator, in consultation with the URC when necessary, determines that the IP under consideration is exempt under this Policy, or that the chances of successful commercialization are minimal, or the costs of pursuing such

commercialization outweigh the income potential, the IP shall be released to the Creator(s) or appropriate party and the University will not claim ownership, subject to law and prior agreements, but shall retain a perpetual, royalty-free, worldwide non-exclusive right to use the IP for educational, research or service reasons.

VII. COMMERCIALIZATION OF IP

- A. In cases where the university owns the IP, the University's policy is to distribute a substantial portion of net revenues to the Creator(s). Specifically, the University's goals for revenue distribution are: (a) to create a strong incentive for faculty participation in technology transfer activity by providing revenues for the continued support of Creator's research, (b) to support further investment in research and educational activities, (c) to share revenues directly with Creator, and (d) to fulfill its obligations under federal regulations.
- B. Where the University properly claims its interest in IP, the Creator(s) will be entitled to receive fifty percent (50%) of net royalties or other income accrued to the University by its sale, lease, licensing, exchange or other disposition.
- C. The University may assign or license its IP to others. Royalty or income received from such transactions may be shared with the Creator(s) of such works, as approved by the appropriate University personnel, which includes the president, executive vice president, provost, and chief financial officer, acting singly or in concert, taking into account the originator's contribution, the University's costs, any provisions imposed by sponsors or other funding sources, and any other applicable agreements concerning the IP. Options for commercialization include, but are not limited to:
 - 1. Licensing to Third Parties
The University may license IP owned by the university to external entities for further development and commercialization.
 - 2. Licensing to Business Entities in Which a Creator Holds an Ownership or Management Interest
The University may enter into license agreements with business entities in which the Creator holds an ownership interest. Such licenses will be comparable to those negotiated with unrelated third-party licensees.
 - 3. Reassignment of Ownership to Creator(s)
If, after establishing an initial license, the Creator(s) wish to market, protect, and license intellectual property on their own with minimal university involvement, the university may, if amenable, assign its right of ownership to the Creator(s). Such an arrangement would typically include the recovery of any University patent and licensing expenses and royalties or other income to date.

II. DISPUTE RESOLUTION

- A. In any case in which a Creator or IP disagrees with a decision of the administrator in respect to the ownership of IP in which such persons claim an interest, or in respect to the sharing of royalties or other income accruing to the University through the sale, lease, licensing or other disposition of such property, such persons will be entitled and obligated to pursue an administrative appeal within the University before pursuing any other legal or equitable remedy. The administrative appeal will be conducted as follows:
1. The aggrieved persons will file with the Provost a written statement of appeal specifically identifying the nature of the dispute and specifically stating the relief requested. This statement must be filed within thirty (30) days after receipt by the Creator(s) of written notice of the Administrator's decision which is being appealed.
 2. Upon receipt of such a statement of appeal, the Provost will refer the matter to the University Research Council. The Administrator will be notified of, but excluded from the URC review, except when specifically called upon by the Council to provide information, and the Provost will appoint a temporary chairperson from among the URC membership to oversee the Council's duties regarding dispute resolution. The URC will, within sixty (60) calendar days of the filing of the statement of appeal, make written findings of fact and recommendations regarding resolution of the dispute, unless within such time the Administrator and the aggrieved persons acknowledge in writing that they have resolved their dispute. The committee may require, upon reasonable notice, that the aggrieved parties or the Administrator or both appear before it and provide the committee with additional information relevant to the dispute.
 3. Upon receipt of the written findings and recommendations of the committee, the Provost will have fifteen (15) calendar days to deliver a decision, in writing, to the aggrieved parties and to the Administrator. The Provost may affirm, modify or reject any determination of the committee.
 4. If the Provost and the Administrator disagree, the matter will then be referred to the President of the University who will have fifteen (15) calendar days to deliver a decision, in writing, to the aggrieved parties, the Administrator and the Provost.
 5. The decision of the President will be final within the University and no further administrative appeal will be available to the aggrieved parties or to the Administrator.