

From the 2009 Faculty Handbook

2.19 Policy on Patents and Copyrights

Preamble

In adopting this policy, the board of trustees recognizes there may be research projects sponsored by governmental authorities, industrial concerns or others, which may entitle the sponsors to the ownership, without payment or any royalty to any person. "Ownership" as used in this document refers both to ownership of a discovery or invention made by a faculty member as to which there is a reasonable likelihood of obtaining a patent; and to ownership of copyrightable material authored by a faculty.

2.19.1 Creation of Patent and Copyright Committee

The board of trustees has authorized the president to appoint a Patent and Copyright Committee with the authority and responsibility provided for below, and that will be comprised of three members of the university faculty and three members of the university administrative staff.

2.19.2 Discoveries and Inventions.

1. Disclosure, Discoveries and Inventions

Any faculty member who has made a discovery or invention that in his/her judgment reasonably appears to be patentable, shall bring such discovery or invention to the attention of the president of the university or his designated representative, who will refer it to the committee to determine whether and to what extent the university has an interest in the discovery or invention. Any such discovery or invention shall be disclosed promptly, but in any event within 60 days.

2. Ownership of Discoveries and Inventions

a. A discovery or invention developed as a direct result of the regular duties of a faculty member or as a result of research done on or in connection with theses or dissertations or as a result of a program of research financed wholly or in part by university funds or by funds under the control of the university; shall except otherwise owned for reasons mentioned in the Preamble, be the exclusive property of the university. The ownership of any such discovery or invention and any patent rights shall be assigned to the university or its designee and shall be administered in accordance with the determination of the committee.

b. A discovery or invention developed by a faculty member shall be the exclusive property of the inventor(s) if all the following conditions exist.

(1) If the university has contributed nothing substantial or essential to the production and development of such discovery or invention in funds, space, facilities or personnel, including students.

(2) If the discovery or invention is not related to any university research then in progress or to which the university is committed, and to which the faculty member is connected.

(3) If the discovery or invention was developed by the faculty member(s) on his/her or their own time without any expense to the university.

c. If there is a difference of opinion as to whether a discovery or invention is within (a) or (b) above, or if within neither, the ownership and determination of any equities of the discovery or invention shall be decided by the committee, and subject to appeal to the president of the university. Once the decision has been rendered, it is binding on the university and the faculty member who made the discovery or invention.

3. Authority and Responsibility of Committee with Respect to Discoveries and Inventions

The committee, subject to appeals to the president listed here, has the following authority and responsibility with respect to discoveries and inventions:

- a. To receive and act on reports of discoveries and inventions.
- b. To determine the ownership of discoveries and inventions, and the dates of their conception, disclosure and reduction to practice.
- c. To determine the equities of the university, the inventor(s) and any other parties in discoveries and inventions; and to provide equitably for sharing royalties received for any patented or patentable discovery or invention in which the university has a property interest between the university and the inventor with the following.
 - (1) Where an agreement, letter or other document involving the university and another party having an interest in a discovery or invention requires royalties on the discovery or invention to be distributed in a particular manner. In all other cases, the procedure set out in 2, 3 and 4 shall be followed, provided that where an agreement, letter or other document places a limit on the amount of royalties to be paid, the amount of royalties paid shall not exceed that limit.
 - (2) The university shall retain all royalties until it has fully recovered all expenses incurred in connection with the filing and prosecution of a patent application.
 - (3) The next \$2,500 of such royalties shall be paid to the inventor(s) of the discovery or invention.
 - (4) Royalties received beyond those required to meet the conditions specified in 1, 2 and 3 above shall be divided as follows:
 - i. One-third of royalties received shall be retained by the university.
 - ii. One-third shall be paid to the inventor(s) in accordance with their rights.
 - iii. One-third shall be paid to the primary academic

department(s) of the inventor(s) according to proportionate participation as determined in “d” below.

- d. To determine the financial returns from the discovery or invention due each inventor when there are co-inventors.
- e. To determine whether the university should attempt to obtain a patent or submit the discovery to the university’s patent agent, in the case of the university having a property interest. Any such determination shall be made within two months from the date the discovery was disclosed to the committee or, if sooner, within 30 days after the written request is received from the president of the university or from the inventor.
- f. To determine whether the university shall pursue a patent application or assign any right it may have in the discovery, when the committee submits a discovery or invention to the university’s patent agent and the agent decides either not to file the application or abandon an application already filed. The inventor shall be notified of the determination within 30 days after the receipt by the committee of notice from the university’s patent agent.
- g. To report its findings and determinations to the president of the university and other interested parties within 120 days, except in those situations for which a different period of time for making a determination is established.
- h. To report its findings to the president of the university on all matters pertaining to patentable research or patents offered to the university by gift, devise, purchase, sale or assignment, regardless of the potential value or circumstances under which such patentable research or patents were discovered.

4. Management and Exploitation of Patents.

The president of the university shall be the final authority to determine how patents that are the property of the university shall be managed and exploited.

2.19.3 Copyrightable Material

1. Rights of Authors

In accordance with other institutions of higher learning and except as provided for in Paragraph 2 below, the right of first publication and of statutory copyright in any book, manuscript, television or motion picture script or film, educational material or other copyrightable work, whose author is a faculty member, shall be the property of the author.

2. Rights of the University

Copyrightable material resulting from a project assigned to faculty as a part of their regular duties shall inure to the university only if so specified in writing and signed by the faculty member, their department head and the dean.

3. Authority and Responsibility of Committee with Respect to Copyrightable Materials

The committee has the same authority and responsibility with respect to copyrightable material authored by a faculty member as it has in respect of discoveries or inventions

made by such persons and dealt with in Section 2.19.2 "Discoveries and Inventions." The specific authority and responsibility of the committee with respect to discoveries and inventions described in Paragraph 3, Section 2.19.2, shall apply with equal force to copyrightable material owned in total or in part by the university.

4. Notice to Committee

Department heads, deans and directors shall notify the committee in writing of any work assigned in accordance with Paragraph 2 above, "Rights of the University," which might result in a manuscript or other property for which copyright may be obtainable.

2.19.4 Publication of Material Relating to Discoveries, Inventions and Scholarly Investigation

The board of trustees recognizes and wishes to give the fullest possible cooperation to traditional principles and practices of academic freedom in connection with the publication of writings that relate to discoveries and inventions. At the same time, it is recognized that governmental authorities, industrial concerns or other organizations that sponsor research projects may require temporary restriction on publication to protect the sponsor's interest in patentable inventions or discoveries, or because of the national interest or other reasons considered sufficient by the sponsor. The committee will determine if the university has been authorized or required by the sponsor to determine whether or not publication would be in compliance with such restrictions and/or conditions.

2.19.5 Appeals from Committee Determinations

If any interested persons are dissatisfied with the determination by the committee of any matter relating to any discovery, invention, patent, copyright or copyrightable material, or publication of any writing, such person may request the determination be reviewed by the president of the university. Any such request shall be made in writing and delivered to the committee no later than fifteen (15) days after receipt of notice of the determination that he/she regards as unsatisfactory, or within fifteen (15) days after the expiration date when the committee should have reported its findings to interested parties. On receipt of such a request, the committee will forward it with its determinations and recommendations to the president, unless the committee reconsiders or modifies its previous determination to the satisfaction of all parties. The president may affirm, modify or revise the committee's determination, and his determination shall be binding on all interested parties. The committee will assist the president in reviewing any such matter as the president may request.

2.19.6 Policy on Stored Course Materials

The current Florida Tech intellectual property policy as contained in this document focuses on traditional copyright and patent issues, and creates a balance between the goals of creating and disseminating knowledge, and deriving revenue from commercially viable inventions. Through this policy faculty retain ownership of copyright material while they are required to disclose all creations or inventions that have patent potential to the standing committee on intellectual property. The committee reviews each circumstance and recommends a course of action (seek a patent, return the rights to the creator or some other appropriate process).

The policy also contains a provision where the university and the creator of copyright material can create a contract for the investment of resources, the control over the product and the associated rights. As educational material is now frequently created,

stored and reused in a digital format, it is necessary to establish procedures to govern this stored course material.

Digital intellectual property creates new forms of value and has an extended life that makes it commercially viable. These products are changing the format, content and economics of educational delivery. This extension to the intellectual property policy sets out some basic principles for stored course materials that will mutually benefit the creators and the university, but does not address patent or trademark rights and is not intended to apply to traditional printed materials such as books and lecture notes. A primary concern is to promote the broadest possible creation and dissemination of knowledge while protecting academic freedom.

With the university's encouragement and support, faculty members are creating course material that can be reused. Digital course segments range from simple or inexpensive productions to major investments:

- 1) If the stored course material is created by full-time faculty in the context of the normal duties and does not involve substantial use of Florida Tech resources, the ownership of the intellectual property remain with the creator.
- 2) If a substantial use of Florida Tech resources is involved in the creation of the product, the university and the faculty member should plan together to recover its investment over time. A separate contract must be developed at the start of the project to cover the concerns and interests of the creator(s) and the university. This includes intellectual property rights as well as such matters as initial investments, protections, editorial control, marketing, royalties, extended use and eventual disposition.

Substantial use is defined as a threshold for the investment of institutional resources that requires additional planning and preparation to recover this investment over some period of time. If use is substantial, the university is acting with the faculty member as a partner in the development of stored materials and will have rights to those materials.

DEFINING SUBSTANTIAL USE

A faculty member makes substantial use of university resources if the use significantly exceeds the customary level needed to support teaching responsibilities. Under the supervision of the dean, the department head determines if the development of stored material makes substantial use of university resources. The input of service providers whose services were used or may be used is relevant to this determination. Factors to be considered in the determination include, but are not limited to, the following.

- 1) Use of an online presentation system like ANGEL, which is offered to all faculty for normal use in their courses does not count toward substantial use.
- 2) A course stored and offered later or offered remotely by the university does not count toward substantial use.
- 3) Use of any materials or services paid for out of an external grant to the faculty member does not count toward substantial use.

- 4) Technology Enhanced Content (TEC) resources, when providing faculty with basic training in multimedia course development, does not count toward substantial use.
- 5) TEC resources, if paid for by the faculty member at the university's then-current rate for use of the lab, does not count toward substantial use.
- 6) TEC resources, for which no reimbursement is made, is presumed to be substantial if the TEC staff considers it will be substantial or that further effort would make a use substantial.
- 7) Use of the library is not normally substantial, but extensive use of the library staff as research assistants could contribute toward a determination of substantial use.
- 8) Faculty developing and/or teaching a course as part of his/her normal teaching responsibilities on campus, and without a compensatory reduction in teaching load or significant additional teaching or support staff, DOES NOT count toward substantial use.

A determination of whether or not use of university resources is "substantial" is not a determination that the proposed use is reasonable or within the capacity of the university's service providers. Service providers (such as the library or TEC facilities) have limited resources. Whether or not a use is deemed substantial under this definition, the service provider may advise a faculty member the proposed use is significant, it must be approved by the department head or dean, extra funding will be required to provide the level of service requested or the service cannot be provided in the time frame requested.

NOTE: TEC resources are those facilities provided to develop technology-enhanced content. This is an expanding role in terms of services and service providers. TEC is subject to competing demands for limited resources and is required to maximize the use of institutional resources in achieving Florida Tech's educational and research goals.

WHEN THERE IS NO SUBSTANTIAL USE

If a faculty member does not make substantial use of university facilities in the development of copyrightable course materials, the copyright to those materials will belong to the faculty member, not to the university. The university may not make use of these materials in other courses without permission of the faculty member. The faculty member has the same rights to use these materials in other courses or at other schools, as he/she would have if they were written lecture notes.

WHEN THERE IS SUBSTANTIAL USE

If a faculty member does make substantial use of university resources in the development of copyrightable course materials, the university will have rights to those materials. The faculty member and the university should enter into a contract before development of any materials.

If there is no written contract between the faculty member and the university, a contract will be implied and include the following terms.

- 1) The faculty member will own the copyright to the materials, but the university will have a license to use the materials.
- 2) The university may use the materials in courses not taught by the faculty member for one year after the end of the first course that used the materials, even if the faculty member leaves the university before this year has ended. The university may continue to use the materials indefinitely if the faculty member does not instruct the university to stop using the materials.
- 3) The faculty member will have artistic and editorial control over the materials, subject to any constraints the university may impose on the nature and level of its investment.
- 4) The faculty member may revise the materials. Normally, the university will make reasonable efforts to work with the faculty member to revise the materials in a reasonable time. However, the university shall accelerate its efforts if the faculty member believes, in good faith that continued use of some material(s) would damage her/his reputation or expose the university or faculty member to a successful lawsuit. In either case, the university shall make its best effort to work with the faculty member to promptly revise the materials in a way that is satisfactory to the faculty member.
- 5) The faculty member will deposit a copy of the materials with the university library, which it will hold as noncirculating reference materials for local use only and not for use in interlibrary loans.
- 6) In the event of a lawsuit, the same rules for liability allocation apply to stored course materials as to live materials. However, (a) If the university or the faculty member uses the materials without revision after being advised of a legal risk by the other, the using party assumes all risk, and indemnifies and holds the other party harmless from all legal claims arising from matters warned about by the other party. (b) If the university sublicenses materials to a third party, it is the university that bears the risk of any liability in connection with the third party's use of the materials. (c) If one of the parties uses the materials outside of their geographic scope, that party assumes all risk and holds the other party harmless from all legal claims arising out of differences in legal rules in the out-of-scope geographic area. (The normal geographic scope is the country in which the faculty member teaches for the university.)

A typical contract will include additional terms, for example:

- 1) The university will normally be granted a longer term, at least two years after the end of the first course that uses the materials, during which it can use the materials.
- 2) In the absence of a contract, the university will not owe the faculty member a royalty or fee for using the materials in courses not taught by the faculty member. The contract may specify such a royalty or fee.
- 3) The university will normally be granted a right to sublicense the materials to other institutions, and the contract will specify the maximum term of the

sublicense that the university may grant. In the absence of a contract, the university may not sublicense the materials.

- 4) If the university sublicenses the course materials, the license fee will normally be divided equally between the university, the faculty member's department and the faculty member.
- 5) The faculty member may be granted a right to sublicense the materials to other institutions. The contract will specify the maximum term of the sublicense the faculty member may grant, and the royalty or fee due the university. In the absence of a contract, the faculty member may not sublicense the materials.
- 6) The faculty member may be granted the right to market and use these course materials in courses presented independently of the university. If so, it will specify the royalty or fee due the university for such presentations. In the absence of a contract, the faculty member may not market or use these materials outside of the university without permission of the university.
- 7) The university may be granted the right to modify the course materials. In the absence of a contract, modifications may not be made without the approval of the faculty member.