

# Intellectual Property Policy

## Frequently Asked Questions

On April 6, 2018, the university's Board of Trustees approved a new Intellectual Property Policy. The policy governs the ownership, commercialization, and certain other uses of the inventions and copyrighted materials created by the faculty, staff, and students of the university.

These Frequently Asked Questions are aimed to answer a few inquiries that faculty, staff, and students might have. Note that the only the text of the policy is binding and therefore if there is any conflict or tension between the policy and this document, the text of this policy will govern.

The policy can be found here: <https://tco.osu.edu/v2/wp-content/uploads/IP-Policy.pdf>.

### What is the scope of the policy?

The policy deals with inventions and copyrighted materials (as those terms are broadly defined in the policy) that are created by faculty, staff, and students of The Ohio State University.

The policy does not address rights in inventions and copyrighted materials that are owned by others, including the use of faculty, staff, and students of intellectual property owned by third parties. For example, the policy does not deal with the use of copyrighted materials in casebooks that are authored by OSU faculty, or the use of patented technology in research on campus. Such use is governed by the applicable law. For questions on those matters, please contact the [university's Office of Legal Affairs](#).

### Who owns the inventions and copyrighted materials that are created by faculty, staff, and students?

This is a complex question that the policy addresses in detail. Determining ownership might depend on the position of the creators (are they faculty members, staff, or students?), the nature of the legal right (is it a copyrighted good or a patentable invention?), the nature of the work itself (for example, is it a form of scholarship? Is it software?), and the resources that were used to create the work. For details, see Sections III and IV of the policy.

The [Intellectual Property, Property, and Copyright Committee \(IPPC\)](#) created [an interactive tool](#) to assist faculty, staff in navigating the ownership provisions of the policy.

### How are the creators' royalties calculated?

When inventions or copyrighted materials are owned and commercialized by the university, the creators—whether faculty, staff, or students—are entitled to a share of the royalties that the university gets, after deducting for the direct expenses of the commercialization process. The creator is entitled to 50% of the first \$100,000 of net proceeds that the university receives, and 34% for any net proceeds beyond \$100,000.

For details see Section V of the policy.

### What if a copyrighted work has more than one creator?

Rights in co-authored copyrighted materials will be determined in the following way: first, the co-authors under copyright law will be identified. Then, the ownership rights of each co-author will be determined separately as if that co-author created the work on his or her own.

For example, if a textbook was created by a faculty member with the assistance of a staff member then, as an initial matter, the authorship status, under copyright law, must be determined. In other words, the question will be whether the faculty and the staff member are considered joint authors of the work or not. [Copyright law has](#)



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[complex tests to address this question](#) that focus on the parties' intent and exercise of control over the creative process.

If the faculty member and the staff member are joint authors, the ownership of each one of them will be determined separately. Faculty members own the textbooks they create while staff member, subject to certain exceptions, do not. Therefore the staff member's rights will be owned by the university. This would mean that the faculty member and the university will be joint authors of the work.

## Can the university enter into contracts that set forth different arrangements from those set forth in the policy?

Yes, it can. However, only under the following circumstances will such agreements affect the ownership interest of faculty, staff, and students, or their right to a share of the royalties from commercialization:

1. If the person who created the invention or copyrighted material is a party to such a contract. For example, if the university plans on investing unusually significant resources in a research project, it might require the faculty members who lead such a program to agree to specific arrangements regarding the intellectual property that will be generated in that program. If the faculty members agree to those arrangements in writing they become binding.
2. If the person who created the invention or copyrighted material explicitly or implicitly consented to the terms of such an agreement before the creation of the intellectual property. There can be situations in which creators are not a party to an agreement, but they know, or should have known, that such an agreement is in place. A common example is an agreement that governs sponsored research that states that the intellectual property created in such project will not be owned by the individual creators but by the university or the sponsor. If individuals knowingly chose to work on such a research project, it might be inferred that they knew, or should have known, that the ownership rights in the products of the research project will be determined by the sponsorship agreement and not by the intellectual property policy.

For details, see Section VI of the policy.

## What are the main rights and obligations of the creators in the commercialization process of university IP?

The commercialization process is, by its nature, collaborative. A successful process is typically the result of cooperation between the creators and the university's [Technology Commercialization Office \(TCO\)](#).

The process typically starts with a disclosure. The policy states that all faculty, staff, and students who create inventions or copyrighted materials that belong to the university and that have commercial value must promptly disclose that information to the TCO.

It is then the responsibility of TCO to decide if and how to commercialize the work. The policy provides that the creators will receive periodic updates from TCO regarding the commercialization process. Moreover, in unusual circumstances, where needed decisions and actions are not taken, the creator can even require TCO to assign works back to their creators. Nevertheless, IPPC hopes that those involved in the commercialization process will communicate frequently and openly with one another without relying on the core rights set forth in the policy.

For details regarding the commercialization process, see Section VII of the policy.



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### **What if there is a dispute?**

IPPC recognizes that the policy will need to be interpreted and applied in various situations. Such interpretation and application will be conducted by many entities and individuals, and especially TCO.

If anyone disagrees with any such interpretation or application, the parties involved should make every attempt to resolve their disagreement informally among themselves and, if needed, with the assistance of the Office of Academic Affairs, the university Ombudsman, and/or the Office of Legal Affairs.

If those informal attempts to resolve the disagreement fail, a party can bring the matter to IPPC. IPPC will investigate the matter and submit its report and recommendations to the senior vice president for business and finance and/or the provost, who will then decide the dispute on behalf of the university.

For details, see Section VIII of the policy.

### **What if I have additional questions or suggestions?**

Questions regarding specific works should be directed to the Technology Commercialization Office (TCO).

Questions or suggestions regarding the policy in general should be directed to the Intellectual Property, Patents, and Copyright Committee (IPPC). IPPC will review the policy from time to time and might suggest revising it. IPPC is therefore interested in hearing feedback and suggestions regarding the policy.

