

**CENTRAL MICHIGAN UNIVERSITY
MANUAL OF BOARD OF TRUSTEES
POLICIES, PRACTICES AND REGULATIONS**

CHAPTER 13

PAGE 13-2(R)

SUBJECT: INTELLECTUAL PROPERTY RIGHTS POLICY

The Intellectual Property Rights Policy dated December 6, 1996, is adopted.

The property rights and earnings policy dated April 7, 1989, is rescinded.

NOTE: The Policy is reproduced on the following pages.

Authority: BTM 12-6-96 at 3312.

History: BTM 6-4-82 at 1754; BTM 4-7-89 at 2531.

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INTELLECTUAL PROPERTY RIGHTS

I. Introduction

Central Michigan University is committed to providing: "an atmosphere conducive to scholarship, research, and creative activity. Students, faculty, and staff are encouraged to engage in the scholarly pursuit of knowledge, artistic production, and applied research. . . ."¹ Although not the original intent, the results of such pursuits on the part of students, faculty, and staff may lead to the development of intellectual property that may be patented, copyrighted, or otherwise have commercial value. It is the purpose of this intellectual property rights policy to inform all employees and students of Central Michigan University of their rights and responsibilities whenever the results of their research or creative endeavors are patentable, copyrightable, or commercially marketable. The University recognizes the need to balance a number of diverse interests in such matters; thus, this policy reflects its commitment to (a) encourage, support, and motivate students, faculty, and staff in the creation of new knowledge and new applications of existing knowledge; (b) protect the interests of the public, especially the taxpayers of the state of Michigan; and (c) safeguard the current and potential financial assets of the University.

The Assistant Vice President for Research is responsible for the interpretation and implementation of the provisions contained in this policy. Appeals and disputes will be resolved by the Intellectual Property Rights Committee, as described in Section X (page 14).

II. Exclusions

- II.A. If any portion of this policy conflicts with any labor agreement signed by the University, the provisions of the labor agreement will prevail.
- II.B. If any portion of this policy conflicts with a signed agreement between the University and a creator (or a person who assists in the creation of intellectual property) or between the University and an external funding agency, the terms of the signed agreement will prevail.

¹Central Michigan University Mission Statement, adopted by the Board of Trustees, October 7, 1994.

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III. Persons Covered by the Policy

This policy applies to all full-time and part-time CMU faculty, staff, and administrators including those employed through the College of Extended Learning; postdoctoral appointees and graduate and undergraduate students, working with or without monetary compensation on any project under the direction and control of the University; and anyone using university facilities or conducting activities under the supervision of university personnel.

Contracts and subcontracts will generally include language that determines the ownership of intellectual property that is developed by those working under the terms of the contract or subcontract. This is also true for those hired as independent contractors.

IV. Products Covered by the Policy

The policy covers **all intellectual property** including anything that is patentable, copyrightable, or otherwise marketable. This includes, but is not limited to, inventions, books, articles, study guides, syllabi, workbooks or manuals, bibliographies, instructional packages, tests, video or audio recordings, films, slides, transparencies, charts, other graphic materials, photographic or similar visual materials, film strips, multi-media materials, three-dimensional materials, exhibits, and computer software.

V. Ownership Rights

The ownership of intellectual property will normally be determined by the Assistant Vice President for Research, or designee, following the principles set forth in this policy. When there is a disagreement regarding ownership, the matter will be resolved by the Intellectual Property Rights Committee (see Section X, page 14).

V.A. Ownership retained by creator^{2,3,4}

²Throughout this policy, the term "creator" is used to refer to the person or persons who developed the intellectual property.

³Students--specifically unpaid students--have different rights than employees. Students' rights are discussed separately in Section V.D (page 5).

⁴Under certain very specific circumstances, the University requires creators who are university employees and who have ownership of intellectual property rights to return a portion of their royalties to the University. See Section IX.A (page 11) for details.

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- V.A.1. When intellectual property is developed on the employee's own initiative, outside the scope of his/her university responsibilities, and without any reliance on university support or university resources, the University will not claim ownership rights for that intellectual property. Where the intellectual property bears a reasonable relationship to the person's employment responsibilities at the University, it will be the employee's burden to show that the intellectual property was developed according to these criteria.
- V.A.2. Employees have personal ownership of books, journal articles, other written reports of research, creative works of fiction, textbooks, tests, course-related materials, slides, transparencies, bibliographies, music, and art work that were not created as "works for hire," as described in Section V.B.1 (page 4). See Section V.E (page 6) for additional information on the ownership of research data and course-related materials.
- V.A.2.a. Where appropriate, the creator shall acknowledge in writing the support of Central Michigan University in producing the work.
- V.A.2.b. Multimedia materials, video and audio recordings, films, and other works that are created with substantial use of university support and resources are intentionally omitted from the examples listed in Section V.A.2. Their ownership is discussed in Section V.B.4 (page 5).
- V.A.2.c. Inventions, other patentable property, and software are specifically excluded from the list of items in Section V.A.2. Their ownership is discussed in Section V.B.3 (page 5).
- V.A.2.d. If the items listed in Section V.A.2 result in royalties or other income for the employee, he/she must repay the University from royalty or other support payments for the following:
- V.A.2.d.(1) normally stocked consumable materials (beyond a nominal amount), materials purchased specifically for the project, and staff services provided by a department or college or any other campus unit that assisted in the development of the intellectual property;
- V.A.2.d.(2) funds supporting any aspect of the project, such as travel, student assistants, materials purchased, provided by a department or college or by any other unit of the University;

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V.A.2.d.(3) the full amount of all *grant funds* provided by a university committee, such as FRCE and FTPD⁵.

These payments, which are to be made to the unit that incurred the expense, are due after the creator recovers his/her out-of-pocket expenses but before the creator realizes any *profit*.

V.A.3. When intellectual property not specifically discussed in this policy is developed with reliance on less than substantial university support or university resources, the University will not claim ownership rights for that intellectual property. "Substantial support" is defined in Section V.B.4.a (page 5).

V.B. Ownership rests with the University

V.B.1. Intellectual property rights are owned by the University and **income is not shared** with the creator(s) when the property is considered a "work for hire." A work for hire is a work prepared by an employee within the scope of his or her employment. If, for example, an employee is specifically assigned to write, create or otherwise develop the intellectual property, OR the property is produced by a university employee (including a student paid as an employee) as the result of a direct work assignment to meet specific objectives or as an assigned university duty, then it is a work for hire. As described in Section V.A.2 (page 3), however, the University relinquishes its rights to scholarly works, even if they are works for hire, when they are books, journal articles, other written reports of research, creative works of fiction, textbooks, tests, course-related materials, slides, transparencies, bibliographies, music, and art work that were created by faculty in the normal course of their conducting research or carrying out their teaching assignment. See Section V.E (page 6) for clarification of the ownership of research data, reports of research, and course-related materials.

V.B.2. Intellectual property rights are owned by the University when the property is offered to the University in the form of a gift or grant or under the terms of an agreement, AND the University agrees to accept the property. The distribution of any income accruing from the property will be determined by the terms of the acceptance agreement.

V.B.3. Intellectual property rights for inventions, other patentable products and software will be owned by the University. **Income** attributable to the intellectual property **will be shared** according to the provisions of Section IX.B (page 12).

⁵Repayment of normal salary is not expected, even when the salary was provided by a sabbatical leave or Research Professor award.

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V.B.4. Intellectual property which is not covered elsewhere in this policy and is developed with substantial university support will be owned by the University. **Income** attributable to the intellectual property **will be shared** according to the provisions of Section IX.B (page 12).

V.B.4.a. Substantial university support includes, but is not limited to, use of university facilities (other than one's own office) and university-owned equipment (including multimedia equipment and video taping equipment); other staff salaries and effort; and computing and graphic services.

V.C. Ownership determined by third party agreements

V.C.1. Whenever there is a possibility that an externally funded project will result in intellectual property, the ownership of that property will be determined prior to the University accepting the award.

V.C.2. If the funding agency is a federal or state agency, then the standard practices of that agency will determine ownership rights. The University's ownership rights vis a vis all other sponsors will be determined by written agreement.

V.C.3. The other provisions of this policy will determine the employee's ownership or income rights vis a vis the University.

V.D. Student ownership issues

V.D.1. When intellectual property is developed by students, not paid for their work, the University will not claim ownership rights for that intellectual property, unless one of the following conditions is met:

V.D.1.a. there is a signed agreement between the student and the University, which provides the University with exclusive or shared intellectual property rights; or

V.D.1.b. student used university resources beyond those normally provided to students in their program; or

V.D.1.c. the student's work was part of a larger work for which the University owns all or part of the intellectual property rights, and the student was clearly told before he/she began the work that he/she would not own any of the intellectual property rights in the project.

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V.E. Materials developed by faculty and teaching-PAs in conjunction with their teaching and research responsibilities.⁶

V.E.1. The University will not assert ownership of:

V.E.1.a. Lecture notes, course outlines, hand-outs, class exercises, class tests, etc. developed by faculty and teaching PAs for use in their own teaching activities or on their own initiative because they believe that the students' education will be improved as a result of these efforts, even if the materials have commercial value for use in other classes and at other universities.

V.E.1.b. research data or written reports of research that are developed on one's own initiative because one is pursuing one's research work, provided the research is not covered by Section V.B (page 4) or V.C (page 5) of this policy. **However**, where the University may own all or part of the intellectual property rights for inventions, software, or other patentable products, the author and the University must consult before publication of the written reports so that the rights of both the author and the University may be protected.

V.E.2. The University will assert ownership of:

V.E.2.a. master course syllabi that are submitted through the curricular process.

V.E.2.b. course outlines, class tests, etc., that are developed in response to a specific assignment beyond that of preparing to teach one's own classes, as, for example, course-related materials that were developed specifically to benefit teaching activities of more than the individual who developed the materials. If a faculty member is assigned to develop the course outline for a multi-section course, or if a faculty member is assigned to develop a series of structured lessons for use in a self-paced course and it is initially made clear to the faculty member that these materials are for use by anyone who is responsible for the course, then the University owns the materials, can adapt and change them, and can continue to use the materials even if the faculty member no longer teaches the course or leaves CMU.

V.E.2.c. instructional materials developed at the request of the College of Extended Learning when the individual is paid for the development.

⁶It is difficult to describe precisely what scholarly works are solely owned by the creator, especially with regard to research data and course-related materials. Examples are given to clarify the intent of this policy.

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V.E.3. Ownership of the intellectual property rights is not to be confused with the University's right of access to materials. The University reserves the right to review all materials used in the teaching of a course or in the conduct of or resulting from research at the University. These materials must be made available upon request and at no cost to the University when the University needs access to these materials in fulfilling its institutional responsibilities. When the University requires access to the materials, it will, to the best of its ability, do nothing that will impair the commercial value of the materials to the employees.

VI. Transferring Ownership Rights

VI.A. Copyrightable property

- VI.A.1. If the University determines that it does not wish to retain the ownership of copyrightable materials, it may elect to place the materials in the public domain, assign the ownership rights to an outside party, or offer the rights to the creator, unless a third party agreement prevents such an assignment. Any transfer of ownership must be in writing, signed for the University by the Assistant Vice President for Research, the Provost or the President.
- VI.A.2. If the copyright is assigned to the creator, the University may require that the University be allowed to use the copyrighted materials without charge.
- VI.A.3. If the copyright is assigned to an outside party, the University may enter into an agreement which sells the copyright, licenses the copyright, or gives the copyright to the third party. It may require that the University be allowed to use the copyrighted materials without charge.
- VI.A.4. If the transfer of the copyright to a third party results in revenue for the University, the principles of this policy will determine **if** and **how** those revenues will be shared with the creator. (§IX)

VI.B. Patentable property

- VI.B.1. If the University determines that it does not wish to patent, license, or otherwise market an invention, the University will offer the intellectual property rights to the creator, unless a third party agreement prevents such an offer.
- VI.B.2. A mutually agreeable written agreement will determine the terms of the ownership transfer. For the University, the agreement must be signed by the Assistant Vice President for Research, the Provost, or the President.

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VII. Responsibilities of Inventors and Authors

VII.A. Disclosure responsibilities

VII.A.1. Ownership retained by creator

- VII.A.1.a. If there will be no royalties or other income resulting from the intellectual property and if it is absolutely unambiguous that, under the terms of this policy, the ownership of the intellectual property will be retained by the creator, there is no obligation to report to the University the development of intellectual property.
- VII.A.1.b. Prior to filing any patent or copyright applications and prior to signing any agreements that will produce royalties or other income in regards to intellectual property, the creator must notify the Assistant Vice President for Research, or designee, even if the creator believes he/she has sole rights to the intellectual property.⁷ No agreements should be signed until the Assistant Vice President for Research, or designee, provides written confirmation that the property is not owned by the University.

VII.A.2. Ownership rests with the University

- VII.A.2.a. For **potentially patentable products**: as soon as the inventor recognizes that there is a possibility of a patentable product or discovery, and before disclosing it to any party outside the University, the creator must notify the Office of Research and Sponsored Programs (ORSP) about the product. ORSP will work with the inventor to protect the commercial value of the intellectual property.
- VII.A.2.b. For intellectual property **not subject to patent law**: if there is any possibility that the University will own the intellectual property rights, the creator is encouraged to discuss the idea with the Assistant Vice President for Research, or designee, when the creator first recognizes that the intellectual property will be developed.

⁷The items listed in Section V.A.2 (page 3) are specifically excluded from this provision.

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VII.A.2.c. If funding was provided by an external agency that requires notification when intellectual property is developed, ORSP is responsible for notifying the agency. The project director⁸ will assist ORSP by providing the necessary information and completing any required forms.

VII.A.3. Ownership determined by third party agreement

ORSP should be consulted for assistance in determining the appropriate disclosure procedures for intellectual property developed pursuant to a grant or contract with an external entity.

VII.B. Other responsibilities

VII.B.1. When the University owns the intellectual property rights, each creator is expected to work cooperatively with the University and with anyone to whom the University designates the right to evaluate or commercialize the intellectual property.

VII.B.2. When the University does not have an ownership interest in the intellectual property, the name of the University shall not be used in connection with the property without prior written permission from the Assistant Vice president for Research, except as specified below:

VII.B.2.a. copyrightable materials may indicate that the author is an employee of the University; and

VII.B.2.b. where appropriate, the creator shall acknowledge in writing the support of Central Michigan University in producing the work, as stated in Section V.A.2.a (page 3).

VIII. Control of the Intellectual Property Owned by the University

The Assistant Vice President for Research is responsible for decisions regarding the patenting, copyrighting, licensing, loaning, selling or otherwise controlling the marketing or disposition of intellectual property that is owned in whole or in part by the University. When the creator is entitled to a share of the earnings, the Assistant Vice President for Research, or designee, will consult with the creator prior to finalizing any decisions. If the creator objects to the decision, he/she has the right to appeal the decision to the Intellectual Property Rights Committee (see Section X, page 14). No irrevocable actions regarding the intellectual property will be taken while a decision is being appealed.

⁸If the project director is not the creator, the project director and creator will jointly assist ORSP.

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VIII.A. Copyrightable property

VIII.A.1. The University will determine, in consultation with the creator, whether to file an application with the U. S. Copyright Office. If a copyright is pursued, the author is expected to cooperate in filing the necessary paperwork which will be provided by the Office of Research and Sponsored Programs. All costs will be paid by the University.

VIII.A.2. The University will develop and approve agreements about the assignment of copyright and the publishing and/or marketing of the work. The creator may not enter into agreements to publish or otherwise market the intellectual property, but he/she is encouraged to advise the Assistant Vice President for Research, or designee, on the best outlets for the copyrightable material.

VIII.B. Patentable property

VIII.B.1. The University, through the Assistant Vice President for Research, will determine whether to pursue a domestic and/or foreign patent, and if so, through what means. He/she will also make decisions relating to the licensing and marketing of patentable products.

VIII.B.1.a. The inventor will advise the Assistant Vice President for Research on the best course of action.

VIII.B.1.b. The Assistant Vice President for Research is encouraged to consult others including the Intellectual Property Rights Committee, before determining the best course of action.

VIII.B.2. If the University wishes to file for a patent or for an evaluation for a patent, the inventor will cooperate by completing all of the necessary paperwork. All costs will be paid by the University.

IX. Sharing of Royalties or Other Income

IX.A. Ownership retained by creator

IX.A.1. Neither the University nor any of its employees should benefit financially from the sale of materials that are developed solely for sale to Central Michigan University students (e.g., course packs);

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- IX.A.2. It is understood that royalties will accrue from materials that are developed for sale to an audience broader than just Central Michigan University students. However, university employees may not retain the royalties from the sale of these materials to Central Michigan University students if either of the following conditions are met:
- IX.A.2.a. students purchased the materials in conjunction with a course taught by the employee who will earn the royalties, or
 - IX.A.2.b. the employee who will earn the royalties was involved in selecting the materials that students are expected to purchase.
- IX.A.3. Royalties accruing from the sale of materials to Central Michigan University students, as described in Section IX.A.2. will be given to the employee's dean's office.
- IX.A.3.a. The Office of Research and Sponsored Programs will assist in estimating the dollar value of royalties that are covered by this provision. ORSP will use information from the local bookstores and the creator to develop the estimate.
 - IX.A.3.b. These funds should be used directly or indirectly to encourage and support more research and creative endeavors within the college.

IX.B. Ownership rests with the University

- IX.B.1. Sections V.B.3 and 4 (page 5) delineate the circumstances under which the University will share with the creator the royalties and other income that result from intellectual property owned by the University.
- IX.B.2. Royalties and other income will first be used to reimburse documented expenses in the following order:
- IX.B.2.a. direct costs paid by the University in conjunction with (a) processing of patent or copyright application, (b) marketing or licensing the intellectual property, or (c) related legal costs;
 - IX.B.2.b. documented out-of-pocket costs paid by the creator;

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IX.B.2.c. costs associated with the use of equipment, materials, and staff services of any of the various campus units that assisted in the development of the materials; costs will be determined by the normal fee schedule of the unit providing the support;

IX.B.2.d. funds, supplies, or services provided to the project by a department or college, or by any other unit of the University, including committees such as FRCE and FTPD; normal salary, even that provided by sabbatical or a Research Professor award, need not be repaid;

IX.B.3. After expenditures are reimbursed, the royalties and other income will be disbursed as described in the table on the following page.

**Distribution of Royalties for
Intellectual Property Owned by University⁹**

| | Creator | College ¹⁰ | ORSP | General Fund |
|---|---------|-----------------------|------|--------------|
| The first \$5,000 | 100% | | | |
| The portion between \$5,001 -- \$50,000 | 60% | 20% | 20% | |
| The portion between \$50,001 -- \$100,000 | 50% | 20% | 20% | 10% |
| The portion over \$100,000 | 25% | 15% | 15% | 45% |

⁹This table shows the distribution of royalties only in those cases where the University owns the intellectual property rights and royalties will be shared with the creator.

¹⁰If the creator does not report to a college dean, then the administrative unit most comparable to the college will receive this share of the royalties.

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- IX.B.4. In the event of multiple creators, the allocation of the creators' share of the royalties will be determined by them, preferably when the research or creative work is first undertaken. If they cannot agree on the distribution, the money shall be deposited into a university account until such time as the creators agree on a written distribution plan or a dispute resolution mechanism resolves the issue.
- IX.B.5. The royalties given to the "College" (or comparable administrative unit) and to "ORSP" should be used directly or indirectly to encourage and support more research and creative endeavors.
- IX.B.6. Note: If an infringement suit or claim of patent invalidity is brought against the University during the life of a patent, the income distribution attributable to that patent may be halted pending settlement of the suit. Similarly if there is a legal challenge to the validity of a copyright, income distribution may be halted pending settlement of the suit.

X. Intellectual Property Rights Committee

- X.A. The Intellectual Property Rights Committee is a 5-person standing committee, advised by the University Counsel. All members of the committee are voting members and decisions will be determined by majority vote. The committee will include:
 - X.A.1. the Assistant Vice President for Academic Administration who will serve as committee chair,
 - X.A.2. the Associate Vice President for Business and Finance, and
 - X.A.3. three persons appointed to 3-year terms by the President, with at least two of the persons being faculty members.
- X.B. The Intellectual Property Rights Committee is responsible for resolving any disputes in the application and interpretation of the provisions of this policy, including but not limited to, disagreements regarding (a) ownership of intellectual property rights, (b) transfer of intellectual property rights, and (c) marketing of intellectual property. The Intellectual Property Rights Committee may also intervene when individuals or campus offices that deal with patenting, copyrighting, or commercializing intellectual property are not making decisions or filing paper work in a timely fashion.
- X.C. Any party within the University with a vested interest in the decisions relating to the intellectual property may request that an issue be reviewed by the Intellectual Property Rights Committee. The request must be submitted in writing to the chair of the Committee with a copy sent to the Assistant Vice President for Research and the creator.
- X.D. Decisions of the Intellectual Property Rights Committee may be appealed in writing to the President who has final authority for resolving the issues.