

Title/Subject: INTELLECTUAL PROPERTY

Applies to: faculty staff students student employees visitors contractors

Effective Date of This Revision: March 16, 2020

Contact for More Information: Vice President of Research and Innovation

Board Policy Administrative Policy Procedure Guideline

BACKGROUND:

It has long been the philosophy of American society to encourage creative and inventive works by its members. In fact, Article 1 Section 8 of the US Constitution grants Congress the power "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." It is from this clause that modern intellectual property law flows.

Intellectual property refers to those works created by persons that are proprietary and subject to the protection of patent, trademark, copyright, or trade secret law. This policy will address the creation of works that are subject to patent or copyright law, as those concepts can grant rights to individuals as well as their employers, and the purpose of this policy is to clarify CMU's position with respect to works created by its employees.

Patent law applies to inventions. A patent is a grant from the government to the inventor that allows the inventor, for a period of time (usually 20 years) the exclusive rights to make, use, and sell that invention within the United States. If a third party makes, uses, or sells the invention without the patent holder's permission, they are guilty of infringement and the patent holder can stop them from engaging in the infringing activity, as well as recover monetary damages. There are three types of patents that the Patent Office can issue: utility patents, design patents, and plant patents. A utility patent is issued for a new and useful process, machine, article of manufacture, or composition of matter, or any new and useful improvement thereof; a design patent is issued for a new, original, and ornamental design for an article of manufacture; and a plant patent is issued for the invention or discovery and asexual reproduction any distinct and new variety of plant. Ownership of patents can depend on a number of factors, but an employer usually has at least a partial interest.

Copyright law applies to written and other creative works of authorship that are fixed in a tangible medium of expression. A copyright is a grant of rights to the work's author of an exclusive bundle of rights, including the right to copy, distribute, perform, display, prepare derivative works, and otherwise disseminate the work to the public. This right typically lasts for 70 years from the author's death, or 120 years from date of creation if the author is anonymous, pseudonymous, a work for hire, or a juridical person (a corporation or other legal entity, rather than a person). Ownership of copyright can be determined by a number of factors, including the creator's relationship to their employer, the circumstances under which a work is produced, and the existence of any agreements governing the project under the auspices of which the work is created.

PURPOSE:

The purpose of this policy is to clarify intellectual property ownership to works and inventions produced by members of the CMU community; to enable faculty and staff to engage freely in teaching, scholarship, and research; to enhance CMU's reputation and position in the research community; and to allow faculty and staff to realize the best possible return from their scholarly works and inventions.

Authority: R. Davies, President

History: none

Indexed as: copyright; patent; royalties

Title/Subject: **INTELLECTUAL PROPERTY**

POLICY:

A. COPYRIGHT

Generally, as a matter of US Copyright law, works created by an employee that are within the scope of employment are owned by the employer as works for hire, as are works created pursuant to a work-for-hire agreement. CMU, in its hire of faculty, requires the faculty members to engage in teaching, scholarship, and research. Staff are also expected to create works that could be capable of copyright protection. By operation of law, because these works are produced by CMU employees, these works of teaching, scholarship, research, and other copyrightable works are owned by CMU. CMU believes, however, that such a restrictive view of copyright ownership is not in the best interest of either the university or its individual employees; as such, CMU will not assert ownership of, and will allow employees to retain copyright in, the following works:

1. Works created outside the scope of employment. The burden of proof is on the employee to demonstrate that the work was created outside the scope of employment.
2. Works created as scholarly or teaching aids – these include works such as instructional texts for in classroom use, syllabi (other than master course syllabi), tests, answer materials for tests, or other “original works of authorship” that arise from professional responsibilities as defined in applicable faculty bargaining agreements. Notwithstanding the foregoing, CMU will assert ownership of these types of works if they are produced in exchange for additional compensation or a reduced course load. This exception also includes books, journal articles, other written reports of scholarly activity, creative works of fiction, and any other material that would fall within the “academic exception” to the work for hire doctrine and that were created without substantial CMU support. Works created while on sabbatical or other paid leave are considered created with substantial CMU support, unless deemed otherwise during the negotiation of the sabbatical or paid leave. Likewise, CMU retains the right to use these works in order to maintain smooth university operations (for instance, if a faculty member suddenly becomes incapacitated or otherwise unable to teach a course, CMU retains the right to use that faculty member’s teaching or classroom aids to continue teaching that class).

CMU will assert ownership of all works produced as a result of: the employee’s exercise of their job duties other than those referred to in Section A(2) above; sponsorship agreements (unless the ownership of these types of works is defined differently in the agreement); works created using substantial university resources (e.g., use of CMU facilities, equipment, staff, computing or graphic services over and above those typically used by the employee in the performance of their job duties); works produced by research supported either directly or indirectly by funds administered by CMU, regardless of the source of these funds; works specifically commissioned by CMU; works created specifically for online course delivery (these are produced pursuant to a separate agreement); and any other works that do not fall into the category enumerated above.

Works created by students, either as part of a course assignment, capstone or other project, internship, or other unpaid experience directed by CMU are retained by the student, as they are not works for hire and no transfer of copyright occurs by operation of law. If, however, a work created by a student is done using substantial university resources (as defined above), or as a result of a collaborative effort associated with faculty research, that work will be subject to the respective copyright or patent provisions of this policy. CMU, by virtue of a student’s registration in a particular class, retains the right to utilize that work in order to assess the student’s performance in the class or as otherwise required by CMU policies and procedures. If a student is paid or otherwise compensated for their work, they are considered an employee for purposes of this policy and the employee-focused provisions of the policy will apply.

Courses developed specifically for online delivery are created pursuant to the [Online Development Course Process Agreement](#), the terms of that agreement will govern the materials created and used in the delivery of online classes.

Any royalties received by works owned by CMU, either as works made for hire or as defined in this policy, will be shared with the creator according to Section D of this policy.

Title/Subject: **INTELLECTUAL PROPERTY**

B. PATENT

1. OWNERSHIP

Consistent with the aims and objectives of U.S. Patent law and the underlying philosophy of the U. S. Constitution, it is CMU policy to obtain patents for inventions created by its employees, in order to contribute to the progress of science and the useful arts. To this end, and in exchange for the financial assistance in obtaining and maintaining these patents, CMU employee inventors agree that CMU will be the owner of all inventions created by its employees as set forth in this policy. CMU will own all discoveries and inventions made by its employees that result from research that is supported by CMU funding or by funding sources controlled or administered by CMU; that are made by an employee in a field that is directly related to the employee's scholarly or other endeavors at CMU; or that have been developed entirely or with the support of CMU resources or support.

CMU will not own any of the discoveries or inventions made by its students unless those students are also employees and have made the relevant discoveries or inventions as part of their employment. In that case, they will be considered employees and the provisions of this Section B governing ownership shall apply. CMU will also own any student discoveries or inventions that are made using CMU support or resources that are not generally available to all students. CMU shall not own any student-made inventions or discoveries that are made as part of activities undertaken or funded to encourage innovation or entrepreneurship (e.g., the New Venture Competition). If a student chooses to assign the rights to any non-CMU owned invention or discovery to CMU, CMU will administer such discovery or invention as if it were produced by a CMU employee, including the distribution of any royalties.

CMU may choose to assign its interest in any inventions or discoveries made by its employees or students as described above to their respective inventors. In these cases, the Office of Research and Graduate Studies will work with the inventor to effectuate such a transfer of ownership.

All persons subject to this policy are obligated to assign, and agree to execute any necessary documents to effectuate the assignment of, all right, title, and interest in and to any inventions or discoveries owned by CMU as described in this policy.

2. DISCLOSURE AND REVIEW OF PATENT APPLICATIONS

All persons subject to this policy agree to timely provide disclosure of all inventions and discoveries to CMU through its Office of Research and Graduate Studies, using the appropriate forms, which can be found at the following link: [https://www.cmich.edu/office_provost/ORGS/Pages/Technology-Transfer-and-Commericalization.aspx]. These disclosures must be made prior to any publication or other dissemination of the invention or discovery to any third party, including any research sponsor. The reason for this disclosure process is to help CMU obtain the best possible patent protection for the invention or discovery, as well as avoid any unintended barriers to achieving patent protection. The disclosure will be reviewed by the Office of Research and Graduate Studies for completeness, documentation, and authentication. The Office of Research and Graduate Studies will then work with the inventor to obtain any appropriate patent protection.

The Office of Research and Graduate Studies will, in its patent review, decide what constitutes traditional CMU support (as contrasted with substantial CMU support). The Office of Research and Graduate Studies will decide, in consultation with the inventor, whether it is in CMU's best interest to apply for a patent. If CMU decides against filing such an application, CMU agrees to waive its rights in and to the invention or discovery in favor of the inventor.

3. COMMERCIALIZATION, ASSIGNMENT, AND LICENSING

In some cases, CMU will determine that it is appropriate to seek a patent, since doing so will be an effective means of disseminating knowledge, promoting new discoveries for the benefit of the public, or is otherwise in the best interests of CMU.

CMU's share of any income derived from any patents shall be used to support research, education, and other activities that are consistent with CMU's mission, vision, and core values.

Title/Subject: **INTELLECTUAL PROPERTY**

Any assignments entered into on behalf of CMU will be done in consultation with the inventor in order to maximize any royalty stream to the inventor as outlined in Section D of this policy. Any assignments to CMU employees or employee-owned companies shall be subject to both Section E of this policy and CMU's Conflict of Interest Policy.

C. HYBRID TECHNOLOGY

In some cases, a discovery or invention will be eligible for both patent and copyright protection. This is particularly true of computer software but can be found in other areas of research that might produce tangible property (, biological organisms, engineering prototypes, etc.). Although these things can be physically transferred, it is important to remember that they also possess intellectual property rights and, as such, are subject to this policy.

For all technology that could be subject to either patent or copyright protection (or both), the Office of Research and Graduate Studies will determine which form of protection is most beneficial, and the creator or inventor agrees to work with the Office of Research and Graduate Studies to effectuate this protection.

Computer software created by CMU employees in connection with the administration, research, or other educational activities, with support from CMU (regardless of the source of that support), shall be the property of CMU as described in Sections A, B, and C of this policy.

D. ROYALTIES AND ROYALTY DISTRIBUTION

When the commercialization of a work protected according to this policy results in economic benefits in the form of royalties, they will be shared among CMU and the inventor or creator. The allocation of royalties shall be as described in this section.

First, CMU will recover any costs it has incurred in the protection, marketing, and licensing of the work, invention, or discovery (including but not limited to litigation, application, and other expenses). In some cases, CMU may incur extraordinary expenses (e.g., reduction to practice, prototyping, piloting, extra due diligence in ownership review, and the like). In these instances, CMU shall also recover these out-of-pocket costs before the royalty formula is applied.

Once costs are recovered by CMU, the royalties for any work, invention, or discovery shall be distributed as follows:

| Royalty Amount | Inventor's Share | University Share |
|-----------------------------|------------------|------------------|
| Up to \$100,000.00 | 60% | 40% |
| \$100,000.01 - \$200,000.00 | 50% | 50% |
| \$200,000.01 and up | 40% | 60% |

Funds that are received by CMU according to this distribution shall be used to support CMU's research enterprise at the discretion of the Provost.

E. CONFLICT OF INTEREST/CONSULTING ARRANGEMENTS

In some cases, the employee who has created, invented, or discovered the work will seek to enter into a relationship with CMU to exploit that work. If both parties agree that this relationship is desirable, CMU will enter into a licensing agreement with the creator/inventor to define this relationship. These licenses will be substantially similar to any CMU license to an unrelated third party and will not confer unduly advantageous terms to either party. These licenses shall contain terms governing royalty payments, equity interest, or a combination thereof to CMU in exchange for the licensing of the work to the inventor/creator. In licensing to start-up companies, CMU will place emphasis on the viability of those start-ups. When a creator/inventor chooses to accept the risk of protecting and marketing the work instead of using CMU resources to do so, the license may contain terms that reflect this position.

In some cases, CMU will choose to enter into a consulting arrangement with the creator/inventor. In those cases, these arrangements will be carefully created in order to be in compliance with all CMU policies and procedures, including but not limited to its Conflict of Interest Policy. When CMU equipment, facilities, or other resources are used, CMU will retain an equity interest in any works created as a result of the consulting arrangement.

Title/Subject: **INTELLECTUAL PROPERTY**

F. DISPUTE RESOLUTION

This policy and its implementation may give rise to differing interpretations as to the ownership of intellectual property and to a particular creative work, invention, or discovery. In cases where such a dispute arises, the parties to the dispute should make every effort to resolve the issues informally. Such informal resolution can be arrived at with the input and assistance of the Ombuds, Provost, VP Research and Innovation, CIO, or other cabinet-level CMU officer with substantive knowledge of the work at issue. If resolution cannot be accomplished after this informal discussion, the objecting party may file an official request for a formal dispute resolution or interpretation of this policy, with the Office of the Provost, who will then review the matter and issue a decision. The Intellectual Property Form can be found on the following page:

[https://www.cmich.edu/office_provost/Pages/default.aspx] This decision shall be final and is not subject to appeal.

*Central Michigan University reserves the right to make exceptions, modify or eliminate this policy. This document supersedes all previous policies, procedures and directives relative to this subject.
Please refer questions or concerns to the Originating Department.*