

ARTICLE 18*INVENTIONS AND WORKS*

18.1 University Authority and Responsibilities. The University is authorized to establish regulations and procedures regarding patents, copyrights, and trademarks consistent with federal and state law. Such regulations and procedures shall be consistent with the terms of this Article.

18.2 Definitions. The following definitions shall apply in this ~~this~~ Article-18:

(a) A "Work" means, in accordance with Title 17 of the U.S. Code, any original work of authorship that is or may be subject to copyright. Work includes but is not limited to printed material (such as books, articles, memoranda, and texts), computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, compositions (e.g., written, musical, dramatic), motion pictures, multimedia works, web pages, sound recordings, choreographic works, and pictorial or graphic illustrations or displays, and any creative expression of a Trademark used in connection with these items. Instructional Material is included in this definition.

(b) "Instructional Material" shall include Works authored as part of or in connection with University teaching. Examples include, but are not limited to, syllabi, lecture notes, case examples, course packs, video lectures, power point presentations, examinations, audio or video recordings, motion pictures, films, slides, photographic and other similar visual materials, electronic and digital media, computer programs, programmed instructional materials, web pages, materials created for on-line, mixed mode, distance or distributed learning courses, three dimensional materials and exhibits, combinations of the above, and similar instructional or testing materials.

(c) "Distance or Distributed Learning" means a course that is rarely or never conducted with the employee and the students in the same general physical space.

(d) "Works for Hire" shall mean, as defined in Section 101 of the Copyright Code,
 (i) a Work that is prepared by an employee within the scope of his or her employment;
 (ii) a Work specially commissioned for use by the University, for example, as a contribution to a collective work, as part of a motion picture or other audio visual work, as a translation, as a supplementary work, as a compilation, an instructional text, as a test or material for test, as an atlas, etc., if the parties expressly agree in an executed writing that the Work shall be considered a work for hire.

(e) An "Invention" means
 (i) any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, computer software or databases, or extension of these items which is or may be patentable or otherwise protected under Title 35 of the United States Code, or that is or may be protected as a Trade Secret, under the Florida Trade Secrets Act, Ch. 688, Fla. Stat. or any similar act of another State, or the Defend Trade Secrets Act, 18 U.S.C. §1836, as may be relevant,

(ii) any novel variety of plant that is or may be patentable or otherwise protected under the Plant Variety Protection Act (7 U.S.C. §2321 et seq.) ,

(iii) any Trademark, and/or

(iv) any directly related know-how used in connection with these items.

(f) "University Support" shall mean the use of University funds, personnel, facilities, equipment, the University computer infrastructure, materials, specially created software platforms such as "Materia," or "Obojobo," professional video production, or technological information, in the creation or making of a Work or Invention. University Support includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the University, including but not limited to research and investigations that sponsored by the University and/or that carried out by public funds. It does not include the ordinary use of University resources, including the use of desktop or University provided laptop computers, the University computer resources, secretarial staff and supplies, one's office and the University library.

18.3 Rights to Copyrighted Works.

(a) Works owned by employees. The Work for Hire rule in the Copyright Act gives the University ownership of the copyrights to works produced by its employees within the scope of their employment. However,

54 the University supports the long-standing tradition within academia as to certain exceptions to the Work for Hire
55 Doctrine, and therefore treats teaching and research faculty as the copyright owners of Works as follows:

56 (1) Works created as a result of independent efforts. “Independent “Efforts” means that the
57 ideas came from the employee; that the Work was made without University support; and that the University is not
58 responsible for any opinions expressed in the Work.

59 (2) Works created as a result of Outside Activity. Works created from approved Outside
60 Activity in accordance with ~~Article 19~~, Conflict of Interest or Commitment and Outside Activity Article, are the
61 property of the creator, subject to the following:

62 a. Any requirement that an employee waive potential University rights to any Work
63 that arises during the course of such outside activity shall not be entered into unless specifically approved by the
64 ~~president or president~~ University’s representative, in writing, prior to the start of such outside activity.

65 b. An employee who proposes to engage in an outside activity where the employee is
66 asked to waive the University’s rights shall furnish a copy of this Article and the University’s Copyrights and
67 Works Regulation to the outside employer prior to the time a consulting or other agreement is signed or, if there is
68 no written agreement, before the outside activity/employment begins.

69 (3) Scholarly or artistic works. Works, regardless of their form of expression, for which the
70 intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression such as
71 textbooks, journal articles, scholarly papers, conference presentations, works of popular nonfiction, novels, poems,
72 dramatic works, visual works of art or design, films, musical compositions/arrangements, etc.

73 (4) **Instructional Materials as defined in 18.2(b), subject to an irrevocable, nonexclusive,
74 royalty free license to the University to use, reuse, reproduce, update, display, distribute, and make derivative
75 works (such as compilations, archives, or composite works) for the research and educational purposes of the
76 University. A copy of current Instructional Materials shall be filed in the department office.**

77 (b) Works owned by the University. The University asserts copyright ownership as a Work for Hire
78 (with the exceptions noted in 18.3(a)) in any Work where:

79 (1) The Creator was expressly commissioned in writing to produce or participate in the
80 production of the Work with University funds for a specific University purpose.

81 (2) The Creator was expressly assigned in writing by the University to produce or participate
82 in the production of the Work.

83 (3) The Creator was a faculty administrator or a non-faculty employee acting within the scope
84 of his or her employment.

85 (4) The Creator was substantially assisted by a support agency of the University, received
86 assistance in the form of released time, or received University support including grants and contracts funds
87 administered by the University, for the creation of the Work.

88 (5) Authorship cannot be attributed to one or a discrete number of authors but rather results
89 from simultaneous or sequential contributions over time by multiple employees, such as software tools developed
90 and improved over time by multiple individuals. Joint authorship is the not the determining factor; rather, the
91 University looks to determine whether authorship or creation is so diffuse as to be non-attributable.

92 (c) Transfer of copyright to the employee.

93 (1) When copyright is owned by the University in accordance with the provisions of this
94 Article, the originating employee of the Work may request of the Vice President of Research and Dean of the
95 College of Graduate Studies (“Vice President of Research”) that ownership be transferred to the employee. Such
96 request may be granted if it does not:

- 97 ~~(a)~~ violate any legal obligations of or to the University
- 98 ~~(b)~~ limit appropriate uses of the Work by the University
- 99 ~~(c)~~ create a conflict of interest for the employee
- 100 ~~(d)~~ otherwise conflict with specific goals of the University

101 102 **18.4 Rights in Inventions**

103 (a) **Inventions owned by employees.**

104 (1) Independent Inventive Efforts. All Inventions made outside the field or discipline in
105 which the employee is employed by the University, and for which no University Support has been used, are the
106 property of the employee, subject to 35 U.S.C. 115, who has the right to determine the disposition of such
107 property and revenue derived from such property. The employee and the ~~president or president~~ University’s

108 representative may agree that the patent for such Invention be pursued by the University and the proceeds
109 shared.

110 (2) Outside Activity. An employee may, in accordance with ~~Article 19, the~~ Conflict of
111 Interest or Commitment and Outside Activity ~~Article~~, engage in outside activity, including employment
112 pursuant to a consulting agreement. All Inventions arising from authorized Outside Activity and outside of the
113 field or discipline of the employee are the property of the employee, subject to the following conditions:

114 a. Any requirement that an employee waive potential University rights to any
115 Inventions that arise during the course of such outside activity shall not be entered into unless specifically
116 approved by the ~~president or president~~University's representative, in writing, prior to the start of such outside
117 activity

118 b. An employee who proposes to engage in an outside activity where the
119 employee is asked to waive the University's rights shall furnish a copy of this Article and the University's
120 Patents, Trademarks, and Trade Secret Regulation to the outside employer prior to the time a consulting or other
121 agreement is signed or, if there is no written agreement, before the outside activity/employment begins.
122 Employees are not authorized to waive University rights, and any such waiver is deemed rejected unless
123 specifically accepted by the Vice President of Research and Commercialization or designee.

124 c. Undisclosed Outside Activity is considered unauthorized.

125 (i) Any Invention arising from undisclosed Outside Activity must
126 be disclosed to the Vice President of Research & Dean of the College of Graduate Studies ("Vice President of
127 Research") or designee. If the employee claims the Invention resulted from Independent Inventive Effort(s),
128 then as part of the disclosure, the employee shall provide sufficient documentation to substantiate the claim.

129 (ii) Upon receipt of written notice from the Vice President of
130 Research or designee confirming the University's decision not to assert a University interest in an Invention
131 resulting from unauthorized Outside Activity, the employee shall have the right to determine the disposition of
132 such Invention. However, the employee and the Vice President of Research or designee may agree that a patent
133 for such Invention will be pursued by the University; in that event, the employee and University shall share in
134 the proceeds of any Invention as provided by this Article any applicable University policies or procedures,
135 including applicable University of Central Florida Research Foundation ("UCFRF") Guidelines and Procedures
136 for Distribution of Funds or in such other manner as the employee and the Vice President of Research or
137 designee may agree.

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139 **(b) Inventions owned by the University.**

140 (1) University-Supported Efforts. Inventions made in the field or discipline in which the
141 employee is employed by the University, or by using University Support, are the property of the University and
142 the employee shall share in the proceeds therefrom. Such Inventions and related rights shall be the property of
143 the University or its designee, UCFRF, and are hereby assigned to the University's designee, UCFRF, by the
144 employee. If the University decides to patent, develop and market the Invention, all costs of the patent
145 application and related activities, including those which lead to active licensed production, shall be paid from
146 University funds. These costs shall be recovered before any division of patent or license revenue is made
147 between the University and the employee.

148 (2) Private or Industrially Sponsored Efforts. With some exceptions, Inventions developed
149 in the course of privately or industrially sponsored research are the property of the University. The sponsor may
150 be accorded the first option to negotiate an exclusive license, in which case the term of exclusivity and the
151 compensation shall be negotiated at the time the Invention is made or under the provisions of the University's
152 policy on copyrights and patents. ~~The sponsor may also be accorded a pre-negotiated license, ownership, or~~
153 ~~other non-standard rights (collectively, "Non-Standard IP Rights"), upon written agreement of participating~~
154 ~~employees to the Non-Standard IP Rights. If the sponsor exercises the option, or any other Non-Standard IP~~
155 ~~Rights, the University retains royalty-free license rights to use the Invention or discovery for its own purposes.~~

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157 **18.5 Disclosure/University Review**

158 (a) Employees are required to disclose all Inventions owned by the University and all Inventions
159 resulting from any Outside Activity within the field or discipline of the inventing employee. It is the policy of
160 the University that, in general, research results should be publishable; publication of such results in appropriate
161 venues is encouraged. However, if the publication of research results may reveal an Invention in which the

162 University has an interest, employees should seek advice on how and when to publish the results in order that
163 potential patent rights for the Invention are not compromised. That is, upon the making of an Invention and
164 prior to any publication or public disclosure, employees shall promptly and fully disclose to the Vice President
165 of Research & Commercialization any Invention described in 18.4(b). Any delay in publication resulting from
166 seeking such advice shall be minimized, but in any event shall not exceed **ninety days** from the date of
167 presentation of the proposed publication, unless a sponsor has contractually required a more lengthy period,
168 and such time period was confirmed acceptable to the employee(s) participating in the sponsored project.

169 (1) The disclosure shall be made on the forms and according to procedures prescribed by
170 the Vice President of Research. At a minimum the disclosure shall: (1) identify each employee who contributed
171 to the Invention, (2) provide a brief description of the Invention, and (3) identify and summarize the research
172 project including the participants and applicable funding sources

173 (2) The Vice President for Research or designee shall conduct an investigation to assess
174 the patentability and marketability, as well as the respective equities of the employee and the University in the
175 Invention, and to determine the extent to which the University should be involved in its protection,
176 development, and promotion.

177 (3) The Vice President for Research or designee shall inform the employee of the
178 University's decision regarding the University's interest in the Invention within a reasonable time, not to exceed
179 **ninety days** from the date of the disclosure.

180 (4) In the event the University elects to obtain a Patent, register a Trademark or a
181 Copyright, or to formally define a Trade Secret to protect the University's rights in the Invention, employees
182 will execute any and all necessary documents to affirm, publicly formalize, and record the transfer of all
183 rights to the University or to UCFRF. UCFRF is required to comply with the same policies and procedures
184 regarding allocation of proceeds/royalties as the University.

185 (5) In the event the University asserts its rights in the Invention, all costs and expense of
186 patenting, developing, and marketing the Invention and related activities, including those which may lead to
187 active licensing of the Invention, shall be paid by the University.

188 (6) The division, between the University and the employee, of proceeds generated by the
189 licensing or assignment of an Invention shall be as set forth in the University's policy on copyrights and patents,
190 including the applicable UCFRF Guidelines, or negotiated and reflected in a written contract between the
191 University and the employee. All such agreements shall comport with and satisfy any preexisting commitments
192 to outside sponsoring contractors.

193 (7) The employee shall execute a Rights to Inventions Agreement and not commit any
194 act that would tend to defeat the University's interest in the matter, and the University shall take any necessary
195 steps to protect such interest.

196 (b) Release of Rights.

197 (1) In the event a sponsored research contractor has been offered the option to apply for the
198 patent to an Invention or other rights in an Invention, the University will obtain the contractor's decision
199 regarding the exercise of such rights within 120 days, or within the time provided in the sponsored research
200 agreement.

201 (2) Prior to making a patent application, at any stage of the patent process, or in the
202 commercial application of an Invention, if the University has not otherwise assigned to a third party the right to
203 pursue its interests, the ~~president or president~~University's representative may elect to waive the University's
204 rights to the patent, or withdraw from further involvement in the protection or commercial application of the
205 Invention. At the request of the employee in such case, subject to government approval, if applicable, the
206 University shall transfer the Invention rights to the employee. The Invention shall be the employee's property
207 and any costs already incurred by the University or on its behalf shall not be assessed against the employee.

208 (3) All assignments or releases of Inventions, including patent rights, by the ~~president or~~
209 ~~president~~University's representative to the employee shall contain the provision that such Invention, if patented
210 by the employee, shall be available royalty-free for governmental purposes of the State of Florida and research
211 and instructional purposes of the University, including its affiliated entities, unless otherwise agreed in writing
212 by the University.
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