17.01.01 Ownership of Intellectual Property and Tangible Research Property

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Regulation Summary

This regulation ensures that all The Texas A&M University System (system) employees, students and certain third parties understand the types of intellectual property (IP), the ownership thereof once conceived or developed, and their responsibilities in protecting it.

Definitions

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Regulation

1. DELEGATION OF AUTHORITY

   In accordance with the authority delegated by the system Board of Regents (board) in System Policy *17.01, Intellectual Property Management and Commercialization*, the chancellor further delegates to Texas A&M Innovation (TI) responsibility for determining the IP creator of and protecting intellectual property conceived or developed by faculty, scientists, engineers and/or other employees or students in accordance with System Policy *17.01* and related regulations for IP creators from all member(s) in the system. Such delegation is subject to the chancellor's or designee's right, if the chancellor or designee so chooses, to re-evaluate and make a new determination of an IP creator(s) and/or protection of such intellectual property.

2. Ownership rights in intellectual property, which includes Tangible Research Property (TRP), are as follows:

   2.1 Intellectual Property Creator or Third Party-Owned

   2.1.1 Intellectual property owned by the IP creator is that intellectual property:

   (a) unrelated to the IP creator's employment responsibilities;

   (b) developed on the IP creator's own time; and

(c) developed without the support of the system or any of its members or the significant use of system and/or member facilities. See Section 2.2 of this regulation.

2.1.2 Intellectual property owned by the IP creator under Section 2.1 may be subject to the rights of third parties due to research agreements, grants, cooperative agreements or contracts with the federal and state governments (or agencies thereof). It is the sole responsibility of the IP creator to comply with any such rights or obligations. Any intellectual property owned by the IP creator or a third party must be managed without legal or other assistance from the system or TI, except for the purposes of determining any system or member rights in such intellectual property.

2.1.3 The system recognizes and affirms the traditional academic freedom of its faculty, staff and students to publish pedagogical, scholarly or artistic works. In keeping with this philosophy, the system does not claim copyright ownership to pedagogical, scholarly or artistic works, regardless of their form of expression, except as provided in Sections 2.2 and 2.3. Such works include, but are not limited to, textbooks, course materials and refereed literature, and copyrightable works of students created in the course of their education, such as dissertations, theses, papers, and journal articles. Furthermore, the system claims no ownership in popular nonfiction, novels, poems, musical compositions, or other works of artistic imagination that do not constitute significant use of resources and/or are not works for hire.

2.1.4 If an IP creator retains title to copyright in teaching or course materials that are not works for hire (such as class notes, course presentations, curriculum guides and laboratory notebooks), which are used at or on behalf of the system or one or more members, or works created in the course of an IP creator's education, the system retains a royalty-free right to use the materials for educational purposes.

2.1.5 IP creators of copyrightable works that are not owned by the system, its members or another party such as a research sponsor, or subject to a license or revenue sharing agreement, own the copyright in such works and are free to publish them, register the copyright and receive any revenues which may result without any obligation to account to the system or a member for such revenues.

2.2 System-owned

2.2.1 Except as otherwise expressly provided in this regulation, the system will and does own all intellectual property conceived or developed by an IP creator:

(a) as a result of activities related to an individual's employment responsibilities with the system or a member;

(b) with financial support from the system or any of its members, or financial support received from a third party that is administered by the system or a member;

(c) with significant use of system and/or member resources; or

(d) any combination of the foregoing.

2.2.2 Such IP creator in Section 2.2.1 agrees to assign and hereby does assign such intellectual property to the system, whether such intellectual property currently exists or is conceived or developed in the future while such IP creator is subject to system policies and regulations. Such IP creator further agrees to sign any necessary (as determined by the system in its sole discretion) written instrument to perfect such assignment in the U.S. or foreign jurisdictions. Furthermore, such IP creator agrees not to contest or assist in any manner in contesting the validity of such intellectual property.

2.2.3 Ownership of intellectual property that is conceived or developed by an IP creator in the course of or resulting from research supported by a grant, cooperative agreement, or contract with the federal or a state government (or an agency thereof) or a nonprofit or for-profit nongovernmental entity or by a private gift or grant to the system or its members is determined in accordance with the terms of such grant, cooperative agreement, or contract or, in the absence of such terms and to the extent consistent with applicable law, will be and is owned by the system. Such IP creator agrees to assign and hereby does assign such intellectual property to the system, whether such intellectual property currently exists or is conceived or developed in the future while such IP creator is subject to system policies and regulations. Such IP creator further agrees to sign any necessary (as determined by the system in its sole discretion) written instrument to perfect such assignment in the U.S. or foreign jurisdictions. Furthermore, such IP creator agrees not to contest or assist in any manner in contesting the validity of such intellectual property.

2.2.4 Intellectual property that is not treated as a work for hire, but is developed with significant use of funds, space, hardware or facilities administered by a member and/or the system, where said use was essential and substantial rather than incidental, will be and is owned by the system and the IP creator agrees to assign and hereby assigns such intellectual property to the system. Such IP creator further agrees to sign any necessary (as determined by the system in its sole discretion) written instrument to perfect such assignment in the U.S. or foreign jurisdictions. Furthermore, such IP creator agrees not to contest or assist in any manner in contesting the validity of such intellectual property. The system does not construe the payment of salary or wages, or the provision of offices or library facilities to an IP creator as constituting significant use of system resources.

2.2.5 The system will own and owns copyrightable works created by a third party that was commissioned or contracted to create and assign such copyrightable works to the system.

2.3 Member-owned

2.3.1 A member owns works for hire created by the member's employees or commissioned by the member, and not covered by Section 2.2.3.

2.3.2 Such IP creator described in Section 2.3.1 agrees to assign and hereby does assign such copyrightable work to such member, whether such copyrightable work

currently exists or is authored in the future while such IP creator is subject to system policies and regulations. Such IP creator further agrees to sign any necessary (as determined by the member in its sole discretion) written instrument to perfect such assignment in the U.S. or foreign jurisdictions.

2.3.3 A member may obtain and be assigned trademarks that are first adopted and used in connection with the member's own goods or services. The member is responsible for obtaining and maintaining such trademarks and for all costs associated with such trademarks. TI may assist the member in obtaining and maintaining such trademarks if requested by the member.

2.3.4 A member may commercialize member-owned intellectual property in accordance with System Regulation *17.01.03, Commercial Development of Intellectual Property.* In the alternative, member-owned intellectual property may be assigned to the system, with approval from the system, for commercialization under System Policy *17.01,* but is managed by TI. In all cases, all intellectual property agreements related to member-owned intellectual property are subject to review and approval by OGC as to form and legal sufficiency.

3. Intellectual Property Involving Sponsored Research

3.1 Except as provided by Section 3.5 of this regulation, intellectual property conceived or developed in the course of or resulting from research supported by a grant, cooperative agreement, or contract with a governmental entity or a nonprofit entity, or a for-profit commercial entity will be and is owned by the system as provided in Section 2.2.

3.2 TI must ensure that all reporting requirements and any other obligations to the sponsor for that sponsored research regarding intellectual property are met.

3.3 Any individual involved in performing any portion of the sponsored research is under a duty to disclose to Sponsored Research Services (SRS) and TI, to the best of that individual's knowledge, any potential conflict relating to the rights to intellectual property granted (or proposed to be granted) to the sponsor of a research project and the obligations of the system or a member to another third party under a separate sponsored research grant, cooperative agreement, contract, potential or existing license agreement, or other transaction. TI, in concert with SRS, will review all potential conflicts related to sponsored research. TI will address any conflicts with the appropriate member official/office.

3.4 An IP creator that conceives or develops intellectual property under a sponsored research grant, cooperative agreement or contract, and the employees of the sponsored research offices of the members that may be aware of the conception or development of such intellectual property must promptly disclose such conceived or developed intellectual property to TI.

3.5 The chancellor or designee must approve a waiver of the requirement of system ownership of intellectual property developed under a contract, grant or agreement, for intellectual property that does not currently exist at the time of the waiver, subject to OGC review and approval for legal sufficiency. Such waiver may be granted if the

benefit from the level of funding for proposed research and/or other consideration from the sponsor, licensee or other party outweighs the potential value of system ownership.

3.6 Each member must remit to TI any amount received under a contract, grant or agreement for research as compensation for granting certain rights or ownership to intellectual property that may be conceived or developed under such contract, grant or agreement. If intellectual property is conceived or developed under such contract, grant or agreement as evidenced by a properly filed intellectual property disclosure, such remitted amount will be distributed according to System Regulation *17.01.04, Distribution of Royalties, License Fees and Sale Proceeds from Licensing.* If no intellectual property is conceived or developed under such contract, grant or agreement, TI will retain the remitted amount without being subject to distribution under System Regulation *17.01.04*.

4. Intellectual Property Arising from Consulting Activities

The system recognizes that external faculty consulting can be an effective mechanism for professional development and for establishing good relationships with industry. Notwithstanding anything to the contrary, System Policy *17.01*, System Policy *31.05, External Employment and Expert Witness,* and the regulations promulgated pursuant to such policies solely govern all intellectual property arising under consulting or external employment subject to any of the system's prior legal obligations to third parties.

5. Software Ownership

5.1 Software Pedagogical Work

A software pedagogical work is software source code that is included as examples in a pedagogical work. The copyrights to the software pedagogical works are owned by the IP creator and are treated as part of pedagogical works, subject to Section 2.1 of this regulation.

5.2 Software Scholarly Work

5.2.1 A software scholarly work is software source code that is part of a scholarly work. The copyrights to the software scholarly works will be owned by the IP creator if:

(a) the software source code is submitted as part of the peer-reviewed scholarly work;

(b) the software source code is specifically peer-reviewed and published when approved; and

(c) only the software source code that is actually approved by the peer review committee and published will be owned by the IP creator, subject to Section 2.1 of this regulation.

5.2.2 Software source code that is specifically peer-reviewed means that the normal documented procedure for the peer review committee includes specifically reviewing and commenting on the source code that supports the work submitted

for review, and the review of the source code is not secondary to the peer review committee process.

5.3 System Rights

The system retains a perpetual royalty-free right to use software pedagogical works and software scholarly works (hereinafter special software work(s)) for educational purposes. The system does and will own any other intellectual property rights, such as patents, related to special software works in accordance with System Policy *17.01* and its regulations. A publication of a special software work does not release any of the system's rights that may exist in that special software work, including, but not limited to, inventions and patent rights.

5.4 Commercialization

Commercialization of any intellectual property that is related to or includes a special software work requires the IP creator to assign the IP creator's rights in such special software work to the system in order for the IP creator to be eligible to receive any licensing and distribution income from commercialization in accordance with System Regulation *17.01.04, Distribution of Royalties, License Fees and Sale Proceeds from Licensing*. The system's refusal to file a patent application, copyright or commercialize such intellectual property without an assignment of the IP creator's rights to the system does not waive any of the system's rights that may exist in that special software work. In addition, the system is not obligated to release (by assignment or grant of license) system rights to such an intellectual property to the IP creator under System Regulation *17.01.03, Commercial Development of Intellectual Property*, if the IP creator refuses to assign the IP creator's rights in the special software work, which is related to the intellectual property, to the system.

5.5 Limitation of IP Creator's Rights

5.5.1 An IP creator may not add, embed or incorporate the IP creator's special software work into a device, computer system or other software of a member or the system without obtaining prior permission from the system.

5.5.2 An IP creator may not add, embed or incorporate the IP creator's special software work into a device, computer system or other software for a third party under a contract, grant, cooperative agreement or funding agreement with a member or the system without obtaining prior permission from the system.

5.5.3 If an IP creator fails to obtain prior permission before adding, embedding or incorporating the IP creator's special software work, the system or such third party (where special software work would be included in the deliverable for such third party) has a royalty-free perpetual license for all purposes and all devices, computer systems or other software that includes such special software work.

5.6 Other Software

Except for software pedagogical works and software scholarly works, the system may assert ownership of software as an invention or as a copyrightable work or both in accordance with the other provisions of System Policy *17.01* and its regulations.

Related Statutes, Policies or Requirements

37 C.F.R. § 401

System Policy *17.01, Intellectual Property Management and Commercialization*

System Regulation *17.01.02, Evaluation and Protection of Intellectual Property*

System Regulation *17.01.03, Commercial Development of Intellectual Property*

System Regulation *17.01.04, Distribution of Royalties, License Fees and Sale Proceeds from Licensing*

System Policy *31.05, External Employment and Expert Witness*

Member Rule Requirements

A rule is not required to supplement this regulation.

Contact Office

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