

# 17.01.01 Ownership of Intellectual Property and Tangible Research Property



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## Regulation Summary

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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.

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## Definitions

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## Regulation

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### 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 Technology Commercialization (TTC) responsibility for determining the IP creator of and protecting intellectual property conceived or developed by faculty, scientists, engineers and/or other employees in accordance with System Policy *17.01* and related regulations for IP creators whose member does not have an established member commercialization office.

For members having an established member commercialization office, in accordance with the authority delegated by the system board in System Policy *17.01*, the chancellor further delegates to the member chief executive officer (CEO) or designee and that member's member commercialization office responsibility for determining the IP creator of and protecting intellectual property conceived or developed by that member's faculty, scientists, engineers and/or other employees in accordance with System Policy *17.01* and related regulations. Such delegation is subject to the chancellor's or designee's right, if 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.

For members not having an established member commercialization office, the chancellor or designee may direct one of the established member commercialization offices to support that member's commercialization activities.

In order to best support a member not having an established member commercialization office, the supporting member commercialization office may agree with another member commercialization office having the expertise relevant to particular intellectual property of that member to take over support of that particular intellectual property.

For IP creators that report to multiple members or IP creators from multiple members, the member commercialization office set forth in a member sharing agreement for those members will be responsible for determining the IP creator(s) and for protecting intellectual property conceived or developed by such IP creator(s), subject to Section 1.2 of System Regulation *17.01.02, Evaluation and Protection of Intellectual Property*. If a member sharing agreement is not completed within three (3) months after submission of the completed disclosure form, TTC will be responsible for determining the IP creator(s) of and protecting intellectual property conceived or developed by such IP creator(s). TTC may direct one of the established member commercialization offices to be responsible for determining the IP creator(s) of and protecting intellectual property conceived or developed by such IP creator(s).

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, TTC or any member commercialization office, 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, faculty-prepared works such as 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 will retain 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 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, will be 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 will 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 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 will own copyrightable works that are created by:

- (a) an IP creator who was hired by a member specifically or required as part of the IP creator's employment to produce copyrightable works for institutional purposes; or
- (b) a third party commissioned or contracted by the member and assigned to the member on whose behalf the work was performed.

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 will be responsible for obtaining and maintaining such trademarks and for all costs associated with such trademarks. TTC or the respective member commercialization office may assist the member in obtaining and maintaining such trademarks, if requested by the member.

2.3.4 Member-owned intellectual property may be assigned to the system, with approval from the system, for commercialization under System Policy *17.01*, but

will be managed by TTC or the respective member commercialization office, with appropriate notification to TTC.

### 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 TTC, in coordination with the respective member commercialization office that is responsible for intellectual property related to particular sponsored research, 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 their respective member commercialization office, Sponsored Research Services (SRS) and TTC, 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. SRS, TTC and the appropriate member commercialization office will review and address all potential conflicts related to sponsored research.
- 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 TTC and their respective member commercialization office.
- 3.5 A member CEO or designee may approve a waiver of the requirement of system ownership of intellectual property developed under a contract, grant or agreement, only for intellectual property that does not currently exist at the time of the waiver, 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.

### 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 will retain a perpetual royalty-free right to use software pedagogical works and software scholarly works (hereinafter special software works) for educational purposes. The system 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*. 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 will not be 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 IP creator's member CEO or designee or 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 IP creator's member CEO or designee or 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 member, system or such third party (where special software work would be included in the deliverable for such third party) will have 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.

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## **Related Statutes, Policies or Requirements**

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[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](#)

## **Member Rule Requirements**

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A rule is not required to supplement this regulation.

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## **Contact Office**

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System Office of the Vice Chancellor for Research  
(979) 458-6000