



Intellectual Property	
Responsible Official: Vice Provost for Research and Sponsored Programs	Responsible Office: Research and Sponsored Programs

Policy Purpose

This policy specifies the ownership of Intellectual Property (including inventions and copyrights), the requirements for disclosure, the protection of Intellectual Property, and the distribution of income related to Intellectual Property.

Policy Statement

East Tennessee State University (ETSU) encourages employees to create inventions and to produce copyrightable works; facilitates the utilization of such inventions and works to the benefit of the public, the university, and the members of the campus community; and provides for the equitable sharing of any proceeds derived from the commercial exploitation of inventions and copyrightable works in which, pursuant to this policy, the university is determined to have an interest.

The intent of this policy is to protect the interests of the university, members of the university community, external sponsors of research, and the public with regard to inventions and copyrightable works. This policy shall apply to ETSU faculty, students, staff, visitors, or others participating in ETSU programs using significant ETSU funds or facilities.

I. Agent Authorization for Intellectual Property Matters.

ETSU authorizes the East Tennessee State University Research Foundation (ETSURF) to act as the agent for the university in matters concerning Intellectual Property. ETSU may, at the direction of its President and with approval of the Board of Directors of ETSURF, assign its rights to Intellectual Property to ETSURF.

ETSURF may, on behalf of the university: (1) seek and hold patents and copyrights; (2) negotiate and administer licenses; and (3) collect and distribute royalties on behalf of the university in accordance with the provisions of this policy.

II. Ownership of Intellectual Property.

With the exception of Student Theses, Course Materials, Scholarly Works, and Works-For-Hire, as

described hereinbelow, rights in patentable inventions, mask works, tangible research property, trademarks, and copyrightable works, including software ("Intellectual Property"), made or created by ETSU faculty, students, staff, and others participating in ETSU programs, including visitors, are as follows:

A. Inventor(s) and Author(s) Ownership Rights.

Inventor(s) and Author(s) will own Intellectual Property that is:

1. Not developed in the course of or pursuant to a sponsored research or other agreement (the faculty advisor, administrative officer, or applicable contracts administrator can advise on the terms of the agreements that apply to specific research); and
2. Not created as a Works-for-Hire by operation of copyright law and not created pursuant to a written agreement with ETSU providing for a transfer of copyright or ownership of Intellectual Property to ETSU; and
3. Not developed with the Significant Use of funds or facilities administered by ETSU.

B. Ownership of Other Intellectual Property.

Ownership of all other Intellectual Property will be as follows:

1. ETSU owns Intellectual Property made or created by ETSU faculty, students, staff or others participating in research pursuant to a sponsored research agreement to which ETSU is a party.
2. Ownership of copyrightable works created as Works-for-Hire or pursuant to a written agreement with ETSU providing for the transfer of any Intellectual Property or ownership to ETSU will vest with ETSU.
3. Ownership of Intellectual Property developed by ETSU faculty, students, staff, and others participating in University programs, including visitors, with the Significant Use of funds or facilities administered or owned by ETSU will vest with ETSU;
4. Ownership of Intellectual Property developed in the course of a project arranged, administered, or controlled by ETSU and sponsored by agencies or organizations external to the university will vest with ETSU, absent a prior written agreement to the contrary.

C. Scholarly Works.

ETSU shall not assert ownership of Scholarly Work, regardless of whether the circumstances

surrounding creation of the Scholarly Work satisfy one or more of the four tests outlined in this section for determining University ownership. Disclosure of Scholarly Works is nonetheless required, subject to the condition that only those copyrightable works which could reasonably be expected to have commercial value must be disclosed.

D. Course Materials.

The creator(s) of Course Materials will own the copyright of such materials and shall grant ETSU a fully-paid, worldwide, non-exclusive, non-transferable, royalty-free license for use of such Course Materials in perpetuity.

Ownership of rights to Course Materials that are created by the intellectual labor of more than one person shall be owned jointly, pursuant to the provisions of this policy, where applicable, and/or the Copyright Act.

1. Course Material Created Prior to Employment or Enrollment at ETSU.

Creators of Course Materials created prior to employment or enrollment with ETSU retain the exclusive copyright of such material; however, any Course Materials developed or edited in whole or in part with the use of funds or facilities owned by ETSU will vest pursuant to this policy.

2. Course Materials Developed with Significant Use of ETSU Property or Funds.

Any Course Materials developed with Significant Use of ETSU property or funds shall be governed by a written agreement between the creator(s) and ETSU. The agreement shall specify: (1) how rights will be owned; (2) how rights will be controlled; and (3) how any revenues will be divided if the materials are commercialized.

3. Use of Course Materials by ETSU.

ETSU may utilize its Course Materials licensed pursuant to this policy for the purpose of continuing to teach the course of instruction for which the Course Materials were prepared, with the non-exclusive right to revise and update them as required for this purpose.

E. Student Thesis.

Students will own copyright in their Student Thesis which do not:

1. involve research for which the student received financial support in the form of wages, salary, stipend, or grant from funds administered by ETSU; or
2. involve research performed in whole or in part utilizing equipment or facilities

provided to ETSU under conditions which impose copyright restrictions.

Where copyright ownership is retained by the student, however, the student must grant to ETSU royalty-free permission to reproduce and publicly distribute copies of the thesis in perpetuity. Where Significant Use is made of ETSU equipment or facilities provided to ETSU without copyright restrictions, students own copyright in theses, pursuant to this policy; however, any software code, patentable subject matter and other Intellectual Property contained in the theses are subject to the determinations as set forth in this policy.

III. Works-for-Hire.

Contracts for Works-for-Hire between ETSU and independent contractors, including adjunct faculty, should define the respective rights and responsibilities of the parties with respect to ownership of any Intellectual Property developed within the Scope of Employment.

IV. Responsibilities of Inventor(s) and Author(s).

Persons to whom this policy applies are responsible for disclosing to ETSU the individual's invention or production of a copyrightable work that could reasonably be expected to have commercial value. Disclosure shall be made to the Vice Provost for Research and Sponsored Programs using an Invention Disclosure Form or Copyrightable Work Disclosure Form.

The Vice Provost for Research and Sponsored Programs will coordinate review of an Invention Disclosure Form or Copyrightable Work Disclosure Form by the University Intellectual Property Advisory Committee (IPAC). The Inventor(s) or Author(s) shall fully cooperate with IPAC, as well as with ETSU and ETSURF personnel in the disclosure process and in other subsequent activities associated with patenting and/or commercialization of the invention or work, including any required disclosures under the Bayh-Dole Act or other law.

Guidelines and information regarding disclosure of inventions or copyrightable work may be found in the *Information and Guidelines Concerning the Patent and Copyright Process at East Tennessee State University* (http://www.etsu.edu/research/Word-Web-Docs/Patent_and_Copyright_Guide.doc).

In the event that two or more persons are entitled to claim ownership of the Intellectual Property, the Inventor(s) or Author(s) shall reach a written agreement between or among themselves regarding relative contributions for the purposes of distribution of Net Income from the invention or work. That agreement should be in writing and be notarized. The agreement will be required prior to review by IPAC.

Inventors should particularly note that certain acts (for example, publication of an invention in an academic journal or possibly even presentation at a conference) can constitute a statutory bar to patent protection. An Inventor contemplating public disclosure activities prior to filing an Invention Disclosure Form should contact the Vice Provost for Research and Sponsored Programs prior to engaging in those disclosure activities.

V. Intellectual Property Advisory Committee.

The President of ETSU shall appoint members to IPAC. IPAC will consist of nine (9) appointed, voting members experienced in Intellectual Property matters. Seven (7) of these members shall be drawn from ETSU faculty and two (2) from the community. Two (2) of the nine members shall also be members of the Board of Directors of ETSURF. The Vice Provost for Research and Sponsored Programs shall serve as the chair of IPAC and will not vote. All members of IPAC shall execute confidentiality agreements to ensure that all information concerning Intellectual Property disclosed to the Committee is kept confidential.

A patentability evaluation shall include a thorough evaluation of acts by the Inventor or items of prior art that would bar patent protection.

IPAC may seek outside assistance in preparing its recommendations. Any compensated assistance obtained from private legal counsel that is paid for by East Tennessee State University must be approved in advance by the Attorney General of the State of Tennessee. Approval by the Attorney General of the State of Tennessee is not required if the outside legal counsel is retained and compensated by ETSURF.

The final decision to pursue protection of the Intellectual Property rests with the President of East Tennessee State University.

If the decision of the President is not to seek patent or copyright protection of the Intellectual Property, and ETSU has an ownership interest in the Intellectual Property, the President may assign the Institution's ownership interest to the Inventor(s) or Author(s). The Vice Provost for Research and Sponsored Programs will administer this action.

For those inventions or works in which ETSU is deemed to have an ownership interest, following a decision by the President of University to seek patent protection, copyright registration, and/or commercialization of the Intellectual Property, the Vice Provost for Research and Sponsored Programs shall arrange to have these activities undertaken and oversee their execution. All direct costs associated with those activities shall be borne by ETSU or ETSURF.

For inventions made in the course of a project funded in whole or in part by the Federal Government, the Bayh-Dole Act (37 CFR 401) imposes certain reporting requirements associated with the technology transfer process. The Vice Provost for Research and Sponsored Programs is responsible for ensuring that those reporting requirements are satisfied.

VI. Appeals.

The President is not authorized to delegate responsibilities relative to appeals. The President's decision on an appeal relating to ownership or royalty distribution may be appealed to the ETSU Board of Trustees as described hereinbelow.

After a denial by the President, an Inventor(s) or Author(s) may file one (1) appeal. A written request for revaluation must be received by the Office of the President within thirty (30) calendar days of notification of the initial decision. The Inventor(s) or Author(s) may submit documents or other evidence of support. The decision of the President is final

VII. Distribution of Income from Intellectual Property.

Income derived from the commercialization of Intellectual Property in which ETSU or ETSURF, acting on behalf of ETSU, has an interest shall be first applied toward any direct expenses incurred by ETSU or ETSURF in seeking patent protection or copyright registration, in pursuing commercialization of the Intellectual Property, in maintaining the patents and for legal expenses incurred in the event of infringement defense.

After reimbursement of direct expenses to ETSU or ETSURF as described hereinabove, the remaining Net Income shall be distributed as follows: 50% to the Inventor(s) or Author(s), 20% to the Inventor's or Author's department, 15% to the Inventor's or Author's college, and 15% to the research support fund administered by the Vice Provost for Research and Sponsored Programs, or, if the Intellectual Property has been assigned to ETSURF, 15% shall go to ETSURF rather than to the research support fund. This distribution system shall also apply to license signing fees, to license benchmark and diligence payments, and to payments from the outright sale of the patent or copyright.

The portion of the Net Income from royalties and any other Intellectual Property-related income retained in the Vice Provost for Research and Sponsored Programs research support fund or by ETSURF shall be kept in a restricted account and used for support the enhancement of research and instructional programs at East Tennessee State University and of the research support activities of ETSURF.

VIII. Waiver of Policy Provisions.

This policy shall not preclude a mutually agreed upon written contract between the university and persons to whom this policy applies wherein either party may agree to waive their rights under this policy.

Authority:

The Bayh-Dole Act (37 CFR 401, et. al.).

The Copyright Act of 1976 (17 U.S.C. § 101, et. al.).

Patent Act (35 U.S.C. § 1, et. al.).

Defined Terms

A defined term has a special meaning within the context of this policy

Author:	Means the person or persons responsible for creation of a copyrightable work.
Course Materials:	Means any materials in any format, including power-point slides, lectures in any format, lecture notes, diagrams, web-ready content, educational software, syllabi, study guides, images, audio or visual work, handouts, and/or assessments developed while employed or enrolled with ETSU in any capacity, including as a Graduate Assistant, for the use or aid in the administration or instruction of any academic course currently or previously offered to ETSU students. Course Materials does not include Scholarly Works which may have been developed for instructional use.
East Tennessee State University Research Foundation, Inc. (ETSURF):	Means the separate non-profit corporation established by East Tennessee State University and approved by the Tennessee Board of Regents to provide support for research activities related to the mission of East Tennessee State University including management of Intellectual Property.
Gross Income:	Is income coming to East Tennessee State University or the East Tennessee State University Research Foundation and means proceeds from the sale, lease, or licensing of Intellectual Property by the University; dividends derived from equity received in consideration for the sale, lease, or licensing of Intellectual Property by the University; or proceeds from the sale of equity received in consideration for the sale, lease, or licensing of Intellectual Property by the University.
Intellectual Property:	Means patentable inventions, mask works, tangible research property, trademarks, and copyrightable works, including any discovery, new use or application, process composition of matter, model, design, technological development, software, or biological material.
Inventor:	Means the person or persons responsible for conception of an idea or ideas leading to an invention or creation of Intellectual Property.

Net Income:	Is income coming the East Tennessee State University or the East Tennessee State University Research Foundation and is Gross Income minus the direct costs associated with patent prosecution, copyright registration, commercialization, defense, maintenance, and administration of Intellectual Property.
Scholarly Works:	These include, but are not limited to, articles written for publication in academic journals, textbooks, works of art, musical compositions, and literary works. Theses and dissertations are not, for the purposes of this policy, Scholarly Works. Works by non-faculty employees shall not, for the purposes of this policy, be considered Scholarly Works. Course Materials are not considered Scholarly Works.
Scope of Employment:	Means activities which have been assigned to an employee by his or her supervisor or which are performed during normal working hours or which fall within the employee's job description.
Significant Use:	Means utilization of Institution funds, personnel, facilities, equipment, materials or other resources resulting in a cost to the Institution (direct, indirect, or depreciative) beyond the usual support provided by the University and generally available to similarly situated faculty, staff, or students. For the purposes of this definition, "usual support provided by the University and generally available to similarly-situated faculty, staff, or students" includes customary administrative support, library facilities, office space, personal computers, access to computers and networks, and salary.
Student Thesis:	Means a document or other project submitted in support of candidature for an academic degree or professional qualification presenting the student's research and findings and assigned pursuant to a degree requirement.
Work-for-Hire:	Means "work-for-hire" as defined by the Copyright Act and includes work prepared by an employee within the Scope of Employment.

Policy History

Effective Date:

Revision Date:

Procedure

Inventor(s) and Author(s) should review the guidelines and information regarding disclosure of inventions or copyrightable work found in the *Information and Guidelines Concerning the Patent and Copyright Process at East Tennessee State University* (http://www.etsu.edu/research/Word-Web-Docs/Patent_and_Copyright_Guide.doc) prior to filing a disclosure form.

The procedures for filing, reviewing, and appealing decisions related to an invention or copyright works disclosure is as follows:

I. Inventor(s) and Author(s) Required Disclosure Filing.

The Inventor (s) and Author(s) completes the disclosure form and attach all required documentation (see <http://www.etsu.edu/researchtest/ipandtechtransfer/forms.aspx>). The Inventor(s) and Author(s) submits the disclosure form to their chairman and dean for review and approval. If approved, the Inventor(s) and Author(s) submits the approved forms and required documentation to the Vice Provost for Research and Sponsored Programs.

II. IPAC Review of Disclosure Filing.

The Vice Provost for Research and Sponsored Programs schedules an interview with the Vice Provost for Research and Sponsored Programs within thirty (30) calendar days of receipt of a complete disclosure form. After an interview is complete and any revisions are made by the Vice Provost for Research and Sponsored Programs, the Vice Provost for Research and Sponsored Programs coordinates review of a disclosure filing by IPAC.

IPAC reviews the completed disclosure form and documentation, conducts investigations as necessary and makes a recommendation to the President within thirty (30) calendar days of receipt of a complete disclosure form.

The President issues a written decision to the Vice Provost for Research and Sponsored Programs regarding the request within thirty (30) calendar days .

The Vice Provost for Research and Sponsored Programs notifies the Inventor(s) and Author(s) within seven (7) business days of the President's decision.

III. Appeals.

If the Inventor(s) or Author(s) wishes to appeal a denial, the Inventor(s) or Author(s) submits a written request to the Office of the President within thirty (30) calendar days of notification of the initial decision.

Procedure History

Effective Date:

Revision Date:

Related Form(s)

Disclosure forms are available on the IP&TT website at:
<http://www.etsu.edu/researchtest/ipandtechtransfer/forms.aspx>

Scope and Applicability

Primary: Academic

Secondary: Human Resources