

INTELLECTUAL PROPERTY POLICY AND PROCEDURES

Texas Christian University (TCU) recognizes that research and creative activity are vital functions of a university and encourages participation by the faculty, staff and students in these scholarly pursuits. TCU acknowledges that questions regarding intellectual property rights will arise from research activities, therefore, this policy is intended to provide guidance to faculty, staff and students for decision making involving intellectual property. TCU wants to insure that inventions, discoveries and creative works are managed in a prudent manner which will result in fair benefit to all concerned. The objective of these policy and procedures is to support faculty, staff, and students in identifying, protecting, and administering intellectual property matters; defining the rights and responsibilities of all involved; and establishing support at the University to provide the required assistance. The policy also stipulates how income generated should be distributed to the developers and to the University.

TCU affirms that the creators of intellectual property should have maximum freedom with respect to the creation consistent with preexisting obligations to TCU and other legal entities. All intellectual property produced at TCU or with the use of TCU resources by faculty, staff, or students is covered by this policy. Intellectual property shall consist of, for example and without limitation: inventions, creative works, patentable subject matter, copyrightable materials, know-how, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, trade secrets and trademarks. No intellectual property is specifically excluded. For purposes of this policy, intellectual property is divided into categories:

- Patentable intellectual property shall include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) and discoveries or other material that is patentable under U.S. law (whether or not produced in the U.S.), as well as all software that is excluded from copyrightable material (whether or not patentable under U.S. law).
- Copyrightable intellectual property shall include, without limitation, all creative works, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, and any other materials that may be copyrightable under U.S. law (whether or not produced in the U.S.).
- Trade secrets shall include intellectual property that may or may not qualify as patentable or copyrightable. Trade secrets are a compilation of information that is not generally known or accessible and which gives a competitive advantage to its owner. Trade secrets, if not patented or copyrighted, are proprietary information that have perpetual legal protection so long as secrecy is maintained. Once Trade Secrets are patented or copyrighted, perpetual legal protection is no longer an option. Protection extends for the duration of the patent or copyright.

- Trademarks shall include intellectual property that may be protected by state or federal registration and licensing. Items such as, but not limited to names, seals, logos, mascots, etc. are examples of trademarks. Trademarks associated with any other form of intellectual property covered in this policy will be considered jointly owned by the creator and TCU unless otherwise specified.

An invention, discovery, creative work, trade secret, technology, scientific or technological development, computer software, written or recorded creation of potential value will be promptly (normally within 30 days of the discovery or completion) and completely reported in writing by the originator(s) to the Associate Provost for Academic Affairs. In order to protect a trade secret, such intellectual property will be revealed to TCU only upon receipt of a signed agreement of non-disclosure on the part of TCU.

In consultation with appropriate University officials (including legal counsel) the Intellectual Property Review Committee (IPRC) and the creator will review and recommend to the Provost whether or not to proceed with legal protection of intellectual property, including but not limited to patent, copyright, trademark, and licensing. The Provost will make a decision to proceed or not. If the creator does not agree with the decision, a written appeal may be submitted to the Provost within 30 days of notification of the decision. The Provost will respond within 10 working days. If the creator wishes to appeal again, a written appeal may be submitted to the Chancellor within 10 working days. The decision of the Chancellor is final in such matters.

For purposes of interpreting this document, the following examples are provided to help the reader understand the meaning of the terms. Examples are not intended to be all encompassing or to represent a precise measure or level of use of TCU resources or personnel.

- **Casual** – occurring without regularity, occasional: impermanent; for irregular periods. For example, use by a faculty member of departmental clerical support once a month for a few hours would be considered casual as compared to a faculty member who used departmental students or staff on a weekly basis.
- **Substantial** – of real worth and importance; of considerable value; material. A possible example of substantial use is a faculty member devoting as much time to development of the intellectual property as would be spent teaching a class. Another example of substantial use would be requesting Technology Resources personnel to provide more than the usual computing power or disk storage for the duration of a project, based on what is provided other faculty.
- **Reasonable costs** – in terms of feasibility and patent searches, patent prosecution or copyright protection; required filing fees and attorney fees that are considered the industry standard for comparable work and consultant fees for searches and marketing.

Patent Policy

This policy has been established to encourage TCU personnel to develop and utilize discoveries and inventions and to assure that they will be used in a manner that is consistent with the mission of TCU. Patents can direct attention to individual accomplishments as well as make such inventions or discoveries available to industry and the public and provide appropriate incentives to inventors

Responsibility for disclosure of patentable Intellectual Property: TCU personnel, who alone or in association with others, create patentable subject matter with any use of TCU resources are responsible for disclosing the patentable subject matter to TCU. Since a patent application must be filed within one year of public disclosure, the creator shall make such disclosure to TCU when it can be reasonably concluded that a patentable subject matter has been created, and sufficiently in advance of any publications, presentation, or other disclosure to allow time for possible action that protects rights to the intellectual property for the creator and TCU, usually within 30 days of the discovery or creation. The Provost will authorize contact of legal professionals once a decision has been made to seek legal rights.

Determination of Rights to Patentable Subject Matter. Except as set forth below, the creator of the patentable intellectual property shall retain his/her rights, and TCU shall not assert ownership rights. TCU will assert ownership rights to patentable intellectual property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any agreement which allocates rights to TCU.
- Development required, among other things, use of TCU resources (e.g. facilities, equipment, funding) or more than minimal use of TCU personnel. TCU has rights to patentable material derived from research carried out with any use of TCU's resources. However, patentable material developed independently by the creator outside of normal duties associated with the creator's position and with no use of TCU resources is vested with the creator.
- The creator was assigned, directed, or specifically funded by TCU to develop the material.
- Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under U.S. laws.

Copyright Policy

Copyright is the ownership and control of the intellectual property in original works of authorship, which is subject to copyright law. In contrast to a patent which protects the invention or discovery, copyright covers the artistic expression in a particular literary or musical work, computer program, software, video or motion picture or sound recording, photograph, sculpture, etc. in which the expression is embodied, but does not protect

any idea, process, concept, or discovery. As with scientific and technological inventions and discoveries, creative works that are protectable by copyright belong, under the general law, to an employer if they are created by an employee within the scope of his or her employment. In common with universities generally, however, TCU does not expect ownership rights for artistic, literary and scholarly intellectual property, such as scholarly books, articles, and other publications (including those in electronic form) works of art, literature and music recordings. These are owned by their creators despite the use of University resources so long as such works are neither created under the direction and control of the University, nor developed in the performance of a sponsored research or other third party agreement. Included are all copyright in papers, theses and dissertations written as a student to earn credit in University courses or to satisfy University degree requirements. This limited waiver of rights rests predominantly upon the review that scholars should have unfettered freedom to communicate with others and to convey information to them whether in the form of research findings, ideas, opinions, advice, or instruction for any purpose of their choosing.

Responsibility for Disclosure of Copyrightable Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give faculty members the right to retain ownership of the copyrightable products. This policy protects that traditional right and faculty, staff or students are not obligated to disclose the creation of copyrightable material, even when the product might have commercial value. If the material was developed under one of the qualifying conditions listed in the next section, the creator is responsible for timely disclosure. Faculty, staff and students are, however, encouraged to disclose any copyrightable material that has commercial value to the extent that they may wish assistance in copyright protection and marketing in exchange for profit sharing with TCU. All disclosures should be made to the Associate Provost for Academic Affairs.

Determination of Rights to Copyrightable Intellectual Property: Except as set forth below, the creator of copyrightable intellectual property shall retain his/her rights, and TCU shall not assert ownership rights. Creators will be expected to grant non-exclusive, royalty-free, perpetual licenses to TCU for copyrightable material that is developed for TCU courses or curriculum, so that TCU's continued use of such material for educational purposes would not be jeopardized. TCU will assert ownership rights to copyrightable intellectual property developed under any of the following circumstances:

- Development was funded as part of a sponsored research program under an agreement that allocates rights to TCU.
- A faculty member was assigned, directed, or specifically funded by TCU to develop the material, and TCU has negotiated an understanding or formal contract with the creator.

- Material was developed by staff members, administrators or other non-faculty employees in the course of employment duties and constitutes work for hire under U.S. law.
- The material was developed, among other things, with substantial use of employment duties. This might occur as use of staff time, networks, equipment, or direct funding that would not occur but for the development of the intellectual property.

Copyright Infringement and Fair Use

Using the protected works of others in the creation of a new work, or in classroom teaching, will subject the author to infringement liability unless the use falls within the exceptions outlined in current Copyright Law. Fair use doctrine provides limited copying of copyrighted works without permission of the owner for certain teaching and research purposes. In determining fair use, the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used and the effect of the use upon the potential market for, or the value of, the copyrighted work will be considered. The last of these factors is considered most important in determining whether a particular use is fair. When in doubt, the user should obtain permission to use the material in question.

Intellectual Property in Distance Education

Faculty members hold copyright in materials they create on their own initiative in the course of performance of their teaching responsibilities, regardless of the medium of delivery. TCU will own courses that are created, if creation of the course and/or its delivery means is the primary condition of employment. Faculty members have a responsibility to meet the reasonable needs of their currently enrolled students, including those addressed by the use of technologies that make materials readily accessible. Notwithstanding this responsibility, the creation and use of distance education materials intended for use beyond the current semester or for commercial purposes will be considered property owned jointly by the faculty member and TCU.

Intellectual Property Developed in Collaboration

Works created through the joint efforts of TCU faculty members and nonfaculty (staff, post-doc, etc.), within the scope of their employment will be considered owned by TCU. Works created by TCU faculty members and others outside the employ of TCU may result in ownership that is altered by agreement of the parties. Joint authors may choose to cooperate in the commercialization of their work, or to commercialize separately. A TCU faculty member may assign his or her rights in a joint project to TCU, assuming such assignment is not prohibited by a prior agreement and TCU agrees to accept the assignment.

Intellectual Property Developed Under Sponsored Research Agreements

Ownership of copyrightable and patentable intellectual property developed pursuant to an agreement with any sponsor will be governed by the provisions of the agreement. Sponsored research programs funded by private sponsors will generally provide for TCU to retain all intellectual property that arises in the course of the research program with the sponsor retaining an option to acquire commercialization rights through a separate license agreement. Government and nonprofit sponsors generally allow rights to intellectual property that arises from the research program to vest with TCU. The federal government has a non-exclusive, non-transferable, irrevocable paid-up license to practice for or on behalf of the U.S. government.

Creator Equity Participation

TCU policy on Disclosure of Conflict of Interest does allow creators to receive equity in return for their contributions to companies as founders or consultants, as long as the creator discloses his/her equity position and is otherwise in compliance with the TCU Conflict of Interest requirements. In the event the creator receives equity from the company, and TCU has negotiated as licensor a royalty-bearing license, or an option for such a license, with respect to intellectual property, the creator shall agree to waive his or her share of Net Royalty Income received by TCU and it shall be retained by TCU.

Administration of the Intellectual Property

The Associate Provost for Academic Affairs along with the Office of Sponsored Research will be responsible for day-to-day management of all University intellectual property issues, and shall be empowered to negotiate the University's rights under these policies, unless otherwise stipulated as in the case of Trademarks. Intellectual property disclosable hereunder shall be disclosed to the Associate Provost's Office, which will be responsible for timely review of all disclosures. The Office will confer with the Intellectual Property Review Committee for a review of the patentability and marketability of the intellectual property and shall be responsible for working with creators, for obtaining patent, copyright or other protection of intellectual property owned by TCU, and for contracting for marketing and licensing of all such intellectual property rights as appropriately directed by the Provost.

TCU personnel who wish to pursue the commercialization of the independently developed and owned intellectual property through TCU may offer such intellectual property to TCU by disclosing the intellectual property to the Office of the Associate Provost for Academic Affairs. The office will work with the Intellectual Property Review Committee to evaluate the commercial potential of the intellectual property and make a recommendation to the Provost regarding the acceptance of the intellectual property. Acceptance of such intellectual property by TCU will be made at the sole discretion of TCU and will require creator(s) to accept all provisions of this policy, including the assignment of right and income distributions.

In those cases where an assignment of an invention is made to and accepted by TCU, then TCU will pay the reasonable cost of prosecuting and licensing of a patent. TCU

reserves the right, based on its determination of the commercial value and marketability of an invention or copyright, not to prosecute a patent. TCU shall, if applicable, ensure compliance with the Texas Regulation of Invention Services Act. In those cases where an assignment of a copyright is made to and accepted by TCU, then TCU will pay the reasonable cost of obtaining a copyright. TCU reserves the right, based on its determination of commercial value and marketability, not to pursue copyright registration. Prior to any distribution of income or royalty, TCU is entitled to recover all direct expenses, including reasonable costs, incurred in the prosecution and licensing of a patent or registration of copyright. Funds remaining and future net income in either case, will be distributed, generally, as follows:

	Creator	Lab of the Creator	Department of the Creator	College/school of the Creator	IP Pursuit Fund	University Research
≤ \$100,000	50%	10%		20%	10%	10%
> \$100,000	40%	10%	10%	25%	5%	10%

Trade Secrets

Trade Secret is a legal term referring to any information of knowledge, whether or not patentable or copyrightable, which is not generally known or accessible, and which gives a competitive advantage to its owner. Trade secrets are proprietary information. Making such knowledge widely known destroys its value as a competitive advantage. To the extent possible and in keeping with TCU’s objectives, such knowledge should be protected.

Any employee with intellectual property falling into the Trade Secret category should contact the Dean or Vice Chancellor with administrative oversight of his or her unit for assistance in determining what form of protection should be sought. In order to protect intellectual property as trade secret, TCU will enter into a non-disclosure agreement with the employee prior to proceeding.

Responsibility for Notification of a Trade Secret: TCU personnel, who alone or in association with others, create a trade secret with any use of TCU resources are responsible for notifying TCU. Such notification shall be made when it can be reasonably concluded that the subject matter has been created, normally within 30 days of the creation. Creators are encouraged to seek advice of the Office of Sponsored Research. Some Trade Secrets are patentable or copyrightable. However, once disclosed, they are no longer secret and thus enjoy legal protection afforded under patent or copyright law. To enjoy perpetual protection, Trade Secrets must not be disclosed as part of the patent or copyright process. Disclosure of a trade secret, except when assigned or sold, voids its value as a secret.

Determination of Rights to Trade Secret Subject Matter. Except as set forth below, the creator of a trade secret shall retain his/her rights, and TCU shall not assert ownership rights. TCU will assert ownership rights to a trade secret developed under any of the following circumstances.

- Development was funded by an externally sponsored research program or by any agreement which allocates rights to TCU.
- Development required, among other things, use of TCU resources (e.g. facilities, equipment, funding) or more than casual use of TCU personnel. TCU has rights to trade secret material derived from research carried out with any use of TCU’s resources. However, trade secret material developed independently by the creator outside of normal duties associated with the creator’s position and with no use of TCU resources is vested with the creator.
- The creator was assigned, directed, or specifically funded by TCU to develop the material.
- Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under U.S. law.

In those cases where an assignment is made to and accepted by TCU then TCU will pay the reasonable cost of prosecuting protection of the trade secret. Prior to any distribution of income or royalty, TCU is entitled to recover all direct expenses incurred, including reasonable costs. Funds remaining and future net income will be distributed as follows:

	Creator	Lab of the Creator	Department of the Creator	College/school of the Creator	IP Pursuit Fund	University Research
≤ \$100,000	50%	10%		20%	10%	10%
> \$100,000	40%	10%	10%	25%	5%	10%

Conflict Resolution:

Should questions arise as to ownership, prosecution, or revenue sharing issues where the original creator of the intellectual property does not think that this policy has been interpreted properly, he or she shall submit a request for review in writing to the Provost and Vice Chancellor for Academic Affairs. Upon consultation with the Intellectual Property Review Committee, the Provost will render a decision and notify the appropriate parties.

Texas Christian University Name, Trademark, or Seal

Use of the TCU name, trademark or seal on letterhead and business cards is standardized and regulated by the Office of Marketing and Communication. Any questions regarding the use of the TCU name, trademark or seal in circumstances other than the ones listed above should be referred to the Vice Chancellor for Marketing and Communications. Any questions regarding the use of the University name, trademark, or seal in circumstances other than the ones listed above should be referred to a University officer. Trademarks associated with any of the aforementioned intellectual property shall be the joint property of the Creator and TCU. TCU will assist the creator of a product in registering and protecting a trademark associated with any property in which TCU has an assigned interest.

Previously revised and approved by Provost Council August, 2002

Revised and approved by Provost Council October 2010



TEXAS CHRISTIAN UNIVERSITY INVENTION DISCLOSURE

TITLE: _____

ABSTRACT (Type, Purpose, and Primary Uses): _____

PLEASE ATTACH TO THIS COVER SHEET:

- 1. Description of Invention.
- 2. Applications for the Invention.
- 3. Short description of prior art (if known), including advantages of this approach over priors.
- 4. Other pertinent information.

CHRONOLOGY OF DEVELOPMENT:

- 1. Date of conception _____
- 2. Date and location of first written description _____
- 3. Date and location of first test (if applicable) _____
- 4. First disclosure to non-University personnel (date, place, and nature of disclosure) _____
- 5. Publication(s) where disclosed (date, title, publisher) _____

EXTERNAL SOURCES THAT DIRECTLY SUPPORTED THE WORK LEADING TO INVENTION:

COMPANIES WITH KNOWN COMMERCIAL INTERESTS IN THIS INVENTION:

Optional: I (We) do do not grant permission to share this disclosure with selected TCU students with the intent to develop a strategic proposal to launch a venture around the invention.

INVENTOR(S):

Signature _____

Signature _____

Name _____

Name _____

Department _____

Department _____

Date _____

Date _____

Witness _____

Witness _____

