

Research and Sponsored Projects Manual (RSP)

RSP 604: Ownership of Research Data and Materials & Intellectual Property Management Implementation Policy

Effective: 3/1/2000

Revised: 3/1/2025

Purpose

To provide policy level implementation guidelines to the Arizona Board of Regents' Intellectual Property Policy (6-908)
To confirm and clarify the ownership of research data and materials

Sources

Arizona Board of Regents Policy Manual – 6-908

University Senate

Skysong Innovations (SI)

Knowledge Enterprise (KE)

Office of Research Integrity and Assurance (ORIA)

Background

It should be noted that in addition to the statements contained within the Preamble in the *Arizona Board of Regents (ABOR) Policy Manual: 6-908, "Intellectual Property Policy,"* it is the conviction of Arizona State University that potential commercial value is a by-product opportunity and not the "raison d'être" to create or enhance intellectual property at Arizona State University.

Policy

Intellectual Property

ASU's policies and procedures concerning intellectual property, including patents and copyrights, are controlled by the Arizona Board of Regents' "Intellectual Property Policy", [ABOR 6-908](#) (select Chapter 6, item 6-908) adopted at the June 24-25, 1999 meeting (as amended from time to time).

As used in this policy, the definition of "Intellectual Property" shall have the meaning set forth in Section F, Paragraph 5 of ABOR Policy 6-908 (as amended from time to time).

Exclusions to Scholarly Works

With respect to Section A.2.c.(2) of ABOR Policy 6-908, as implemented by the Intellectual Property (IP) Official for ASU, Scholarly Works do not include "Works of Authorship and Creative Works created as deliverables under a sponsorship or funding agreement, but only to the extent that such sponsorship or funding agreement (j) requires (or is intended to require) copyright ownership by the university, (ii) grants to the sponsor or other third parties any rights in such works through option, license, assignment, sale, or other transfer, or (iii) otherwise includes provisions inconsistent with an ownership interest in such works by the creator."

With respect to Section A.2.c.(5) of ABOR Policy 6-908, the IP Official for ASU or university president, after review and determination, may grant to a faculty creator, at his or her request, a nonexclusive, non-transferable, and non-commercial license in course and instructional materials covered by that section and created by such creator solely for teaching use by him or her after leaving ASU, provided that the creator is and continues to be in compliance with his or her obligations to ASU.

Significant Use of Board or University Resources

With respect to Section F.9 of ABOR Policy 6-908, as implemented by the IP Official for ASU and specifically as that section relates to “personal workstations” and “personal computers”, the university does not construe the use of enterprise workstations or enterprise computers (i.e. laptop or desktop computers owned and/or provided by the university) as a Significant Use of Board or University Resources. For the sake of clarity, “personal workstations” or “computers” shall not include mainframe or supercomputers.

Ownership of Research Data and Materials

ASU maintains ownership of all research data, including but not limited to lab notes, results of analyses, research notes, research data reports, research notebooks, and materials. Pursuant to ABOR policy 6-908 (Chapter 6, item 6-908), all intellectual property rights in and related to such data and materials are determined by that policy. Certain types of data or materials may be licensed by ASU as part of an intellectual property licensing transaction. ABOR policy 6-908 provides ASU the discretion to retain ownership in intellectual property, to enter into agreements with industry sponsors to grant exclusive or nonexclusive licenses, or when appropriate, to assign title to intellectual property.

Administrative Responsibilities

With respect to Section D, Paragraph 3a of ABOR Policy 6–908, the following specifics are added:

- a. If ASU decides to protect intellectual property in which the board holds an interest, then as between the creator(s) and the university or its nominee (or licensee), the university or its nominee (or licensee) will pay all costs involved in obtaining and maintaining domestic and/or foreign patent or copyright protection for such intellectual property. Additionally, the university or its nominee will pay all reasonable costs involved in marketing or promoting or maintaining the licensing of such intellectual property. Such costs shall be deducted from any gross revenue received directly by the university in calculating the net income as defined under “Revenue Sharing” below. The IP Official, or upon appeal by the IP creator, the Intellectual Property Committee shall determine when such costs are “reasonable” within the meaning of this paragraph.

Revenue Sharing

The following ASU policy meets all ABOR policy 6–908 Section B guidelines and offers more specific implementation language. For this policy, “Net Income” is defined as gross revenues, received by the university or its nominee, resulting from any given intellectual property, less an administrative fee of 15%, then less all unreimbursed costs incurred by ASU or its nominee in protecting, licensing, maintaining, and litigating rights in the intellectual property or any agreements thereon as described under “Administrative Responsibilities” above, including, for the sake of clarity, any legal fees and other costs and expenses associated with intellectual property protection and litigation.

Herein, the term “creator” is used, as set forth in Section F, Paragraph 3 of ABOR policy 6-908, to refer to an inventor as defined under the United States patent laws, an author as defined under the United States copyright laws or, for any other type of intellectual property recognized by United States intellectual property law, the creator recognized under those laws. For example, for a patented invention conceived at ASU by a faculty member, the faculty member is the legal inventor according to United States patent laws and therefore the “creator.” As another example, in the case of a copyrighted work that constitutes a work for hire, ASU is the legal author according to United States copyright laws and therefore the “creator.”

Creator Share

Subject to ABOR policy 6-908, the terms and conditions of employment of the creator by the university and/or unless otherwise agreed with the creator, the university will pay the creator a share of the Net Income received by the university from any intellectual property licensed or assigned in accordance with ABOR policy 6–908. The IP Official will determine the amount to be paid to the creator, ensuring that it is in accordance with the university’s revenue sharing policy as described below; provided that the creator may agree in a writing to receive less than the Net Income allocations described below or to participate in an alternative revenue-sharing arrangement with the university.

Under the university’s revenue sharing policy, 45% of the first \$15,000,000 in cumulative Net Income received by the university and 25% in cumulative Net Income received above \$15,000,000 by the university (in each case, the “Creator Share”) shall be divided evenly amongst all creators of intellectual property resulting in such Net Income, unless each and every such creator signs a writing delivered to the IP Official specifying a different distribution. The foregoing allocation and distribution for the Creator Share is and will be subject to any limitations or requirements under ABOR 6-908, as may be amended from time to time. The Creator Share shall continue for as long as the university receives income and shall accrue to the estate of the creator if such creator is deceased.

Lab Share

A total of 21.67% of cumulative Net Income will be distributed to the active research account at ASU of the university creator of intellectual property resulting in such Net Income (commonly known as the “Lab Share”), up to the Capped Amount as described below. If there are multiple creators who have active research accounts at ASU, the Lab Share shall be allocated equally amongst such accounts, provided that such creators may agree to a different allocation of the Lab Share in a writing signed by each such creator and delivered to the university. The Lab Share shall be used by such creator(s) only to conduct research and develop intellectual property at the university. The university will determine the active research account(s) to which the Lab Share will be distributed and used for the conduct of research and the development of intellectual property. In determining the distribution and allocation of the Lab Share, the university may consult with the Intellectual Property & Institutional Review Committee.

Each fiscal year, such Lab Share shall be limited to \$2,000,000 (“Capped Amount”), irrespective of the number of lead or other creators, and any amount over the Capped Amount shall be retained by the university. If any amount of such Lab Share is unused at the end of the fiscal year, then such amount may be rolled over to such research account in the next fiscal year; provided, however, that any unused funds rolled over from a fiscal year (including amounts from prior fiscal years) to the next fiscal year may not exceed \$1,500,000. Any funds received by the university in excess of the Capped Amount in any fiscal year shall be retained and used by the university in its discretion, following consultation with an ad hoc committee of the Intellectual Property & Institutional Review Committee, which, in turn, shall consult with the creator(s) receiving the Lab Share. The Lab Share is deemed to satisfy Paragraph D.3.b of ABOR Policy 6-908.

If, at the time of any given distribution of the Lab Share, a creator who has (or had) an active research account at ASU either has left the university or is unable to use the Lab Share for its permitted purpose at the university, then the portion of Lab Share that would have otherwise been distributed to such account shall be distributed within the department or other unit.

University Share

The university shall receive at least 33.33% of the Net Income, irrespective of the allocation and determination of the amounts of the Creator Share and the Lab Share, as shown in the Table below. From time to time, in appropriate cases to be determined by the Office of the President, the university may reallocate some of the University Share to university units involved in the creation of intellectual property resulting in Net Income (e.g., a school or department where the creator has an academic appointment).

Table	First \$15,000,000 of cumulative Net Income	Cumulative Net Income above \$15,000,000
Creator Share	45%	25%
Lab Share	21.67%*	21.67%*
University Share	33.33%	53.33%
Total	100%	100%

*Subject to the annual cap set forth above in the second paragraph of the “Lab Share” section of this policy.

Notwithstanding anything to the contrary in this policy and for the sake of clarity:

1. Eligibility for a Creator Share requires the following: a creator must be, at the time of creation of intellectual property, a university employee (i) whose principal job duties include research and/or teaching and who holds academic or research appointments and/or (ii) whose principal job duties include research and/or teaching and who work under the direction or management of university employees with academic or research appointments. For the avoidance of doubt, the foregoing university employees include faculty, researchers, post-docs, graduate students, research scientists, and research professionals. Eligibility for a Creator Share shall be determined by the IP Official, consistent with this policy and subject to federal law and regulations.
2. Where a creator (i) has, at or around the time the license agreement is executed, whether actually held or contractually committed (e.g., on a deferred or vesting basis), a substantial interest in a company that has licensed ASU technology, or(ii) has failed to disclose such interest as required by ABOR 3-901, the university has discretion (to the extent consistent with federal law and regulations) to eliminate or otherwise adjust any share of Net Income that the creator otherwise may have received resulting from: (a) any sale of equity or other ownership interests in the company held by ASU or its nominee, (b) any payment received by ASU or its nominee in connection with a sale or initial public offering of the company, or (c) any merger or acquisition or other transaction relating to equity or other ownership interests in the company held by ASU or its nominee.
3. Neither university employees (with or without an academic or research appointment) nor any other individuals are entitled to a share of tuition, fees, or other charges paid by or on behalf of learners or students at any level (degree-seeking or otherwise) or any related income received by the university, its affiliate and/or designee, or from or through any third party.

Effective Date

This ASU policy shall be effective as of March 1, 2025, regardless of the date of creation or disclosure of the intellectual property licensed or assigned by the university and resulting in Net Income. Distributions of Net Income received by the university before March 1, 2025 shall not be affected by this ASU policy.

Interpretation, Decisions, Appeals (Disputes)

The appeal procedures specified below indicate how ASU will fulfill Section I of ABOR Policy 6–908:

- A. Under the Arizona Board of Regents Intellectual Property Policy, an employee who does not agree with a decision or interpretation made by the Intellectual Property Official (“IP Official”) may ask the Intellectual Property Committee (“IP Committee” or “committee”) to review that decision. These procedures are intended to provide for prompt and equitable review by the IP Committee.
- B. If the issue under review is time sensitive, any employee, including the IP Official, may request that the review process be placed on a “fast-track” review. Once the committee has received a request for fast-track review, the fast-track time limits identified below apply. The committee chair may schedule special meetings, arrange for telephonic meetings, or solicit input from members and interested parties through e-mail to facilitate a timely review.
- C. Review Procedures

1. A quorum of at least one-third of the voting membership of the IP Committee shall be required for the IP Committee to conduct a review under this procedure.
2. Within 30 calendar days of notice of the decision or interpretation to be reviewed, the employee shall make a written request for review by the IP Committee. (For fast-track review, the written request must be received within 7 days.) The request should be sent to the chair of the IP Committee either directly or through Knowledge Enterprise. If no such notice is received within the prescribed period, the decision of the IP Official shall be final unless the committee determines that the failure to file a timely notice was due to causes not reasonably within the appellant's control.
3. The request for review must state the employee's name, address, and phone number, and must describe the intellectual property decision or interpretation in dispute and the requested remedy. The request must also indicate whether the employee wishes to make a presentation to the IP Committee. The chair of the IP Committee will provide a copy of the request to the IP Official.
4. Within 15 days of the original request (7 days for fast-track), the employee will receive written notification from the chair of the IP Committee indicating the date on which the IP Committee will consider the disputed issue and, if requested, will hear the employee's presentation. This discussion should begin within 60 days of the date of the original request (or within 14 days for fast-track). This 60-day period includes only the time when school is in session. Semester breaks and summer recess are not included but weekends and national holidays while school is in session are included. (Fast-track review may proceed during times when school is not in session.)
5. The employee may withdraw the request for review at any time. If the employee asks to make a presentation to the IP Committee but does not appear at the designated meeting, the IP Committee may complete its review without the benefit of the presentation.
6. No later than 15 days before the date on which the committee will conduct its review (4 days for fast-track review), the employee and the IP Official will provide relevant written documentation regarding the disputed decision or interpretation to the IP Committee, with copies to each other. To the extent possible, these documents should be submitted in electronic form in addition to hard copy. If appropriate, the parties will also provide to the IP Committee and to each other a list of witnesses who will appear before the IP Committee during the presentation.
7. The chair of the IP Committee will send a copy of any written documentation and witness lists to the committee members within two days after receipt.
8. The chair of the IP Committee may call witnesses upon request of either party or the committee, or on the chair's initiative. The chair may also require the production of books, records, and other evidence.
9. In the interest of fair treatment, it is expected that any member of the university community called to testify shall testify and any university community member or university office that has access to relevant documents will produce them to a requesting party or the IP Committee. In the event such cooperation is not forthcoming, the IP Committee has subpoena power to do one or more of the following:
 - a. compel the attendance and testimony of witnesses who are called by the parties or the IP Committee who refuse to appear without a subpoena
 - b. compel either party to produce relevant documents if a party refuses to do so without a subpoenaand
 - c. compel a university office/representative who is in possession of relevant documents desired by a party or the IP Committee to produce such documents to the IP Committee, if the office/representative refuses to do so without a subpoena.
10. If a party needs a subpoena, the party will request a subpoena form from the IP Committee chair, complete the form and submit it to the chair for signature. The party will then give the signed subpoena to the appropriate witness or university representative. The chair may also serve subpoenas on the chair's initiative.
11. On counsel participation, the employee must elect one of the following three options in making a presentation to the committee:
 - a. The employee may proceed without counsel at the presentation. In this event, the IP Official will proceed without counsel;
 - b. The employee may be accompanied by counsel who will act as an advisor during the presentation. The employee will be responsible for presenting the case (witnesses, exhibits, and statements) and counsel may advise the employee. In this event, the IP Official may proceed with counsel as an advisor;

- c. The employee may be represented by counsel at the presentation; counsel may present statements, question witnesses called by both parties and present documents. In this event, the IP Official may be represented by counsel in the same manner.
- 12. Regardless of which option the employee elects, the IP Committee has the right to speak to the parties and witnesses during the presentation, including the right to question and to receive responses from the parties and witnesses directly.

If neither party is advised or represented by counsel and the university general counsel has not been involved in the case on behalf of either party, the Office of General Counsel (“OGC”) may provide advice to the IP Committee. If the employee elects to be represented by counsel, an attorney with the OGC may represent the IP Official. In order to avoid a potential conflict of interest, an attorney with the OGC will not advise the IP Committee or its chair. Rather, the university OGC will secure an outside counsel to advise or otherwise assist the IP Committee at the chair’s request, if the IP Committee desires such assistance.

- 13. Except in cases requiring confidentiality, all parties will have access to all information and testimony that is presented to the IP Committee. While a review is underway, all parties will be informed about the status of the process.
- 14. A member of the IP Committee may not participate in review of any decision in which he or she may have a conflict of interest as determined by the IP Committee.
- 15. Upon request of either party or the committee, the chair may continue the proceedings to another time.
- 16. Either party or the committee may ask that witnesses be excluded except while testifying. Generally, the committee will allow all witnesses to testify and documents to be presented which are related to the dispute.
- 17. If the parties choose to make a presentation to the committee, each party or counsel may present an opening statement of his or her position. Generally, the employee or counsel will then present all of his or her witnesses and documents. The committee members may question the witnesses and ask questions about documents presented. The IP Official or counsel may question the employee. After the employee has presented his or her case, the IP Official or counsel may present witnesses and documents, and the committee members may question the witnesses and ask questions about documents presented. The employee or counsel may question the IP Official. The committee may question the parties throughout.
- 18. The chair will provide the parties and the president or the president’s designee with the committee’s recommendation within 30 days after the completion of the presentations or review discussion (7 days for fast-track).
- 19. The committee’s recommendation will be in writing and will include its findings, conclusions, and recommendations. These recommendations will be kept by the IP Committee in a form suitable for reference and review by members of the IP Committee in the future.
- 20. Within 45 days of receipt of the committee recommendation (7 days for fast-track), the president or the president’s designee will forward a final written decision to the employee, the IP Official and the IP Committee.
- 21. Throughout this review procedure, “day” means calendar day unless otherwise specified.
- 22. The employee who is dissatisfied with the decision of the president may request reconsideration by filing a written request with the president no later than five days following the receipt of the president’s written decision. The request shall be based on one or more of the following grounds:
 - a. irregularities in the proceedings, including but not limited to any abuse of discretion or misconduct by the IP Committee which has deprived the employee of a fair and impartial process
 - b. newly discovered material evidence which could not have been available for the presentation
 - c. that the decision is not justified by the evidence or is contrary to lawand
 - d. excessive severity of the sanction.
- 23. Following receipt of the request for reconsideration, the president shall conduct whatever reconsideration is deemed necessary to resolve the issues that have been raised. The president will provide a written response to the request to all parties within 20 days of receipt of the employee’s request. The decision following reconsideration is final.
- 24. To pursue the case outside the university, the employee must file a legal action in Maricopa County Superior Court in accordance with *Arizona Revised Statutes*, section 12-901, *et seq.* The action must be filed in court

within 35 days after receipt of the president's decision, if the employee does not request reconsideration, or within 35 days after receipt of the president's response following reconsideration, if requested by the employee.

25. The final decision is subject to judicial review pursuant to applicable law. Failure to complete these review procedures will constitute failure to exhaust administrative remedies.
26. With the exception of the requirements for judicial review, the parties and the committee may agree in writing to modify the foregoing procedures as appropriate to individual circumstances.