

Texas Woman's University University Regulation and Procedure

Regulation and Procedure Name: Intellectual Property

**Regulation and Procedure
Number: URP: 02.400**

Policy Owner: Academic Affairs

POLICY STATEMENT

The purpose of this URP is to provide guidance for decisions about ownership, distribution, and commercial development of intellectual property developed by TWU faculty, staff, students, and others participating in TWU programs. The principal rights governing the ownership and disposition of intellectual property are so-called "intellectual property" rights, which are derived primarily from legislation granting patent, copyright, and trademark protection. In some instances, distribution and commercialization of intellectual property may be accomplished by the transfer or licensing of the intellectual property rights such as patents and copyrights. In other instances, distribution and commercialization of intellectual property may be aided by or depend upon access to the physical or tangible embodiment of the technology, as in the case of biological organisms, plant varieties, or computer software. This URP will define not only the ownership, distribution, and commercialization rights associated with intellectual property, but will also define policies and procedures which govern the use and distribution of the intellectual property in its tangible form.

APPLICABILITY

This policy is applicable to TWU Faculty, Staff, and Students.

DEFINITIONS

"Intellectual Property" means technical innovations, inventions, and discoveries, as well as writings and other information in various forms including computer software.

REGULATION AND PROCEDURE

I. Part 1- Introduction

A. 1.1 Patents and Patent Rights

1. A patent is a grant issued by the U.S. Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories,

and its possessions for a period of 17 years from the patent grant. The period of 17 years is exclusive of certain regulatory delays such as those sometimes imposed by the Food and Drug Administration.

2. Patents may also be granted in foreign countries; procedures for filing, regulations for patentability, and term of patent grant vary considerably from country to country.
3. To be patentable in most countries, an invention must be new, useful, and nonobvious. In the U.S., a grace period of 12 months from the first written public disclosure of an invention is allowed to file a patent application. In most foreign countries, an invention is non patentable unless the application is filed before public disclosure. However, if one has filed in the U.S. prior to disclosure, the applicant has 12 months to file in most non-U.S. countries without losing filing rights.
4. In addition to more traditional forms in inventions, the patentability of computer software is well established. Computer software generally will be patentable if it meets the tests of novelty and no obviousness and if its application is part of a process, machine, manufacture, or composition of matter which can be considered for patent protection. A software invention will be automatically disqualified from patent protection only if it is purely a mathematical equation or formula with no other application.

B. 1.2 Copyrights

1. As provided in copyright law, a copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.
2. Under federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device. For an individual author, copyright protection of a work extends for the author's life plus 50 years.
3. For employers, copyright protection of a work extends for 75 years from the date of publication.
4. In contrast to a patent which protects the "idea," copyright covers the "artistic expression" in the particular literary work, musical work, computer program, video or motion picture or sound recording, photograph, sculpture, and so forth, in which the "expression" is

embodied, illustrated, or explained; copyright does not protect the "idea."

C. 1.3 Trade and Service Marks

A trade or service mark is a work, name, symbol, or device (or any combination) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others. In the U.S., trademark ownership is acquired through the use of a term to identify origin of goods or services. Trade or service mark ownership is not dependent upon federal or state registration, but upon use of the mark. Registration of trade and service marks may be obtained on both the state and federal levels. However, to apply for a federal registration of a mark, it must be used in interstate commerce.

D. 1.4 Tangible Research Property

1. The term "tangible research property" refers to those research results that are in tangible form as distinct from intangible (or intellectual) property. Examples of tangible research property include integrated circuit chips, computer software, biological organisms, engineering prototypes, engineering drawings, and other property which can be physically distributed.
2. Although tangible research property may often have intangible property rights associated with it (such as biological organisms which may be patented or computer software which may be either patented or copyrighted), TWU and/or the inventor/author may choose to distribute the research property without securing intellectual property protection by using some form of contractual agreement such as a formal contract, loan agreement, letter of agreement, or user license as further set forth in this document.

II. Part 2 - TWU Policy Statements

A. 2.0 General Policy Statement

The prompt and open dissemination of the results of TWU research and the free exchange of the information among scholars are essential to the fulfillment of TWU's obligations as an institution committed to excellence in education and research. Matters of ownership, distribution, and commercial development arise in the context of technology transfer which is an important aspect of the institute's commitment to public service. Technology transfer is subordinate to education and research; therefore, the dissemination of information must not be delayed beyond the minimal period necessary to define and protect the rights of the parties.

B. 2.1 Patent Policy Statement

1. Rights in inventions made by TWU faculty, students, staff, and others participation in TWU programs are as follows:
2. Inventor Owned
3. Inventors acquire ownership in inventions which are:
 - a. Not subject to the terms of agreements with research sponsors or other third parties under (a) below; and
 - b. Do not involve the significant use of TWU administered resources under (b) below.
4. Other Inventions
5. TWU acquires ownership or other rights on invention as follows:
 - a. Inventions subject to the terms of a sponsored research or other agreement are treated in accordance with the terms of the applicable agreement; and
 - b. Inventions involving the significant use of funds or facilities administered by TWU are the property of TWU and subject to any obligations to third parties in connection with such support.

C. 2.1.1 Sponsored Research and Other Agreements

1. Grants and contracts applicable to research sponsored by the federal government are subject to statutes and regulations under which TWU acquires title in inventions conceived or first reduced to practice in the performance of the research. TWU's ownership is subject to a nonexclusive license to the government and the requirement that TWU retain title and take effective steps to develop the practical applications of the invention by licensing and other means.
2. With rare exception, contracts with industrial sponsors provide that TWU retain ownership of patents while the sponsor is granted an option to acquire license rights.
3. The terms of such agreements apply not only to inventions made by faculty and staff, but also to those made by students and visitors (whether or not paid by TWU) who participate in performing research supported by such agreements. It is essential, therefore, that all individuals participating in the research be made aware of

their obligation to assign rights to TWU and sign Invention and Copyright Agreements as provided under PART 5.

D. 2.1.2 Significant Use of TWU Administered Resources

1. TWU does not construe the payment of salary nor the provision of library facilities or an office as constituting significant use of TWU funds or facilities except when there is prior written agreement by the University and the faculty member to the contrary.
2. When an invention involving the significant use of TWU administered resources is made by a student, TWU (with the approval of the laboratory director or department head) may elect to waive its rights except where the invention is subject to a sponsored research or other agreement. At the discretion of the laboratory director or department head, TWU may retain a right to use such invention for purposes of education and research. In addition, a student's rights to such invention may be subject to the terms of any financial aid received, including scholarships, fellowships, traineeships, thesis expenses, or other assistance whether or not administered by TWU. Individuals who are both staff members and students shall be considered to be staff members with respect to patentable inventions which arise during the course of employment.
3. Disputes arising under this section with respect to significant use shall be finally arbitrated by the Executive Vice President for Academic Affairs and Provost ("EVPAA/Provost").

E. 2.2 Copyright Policy Statement

1. Copyright ownership of material (including software) created by TWU faculty, staff, students, and others participating in TWU programs is as follows:
2. Author Owned
3. The author acquires copyright ownership in materials (including computer software) which are:
 - a. Not developed in the course of a sponsored research or other agreement under (a) below;
 - b. Not created as a "work-for-hire" by operation of copyright law or created pursuant to an agreement in writing with TWU under (b) below which provides for a transfer of copyright to TWU;

- c. Not developed with the significant use of TWU administered resources under (c) below, except that ownership by students making significant use of TWU resources shall be determined in accordance with Section 2.2.4; and
 - d. A student thesis as provided under Section 2.2.5.
- 4. TWU Owned
- 5. TWU acquires ownership or other rights in copyrightable material (including computer software) as follows:
 - a. Copyright ownership in material developed in the course of, or pursuant to, a sponsored research or other agreement is determined according to the terms of such agreement;
 - b. Copyright ownership in material created as a "work-for-hire" by operation of copyright law or created pursuant to an agreement in writing providing for transfer of copyright to TWU shall vest in TWU; and
 - c. Copyright ownership in material developed by faculty and staff with the significant use of funds or facilities administered by TWU shall vest in TWU.

F. 2.2.1 Sponsored Research and Other Agreements

- 1. Normally, research contracts sponsored by the federal government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may consist of title to such material resting solely in the government; more often, they consist of a royalty-free license to the government with title vesting in TWU.
- 2. When a work is created under the terms of a sponsored agreement, authors of copyrightable works should be aware that there may be contractual terms relating to the form of the report or advance notice to the sponsor before publication may be required. The Vice Provost for Research and Innovation and Dean of the Graduate School ("VPRI/DGS") should be contacted for information or assistance regarding interpretation of contract terms.

G. 2.2.2 Works for Hire

- 1. Employees - A "work-for-hire" is defined by law as a work product created in the course of the author's employment. Copyright of the work product in these situations belongs to the employer. For example, results of work assigned to staff programmers or writers of

university publications are considered to have been created in the course of the author's employment and are the property of TWU. It is the policy of TWU that it shall own all "works-for-hire."

2. Non-Employees - Under the Copyright Act, copyright of commissioned works of non-employees is owned by the author and not by the commissioning party unless there is a written agreement to the contrary. All TWU personnel are cautioned to ensure that independent contractors agree in writing that ownership of the commissioned work is assigned to TWU, except where special circumstances apply and it is mutually agreed that the author will retain ownership.

H. 2.2.3 Independent Works

1. TWU does not claim ownership of books, articles, and other scholarly publications or of popular novels, poem, musical compositions, or other works of artistic imagination which are created by the personal effort of faculty, staff, and students independent of employment tasks and which do not make significant use of TWU administered facilities.
2. In those situations where copyright to such scholarly or artistic work resides in TWU under the terms of a sponsored research or other agreement or by operation of the copyright law or otherwise as a result of this Policy, TWU may, upon the author's request and to the extent consistent with the intent of the sponsor, convey copyright to the author of such work as further provided under this Policy. Where necessary, the approval of the laboratory director or department head will be required.

I. 2.2.4 Significant Use of TWU Administered Resources

1. TWU does not construe the provision of library facilities or an office as constituting significant use of TWU space or facilities; the payment of salary from unrestricted accounts is not construed as constituting significant use of TWU funds except in those situations where the funds were paid specifically to support the development of material.
2. Textbooks developed in conjunction with class teaching are also excluded from the "significant use" category, unless such textbooks were developed using TWU administered funds paid specifically to support the textbook development.
3. TWU does not acquire rights to independently created software which has been developed using conventional TWU resources such as personal computers.

4. Student authors who make significant use of TWU resources to develop software will retain ownership of such software subject to a royalty-free, nonexclusive license granted to TWU to use the software for purposes of education and research.

J. 2.2.5 Theses and Dissertations

Copyright ownership of theses and dissertations is retained by the student, but the student must grant to TWU royalty-free permission to reproduce and publicly distribute copies of the thesis or dissertation. In circumstances where the research for the thesis or dissertation has been done in conjunction with other policies discussed in this document, those policies will apply with regard to the students.

K. 2.3 Trade and Service Marks

Trade and service marks relating to goods and services developed at TWU shall be owned by TWU.

L. 2.4 Tangible Research Property (TRP)

TWU owns TRP except when it becomes the property of a third party under the terms of a sponsored research or other agreement.

M. 2.5 Distance Learning and Intellectual Property

A distance learning course is one in which 50% of the instruction is delivered via satellite, compressed video, Internet, or other electronic means. Electronic courses are means of communicating content to persons not physically present in the classroom. For the purposes of this Policy, instruction in any electronic medium will be referred to as "distance learning" and the course materials as "electronic courses." Works in any medium may be digitized; thus, electronic courses tend to be multimedia creations, which may compound the clear determination of appropriate uses of contributed materials.

N. 2.5.1 Ownership and Copyright in Electronic Courses

1. Faculty members hold copyright in electronic course materials they create on their own time or in their ordinary role as a faculty member except that electronic courses belong to TWU if created by faculty under a specific contractual arrangement or as a specific condition of employment with the University. Electronic courses belong to TWU if created by non-faculty employees within the scope of their employment.
2. Electronic courses created jointly by faculty authors and others whose contributions would be works for hire are jointly owned

by the faculty authors and TWU. For works created throughout the joint efforts of faculty and non-faculty employees working within the scope of their employment or under contract to provide the services, ownership of the course is shared. A written agreement addressing joint ownership should be completed prior to creation of the course. Any owner of copyright in an electronic course may secure copyright registration; joint owners may, but do not have to, agree to bear responsibility for enforcement of the copyright.

O. 2.5.2 Contributed Materials

Liabilities may be incurred with respect to the inclusion of materials in electronic courses other than materials created by the electronic course author. Contributed materials may include voices or images of persons in the electronic course, including students and guest lecturers. It is the policy of TWU that all faculty and staff comply with the law, including copyright and privacy laws; therefore, creators of electronic courses must obtain all permissions and releases necessary to avoid infringing on copyright or invading the personal rights of others.

P. 2.5.3 Faculty Responsibility to Currently Enrolled Students

Faculty members have a responsibility to meet the reasonable needs of their currently enrolled students and to maintain access to course materials in accordance with TWU policies.

Q. 2.5.4 Course Development

Faculty may receive course release or workload credit, as negotiated with the dean, for duties performed in their ordinary role as a faculty member, including development of electronically published course materials. Course release or workload credit does not automatically determine assignment of copyright or royalties. If a course is jointly owned by a faculty author and the University, a written agreement addressing joint ownership should be completed prior to creation of the course.

R. 2.5.5 Revision Rights

When the University has a copyright or ownership interest in the electronic course, the faculty member retains the nonexclusive right to update, edit, or otherwise revise electronic course materials that become out of date, or, in certain circumstances, place a time limit upon the use of course materials that are particularly time-sensitive. These rights and limitations may be negotiated in advance of the creation of the electronic course, be reasonable under the circumstances, and be in writing.

S. 2.5.6 Royalties

Faculty members shall receive all royalties that may accrue from the commercialization of electronic courses they create on their own time or in their ordinary role as a faculty member without substantial university resources above and beyond those normally provided. TWU retains all royalties that may accrue from the commercialization of electronic courses created by faculty members under a specific contract or as a work for hire. In cases of joint ownership (such as an electronic course initiated by a faculty member but with significant use of TWU facilities), a written agreement addressing royalties should be completed prior to creation of the course. Copyright law permits joint owners to pursue commercialization either jointly or separately, with accounting.

T. 2.5.7 Definitions, Exemplars, and Division of Ownership and Royalties

1. Totally Faculty-Generated without Extraordinary University Resources

a. Definition

The work results from the individual's efforts while in his/her ordinary role as a faculty member at TWU without substantial university resources above and beyond those normally provided by TWU.

b. Exemplar 1

A tenure-track faculty member has developed an electronic course from a course previously taught in the traditional (meeting three face-to-face hours per week) format. The semester prior to teaching the electronic course, the faculty member adapts assignments and materials from the previous version and adds new materials and strategies to enhance the online experience. Because the faculty member is teaching the expected course load and, additionally, developing the electronic course during the same semester, the faculty member negotiates work unit credit of course development. The faculty member requires no special assistance, training, or technical support for developing the electronic course.

c. Exemplar 2

A faculty member is hired into a normal faculty role. The faculty has several years of experience creating and conducting online courses. The faculty member is assigned to teach two courses the second semester she is at the university and is asked to put both courses online (one at 50% and one at 75%). She does this during the same semester she is teaching the courses, staying just one step ahead of

the students. She uses her office computer and develops the courses during her normal work hours. Since she has never used Blackboard as a platform, she has to get an orientation to Blackboard plus have several phone consultations with the distance education staff.

d. Division of Ownership and Royalties

The faculty member owns the intellectual property and has the right to distribute the work commercially. The faculty member will receive all royalties generated from the commercialization of the property.

2. Substantial University Resources are Provided

a. Definition

The work results from the individual's efforts with substantial University resources above and beyond those normally provided.

b. Exemplar

A department is developing an online master's program. A faculty member who teaches the public policy class takes responsibility for designing the course. She is provided a .25 research assistant during the fall and spring semesters to assist her in the design and production of all course materials. Additionally, Lifelong Learning contributes 100 hours in design and production of a compact disk that supports class content. The compact disk is duplicated and distributed to all students enrolled in the class.

c. Division of Ownership and Royalties

The faculty member shares ownership of the intellectual property with TWU. A written agreement addressing joint ownership should be completed prior to creation of the course. Any owner of copyright in an electronic course may secure copyright registration; joint owners may, but do not have to, agree to bear responsibility for enforcement of the copyright. If licensed for commercial purposes either by the University or the faculty member, the University and the faculty member will each receive a percentage of the royalty as negotiated. If not negotiated, each would receive 50% of the net profit. In case of multiple authors, the authors will share the authors' portion of the royalty pro rata based on their participation.

3. Work for Hire

a. Definition

A faculty member at TWU is contracted to develop a specific distance learning product, or a non-faculty employee develops such a product within the scope of his/her employment. TWU provides all resources for the work.

b. Exemplar 1

A faculty member receives a summer stipend for electronic course development in the School of Library and Information Studies. He has no teaching responsibilities during the summer term.

c. Exemplar 2

A staff member in Lifelong Learning is assigned to develop a one-hour online course, "Introduction to Research" for use in several departments. All course development takes place in the normal course of employment.

d. Division of Ownership and Royalties

TWU owns all intellectual property and has exclusive educational and commercial ownership and license authority. The faculty or staff member is not entitled to payment of royalty.

III. Part 3 - Technology Evaluation, Protection, and Dissemination

The VPRI/DGS and the Intellectual Property Committee ("IPC") are responsible for facilitating the transfer of TWU technology to public use and benefit. The IPC evaluates the commercial potential of TWU technology and decides whether to proceed with commercial development of the technology. The VPRI/DGS assists the IPC in its evaluation of the intellectual property, obtains proprietary protection for selected technology, and assists in the distribution of technology for research purposes, as described in this PART 3. The VPRI/DGS may assist in the commercial development of selected intellectual property by identifying potential markets and negotiating license agreements when approved by the University, as described in PART 4.

A. 3.1. Disclosure

1. The initial step in establishing contact with the IPC is usually the submission of a TWU Intellectual Property Disclosure Form to the VPRI/DGS. This form can be obtained from the Office of

Research and Sponsored Programs. When submitted, the Intellectual Property Disclosure Form will initiate action by the IPC to investigate the patenting (or other methods of protection) and marketing of the technology unless accompanied by a letter requesting other action by TWU, such as a waiver of TWU's ownership rights in the technology.

2. Sponsored Programs - The terms of sponsored research and other agreements normally create obligations with respect to the reporting of inventions, technical data, and copyrightable works (such as software). In particular, inventions and copyrightable works developed under sponsored research should be promptly reported to the VPRI/DGS by submitting an Intellectual Property Disclosure Form. The VPRI/DGS is responsible for discharging TWU's obligations to research sponsors.
3. Other Programs - Inventions or technology developed under TWU-administered programs, either as work-for-hire or with significant use of TWU funds or facilities, should also be submitted to the VPRI/DGS using an Intellectual Property Disclosure Form. Independently owned technology need not be disclosed to the VPRI/DGS unless the owner of the technology desires TWU to assist in the commercialization of the technology. In such cases, the technology should be submitted to the VPRI/DGS using the Intellectual Property Disclosure Form.

B. 3.2 Patents

C. 3.2.1 Protection

1. Although patent protection is sometimes sought for various noncommercial reasons (such as professional status), TWU will not seek protection for concepts which are not commercially attractive even if the concept is intellectually meritorious. TWU will normally seek patent protection on inventions in order to pursue commercial licensing and to comply with the terms of sponsored agreements. The procedures for obtaining patents on inventions are described in PART 4 - COMMERCIAL DEVELOPMENT.
2. It is important to understand at the outset that any publication which describes an invention (even in minimal detail) prior to filing for a patent may preclude patenting in foreign countries and may also preclude protection in the United States unless a patent is filed within one year from publication. The implications of publication upon patent rights should be discussed with the VPRI/DGS and a decision on patent filing reached promptly so that publication will not be delayed.

D. 3.3 Copyrights

E. 3.3.1 Asserting and Registering Copyright

1. Copyright protection of books, articles, and publications is sought in order to recognize authorship and protect the integrity of the work. It is also essential in order for TWU to license copyrightable materials to commercial book publishers and others and to comply with the terms of sponsored research agreements.
2. A copyright is established at the time expression is fixed in tangible medium. In order to maintain the copyright for the period prescribed under the copyright statute, notice of copyright must be affixed to the copyrightable material. Failure to affix the proper notice will cause the copyright to be lost after a certain period of time has elapsed from first publication of the work.
3. The following notice is to be applied on TWU-owned works to protect the copyright:

"Copyright (c) 2002 Texas Woman's University
All Rights Reserved."*
4. *The date in the notice should be the year in which the work is first published. No notice other than the foregoing is to be used for TWU-owned works.
5. For added copyright protection, certain works should be registered with the U.S. Copyright Office using its official forms.

F. 3.4 Trade and Service Marks

G. 3.4.1 Asserting and Registering Trade and Service Marks

1. A trade or service mark may be used to protect those names and symbols associated with certain TWU activities and events and with certain technology developments such as computer programs. Prior to registration for trademark protection, the designation "TM" after a trademark or "SM" after a service mark will give adequate notice of a claim of ownership. The designation "R" for a trade mark may only be used after federal registration.
2. The use of trade and service marks to protect TWU-owned intellectual property or to designate TWU as the origin of a product, event, activity, service, or the like, may be instituted only at the direction of the IPC. It is important to note that trademark protection carries with it certain obligations on the part of the holder of the mark. Therefore, requests for use of trade or service marks on behalf of the

TWU must be coordinated by the VPRI/DGS. Requests for the use and registration of trade and service marks may be directed to the IPC through the VPRI/DGS.

H. 3.5 Tangible Research Property

1. Tangible research property (“TRP”), such as biological materials and computer software, is frequently patented or copyrighted as appropriate and then licensed for commercial purposes.
2. However, these and other forms of TRP (including those under commercial license) generally are simultaneously distributed solely for research purposes under simple letter of understanding agreements or under more formal licenses.
3. The following sections deal only with dissemination of TRP for research and other noncommercial purposes. Commercial licensing of TRP is covered under PART 4.

I. 3.5.1 Distribution for Scientific Research Use

In keeping with the traditions of academic science and its basic objectives, it is the policy of TWU that results of scientific research are to be promptly and openly made available to others. Since the traditional modes of dissemination through scholarly exchange and publication are not fully effective for most TRP, it is TWU policy that those research results which have tangible form should also be promptly and openly made available to other scientists for their scientific research, unless such distribution is inappropriate due to factors such as safety, the need to more fully characterize or develop the TRP prior to distribution, or unless such distribution is incompatible with other obligations.

J. 3.5.2 Control of TRP

Where TRP is developed in the course of research which is subject to the terms of a sponsored research or other agreement, control over its development, storage, distribution, and use is the responsibility of the principal investigator, who will consult with the VPRI/DGS. In other cases, significant use of TWU resources will be presumed, so control over TRP rests jointly with the laboratory director or department head when distribution of the TRP is to be made beyond the laboratory for scientific use by others in accordance with the terms of the policy.

K. 3.5.3 TRP with Potential Commercial Value

1. Scientific exchanges should not be inhibited due to potential commercial considerations. However, where TRP may have

potential commercial value as well as scientific value, the principal investigator (who may wish to make TRP available for scientific use in a manner which does not diminish its value or inhibit its commercial development) should seek guidance from the VPRI/DGS.

2. The normal mechanism for commercialization of TRP is through licensing agreements as set forth in PART 4.

L. 3.5.4 TRP Registration

Each item of TRP should have an unambiguous identification code and name sufficient to distinguish it from other similar items developed at TWU or elsewhere. The VPRI/DGS should be consulted for assistance in developing appropriate identification systems.

M. 3.5.5 Distribution of Biological TRP to Research Colleagues

1. Biological materials are, in many cases, patentable and licensed for commercial purposes under various types of patent licenses. They are also a form of tangible research property which can be distributed for commercial and/or research purposes with or without patent protection.
2. Biological TRP owned by TWU may usually be distributed for research purposes only with minimal conditions attached. Any such distribution is subject to an agreement by the recipient that commercial development or commercial use or further transfer of the biomaterial is not to be undertaken. In addition, the principal investigator may wish to control subsequent use by requiring recipients to follow a specific research protocol (such as in the use of biological materials).
3. When distributing biological TRP to research colleagues outside the laboratory, costs of the materials and handling may be recovered from the recipient and returned to the account which funded those costs. When costs are charged for TRP distribution, adequate documentation must be maintained for audit purposes. If there is a possibility of a biohazard or other risk associated with the transport, storage, or use of a particular clinical research, the VPRI/DGS should be contacted for advice on the appropriate form of disclaimers of liability and indemnities.
4. If the biological TRP was developed under a sponsored research agreement, the VPRI/DGS should be contacted to advice on possible contractual obligations with respect to the TRP prior to its distribution for noncommercial purposes.

N. 3.5.6 Distribution of Computer Software for Research Purposes

The distribution of TWU-owned computer software to colleagues for research purposes must be coordinated with the VPRI/DGS if the software has potential commercial value, if the principal investigator wishes to control subsequent use, or if it is subject to the terms of a sponsored research or other agreement.

IV. Part 4 - Commercial Development

A. 4.1. Introduction

1. It has long been acknowledged that the primary functions of a university are education, research, and public service. It is in the context of public service that TWU supports efforts directed toward bringing the fruits of TWU research to public use and benefit.
2. In many cases, mere publication of research results will be sufficient to transfer TWU research to the public. In other cases, it is necessary to encourage industry, by the granting of license rights, to invest its resources to develop products and processes for use by the public.

B. 4.1.1 Commercialization – General

The VPRI/DGS may pursue the licensing of technology selected for commercial development by the IPC. This pursuit may consist of researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, developing a business plan, negotiating appropriate licenses or other agreements, monitoring progress, and distribution royalties to the inventors/authors in accordance with TWU royalty policy. When it is appropriate to do so, TWU may accept an equity position in lieu of cash royalties.

C. 4.1.2 Inventor/Author Assistance

With a few exceptions, the support and cooperation of the inventor/author is critical to licensing success.

D. 4.1.3 Inventor/Author Owned Intellectual Property

1. TWU faculty, staff, and students who wish to pursue the development of their independently owned technology may offer such intellectual property to TWU by submitting an Intellectual Property Disclosure Form. The IPC will evaluate the commercial potential and determine whether or not the technology will be accepted for licensing. Acceptance for licensing by the IPC will

involve assignment of the technology to TWU under an Assignment/Royalty Sharing Agreement.

2. Faculty, staff, and students are equally free to choose some other mechanism for commercializing their independently owned intellectual property, but prior to such commercialization shall make sure that the technology does not fall under the terms of a sponsored research or other agreement, constitute a work-for-hire, or result from significant use of funds or facilities administered by TWU. If any of these conditions might apply, the inventor/author shall request from the IPC an appropriate license to exercise such rights or a waiver of TWU's rights as set forth in this PART 4.

E. 4.2 Patents

F. 4.2.1 Evaluation

1. Once an Intellectual Property Disclosure Form disclosing an invention is submitted, the IPC typically will meet with the inventor(s) as a first step in evaluation. In many cases, contact with industry will be made a part of the evaluation process.
2. If the IPC concludes that the intellectual property has a good possibility of being licensed and that potential royalty returns are sufficient to justify patenting and licensing expenses, an Assignment/Royalty Sharing Agreement will be executed with the inventor(s) and commercialization will proceed as described in this PART 4.

G. 4.2.2 Sponsored Programs

If the invention arose from a sponsored research project, the VPRI/DGS will file for a patent and negotiate an appropriate license consistent with the terms of the contract, provided that royalty terms justify the expense or that funds for filing have been provided under the research agreement.

H. 4.2.3 Waiver of TWU Rights

1. When it has the discretion to do so, TWU may (if requested by the inventor) "stand aside" in those situations when it would enhance the transfer of technology to the public, when it is consistent with TWU's obligations to third parties, and when it does not involve a conflict of interest as set forth below. By "standing aside," TWU agrees not to exercise its contractual rights to the technology, clearing the way for the TWU inventor to seek ownership.
2. In the case of federal agency sponsorship, the inventor may directly petition the agency for a release of rights to himself or herself.

However, federal research agreements are generally subject to a uniform patent law which provides that universities take title to resulting inventions subject to certain obligations concerning exploitation in the public interest, federal approval of any assignment of ownership, preferences for licensing, the retention by the federal government of certain license rights, and march-in rights. Decisions by federal sponsors to permit individual inventors to acquire ownership are generally made on a case-by-case basis with the federal government retaining for it those rights previously discussed.

3. In the case of industrial sponsorship, TWU will seek approval of the sponsor prior to releasing its ownership rights in favor of the inventor.

I. 4.2.4 Licensing of TWU Rights to Inventors

TWU faculty, staff, and student inventors may also request a license to commercially develop their TWU-owned inventions when such licensing would enhance the transfer of the technology, when it is consistent with TWU's obligation to third parties, and when it does not involve a conflict of interest.

J. 4.2.5 Conflict of Interest of Commitment

Any of the following factors may signify a conflict of interest which will be taken into account prior to waiving or licensing TWU's rights to inventors under this Section 4.2 or to authors under Section 4.3: (1) an adverse impact upon TWU's educational responsibility to its students; (2) an undue influence on the inventor's/author's employment commitment to TWU in terms of time or direction of effort; or (3) a detrimental effect on TWU's obligation to serve the needs of the general public. In order to minimize conflicts of interest, TWU will not accept equity in a start-up company as royalty if the inventor/author also holds an equity or founder's stock position.

K. 4.3 Copyrights

L. 4.3.1 Commercialization by the IPC

1. Copyrightable works owned by TWU are normally licensed through the IPC except where other arrangements are made in accordance with this policy. Copyrightable material not owned by TWU also may be licensed through the IPC when submitted under an Intellectual Property Disclosure Form to the IPC by its author and accepted for licensing.

2. Computer Software

Computer software in which TWU acquires rights may be either patented or copyrighted and made available by TWU for commercial purposes through the IPC under various forms of copyright or patent licenses. Authors will share in royalties earned from licensing as further set forth in this policy.

3. Video Works

This policy does not define commercialization and ownership rights with regard to video works produced through use of TWU facilities or those which may be specially commissioned by a department or laboratory within TWU. Video works developed pursuant to an agreement will be subject to the terms of that agreement. The disposition of rights.

M. 4.3.2 Waiver of TWU Rights to Authors

1. The authors may, with the agreement of their department head or laboratory director and of all their coauthors, request that TWU (through the IPC) waive any ownership or other rights it acquires or may elect to acquire under a sponsored research or other agreement to the authors. The waiver of rights under this section shall be subject to TWU's Conflict of Interest and Commitment policies under *Section 4.2.5*.
2. Federal research agreements presently vary widely with respect to rights in copyrightable technical data and computer software; but, in general, the universities have the right to copyright and to control distribution of most materials. Several major agencies retain a large degree of control over computer software and will relinquish control only under limited circumstances.
3. Industrial or commercial sponsors who acquire exclusive licenses to software usually will not release rights to authors. However, under most sponsored research agreements, software normally is licensed on a nonexclusive basis (in which case a nonexclusive license to the authors is not necessarily precluded).
4. Ownership of unobligated software (such as that developed with TWU internal funds), upon the request of its authors and with the necessary approvals as provided in this policy, may be waived to the authors in those cases where effective technology transfer and the public interest would be served TWU may, where it is deemed necessary, place qualifications on such waivers, such as a right for TWU use of the software, royalty sharing, and march-in rights.

N. 4.3 3 Other Forms of Author Control

Where consistent with TWU's obligations to third parties, TWU faculty, staff, and student authors (with the agreement of their laboratory director or department head and all of their co-authors) may request a license from the IPC to commercially develop their TWU-owned works, may request to have the works openly distributed through royalty-free licenses, or may request that the works be placed into the public domain.

1. Public Domain

- a. Authors may request that otherwise copyrightable works, including computer software, be placed in the public domain if such action will promote widespread use or, for example, as means to establish a new standard such as a computer operating system.
- b. In responding to a request for public domain, TWU will weigh the advantages of improved access, the complexity of the work and whether it is ready for effective public use, whether its quality can be maintained, and the authors' reasons for seeking this mode of dissemination.

2. Licensing to Authors

- a. Authors may request control of the copyrighted material through a grant of commercial license rights.
- b. Consistent with the public interest, TWU may grant the request for author control but with the option for TWU to retain title to the work, the right to use it for internal purposes, a right to the payment of appropriate royalties, and the right to withdraw such rights and controls in three years if the authors have not achieved effective dissemination as agreed. In addition, such arrangements will be subject to TWU's Conflict of Interest and Commitment policies as stated in *Section 4.2.5*.
- c. When requests are related to major projects that typically involve multiple authors and long development periods, the most effective course for dissemination will require discussion and special negotiation with the IPC.
- d. TWU will respond to author requests made under this policy within 90 days. However, in those cases where the work (generally software) is not sufficiently developed to allow proper assessment, TWU may require additional development prior to responding to an author request.

O. 4.4 Trade and Service Marks

Trade and service marks owned by TWU are to be licensed through the IPC.

P. 4.5 Tangible Research Property

1. It is TWU policy that any commercial distribution of TWU-owned TRP be handled only through the IPC unless arrangements are made for independent development by the inventors/authors. Software should be submitted to the IPC in the same fashion as a patentable invention, for which the first step is preparation and submission of an Intellectual Property Disclosure Form.
2. If TRP developed by TWU as a result of research activities is to be distributed to outside users for commercial purposes, the distribution agreement must contain provisions negotiated by the IPC covering the terms under which the property may be used, limits on TWU's liability for the TRP or products derived therefrom, and other conventional license agreement terms, including those relating to any intangible property rights (such as patents) which also may be associated with the use of the tangible property.

Q. 4.6 Royalty Distribution – General

Royalty income received during the preceding TWU fiscal year for a technology license shall be distributed once annually as follows:

1. Deduct 15% from Gross Royalty Income. This deduction is directed toward covering the expenses of the Office of Research and Sponsored Programs.
2. Deduct out-of-pocket costs and, in some cases, a reserve, to arrive at Adjusted Royalty Income. Out-of-pocket costs are direct assemble expenses to a specific case such as patent filing, prosecution and maintenance fees, and specific marketing costs. When out-of-pocket costs in the next TWU fiscal year are forecast and future income unlikely, a reserve may be deducted. Any excess reserve shall be promptly distributed after forecast costs are paid.
3. Distribute 50% of the Adjusted Royalty Income to the inventors/authors.
4. Distribute 50% of the Adjusted Royalty Income to TWU for the support of research and other intellectual pursuits.

R. 4.7 Technology Royalties - Special Cases

In some cases, distribution of royalties to individuals will be impractical or inappropriate, such as where the material was developed as a laboratory

project or where the authors/inventors are not easily identifiable. The IPC, in consultation with the principal investigator (or laboratory director/department head if not under a sponsored agreement) will review the circumstances of development when such situations have been identified. If not allocated to individuals, the authors'/inventors' share may be allocated to a research or educational account in the laboratory/department where the material was developed. In any situation when royalty distribution to individuals is not recommended, it is subject to the approval of the EVPAA/Provost.

S. 4.8 Equity and Management Participation in Business Entities

If TWU forms or becomes an equity owner in a company or other separate business entity that utilizes the technology created at TWU, TWU and the inventor/author each will hold 50% of the voting rights in stock or other evidence of ownership received or owned as a result of the TWU and inventor/author technology interest. TWU and the inventor/author each will have a 50% right to management participation in the entity equity interest, subject to the restriction that neither party may sell, lease, or assign such equity interest in a separate business or management participation right without the prior written consent of the other party.

V. Part 5 - Faculty, Student, Staff, and Visitor Obligation

It is the general policy of TWU that individuals, by participating in sponsored research project, accept the principles of ownership of technology as stated under this policy. In furthering such undertaking, all participants will sign Invention and Copyright Agreements in accordance with the following policy.

A. 5.1 Personnel Invention and Copyright Agreements

B. 5.5. Who Must Sign

Individuals at TWU who:

1. Receive support from externally or internally sponsored projects; or,
2. Otherwise may be in a position to make, conceive, or reduce to practice inventions or otherwise develop technology under externally or internally-sponsored projects (whether or not salary or other support is received from such projects) must sign the TWU Invention and Copyright Agreement. Note that this requirement specifically extends not only to TWU personnel but also to visiting scientists and fellows or others who may participate in sponsored projects at TWU.

C. 5.1.2 Administration

Each TWU laboratory and department is responsible for ensuring that Invention and Copyright Agreements are signed by all faculty, students, staff, and visitors who may be, or are involved with, sponsored projects administered by that laboratory or department. The VPRI/DGS will monitor laboratory and department compliance with this requirement. All Invention and Copyright Agreements should be signed in triplicate with one copy retained by the signatory, one copy retained in the laboratory or department files, and one copy sent to the Office of Research and Sponsored Programs.

VI. Part 6 – Administration

A. 6.1 Office of Research and Sponsored Programs

The Office of Research and Sponsored Programs is responsible for the negotiation, execution, and administration of all TWU agreements with external sponsors of research grants and contracts and for ensuring that the rights of the sponsors in technology developed under external grants and contracts are protected. The VPRI/DGS is available to assist all principal investigators and sponsored program administrators in the negotiation of intellectual property terms of grants and contracts.

B. 6.2 Intellectual Property Committee

1. To assist in the administration of TWU technology, an Intellectual Property Committee (IPC) shall be appointed by the EVPAA/Provost for TWU. The VPRI/DGS shall serve as chairman of the committee. In addition to the chairman, the other voting members of the IPC will be two administrators and one staff member appointed by the EVPAA/Provost, and three faculty members appointed by the Faculty Senate. Except for the chairman, members of the IPC normally shall be appointed for terms of two years.
2. The IPC has the responsibility for reviewing all disclosures pertaining to TWU intellectual property and recommending the selection for which protection and/or commercial development will be sought. In addition, the IPC will review all licensing agreements negotiated by the VPRI/DGS and will hear all disputes pertaining to the ownership of TWU technology and its commercial development. All recommendations of the IPC are subject to the approval of the EVPAA/Provost. The IPC shall operate in accordance with the principle that research priorities will have precedence over technology development priorities. Thus, no grant or contract terms are to be accepted which inhibit the utilization by the public of the results of research at TWU.

C. 6.3 Executive Vice President for Academic Affairs and Provost

The EVPAA/Provost is the final arbiter of any disputed issues or questions of interpretation relating to this policy. In unusual circumstances, the EVPAA/Provost may also authorize exceptions to the normal procedures.

REVIEW

This policy will remain in effect and published until it is reviewed, updated, or archived. This policy is to be reviewed once every six years. Interim review may be required as a result of updates to federal and state law or regulations, Board of Regents policies, or internal processes or procedures.

REFERENCES

None

FORMS AND TOOLS

None

<p>Publication Date:</p> <p>Next Review:</p>
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Appendix A

Intellectual Property Disclosure Form

Texas Woman's University

Descriptive Title of Intellectual Property:

	Name of Inventor(s)	Title	Department
1.			
2.			
3.			

-
1. Description of Intellectual Property (Use additional sheets to elaborate or attach descriptive materials.)
 1. Briefly summarize the purpose and use of the intellectual property.
 2. Why do you think that this discovery is patentable? (Address the issues of novelty and non-obviousness.)
 3. List the potential claims. (Define the scope of your invention--its limitations and boundaries.)
 4. Describe a specific embodiment of the invention. (Include sketch, drawings, circuit diagrams, photographs, chemical formulas.)
 5. Please provide, if possible, an estimate of the commercial value of the invention.
 6. List any known commercial interest that might be willing to license the product or support further research.
 2. Prior Disclosures

It is extremely important for the Committee to be aware of and have complete knowledge of your publication record relating to this invention. The Intellectual Property Committee will keep in confidence any information disclosed in this document.

3. Has the invention been disclosed or will it be disclosed in any scientific forum (publications, abstracts, or oral presentations)?

_____ YES _____ NO

If yes, give where disclosed and the date. Copies of all prior publications, abstracts, or presentations related to this invention should be attached.

4. Has the invention been disclosed in any other public forum, such as news releases, feature articles, and items in internal publications? If yes, please describe circumstances and attach copies of relevant examples.

5. Documentation of Discovery

1. Date invention conceived
2. Date invention disclosed
3. To whom disclosed
4. Date first drawing or sketch was made
5. Date invention was reduced to practice
(Date first product or model was made)

6. Has the invention been tested?

_____ YES _____ NO

If yes, state the date and describe the results.

7. Has the invention been used?

_____ YES _____ NO

If yes, state the date and details of its use.

8. Support for Invention

1. Was the development of the invention supported in any way by funds from an outside source (Federal Government, Foundations, Company or Private Gift)?

_____ YES _____ NO

If yes, Name of Agency, Company, etc. If development of project was aided by more than one source of outside funding, please provide the information for each source.

Name of Agency, Company, etc.

Title of Project

Project number (if any)

TWU Account Number

Did you make substantial use of any of the following?

University facilities-laboratories, etc. _____ YES _____ NO

University equipment _____ YES _____ NO

University supplies _____ YES _____ NO

NAME(S) DEPARTMENT

1)

2)

The undersigned certify that all prior publications, abstracts, or public presentations on any topic relevant to the enclosed invention disclosure have been revealed in this document. All inventors must sign this document.

INVENTOR

1. Signature

Typed Name

Date

2. Signature

Typed Name

Date

3. Signature

Typed Name

Date

_____ Date
Department Chair

_____ Date
Dean

Appendix B

Report of Possible Copyrightable Materials Developed through Substantial Use of University Resources

1. Title:
2. Concise Description:
3. Nature of Any University or Contract Support:
 - a. External Funding
 - b. Department Support
 - c. Contract
 - d. Other

Sponsor, if any:

Has sponsoring agency been notified? Yes _____ No _____

- e. Approximate date of writing or completion of computer program:
- f. Names and affiliations of collaborators, if any:
- g. Has this been published?
If so, where and when?

Address

Address

Signature

Signature

Date

Date

(Additional sheets may be used when necessary to supply information in any of the categories above.)