

	FGCU POLICY 2.002	Responsible Unit: Office of Research and Graduate Studies
	Intellectual Property	

A. POLICY STATEMENT

This Intellectual Property Policy of Florida Gulf Coast University (referred to herein as “the Policy”) is based on section 1004.23, Florida Statutes, which authorizes the University to license, protect, and consider the contributions of University Personnel in the development of Intellectual Property such as trademarks, copyrights and patents and conforms with the FGCU-UFF collective bargaining agreement for in-unit faculty. The University is implementing this authority through this Policy, which requires that all University Personnel disclose certain works and inventions that are developed or discovered while affiliated with the University.

In accordance with federal law, the objective of copyright is to promote the progress of science and useful arts. Like the policies of most institutions of higher learning, the University interprets copyright law as a means of encouraging the discovery of new knowledge and its dissemination to students, the profession, and to the public. Furthermore, this Policy promotes the long-standing academic tradition, as described by the Statement of Copyright, issued by the American Association of University Professors (AAUP), that treats the faculty member as the copyright owner of Works that are created independently and at the faculty member’s own initiative for traditional academic purposes, regardless of the physical medium, whether on paper or in audiovisual or electronic form.

Pursuant to 35 U.S.C., section 200-212, universities are granted the right to claim title to Inventions created under federally-funded work and charged with commercializing those Inventions for the public good. Incentives to potential creators of patentable Inventions through generous sharing of proceeds that may result from the transfer and development of such Inventions and other marketable forms of Intellectual Property encourage the creation of such Intellectual Property. Consistent with these federal and state laws, the University is committed to sharing the intellectual and financial benefits resulting from the work of its Personnel

Florida Gulf Coast University encourages its employees and Students to undertake and/or assist with creative research endeavors and the development of new scholarship, Works and Inventions that stimulate learning and lead to the discovery of new knowledge. This Policy provides for the participation of University Personnel in protecting and enhancing the value of the University’s Intellectual Property and in sharing in its recognition, dissemination, and rewards.

B. REASON FOR POLICY

The primary purpose of this Policy is to provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and its transfer for public benefit. A secondary purpose is to enhance the generation of revenue for the University and creators. Any revenues accruing to the University as a result of the commercialization of Intellectual Property covered in this Policy will be for the purposes of advancing the University's mission. The University is guided by the following objectives:

1. To ensure that the educational mission of the University is advanced;
2. To optimize the environment and incentives for research and for the creation of new knowledge at the University;
3. To bring the results of research and scholarship into practical use for the public benefit as quickly and effectively as possible;
4. To protect the interests of the people of Florida through a due recovery by the University of its investment in research and scholarship; and
5. To protect the interests/rights of faculty, staff, and Students through their investment in research and scholarship.

Central to the purpose of Florida Gulf Coast University are teaching, research, and service. Florida Gulf Coast University believes that a University has an obligation to serve the public interest through teaching, intellectual pursuit, and new discovery. The University recognizes that Inventions, discoveries, and Works of original authorship may occur in the course of independent (individual) effort, University sponsored (supported) or externally sponsored activities. While the vast majority of activity conducted at the University is not directed toward the production of commercial products and inventions, the University recognizes that marketable forms of Intellectual Property may result from research conducted by University Personnel. The University has a responsibility to support personnel in fostering all forms of Intellectual Property, but has a special obligation to serve the public interest by ensuring that marketable forms of Intellectual Property are appropriately developed into commercial products available to the public.

This Policy distinguishes between two (2) classes of Intellectual Property produced on campus, "Works" and "Inventions", which are defined in section C of this document. Generally, Works include copyrightable material and Inventions include patentable material. This Policy articulates the specific rights that accrue to the Creator(s) and the University according to these two (2) primary categories.

C. APPLICABILITY AND/OR ACCOUNTABILITY

This Policy shall apply to all University Personnel and students who fall within the definition of “University personnel” in Section D, Definitions, below. This Policy applies to all Works and Inventions as covered by section 1004.23, Florida Statutes, and, as defined in section D of this Policy.

D. DEFINITIONS

For the purposes of this Policy, the following definitions shall apply:

1. *Appreciable University Support*: Refers to funds, personnel, facilities, equipment, materials, and/or technological aid provided by the University, as well as to support provided by outside sponsors under agreements that have been arranged, administered, or controlled by the University and that specify the disposition of Intellectual Property, where the form and/or amount of such support measurably exceeds what is customarily provided to University Personnel.
2. *Creator*: Shall mean University Personnel who create a Work or create or discover an Invention.
3. *Independent Efforts*: The term Independent Efforts means that:
 - a. The ideas came from University Personnel;
 - b. The Work was not made with the use of Appreciable University Support; andThe University is not held responsible for any opinions expressed in the Work.
4. *Instructional Technology Material*: Includes video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs, computer assisted instructional course work, programmed instructional materials, three-dimensional materials and exhibits, and combinations of the above materials, which are prepared or produced in whole or in part by University Personnel, and which are used to assist or enhance instruction.
5. *Intellectual Property*: Means all Intellectual Property including, but not limited to, Works and Inventions.
6. *Invention*: Includes any discovery, Invention, process, composition of matter, article of manufacture, know-how, design, model, technological development, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these items. Instructional technology material, as defined in D.4. above, is included in this definition. The term includes Inventions as defined by 35 U.S.C. section 201(d).

7. *Student*: All persons admitted to the University or taking credit-bearing courses at or through FGCU, either full-time or part-time, degree-seeking or non-degree-seeking, on campus, through distance learning, or as part of an international program.
8. *University Personnel*: Refers to all employees, officials, agents, representatives, independent contractors and volunteers of the University including faculty in positions represented by the United Faculty of Florida pursuant to Public Employees Relations Commission Certification Number 1394 (May 13, 2003). Students who assist or are otherwise involved in the creation of Intellectual Property at the University in one of the above-mentioned capacities are also considered “University Personnel”. In addition, Students participating in work-study programs and Students assisting faculty members in matters relating to the development of Intellectual Property, such as research, scholarship, or the development of curricula or course syllabi are considered “University Personnel” regardless of whether such assistance is rendered for compensation, for academic credit or as a volunteer.
9. *University Support*: Includes the use of University funds, personnel, facilities, equipment, materials, or technological information customarily provided to University Personnel by the University, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the University. Examples include base salaries of University Personnel producing a Work or Invention; customary time assigned to research and/or teaching; customary use of instructional delivery mechanisms such as the University network and WebBoards; customary use of facilities, offices, equipment, software, and/or supplies provided by the University for academic purposes and available for use by University Personnel generally; use of University library resources; and limited secretarial and/or administrative resources available to University Personnel generally.
10. *Work*: Includes any copyrightable material, such as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, pictorial or graphic works, and sculptural works. Instructional technology material, as defined in section D.4. above, is included in this definition.

E. PROCEDURES

1. Ownership
 - a. Works
 - 1) Independent Efforts
 - a) A Work made in the course of independent efforts is the property of University Personnel, who has the right to determine the disposition of such Work and the revenue derived from such Work.

- b) Ownership of the following types of Works shall be retained by University Personnel:
 - i. Those Works for which the intended purposes are to disseminate the results of academic research, scholarly study, or artistic expression; such as books, articles, or electronic or artistic media.
 - ii. Works developed without the use of Appreciable University Support and used solely for the purpose of assisting or enhancing University Personnel's instructional assignment. Examples include non-commercialized instructional works, course plans, lecture notes, course handouts and other course supplements, study guides, and instructional technology materials.
 - iii. Consistent with normal academic environments, nothing in this Policy (or any current collective bargaining agreement if applicable, i.e., in-unit faculty only) is intended to interfere with the normal voluntary sharing of non-commercial instructional materials among faculty colleagues at Florida Gulf Coast University. For purposes of program and administrative record keeping, the University can maintain syllabus information.

2) University-Supported Efforts

- a) If the Work was not made in the course of Independent Efforts, the Work is the property of the University and University Personnel shall share in the proceeds therefrom.
- b) Ownership of the following types of Works shall be retained by the University, and University Personnel shall share in the proceeds: Works produced with the use of Appreciable University Support; Works expressly commissioned or contracted by the University, where the University provided direct and detailed specifications for the content, nature, direction, and form of expression and exercising authority over final acceptance; and Works conceived or developed through a University-administered- and externally-sponsored agreement.

b. Inventions

1) Independent Efforts

All Inventions made outside the field or discipline in which University Personnel is employed, engaged, or retained by the University and for which no Appreciable University Support has been used are the property of University Personnel, who has the right to determine the disposition of such Invention and revenue derived from such Work. University Personnel and the President or President's designee

may agree that the patent for such Invention be pursued by the University and the proceeds shared.

2) University-Supported Efforts

An Invention which is made in the field or discipline in which University Personnel is employed, engaged, or retained by the University, or by using Appreciable University Support, is the property of the University and University Personnel shall share in the proceeds therefrom.

2. Disclosure/University Review

a. Works

Upon creating a University-supported or externally sponsored Work, and prior to any publication, University Personnel shall disclose directly to the Office of Research and Sponsored Programs any Work made in the course of University-supported efforts, together with an outline of the project and the conditions under which it was done. University Personnel need not disclose books, articles, and similar Works, the intended purpose of which is to disseminate the results of academic research or scholarly Work, nor Works developed without Appreciable University Support, and used solely for the purpose of assisting or enhancing University Personnel's instructional assignment.

- 1) The Office of Research and Graduate Studies (ORGS) shall assess the relative equities of University Personnel and the University in the Work.
- 2) Within sixty (60) days after such disclosure, the ORGS will inform University Personnel whether the University seeks an interest in the Work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of University Personnel and the allocation of proceeds resulting from such Work. Creation, use, and revision of such Works shall also be the subject of the written agreement between University Personnel and the University as well as provisions relating to the use or revision of such Works by persons other than the Creator. University Personnel shall assist the University in obtaining releases from persons appearing in, or giving financial or creative support to, the development or use of these Works in which the University has an interest. All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.
- 3) University Personnel and the University shall not commit any act which would tend to defeat the University's or University Personnel's interest in the Work and shall take any necessary steps to protect such interests.

b. Inventions

University Personnel shall fully and completely disclose directly to the ORGS all Inventions which University Personnel develops or discovers while having the role of University Personnel together with an outline of the project and the conditions under which it was done. With respect to Inventions made during the course of approved outside employment, University Personnel may delay such disclosure, when necessary to protect the outside employer's interests, until the decision has been made by the outside employer whether to seek a patent.

- 1) If the University wishes to assert its interest in the Invention, the ORGS shall inform University Personnel within sixty (60) days of University Personnel's disclosure to the Division.
- 2) The ORGS shall inform University Personnel of the University's decision regarding the University's interest in the Invention within a reasonable time, not to exceed sixty (60) days from the date of the disclosure to the President or President's designee.
- 3) The division, between the University and University Personnel, of proceeds generated by the licensing or assignment of an Invention shall be negotiated and reflected in a written contract between the University and University Personnel.
 - a) All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.
 - b) University Personnel shall not commit any act which would tend to defeat the University's interest in the matter, and the University shall take any necessary steps to protect such interest
- 4) Release of Rights
 - a) In the event a sponsored research contractor has been offered the option to apply for the patent to an Invention or other rights in an Invention, the University will use its good offices in an effort to obtain the contractor's decision regarding the exercise of such rights within 120 days.
 - b) At any stage of making the patent applications, or in the commercial application of an Invention, if it has not otherwise assigned to a third party the right to pursue its interests, the ORGS may elect to withdraw from further involvement in the protection or commercial application of the Invention. At the request of University Personnel in such case, the University shall transfer the Invention rights to University Personnel, in which case the Invention shall be University Personnel's property and none of the costs incurred by the University or on its behalf shall be assessed against University Personnel.

- c) All assignments or releases of Inventions, including patent rights, by the ORGS to University Personnel shall contain the provision that such invention, if patented by University Personnel, shall be available royalty-free for governmental purposes of the State of Florida, unless otherwise agreed in writing by the University.

3. Consulting and Other Outside Activity

- a. Although University Personnel may (if an in-unit faculty member, in accordance with the Conflict of Interest/Outside Activity and other relevant provisions of the collective bargaining agreement) as applicable, engage in outside activity (including employment pursuant to a consulting agreement), any requirement that University Personnel waive University Personnel's or University's rights to any Works or Inventions which arise during the course of such outside activity must be approved by the President or the President's representative.
- b. University Personnel who propose to engage in such outside activity shall furnish a copy of this Policy (and the Conflict of Interest/Outside Activity and Intellectual Property Articles of the collective bargaining agreement if University Personnel is an in-unit faculty member) to the outside employer prior to or at the time a consulting or other agreement is signed, or if there is no written agreement, before the employment or engagement begins.

4. Inventions Arising from Federally-Supported Research

In the event the University elects to retain title to an Invention, as it is authorized to do pursuant to 35 U.S.C. section 202(a), the ORGS shall ensure the University complies with the contractual disclosure and election deadlines set out in 35 U.S.C. section 202 (c).

Authority

BOG Regulation 1.001, University Board of Trustees Powers and Duties

History of Policy

New 07/29/05; Amended 08/24/20

APPROVED

 */s/Michael V. Martin
Michael V. Martin, President

 August 24, 2020
Date