

Statement of Policy in Regard to Intellectual Property

Adopted by the President and Fellows of Harvard College on November 3, 1975 as the “Statement of Policy in Regard to Inventions, Patents, and Copyrights” and amended on March 17, 1986, February 9, 1998 and August 10, 1998. Further amended, restated and renamed on February 4, 2008.

INTRODUCTION

Harvard University has had a long history of benefiting the public through its research programs. The University recognizes that the public benefits from new products and processes resulting from discoveries and inventions made by individuals connected with the University in the course of their University activities. The growing application and use of communications media, educational technology, computer programs and other innovative approaches to conducting the work of the University often raise complex and ongoing challenges as to the proper and equitable utilization, obligations and rewards associated with innovation. Inventors, authors, the University and outside sponsors all may be involved. These challenges are further affected by federal policy and legislation relating to intellectual property (including patents and copyrights) as well as the funding of research. All of these considerations have led the University to develop and adjust, over time, policies that are understandable to members of the Harvard community and that provide the basis for equitable adjudication between the various interests involved in a manner consistent with the University’s primary commitment to the public interest.

In November 1975, the University adopted a patent and copyright policy to codify existing practices and to replace the 1934 policy regarding patents in the field of health and therapeutics. This document incorporates revisions to the 1975 policy as provided in amendments adopted between 1986 and 2003 and further modifies and updates the policy.

Previous policy statements have tended to be general in nature, based on a belief that the University was too diverse to adapt easily to a detailed policy. However, as the legal, equitable and public interest challenges have become more complex, the discretionary approach to solving problems of interpretation has caused confusion and uncertainty both for members of the Harvard community and for those outside the University community. In addition, advanced standardized practices have been adopted over the years among some of Harvard’s peer institutions and are important to recognize on behalf of the Harvard community.

Therefore, it is the intent of this document to overcome ambiguities in earlier policy statements in favor of more definitive statements of policy that are applicable to the entire Harvard community and that more closely align the University with the practices of peer and affiliated institutions.

The University's policy governing the ownership and disposition of intellectual property which includes, but is not limited to, inventions, copyrights (including computer software), trademarks, and tangible research property such as biological materials is based on the following principles. From time to time, advances in science and the arts may result in new structures of intellectual property protection. They shall be considered to fall within this policy to the extent practicable.

First, the policy should encourage the viewpoint that ideas or creative works produced at the University should be used in ways that are meaningful in the public interest. This may be accomplished through widespread dissemination. Thus, dissemination and use of ideas and creativity should be encouraged throughout the Harvard community. In other circumstances, the public may benefit from the stronger application of legal protection to the innovations and creative works of inventors and authors so that they may be developed into useful products. Although this policy recognizes that public benefit should be placed before financial gain, it is appropriate and often desirable for the University and inventors and authors to benefit financially from the use of a particular invention or creative work. In deciding how to proceed in regard to a particular invention or creative work covered by this policy, the University will consider the benefits and consequences for the public and the University, as well as for individual inventors and authors.

Second, the policy should protect the traditional rights of scholars with respect to the products of their intellectual endeavors. For instance, the policy should not interfere with the rights of a scholar to publish a book or an article. Where the University takes ownership or control over scholarly works, the University shall consult with authors on plans for publication.

Third, where financial or other support in terms of facilities, equipment or staff for development of intellectual property has been provided or administered by or through the University, the University may have outside contractual commitments which must be recognized or may have made financial investments for which reimbursement through commercial application is appropriate.

The University also has a compelling interest in ensuring that its name and insignias are properly used, especially that the use of its name or insignia to imply association with the institution is accurate and appropriate, and that it receives a fair share of any commercial fruits from the use of its names. While this concern relates to the University's intellectual property rights, i.e., in trademarks that protect the Harvard name and insignias, it is addressed separately in the "Policy on the Use of Harvard Names and Insignias", dated February 9, 1998.

The following policy is applicable to all full- and part-time faculty, staff and employees, students, postdoctoral fellows and non-employees who use University funds, facilities or other resources, or participate in University-administered research, including visiting faculty, industrial personnel and fellows, regardless of obligations to other companies or

institutions. For purposes of this policy, these individuals will be referred to as “covered persons” or “persons covered by this policy”.

From time to time, it may be in the best interests of the University to enter into agreements with third parties that are exceptions to the policies reflected in this document and the persons covered by this policy. Exceptions shall be made after consultation with the Office of Technology Development and only upon written agreements signed by individuals authorized to grant such exceptions on behalf of the University.

SECTION I. INVENTIONS AND PATENTS

A. Definitions. For purposes of this policy, the following terms related to inventions shall have the following meanings:

Inventor. Shall mean a person covered by this policy who individually or jointly with others makes an Invention and who meets the criteria for inventorship under United States patent laws and regulations.

Invention. Shall mean any patentable or potentially patentable idea, discovery or know-how and any associated or supporting technology that is required for development or application of the idea, discovery or know-how.

Supported Invention. Shall mean an *Invention* conceived or reduced to practice by a person covered by this policy (whether alone or together with others) if conceived or reduced to practice in whole or in part:

1. Under or subject to an agreement between Harvard and a third party; or
2. With use of direct or indirect financial support from Harvard, including support or funding from any outside source awarded to or administered by Harvard; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through the University.

Incidental Invention. Shall mean an *Invention* (other than a *Supported Invention*) that is conceived or reduced to practice by a person covered by this policy making an incidental use of space, facilities, materials or other resources related to the conception or reduction to practice of such *Invention*.

B. Disclosure Obligations. *Covered persons* are required to notify the University’s Office of Technology Development (“OTD”) of each *Supported Invention* and *Incidental Invention* through a disclosure document as prescribed by OTD, except as otherwise provided in Section III regarding *Sponsored Software Inventions*.

C. Ownership Determination. Upon review of the disclosure document, OTD will determine whether the *Invention* is a *Supported Invention* or an *Incidental Invention* and, in the case of a *Supported Invention*, shall further determine, with assistance from patent

counsel, who are the *Inventor(s)*, consistent with U.S. patent law. Harvard shall have the right to own and each *Inventor*, at Harvard's request, shall assign to Harvard all of his/her right, title and interest in a *Supported Invention*. Ownership of an *Incidental Invention* shall remain with its *Inventor(s)*, subject to any rights that may be granted to Harvard as required by this policy.

D. Filing of Patent Applications. OTD shall be solely responsible for determining whether a patent application shall be filed on a *Supported Invention*. Filing determinations may be made on the basis of commercial potential, obligations to and rights of third parties, or for other reasons which OTD, in its discretion, deems appropriate. *Inventor(s)* of a *Supported Invention* for which patent applications are filed shall cooperate, without expense to the *Inventor*, in the patenting process in all ways required by the University or its agent or designee.

E. Commercialization. OTD shall have the sole discretion with respect to the commercialization of a *Supported Invention*, but shall take into account the public interest. Where a *Supported Invention* is subject to an external agreement with a third party (for example, the federal government or other funding sponsor), OTD shall make decisions consistent with that agreement. OTD shall make decisions concerning commercialization as it deems appropriate and shall make reasonable efforts to keep *Inventor(s)* involved and informed of its commercialization efforts.

F. Royalty Sharing. Where royalties are generated by Harvard as a consequence of commercializing a *Supported Invention*, royalties will be shared with the *Inventor(s)* as described in Section V ("Royalty Sharing") of this policy. The University shall have the right to modify the Royalty Sharing section of this policy in accordance with Section VI.C of this policy.

G. Release of Inventions. Where the University determines that it will not file a patent application on a *Supported Invention*, abandons a patent application on a *Supported Invention* prior to issuance of the patent, or abandons an issued patent on a *Supported Invention*, the *Inventor(s)* may request a release of the *Invention*. Upon determining that releasing the *Invention* to the *Inventor(s)* will not violate the terms of an external funding agreement and is in the best interests of Harvard and the public, OTD may agree to a release and in such case will assign or release all interest which it holds or has the right to hold in the *Invention* to the *Inventor(s)* in equal shares, or such other shares as the *Inventors* may all agree. Release of *Supported Inventions* may be conditioned upon, among other things, agreement by the *Inventor(s)* to the following:

1. To reimburse the University for all out-of-pocket legal expenses and fees incurred by the University if and when the *Inventor(s)* receive income from the *Invention*.
2. To share with the University 20% of the net income (income remaining from gross income after repayment of University expenses above and the *Inventor(s)*' legal and licensing expenses) received by the *Inventors* from the *Invention*. Income subject to this revenue sharing provision includes equity received by

- Inventors as consideration for the *Invention* but does not include financing received for purposes of research and development.
3. Upon request, to report to the University regarding efforts to develop the *Invention* for public use and, at the University's request, to reassign those *Inventions* which the *Inventor(s)*, their agents or designees are not developing for the benefit of the public.
 4. To fulfill any obligations that may exist to sponsors of the research that led to the *Invention*.
 5. To grant back to Harvard an irrevocable, perpetual, royalty-free, nonexclusive, worldwide right and license to use the *Invention* for its research, education and clinical care purposes and a right to grant the same rights to other non-profit institutions.
 6. To agree to such limitations on the University's liability and indemnity provisions as the University may request.

H. Harvard Rights in Incidental Inventions. In recognition of the contribution the Harvard community as a whole makes in support of innovation at Harvard, *Inventor(s)* agree to grant to the University an irrevocable, perpetual, non-exclusive, royalty free, world-wide right to use *Incidental Inventions* in the University's non-profit educational and research activities.

SECTION II. COPYRIGHTS

A. Ownership. Subject to the Exceptions in subsection B below, *Authors* are entitled to own the copyright and retain any revenue derived therefrom in books, films, video cassettes, works of art, musical works and other copyrightable materials of whatever nature or kind and in whatever format developed, except that computer software and databases shall be subject to Section III ("Computer Software") of this policy. It is expected that when entering into agreements for the publication and distribution of copyrighted materials, *Authors* will make arrangements that best serve the public interest. As used in this policy, "*Author*" means any person covered by this policy who creates a work of authorship qualifying for protection under U.S. copyright law.

B. Exceptions.

1. Whenever research or a related activity is subject to an agreement between the University and a third party that contains obligations or restrictions concerning copyright or the use of copyrighted materials, those materials shall be handled in accordance with the agreement. In negotiating with third parties, project directors and the University should strive to protect and advance the public interest as well as obtain the greatest latitude and rights for the individual *Author(s)* and the University consistent with the public interest and this policy.
2. In circumstances where University involvement in the creation and development of copyrighted materials is more than incidental, including, but not limited to,

- use of resources such as funds, facilities, equipment or other University resources, in consideration of making such resources available, ownership and rights to shares of royalties or income or both shall be fairly and equitably apportioned as between the University and the *Author(s)* or may be varied by policy duly adopted by the University or individual Faculties. This policy encourages, whenever feasible, the University and the *Author(s)* to reach agreement prior to the commencement of a project on the rights that the University and *Author(s)* will have in the resulting copyrighted materials.
3. A copyrightable work created within the scope of employment by non-teaching employees of the University shall be a “work made for hire” under the U.S. Copyright Act of 1976 (17 USC §101 et seq.) and the University shall be deemed the *Author* and shall own the copyright.
 4. The University may also commission copyrightable works from University personnel, including faculty and students. A commissioned work falling within the “work made for hire” definition of the U.S. Copyright Act (17 USC 101 et seq.) shall constitute a work-for-hire and be owned by the University.
 5. The University, at any time, may acquire ownership or rights in copyright and copyrighted materials by agreement with the *Author(s)* or other rightsholder(s), on such terms as are agreed.

C. Other Applicable Policy. Sections I.E and I.F of this policy shall apply to *Copyrights* that are assigned to the University under paragraph B.1 above as if they were *Supported Inventions*, except as otherwise provided in the other paragraphs of Section II.B or in the following sentence. Individual Faculties may adopt different or additional policies concerning copyright and any such policy shall be effective if it is formally adopted by the applicable Faculty and if it is generally consistent with the principles stated in this policy or is also approved by the President and Fellows of Harvard College.

SECTION III. COMPUTER SOFTWARE

A. Definitions.

Sponsored Computer Software. Shall mean any computer program (including, without limitation, microcode, subroutines, and operating systems), regardless of form of expression or object in which it is embodied, together with any users’ manuals and other accompanying explanatory materials and any computer database, that is developed:

1. Under or subject to agreement between Harvard and a third party; or
2. With use of direct or indirect financial support from Harvard, including support or funding from any outside source awarded to or administered by Harvard; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through the University.

Sponsored Software Invention. Shall mean *Sponsored Computer Software* which is an *Invention* as defined under Section I of this policy.

B. Disclosure Obligations.

1. A *Sponsored Software Invention* shall be required to be disclosed to OTD as an *Invention* only in cases where:

- a. The *Sponsored Software Invention* was developed under or subject to agreement between Harvard and a third party as in paragraph A.1 above; or
- b. The Inventor(s) and/or Author(s) deem the *Sponsored Software Invention* to have commercial potential and/or favor seeking patent protection for the *Invention*.

All *Sponsored Software Inventions* required to be disclosed to OTD as an *Invention*, and any *Sponsored Software Inventions* otherwise identified, shall be treated for all purposes under this policy like other *Inventions*, except as expressly provided otherwise in this Section III.

2. *Sponsored Computer Software* that is not required to be disclosed as an *Invention* under paragraph B.1 above shall be disclosed to OTD in accordance with such disclosure procedures as OTD may direct.

C. Ownership.

1. The University shall own all patents, copyrights and other intellectual property rights in *Sponsored Computer Software*. For the avoidance of doubt, where the University determines that a patent application will not be filed for a *Sponsored Software Invention* or, if filed, a patent does not issue, *Sponsored Computer Software* will remain the property of the University. Where a patent application is filed on a *Sponsored Software Invention*, Harvard shall have a right of ownership in all associated copyrights as supporting technology. The purpose of this section of the policy is to enable utilization of *Sponsored Computer Software* in the public interest regardless of the potential for a division of ownership due to the patentable and copyrightable nature of computer software.
2. Computer programs and databases that are not included in paragraph C.1 above shall, for all purposes, be treated in accordance with the policies provided under Section II "Copyrights".

D. Release of *Sponsored Computer Software*. Where the University has the right but elects not to commercialize *Sponsored Computer Software*, the University may release its rights, in its sole discretion, subject to a written agreement reserving certain rights to the University and signed by all individuals who have been determined to be *Inventor(s)* and *Author(s)* of the *Sponsored Computer Software*.

E. Other Applicable Policy. Sections I.E. and I.F. of this policy apply to *Sponsored Computer Software* and to *Inventors* and *Authors* of *Sponsored Computer Software* as if *Sponsored Computer Software* were a *Supported Invention*.

SECTION IV. UNPATENTED MATERIALS

A. Definitions.

Unpatented Materials (including biological materials). Means cell lines, organisms, proteins, plasmids, DNA/RNA, chemical compounds, transgenic animals and other materials useful for research or for commercial purposes for which patent applications are not filed or, if filed, do not issue, where such materials are developed by persons covered by this policy:

1. Under or subject to agreement between Harvard and a third party; or
2. With use of direct or indirect financial support from Harvard, including support or funding from any outside source awarded to or administered by Harvard; or
3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through the University.

Contributors. Means those individuals who are determined by the head of the laboratory or the principal investigator of a research program, as applicable, to have made a contribution to the development of the *Unpatented Materials*.

B. Ownership and Commercialization. The University shall own all rights in *Unpatented Materials* and may make appropriate distribution in the public interest, including licensing or transferring *Unpatented Materials*, for research and commercial purposes. Individuals named as *Contributors* shall be entitled to a share of licensing revenues in accordance with paragraph C.2 of Section V of this policy.

SECTION V. ROYALTY SHARING

A. Distributable Royalties. Harvard employs a single uniform structure for distribution of royalties to *Inventors* and *Authors*. Harvard will distribute *Net Royalties* received by Harvard from the licensing or other distribution of its intellectual property or technology covered by this policy, as and to the extent provided in this policy. *Net Royalties* are calculated based on gross receipts consisting of cash and securities or other equity shares in an enterprise received by Harvard in return for use of its intellectual property, but do not include other non-cash benefits, sponsored research funding or other financial benefits such as gifts. *Net Royalties* equal those gross receipts that Harvard is entitled to retain, less Harvard's out-of-pocket costs and fees associated with securing, maintaining and enforcing intellectual property protection such as patenting and litigation expenses, and less out-of-pocket costs incurred by the Harvard in the licensing of the intellectual property.

B. Standard Distribution Method. Except as otherwise provided in this policy, the following distribution formula will apply to *Net Royalties* based on amounts received by Harvard on or after January 1, 2008:

Inventor/Author personal share – 35%
Inventor/Author research share – 15%
Inventor/Author's Department/Center-directed share (if no department or center to be allocated by Dean of the School for research purposes) – 15%
Inventor/Author School share – 20%
President's share – 15%

C. Technology Development Accelerator Fund Distribution Method. *Net Royalties* based on amounts received by Harvard on or after January 1, 2008 and derived from licensing or other distribution of intellectual property developed with financial support from the Technology Development Accelerator Fund will be distributed in accordance with Section B above except as follows:

Inventor/Author's Department/Center-directed share (if no department or center to be allocated by Dean of the School for research purposes) – 10%
Inventor/Author School share – 10%
President's share – 10%
The Technology Development Accelerator Fund share – 20%

D. Distribution of Amounts Received before January 1, 2008. *Net Royalties* based on amounts received by Harvard before January 1, 2008 will be distributed according to the version of this policy in effect as of the date the amounts were received.

E. Alternative Distribution Methods. *Net Royalties* earned from licensing of patents, copyrights, computer software or unpatented materials with multiple *Inventors, Authors* or *Contributors* will be distributed as follows:

1. *Among multiple Inventors and/or Authors for a single patented invention or copyright:* Personal and research shares (subject to section G below) will be allocated among *Inventors* and/or *Authors* according to a written agreement among them or, if there is no agreement, in equal shares. Departmental or laboratory and school shares will be allocated equally where *Inventors* or *Authors* come from different departments, laboratories or schools regardless of the number of *Inventors/Authors* from each department, laboratory or school, unless otherwise agreed among all *Inventors/Authors*.
2. *Among Contributors of Unpatented Materials:* For purposes of this subsection and applicable to *Unpatented Materials*, *Net Royalties* shall be the gross receipts as defined under subsection A received by Harvard that it is entitled to retain less the out-of-pocket laboratory expenses in making and shipping samples and less other documented out-of-pocket licensing and distribution expenses. *Contributors'* shares will be apportioned according to a written agreement among

the *Contributors* or, if no agreement is reached, an administrative determination of apportionment shall be made by the head of the laboratory where the *Unpatented Materials* are made.

3. *For multiple patents licensed as a package*: As agreed in writing among all *Inventors* or, if no agreement, in equal shares among *Inventors*. In the alternative, upon request of any of the *Inventors*, OTD will determine the relative value of each patent to the package with the *Inventor(s)* of each patent sharing equally in the value assigned by OTD. The foregoing notwithstanding, where an executed license agreement assigns different values to different patents licensed as a package, that value shall be the value assigned for purposes of royalty sharing among *Inventors*.

F. Rights of Appeal. Administrative decisions made under paragraphs E.2 and E.3 above may be appealed by the persons affected to the Committee on Intellectual Property for final determination provided the appeal is made in writing to the Committee within 45 days of such persons receiving written notification of the administrative decision.

G. Portability of Royalty Shares. Personal royalty shares will be payable to *Inventors*, *Authors* and *Contributors* regardless of their employment status at Harvard or elsewhere. Research shares will not follow individuals leaving Harvard but will be transferred and payable to the individual's Harvard laboratory or department as determined by the Dean of his/her school. Where an individual leaves one department and/or laboratory for another at Harvard, the departmental and/or laboratory share will move with him or her.

SECTION VI. COMMITTEE ON INTELLECTUAL PROPERTY

A. Overall Responsibility. The University Committee on Intellectual Property, appointed by the President, shall be responsible for interpreting this policy and resolving questions and disputes concerning it. From time to time, the Committee may suggest changes to this policy on its own initiative or at the request of the President and Fellows of Harvard College or its designee.

B. Other Responsibilities. Other responsibilities of the Committee include the hearing of appeals as provided under this policy and such other duties as may be assigned from time to time by the President and Fellows of Harvard College or its designee.

C. Changes to Policy. In addition to the right to make changes specifically provided elsewhere in this policy, the University reserves the right to amend or modify any of the terms of this policy as it may determine from time to time. Any such modification or amendment shall become effective upon adoption by the President and Fellows of Harvard College or as of such other time as the President and Fellows of Harvard College shall specify.

SECTION VII. MISCELLANEOUS

A. Implementing Procedures and Documentation. The Office of Technology Development (OTD) shall have responsibility for developing procedures and documentation as necessary for implementing this policy. Implementation procedures as recommended by OTD shall be subject to the approval of the Committee on Intellectual Property.

B. Further Assurances of Covered Persons. By making use of Harvard facilities and/or by participating in University-administered research programs and/or activities of the University that are subject to agreements with third parties, persons covered by this policy agree to assist and cooperate with the University in those actions reasonably undertaken by the University pursuant to this policy. All expenses related to providing assistance and cooperation shall be the responsibility of Harvard.

C. Applicability of New Policy Provisions. For the avoidance of doubt, except as otherwise specifically provided, it is not the intention of a policy revision or revisions to apply to Inventions, Copyrights, Computer Software and/or Unpatented Materials made or developed prior to the effective date of the revision or revisions if the revision or revisions would not have applied previously.