

Claremont Graduate University

Statement of Policy on Inventions, Patents, and Copyrights

Purpose and Principles

This Policy reflects the following goals:

- To create a university environment that encourages the generation of new knowledge by faculty, staff, and students.
- To facilitate the broad transfer of useful inventions and writings to society.
- To motivate the development and dissemination of intellectual property by providing appropriate financial rewards to creators and the university, and administrative assistance to creators.
- To ensure that the financial return from the development of intellectual property does not distort decisions and operations of the university in a manner contrary to the mission of the university.

This Policy is based upon the following principles relating the university to society:

- The mission of the University remains the generation and dissemination of knowledge.
- Intellectual property will be generated within the University, and there exists an obligation to disseminate it. An interface is needed if better technology transfer is to be achieved, and the university can provide mechanisms for that function.

This Policy is based upon the following principles relating faculty, staff, and students to the University:

- Intellectual property is created by individuals, or by groups of individuals, who are entitled to choose the course of disclosure; academic freedom of individuals is a higher priority than possible financial rewards.
- There exists an historical tradition allowing authors to retain ownership of intellectual property rights from textbooks and works of art.
- The University is the support of the whole campus community, and is thereby entitled to share in financial rewards.
- There should be incentives for all parties to pursue financial rewards together, consistent with the expressed goals of this Policy. The distribution of these rewards should reflect, insofar as possible, the creative contributions of the creator, and the resources contributed by and risks assumed by both the creator and the University in developing intellectual property.
- Since it is frequently difficult to assess risks, resources, and potential rewards meaningfully, negotiated agreements are to be encouraged whenever possible.

Policy Statement

Introduction

This Policy encourages the notion that ideas or creative works produced at Claremont Graduate University should be used for the greatest possible public benefit. This would normally mean the widest possible dissemination and use of such ideas or materials. Thus, every reasonable incentive should be provided for the dissemination into use of ideas, and the production and introduction into use of creative works or educational materials generated within the University community. While this Policy places benefit to the public before financial gain, it recognizes that it is also appropriate and desirable for the University and individual inventors or authors to benefit financially from the sale of products based on their inventions or other creative works. In deciding how to proceed in regard to a particular invention or creative work, the University will consider the benefits and consequences for the public and the University, as well as the individual inventors or authors.

This Policy seeks to protect the traditional rights of scholars with respect to the products of their intellectual endeavors. For example, this Policy does not interfere with the right of a scholar to decide to publish a book or an article and, if so, when and under what circumstances. With respect to works in which the University takes ownership or has any form of control, the person(s) who created the intellectual property shall be consulted in the determination of how it is to be made public, developed, modified, and/or commercialized.

When University support makes the enterprise possible or when it provides extra or special support, either with money, facilities, equipment, or staff, for the development of ideas or the production of works, it is reasonable for the University to participate in the fruits of the enterprise and/or to be reimbursed for the University's extra or special costs, if such ideas or works are introduced commercially.

A goal of this Policy is to ensure that the privacy rights of staff, students, and faculty are protected. For example, the names, voices, or images of identifiable faculty, students, or staff should be used in works to which this Policy applies only with the consent of the individuals involved and with the approval of a responsible Dean or other independent University official.

This Policy is designed to protect the interests of the University and its members in the use of the Claremont Graduate University names and insignias. The University has a responsibility to ensure that the use of its name 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.

The following general Policy is applicable to all members of Claremont Graduate University ("the University"), including students, in connection with their University work.

Inventions and Patents

1. A member of the University is expected to notify and to disclose to the University in a manner stipulated by the Office of the Vice Provost for Research ("the Vice Provost") any discovery or invention ("Inventions") the individual has made and has reason to believe might be useful, patentable, or otherwise protectable, including potentially useful materials, devices, and certain software, even if not patentable. If a member of the University believes that confidentiality of the disclosure is necessary, then the individual should negotiate the terms of the disclosure with the Vice Provost for Research.

An individual may elect to pursue the patenting and/or commercial introduction of potential Inventions without assistance from the University.¹ The University must be notified of such election and the individual's plans must be briefly described in writing at the time of disclosure. The inventor then shall have the right to pursue the patenting or commercial introduction of the Invention, subject to the diligent prosecution of the same. An individual who obtains a patent or introduces an Invention into public use without assistance from the University, and without substantial University involvement as described in Section 7 below, shall be entitled to all royalties or other income resulting there from. It is expected that in pursuing the introduction of an Invention into public use, individuals will make arrangements that best serve the public interest, and the Vice Provost for Research will be available to advise individuals on this question.

2. If a member of the University elects not to pursue or fails to pursue a patent and/or the introduction of an Invention into use, the University has the right to determine whether title shall vest in the University. If title is to vest in the University, the University shall have the right to evaluate and seek patent or other protection of the Invention, and to undertake efforts to introduce the Invention into use. The individual is then expected to cooperate in every necessary way (but at no expense to the individual) with the University including assigning to the University any ownership rights the individual may have in order to permit the University to evaluate the Invention, to seek a patent, and/or otherwise to introduce the Invention into use. Royalties or other income resulting from the Invention will be shared between the inventor and the University in accordance with the University's policies in Appendix A or otherwise by mutual agreement of the inventor and the University.

3. Notwithstanding paragraphs 1 and 2, whenever research or a related activity is subject to an agreement between an external sponsor and the University that contains restrictions as to disposition of Inventions, any such Inventions shall be handled in accordance with such agreement. As at present, all participants in externally sponsored research will continue to be required to accept the conditions in the agreement between the University and the sponsor before being permitted to participate in the sponsored research. In

negotiating with sponsors, project directors and other representatives of the University should strive to advance and protect the public interest as well as to obtain the greatest latitude and rights for the individual inventor and the University consistent with the public interest and this Policy.

Copyright

4. Except as qualified below, a member of the University is entitled to the sole and exclusive ownership of copyrights, royalties, and other income derived from his or her works, including (but not limited to) instructional materials, course syllabi, case studies, software, scholarly writings, books, photographs, films, cassettes, musical compositions, paintings, sculptures, software, works of art, and/or other materials. It is expected that when entering into agreements for the publication and distribution of copyrighted materials individuals will make arrangements that best serve the public interest.

5. Notwithstanding paragraph 4, whenever teaching, research, or a related activity is subject to an agreement between a sponsor and the University that contains restrictions concerning copyright or the use of copyrighted materials, all materials shall be handled in accordance with such agreement. In negotiating with sponsors, project directors and the University should strive to protect and advance the public interest as well as to obtain the greatest latitude and rights for the individual author and the University consistent with the public interest and this Policy.

6. Notwithstanding paragraph 4, whenever a copyrightable work is created by a member of the non-teaching staff as part of the individual's University responsibilities, the work shall be treated as a work-for-hire under the terms of the Copyright Act of 1976, and ownership will ordinarily be retained by the University. The University presumes that faculty and students are not hired or engaged to create any particular copyrightable work, unless otherwise negotiated for a specific work and the individual(s) and the University mutually agree in writing.

General Provisions (applicable to Inventions, Patents, and Copyrights)

7. In circumstances in which there is substantial University involvement in the creation of an intellectual product, the foregoing provisions concerning rights to obtain a patent or copyright or the rights to royalties or other income, or both, may be varied in favor of the University by explicit agreement between the creator(s) and the University. These circumstances include:

- (a) substantial University financial, staff or other assistance²;
- (b) extensive use of special or rare University holdings²;

(c) significant use of voice or image of faculty, students, or staff in a product, or substantial creative contribution by staff or students³ to the preparation of the product; or

(d) use of the name or insignia of the University or any of its units (other than for purposes of identification of individual faculty members) to identify or to promote the distribution of a product, or other identification or promotion that implies the approval or endorsement by the University or one of its units.

8. The Provost shall make a determination of the University's involvement in the creation of an intellectual product. If the Provost determines that any of the circumstances described in Section 7 apply, the individual creator(s) shall enter into an explicit agreement with the University.

(a) The Vice Provost for Research normally negotiates the agreement with the creator(s) on behalf of the University. The Vice Provost for Research shall report such agreements to the Provost and the President.

(b) Any such agreement should protect the appropriate ownership rights of the creator(s) and establish the University's share of any royalties or other income derived from the product. For Inventions or copyrightable works to which the University has taken title, royalties or other income shall be allocated in accordance with the University's policies in Appendix A or otherwise by mutual agreement between the creator(s) and the University. In the case of copyrightable products that do not bear Claremont Graduate University's names or insignias in the title, the creator(s) shall normally retain ownership.

In cases where there is no external sponsorship and a determination of no substantial University involvement in the creation of a work, an individual creator(s) may request from the Provost a written waiver of the University's rights and/or claims in the work.

9. In the case of sponsored works, the agreement with the sponsor shall provide either that the sponsor reimburse the University for reasonable expenses and/or that the University shall have the right to recover its reasonable expenses, including charges for special equipment used and the cost of obtaining patent protection out of royalty income, unless the University, in exceptional cases, specifically agrees in advance to waive a portion or all of such expenses for reasons of public policy.

10. Inventors and authors who have derived substantial income from their Inventions or works may see fit to make a gift to the University, in some cases in recognition of the contribution made by the availability of University facilities. It is hoped that this practice will become routine, but the matter is left to the judgment and good will of individual inventors and authors, without any expectation on the University's part.

11. The Vice Provost for Research shall have the responsibility for interpreting these policies, resolving disputes concerning the interpretation and application of these

policies, and recommending changes from time to time as experience suggests the desirability of such changes. If any dispute arises under this Policy, the matter should first be submitted to the Vice Provost for Research. Inventors or creators may then submit appeals to the Provost regarding the University's handling of Inventions, Patents, or Copyrights under this Policy. In the case no agreement is reached, the parties should consider alternative means of dispute resolution before initiating any legal proceeding.

Footnotes

¹ The individual may elect to propose to the Vice Provost for Research that the patenting and/or commercial introduction of the Invention be pursued by the University.

² The references in Paragraph 7(a) to "substantial University financial, staff, or other assistance" and in Paragraph 7(b) to "special or rare University holdings " mean the use of University funds, facilities, equipment, or other resources significantly in excess of the norm for educational and research purposes in the department, unit, or school in which the creator holds his or her primary appointment. The University does not regard the provision of academic year salary, summer salary, additional compensation for teaching, office space, usual library resources, usual facilities and office staff, or personal computers as constituting "substantial University financial, staff, or other assistance" or "special or rare University holdings," unless such resources were made available specifically to support the development of certain materials to be acquired by the University as evidenced by a written agreement between the individual(s) and the University.

³ The reference in Paragraph 7(c) to "substantial creative contribution by staff or students" means providing original ideas or new techniques that are essential to the creation of the product or significantly improve its value. For example, devising a new way to test one of the major hypotheses in a study would normally count as such a contribution, but providing ordinary research assistance or conducting standard data analysis would not.

Sources: This Policy is adapted from the intellectual property policies at Carnegie Mellon University, Harvard University, and other organizations.

This Policy is effective on the members of Claremont Graduate University upon adoption by both the CGU Faculty and the Board of Trustees.

Adopted by the Faculty of Claremont Graduate University on September 23, 2002.

Adopted by the Board of Trustees of Claremont Graduate University on October 18, 2002.

APPENDIX A

CLAREMONT GRADUATE UNIVERSITY ROYALTY SHARING POLICY FOR INTELLECTUAL PROPERTY¹

In the absence of other agreements, the table set forth below shall govern the division of all Net Income (gross royalties and other income minus administrative, licensing, legal, and other related expenses) resulting from Inventions or copyrightable works to which the University has elected to take title under the Statement of Policy on Inventions, Patents, and Copyrights:

	<u>Cumulative Amounts Received</u>
Creator(s)	60 %
Creator(s)' Unit (The creator(s) may direct the use of half of the Unit's share so long as he/she/they remain at CGU.)	40 %
Total	100%

Explanatory notes:

1. Definition of "Creator" and "Unit". As used in this appendix, "Creator" means (a) for a patentable work, the legal inventor(s) of the work under the U.S. patent laws; and (b) for a copyrightable work or an unpatentable Invention, the person(s) who have made substantial creative or authorship contributions. Persons whose work product is owned by the University as work-for-hire under the Copyright Law generally are not entitled to royalties under this Policy, but may be given a share of royalties if the University determines that they have made an unusually significant creative contribution to the work. The Creator's "Unit" in this appendix refers to the Claremont Graduate University department, school, or independent unit where the Creator primarily developed the work product.

2. Definition of Royalties and Other Income. The determination of what constitutes "royalties" and "other income" shall be based upon generally accepted accounting principles. For example, equipment or funding for support of research received by the University shall not constitute "royalties" or "other income" under this Policy.

3. Recovery of Institutional Development Costs. Where it is anticipated that application of the formula set forth above would not result in the recovery of

¹ Predicated on adherence to the decentralized budget model.

development costs advanced by the University or Unit, the Creator(s)' share may be reduced, and the Unit's share may be increased, to assure reimbursement of such costs.

4. Use of the Unit's Share; Capitalization of Income. The Unit's share will be used to support its technology transfer efforts, research (including construction or renovation of laboratories or other research facilities), and/or innovative teaching programs. In cases of large sums of income, Units are encouraged to consider capitalizing their shares to create an endowment fund for support of the Unit.

5. Allocation and Distribution of Income.

(a) *Distribution of Unit Share.* Upon approval of the Vice Provost for Research, the distribution of the Unit's share may be altered to fit its particular organizational structure or a particular Invention/creation situation (e.g., when two or more units are involved).

(b) *Allocation Among Creator(s).* For Inventions, the Creator(s)' share will normally be divided equally among all creators unless they agree otherwise. For copyrightable works, the Vice Provost for Research shall allocate the Creators' share among the individuals, having due regard for the value and substantiality of their respective contributions. If the Creators disagree regarding the allocation among them, any one of the Creators may request that the Provost work with the Creators to negotiate a mutually agreeable allocation. If that fails, any one of the Creators may appeal to the President. Any such request or appeal shall only apply to as yet undistributed income and future income.

(c) *Retention of Creator(s)' Share by University.* Any of the Creator(s) may elect to have his/her/their personal share(s) retained by the University, e.g., to support his/her/their research.

(d) *Payments After Creator(s) Leave University.* The Creator(s)' share will continue even though the individual(s) may have left the University.

(e) *Disposition of Share Allocated to the Creator(s)' Unit if the Creator(s) Relocate.* If a portion of the Unit's share under the Creator(s)' control is allocated to the Creator(s)' laboratory or similar facility, that portion will normally follow the Creator if he/she transfers to another part of the University. However, it will not follow the Creator if he/she leaves the University.

(f) *Disposition of Unit's Share if the Creator(s) Relocate.* The Unit's share not allocated to the Creator(s) use will ordinarily continue to be paid to the Unit where the creation was made even if the Creator has moved to another Unit or to another institution. However, the Vice Provost for Research may recommend alternate treatment if it is warranted.

APPENDIX B

CLAREMONT GRADUATE UNIVERSITY FORMS AND AGREEMENTS RELATING TO INVENTIONS, PATENTS, AND COPYRIGHTS

(To be developed)

1. Disclosure of invention or discovery
2. Election for CGU assistance in patenting
3. Patents and copyrights in sponsored research agreements
4. Copyright transfer agreements with publishers and others
5. Waiver request and determination of non-substantial University involvement
6. Sample agreements for work products created with substantial University involvement
7. Other forms and agreements