

INTELLECTUAL PROPERTY

POLICY SUMMARY

This policy implements and supplements Arizona Board of Regents (“ABOR”) Policy 6-908, which governs Intellectual Property developed by employees, Students, and others connected to or affiliated with Northern Arizona University. This policy provides additional detail and guidance regarding the creation, ownership, protection, use, disposition, and transfer of Intellectual Property at the University. Additionally, procedures for the disclosure of, dispute resolution, and the distribution of revenue generated by Intellectual Property are provided. This policy sets forth the principles and procedures through which the University balances the rights of Creators, the interests of the public, and its obligations under federal law in the management of Intellectual Property created at the University.

REASON FOR THIS POLICY

Prudent and effective administration of Intellectual Property in accordance with applicable laws, regulations, and policies requires clear guidance that is properly articulated and consistently enforced.

ENTITIES AFFECTED BY THIS POLICY

- All colleges, schools, departments, centers, and institutes
- Human Resources
- NAU Innovations
- Office of the Vice President for Research

WHO SHOULD KNOW THIS POLICY

- All academic leaders and officials
- All faculty, researchers, graduate assistants, and postdoctoral scholars
- All visiting faculty, scholars, researchers, and scientists
- All Students
- Chief Human Resources Officer
- IP Official
- Staff who may become involved in the creation of Intellectual Property
- The President

DEFINITIONS

ABOR-Owned Intellectual Property: Intellectual Property owned by ABOR as described in Section A of ABOR Policy 6-908 and Section II of this policy.

Course and Instructional Materials: resources in any form, including but not limited to, video lectures, PowerPoint or other presentation or lecture slides, and any other teaching tools or materials (e.g., learning management system course shells, assignments, reading lists, exams) created by an instructor in their course and scope of employment with the University that are provided to Students. Course and Instructional Materials are distinct from, and do not include, lecture and instructional notes.

Creator: an inventor as defined under U.S. patent law, an author as defined under U.S. copyright law, or other creator as defined or in accordance with U.S. Intellectual Property law.

Intellectual Property: all works, work product, designs, developments, discoveries, improvements, inventions, composition of matter, machines, manufacture, materials, methods, processes, diagrams, documentation, reports, evaluations, creations, expressions, algorithms, computer programs, applications, specifications, upgrades, revisions, modifications, and related written or otherwise reproducible materials, whether patentable, copyrightable or not, and all forms of legally recognized Intellectual Property rights, including copyrights, patents, trade secrets, trademarks, service marks, logos, other identifiers, mask works, plant variety protection, and tangible research property, together with any associated goodwill, supporting technology, or know-how.

IP Official: the individual designated by the President to manage the ABOR-Owned Intellectual Property under the University's administration, or if the University contracts with outside entity for Intellectual Property management, the individual designated by the President to serve as the University's liaison to that entity.

Net Income: gross revenues resulting from any given ABOR-Owned Intellectual Property less:

- i. A University administrative fee not to exceed fifteen percent (15%), unless a higher fee is agreed to by the Creator(s) of the ABOR-Owned Intellectual Property; and
- ii. All unreimbursed costs incurred by the University (or its designated Intellectual Property manager) in protecting, licensing, maintaining, and litigating rights in the ABOR-Owned Intellectual Property and any costs incurred during the process of commercializing the ABOR-Owned Intellectual Property.

Scholarly Works: works in which ABOR does not claim copyright ownership and that are assigned to their Creators as described in ABOR Policy 6-908 Section A(2) and Section II(B) of this policy. ABOR does retain certain rights to use Scholarly Works for non-commercial purposes as outlined in ABOR Policy 6-908, Section A(2)(e) and Section II(B)(4) of this policy.

Student: for purposes of this policy, a person who was or is registered or enrolled in one or more classes at the University.

Student-Created Works: Intellectual Property created by a Student in the individual's capacity as a Student and not in the individual's capacity as a University Student employee, as described in ABOR Policy 6-908 Section A(3) and Section II(D) of this policy.

POLICY

Section I. – General

A. Background

ABOR Policy 6-908, to which the University adheres, establishes the rules that govern Intellectual Property within the Arizona university system. As a supplement of ABOR 6-908, the University has implemented this policy to support its administration of Intellectual Property created at the University or using significant University resources. The University's obligation is to manage or administer this ABOR-Owned Intellectual Property in the best interests of the State of Arizona.

B. Philosophy

As an institution of higher education dedicated to teaching, research, and the extension of knowledge, the University recognizes its responsibility to produce and disseminate knowledge. Inherent in this responsibility is the need to encourage the production of Scholarly Works and the development of Intellectual Property, which may have potential commercial value. These activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide additional educational opportunities for Students, and promote the public welfare.

C. Scope and Applicability

ABOR 6-908 and this policy apply to: i) all faculty, researchers, staff, administrators, Student employees, graduate assistants, postdoctoral scholars, and all others paid by the University; ii) all unpaid research assistants and persons with adjunct, emeritus, or other "no salary" appointments; iii) all paid or unpaid visiting faculty, scholars, researchers, artists, engineers, or other similar professionals who, as a condition of their relationship with the University, are contractually obligated to comply with ABOR and University Intellectual Property policies; and iv) any other person developing Intellectual Property with the significant use of ABOR or University resources. These persons are collectively referred to hereinafter as "covered persons." The University's trademarks, logos, and other indicia or identifiers are not subject to or covered by this policy.

D. Terminology

For purposes of this policy:

1. "Course and scope of employment" means any activities that an employee is authorized or required to perform for or on behalf of the University including, but not limited to, all expectations, duties, obligations, or responsibilities listed or described in an employee's job description, in other applicable written or oral statements, or that is within an employee's field of employment (e.g., research or instruction). Course and scope of employment also includes any activities assigned to an employee that involve the creation of Intellectual Property. Except as set forth in ABOR Policy 6-908, Section A(2), copyrightable works created by an employee in the employee's course and scope of employment are works made for hire under U.S. copyright law, with ownership vested in ABOR.
2. "Significant use of ABOR or University resources" includes, but is not limited to, use of the University's research funding; funding allocated for asynchronous or distance learning programs; telecommunication and data services beyond ordinary use; computing resources; instructional design or media production services; and access to and use of research equipment and facilities or production facilities. ABOR and the University do not construe employee use of office space, library resources, personal workstations, or personal computers as constituting significant use of ABOR or University resources. ABOR and the University do not construe the use of instructional materials, instructional labs, and instructional facilities by non-employee Students as a condition of enrollment and fulfillment of degree requirements at the University as a significant use of ABOR or University resources. The significant use of ABOR or University resources does not include use of resources that are available free of charge to the public or when any applicable use fee (excluding tuition and class fees) has been paid. The ordinary use of the University's libraries, employee offices, or work computers do not constitute the significant use of ABOR or University resources for the purpose of vesting the ownership of Intellectual Property with ABOR. It is the responsibility of the IP Official to determine what constitutes significant use of ABOR or University resources for the purpose of determining the ownership of Intellectual Property.
3. "Substantial interest" has the meaning ascribed to it in Arizona Revised Statutes § 38-502.
4. "Tangible research property" means all tangible research tools, prototypes, and records and similar items used or produced in the course of University research projects, and all Intellectual Property rights therein. Examples of tangible research property include, but are not limited to:
 - Hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins
 - Plants protected by the Plant Variety Protection Act
 - Non-patented drugs protected by the Orphan Drug Act
 - Prototype instrumentation or devices
 - Research records and documentation in any format or media of expression
5. The terms "Works," "Works of Authorship," and "Creative Works" have the meanings ascribed to them in U.S. copyright law.

E. Construction

For purposes of this policy, the terms "will" and "must" are each used to impose a mandatory duty or affirmative obligation on the appropriate party or entity. In the event of a conflict or inconsistency between this policy and

ABOR Policies 3-901 and 6-908 or any applicable law or regulation, the law, regulation, or ABOR policy will prevail. In any cases where any provision of this policy may be interpreted to have both a valid and invalid meaning or construction, the valid meaning or construction will prevail.

Section II. – Ownership

A. ABOR-Owned Intellectual Property

1. ABOR owns all Intellectual Property in each of the following categories:

a. Intellectual Property created by an employee in the Course and Scope of their employment. This category includes, but is not limited to:

- i. Designs, developments, discoveries, improvements, inventions, methods, processes, machines, articles of manufacture, compositions of matter, or other ideas that are potentially patentable subject matter under past, present, or future versions of the U.S. Patent Act or the patent laws of any foreign jurisdiction worldwide, even if incorporated into a Scholarly Work;
- ii. Works of Authorship and Creative Works created as University deliverables under a sponsorship or funding agreement between the University and a third-party;
- iii. Computer software created by employees in connection with administrative, research, or other educational activities supported by funds administered by ABOR or the University;
- iv. Works of Authorship and Creative Works commissioned by ABOR or the University or created as part of an administrative assignment to, for, or on behalf of ABOR or the University; and
- v. Course and Instructional Materials (see Sections II(C) and IV(C) below for additional information regarding the treatment of Course and Instructional Materials).

b. Intellectual Property created with significant use of ABOR or University resources. Examples of significant use of ABOR or University resources include, but are not limited to, the use of the following University assets:

- Research or other funds controlled by the University
- Funding allocated for asynchronous or distance learning programs
- University-paid time within the employment period
- Support staff assistance
- Telecommunication services and central computing resources
- Instructional design or media production services
- Research equipment and facilities
- Production facilities

2. All covered persons by virtue of i) their employment at the University; or ii) their significant use ABOR of University resources to create Intellectual Property, are required to assign—and hereby do assign—to ABOR all right, title, and interest in and to ABOR-Owned Intellectual Property.

- a. The Chief Human Resources Officer will ensure that all employees affirmatively assign all ABOR-Owned Intellectual Property they may create to ABOR and the University by including appropriate language to this effect in each employee's annual notice of appointment or by other suitable means.
- b. The dean (or the equivalent official) of each college, school, center, institute or other hosting unit will ensure that in all cases where an individual who is not a paid University employee (such as an unpaid visiting researcher or faculty member), but who may reasonably be anticipated to potentially create ABOR-Owned Intellectual Property while spending time at the University,

enters into a written Intellectual Property agreement with the University prior to their arrival that affirmatively assigns all ABOR-Owned Intellectual Property the individual may create to ABOR and the University. The IP Official will approve and execute all such visitor affirmative assignment of ABOR-Owned Intellectual Property agreements on the University's behalf.

3. ABOR ownership of Intellectual Property may be altered by a) the exceptions described in ABOR Policy 6-908 and this policy; b) applicable law or regulation; or c) the terms of a written agreement signed by the IP Official, developed in accordance with applicable University processes and requirements.

B. Scholarly Works

1. Scholarly Works include all works created by faculty members (as the term "faculty" is defined in ABOR Policy 6-201) at their own direction and without significant use of ABOR or University resources. As an exception to ownership by ABOR of all ABOR-Owned Intellectual Property as set forth in ABOR Policy 6-908, Section A(1) and Section II(A) of this policy, ABOR does not claim copyright ownership of Scholarly Works. Ownership of Intellectual Property rights related to Scholarly Works may be subject to applicable licensing or contractual agreements, however, and are subject to the ABOR and University rights described in Sections II(B)(4) and II(B)(5) below. The following is a non-exhaustive list of Scholarly Works provided for illustrative purposes only:
 - Scholarly or research publications or journal articles
 - Textbooks
 - Lecture or instructional notes (which are distinct from Course and Instructional Materials)
 - Books, poems, or other literary works
 - Play or movie scripts or theatrical productions
 - Works of music (including song lyrics) and art
2. As outlined in Section II(A)(1)(a) above, Scholarly Works do not include:
 - a. The designs, developments, discoveries, improvements, inventions, methods, processes, machines, articles of manufacture, compositions of matter, or other ideas that are potentially patentable subject matter under past, present, or future versions of the U.S. Patent Act or the patent laws of any foreign jurisdiction worldwide, even if incorporated into a Scholarly Work;
 - b. Works of Authorship and Creative Works created as University deliverables under a sponsorship or funding agreement between the University and a third-party;
 - c. Computer software created in connection with administrative, research, or other educational activities supported by funds administered by ABOR or the University;
 - d. Works of Authorship and Creative Works commissioned by ABOR or the University or created as part of an administrative assignment to, for, or on behalf of ABOR or the University; or
 - e. Course and Instructional Materials.
3. To the extent that applicable law results in ABOR ownership of a Scholarly Work, ABOR may assign those rights to the Creator(s) of the Scholarly Work, subject to the terms of applicable policy and a written assignment.
4. For all Scholarly Works assigned to their Creator(s), ABOR and the University will retain a paid-up royalty-free, worldwide, non-exclusive license, for the full term of the Intellectual Property rights, to use, reproduce, publish, modify, distribute, publicly perform, and publicly display the Scholarly Work for education, research in furtherance of the University's public service mission, and any other non-commercial purpose, including the right to sublicense to third parties for reasons that are consistent with these purposes.
5. As requested by ABOR or the University, or as required by applicable law, policy, or written grant or other agreement, Creators of Scholarly Works must provide a copy of their Scholarly Works at no cost to enable ABOR or the University a) to exercise their rights as set forth in this policy; or b) so that they

may comply with obligations to sponsors or other third parties. This expressly includes the right for ABOR or the University to deposit the Scholarly Works in any board, university, or third-party repositories.

C. Course and Instructional Materials

1. As outlined in ABOR Policy 6-908, Section A(2)(C)(5) and Section II(A)(1)(a)(v) of this policy, Course and Instructional Materials constitute ABOR-Owned Intellectual Property. The University will retain and use Course and Instructional Materials created by its instructors in furtherance of its teaching mission, both during and after an instructor's employment at the University. As the University deems appropriate, this may include, but is not limited to, providing Course and Instructional Materials created by one instructor to other instructors teaching the same, similar, or related courses. (See Section II(C)(3) below for related information about clarifying the ownership of Scholarly Works that an instructor may wish to include in the Course and Instructional Materials they produce for the University.)
2. In recognition of the academic tradition of open collaboration, the University's general intent (with rare exceptions) is to exercise its discretion to administer ABOR-Owned Intellectual Property by allowing Creators to share the Course and Instructional Materials they produce amongst their colleagues and peers at the University and other institutions and to allow Creators to use these materials after they leave the University. Accordingly, Creators of Course and Instructional Materials may request from the IP Official a paid-up, royalty-free, worldwide, non-exclusive, non-transferable right, for the full term of the copyright, to use, modify, copy, distribute, display, update, revise, create derivative works, and any other similar use for their own personal benefit, or for the benefit of their then-current employer, subject to the following conditions:
 - a. All use of Course and Instructional Materials must be for non-commercial purposes in academia only and may not impact any commercial use by ABOR or the University; and
 - b. Any modifications, copies, updates, revisions, or derivative materials created from Course and Instructional Material or its use will be held under the same conditions as this license.
3. Creators who wish to include work product that may constitute Scholarly Works in the Course and Instructional Materials they may use to teach a course are encouraged to engage with the IP Official prior to providing the material to Students so that the material's Intellectual Property classification and ownership may be clearly established. When a Creator provides Scholarly Works to Students as part of teaching a course, the Scholarly Work may also be classified as Course and Instructional Materials. In such cases, the Creator will own the Scholarly Work, and concurrently, the Scholarly Work will constitute a part of the Course and Instructional Materials used to teach the course that the University may then use in accordance with ABOR Policy 6-908 and this policy.
4. In all cases and whether or not still employed at the University, upon request, the Creator must supply the University with suitable copies (at the University's expense) of all Course and Instructional Material in which ABOR and the University have a license. A Creator's obligation to supply these copies will continue for three (3) years following the Creator's separation from the University.

D. Student-Created Works

1. ABOR does not claim ownership or other rights in Intellectual Property created by Students (*e.g.*, as the result of class assignments or course work) except for the following, which do constitute ABOR-Owned Intellectual Property:
 - a. Works created by a Student within the Student's course and scope of employment by the University;
 - b. Works created with significant use of ABOR or University resources as described in this policy, provided however, that ABOR and the University will not claim copyright ownership in Student dissertations or capstone projects (unless sponsored by a University laboratory) intended to fulfill degree requirements at the University; and

- c. Works created by a Student as part of a project sponsored or funded by a third party, where the sponsorship or funding agreement provides for University or sponsor ownership, rights, or options in the Intellectual Property.
2. While Students own the copyrights for their theses, dissertations, and other publications, the ownership of Intellectual Property described in these publications will be determined by the IP Official in accordance with applicable policy. Additionally, the University may request that a Student grant certain rights to ABOR and the University as a condition of access to certain University projects, research, or programs. Students are also required to assign—and hereby do assign—to ABOR and the University a copyright license to their thesis or dissertation publications for potential use in furtherance of the purposes described in Section II(B)(4).

E. Visiting Creators

As covered persons, visiting faculty, researchers, scientists, artists, engineers, and all similar persons working temporarily at the University are required, and/or their employers are required as may be appropriate, as a condition of access to the University's resources and/or ongoing projects, to acknowledge by written agreement that ABOR will own all Intellectual Property created by such persons within the scope of their work at the University or with significant use of University resources, and that they (and their employers as may be appropriate) will abide by ABOR Policy 6-908 and this policy as it concerns the ownership or other rights to ABOR-Owned Intellectual Property. On a case-by-case basis, the IP Official may, with the concurrence of the Vice President for Research, grant limited written exceptions to this requirement when they determine that doing so is in the University's best interests.

F. Sponsored Projects

The IP Official will initially classify all Intellectual Property resulting from work supported partially or fully by an external sponsor as ABOR-Owned Intellectual Property. The further disposition of such Intellectual Property will then be subject to and guided by any applicable project-related contractual terms or conditions, and the IP Official will reclassify the Intellectual Property accordingly. In the absence of any such contractual requirements, the Intellectual Property's initial classification as ABOR-Owned Intellectual Property will remain.

G. Outside Consulting Activity

1. Employees may consult for outside organizations pursuant to applicable ABOR or University policies, including conflict of interest and conflict of commitment policies. Employees may not, however, consult for outside organizations if doing so would require assignment or transfer of any rights or ownership of any ABOR-Owned Intellectual Property to any third party. Employees may not use ABOR or University-owned materials, equipment, or facilities for such consultation absent a Facility Use Agreement.
2. Intellectual Property created as a result of outside consulting must be disclosed to the University in accordance with the requirements outlined in Section III. The IP Official will determine whether this Intellectual Property potentially constitutes ABOR-Owned Intellectual Property.
3. An employee may not transfer or use, by assignment, license or otherwise, ABOR-Owned Intellectual Property through a consulting or other agreement or arrangement with a third party unless authorized in advance in writing by the IP Official acting with the prior approval of the Vice President for Research. Any purported transfer of ABOR-Owned Intellectual Property that occurs in violation of this subsection will be void and unenforceable.
4. ABOR and the University will not claim ownership or other rights to Intellectual Property that is the product of employee external consulting work, provided that the employee's consulting:
 - a. Is authorized in advance in writing by the employee's dean or comparable official and the IP Official;
 - b. Is conducted in accordance with applicable University consulting policies that have received prior written approval by the IP Official as according with ABOR and University conflict of interest and conflict of commitment policies;

- c. Falls within the scope of the documented consulting activity for which the employee sought and received the University's advance written authorization to engage in;
- d. Does not overlap or conflict with any University effort or contractual obligation, including but not limited to, a sponsored project in which the employee is involved or may have access; and
- e. The employee's duties, obligations, and responsibilities to the University do not conflict with the employee's duties, obligations, or responsibilities to the external entity.
- f. The employee has obtained permission to use any ABOR or University-owned materials, equipment, or facilities through a properly executed Facility Use Agreement.

H. Individual-Owned Intellectual Property

Absent advance written authorization by the IP Official (with notice given to the Vice President for Research), Intellectual Property owned by individuals must not be used in University efforts or activities. When permission is granted to employ individually owned Intellectual Property, such use must comply and be in accord with the requirements outlined in applicable ABOR and University conflict of interest and conflict of commitment policies.

I. Transfer of ABOR-Owned Intellectual Property Through Licensing or Assignment

Subject to applicable law (including the Bayh-Dole Act and its implementing regulations) ABOR may transfer rights in or title to ABOR-Owned Intellectual Property through written agreements. Transfer of ABOR-Owned Intellectual Property to persons employed by ABOR or the University is subject to the requirements of ABOR Policy 3-901, Section B. Any agreement to assign, license, or otherwise transfer any rights in ABOR-Owned Intellectual Property will include the elements listed below, provided however, that the IP Official may make modifications or exceptions to these requirements for the transfer of ABOR-Owned Intellectual Property if justified by the best interests of ABOR and the University.

- 1. In an exclusive license, an obligation to make good faith attempts to commercialize the ABOR-Owned Intellectual Property;
- 2. The right of the University to use the ABOR-Owned Intellectual Property for research, education, and in furtherance of the University's public service mission; and
- 3. The right of the University to make public through publication or presentation the ABOR-Owned Intellectual Property (subject to reasonable limitations to protect trade secrets and other proprietary information of any sponsor and to preserve patentability and other similar protections).

J. Assignment of Rights or Ownership to Project Sponsors

The University may accept a grant from or enter into a contract with a project sponsor that stipulates that any resulting Intellectual Property be automatically assigned to the sponsor or contractee, or that gives the sponsor or contractee an exclusive option for a limited period of time to negotiate an Intellectual Property license with the University, the terms and conditions of which must be consistent with applicable policy. A sponsor in which an employee has a significant financial interest may not sponsor the employee's laboratory and have assigned the Intellectual Property from the sponsored work in the sponsorship agreement.

Section III. – Disclosure, Protection, and Commercialization

A. Disclosure Requirements

- 1. As described in ABOR Policy 6-908 and this policy, all covered persons must promptly and fully disclose in writing to the University the creation of any Intellectual Property made by that person or resulting from work carried on under that person's direction, in which ABOR or a project sponsor may have or claim an interest, even if the Intellectual Property is incorporated into a Scholarly Work. Creators must use the means of disclosure established or provided by NAU Innovations, such as the [Inventor Portal](#), to submit disclosures. Each disclosure must consist of a full and complete description of the Intellectual Property,

must identify any sponsors or collaborations, and provide sufficient detail to enable determinations of ownership, how the Intellectual Property may be protected, and how it may be licensed or otherwise introduced into commerce.

2. Faculty members or other covered persons are not required to disclose their Scholarly Works created at their own direction and without significant use of ABOR or University resources unless requested to do so by the IP Official. In accordance with Section III(A)(1), however, Intellectual Property must be disclosed even if it is incorporated into a Scholarly Work. The IP Official is available to provide a determination in cases where questions exist about the proper classification of Intellectual Property.
3. Intellectual Property must be disclosed prior to any discussions or actions involving any type of commercialization activity or inquiry, prior to any non-confidential presentation or public release of the Intellectual Property, or as required by a sponsored project contract applicable to the Intellectual Property. Additionally, disclosure must occur whenever requested by the IP Official.
4. Principal investigators are responsible for notifying all persons who may be involved in creating or developing Intellectual Property in advance of their participation in a project when the terms of a sponsored project contract grants the sponsor the rights to inventions or other forms of Intellectual Property that may result from the sponsor-supported effort.
5. Individuals who disclose Intellectual Property are responsible for including all persons involved in creating or developing the Intellectual Property in the disclosure and for notifying each of the disclosure and all ensuing related events, especially those events related to further development or commercialization of the Intellectual Property (*i.e.*, its protection and any subsequent licensing, transfer, or sale). Failure to inform all participants involved in developing the Intellectual Property may subject the individual who disclosed the Intellectual Property to personal liability.
6. Intellectual Property created as a result of outside consulting must be disclosed to the University if there is any potential that the Intellectual Property may constitute ABOR-Owned Intellectual Property.

B. Classification, Protection, and Commercialization

Following the submission of all information reasonably required, the IP Official will determine the initial classification of the disclosed Intellectual Property developed at the University or using significant University resources as either ABOR-Owned, Scholarly Work, Student-Created Work, or otherwise as appropriate in accordance with applicable policy.

1. In cases of ABOR-Owned Intellectual Property:
 - a. Each Creator involved in developing the Intellectual Property must, at the direction of the IP Official, execute any and all documents necessary to assign ownership and/or secure protection of the Intellectual Property in all countries designated by the IP Official; and
 - b. After reviewing the commercialization potential, relevant third-party rights, other appropriate considerations, the University's obligations to the State of Arizona and the general public interest, and after consulting with the Creator(s), NAU Innovations will determine, in its sole discretion, whether a patent application or other means of Intellectual Property protection will be pursued.
2. In cases involving non-ABOR-Owned Intellectual Property the IP Official will, upon request by the Creator, provide a written declaration that ABOR and the University hold no ownership interest. Creators of such Intellectual Property may, upon mutually agreed terms and conditions, assign such Intellectual Property to ABOR for commercialization or other mutually beneficial purposes.
3. In cases involving Intellectual Property subject to a contract with a third party, The IP Official will administer the Intellectual Property with regard to all applicable legal obligation and legal protection and potential for commercialization in a manner consistent with the applicable contract, while making reasonable efforts to consult with and to keep the Creator(s) involved and informed.

4. In cases involving ABOR-Owned Intellectual Property determined not to merit or warrant commercialization or other exploitation efforts by the University, the Creator(s) may request that the IP Official release, assign, or license the Intellectual Property to the Creator(s), subject to retention by ABOR of certain rights and restrictions on further development of the Intellectual Property as outlined in ABOR Policy 6-908 and this policy.
5. At the direction of the IP Official, the University may patent, copyright, or otherwise gain legal protection for all ABOR-Owned Intellectual Property it manages in all countries designated by the IP Official. The University may commercialize ABOR-Owned Intellectual Property rights using its own resources, or it may enter into a contract with external entities, such as Intellectual Property management organizations, to undertake such activities on its behalf.
6. The IP Official is responsible for making reasonable attempts to inform Creators in a timely and ongoing manner as to the progress of protection and/or commercialization activities related to the ABOR-Owned Intellectual Property they disclose to the University.

Section IV. – Publication Rights, Responsibility to Protect, and Assignment of Limited Rights

A. Ability to Publish

Peer-reviewed publication of results is a major objective of academic research. The University does not intend for this policy to impede a covered person's ability to publish.

B. Responsibility to Protect Intellectual Property

1. Because premature public disclosure of a patentable invention prior to filing a patent application may preclude the availability of patent protection, Creators of ABOR-Owned Intellectual Property must appropriately delay publication as required by the terms of contracts or grants sponsoring or funding their work. Further, Creators must consider delaying public disclosure as necessary to prevent losing the ability to obtain patent protection. As used here, "public disclosure" includes, but is not limited to, any non-confidential written or oral release of information that describes the invention (e.g., at a scientific meeting, in a journal, or even in informal discussions with outside colleagues).
2. Such delay is intended to provide the IP Official with enough time to complete the internal evaluation process and the opportunity to appropriately protect any ABOR-Owned Intellectual Property prior to any public disclosure. In disclosing the creation of ABOR-Owned Intellectual Property to the University, Creators must provide the IP Official with sufficient detail, time, and notice to evaluate and determine whether to seek patent protection prior to any public disclosure of the ABOR-Owned Intellectual Property. The IP Official will make every effort to expedite the evaluation process as appropriate or beneficial to the Creator.

C. Assignment of Limited Rights

1. In furtherance of its academic and public service mission, the University's general intent (with rare exceptions) is to exercise its discretion to administer ABOR-Owned Intellectual Property by providing to the Creator(s) limited print publication or copyright ownership rights, as applicable, for certain types of ABOR-Owned Intellectual Property. Accordingly, upon receiving a written request from the Creator(s) of the types of Intellectual Property listed below, the IP Official will execute within a reasonable timeframe a written statement clarifying such rights:
 - a. Course and Instructional Materials; and
 - b. Rights in works commissioned by ABOR or the University or created as part of an administrative assignment to, for, or on behalf of ABOR or the University.
2. Creators may exercise the limited print publication and copyright rights granted under this subsection for non-commercial purposes in academia only. The Intellectual Property in question remains ABOR-Owned Intellectual Property and remains subject to superseding sponsor contractual rights, if any. The

IP Official will have the sole responsibility to determine when any sponsor rights will prevail and the meaning of “non-commercial purposes in academia only.”

D. Artistic Works

Upon receiving a written request from a covered person, the IP Official will execute within a reasonable timeframe a written statement of non-ownership of artistic works as Scholarly Works (except artistic works that are commissioned by ABOR or the University). For purposes of this subsection, “artistic works” include the following:

- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Section V. – Revenue

A. Revenue Sharing

1. The IP Official will manage the University’s ABOR-Owned Intellectual Property in the best interests of the State of Arizona, ABOR, and the University. This may include the generation of revenue, provided however, that there is no requirement to maximize that revenue for the benefit of individual Intellectual Property Creators.
2. If revenue is generated through licensing, assignment, or transfer of ABOR-Owned Intellectual Property, the Net Income derived by the University will be shared with the Creator(s) of the Intellectual Property in accordance with this policy. If there is more than one University Creator of the Intellectual Property, this percentage is divided equally among the Creators, unless the Creators collectively agree in writing to a different revenue sharing arrangement. In accordance with its administrative discretion, the University has determined, however, that Net Income derived from ABOR-Owned Intellectual Property under its administration will be shared equally between its Creator(s) and the University. Accordingly, after all unreimbursed costs incurred by the University or its agents in protecting, licensing, maintaining, and litigating ownership rights in the ABOR-Owned Intellectual Property are repaid, the University will retain up to fifteen percent (15%) of the incoming amount as an administrative fee. Of the remaining percentage—the Net Income—the University will distribute fifty percent (50%) to the Creator(s) and will retain fifty percent (50%).
3. ABOR Policy 6-908 mandates that an employee or Student who creates ABOR-Owned Intellectual Property receive a minimum of twenty-five percent (25%) of any Net Income received by the University for the ABOR-Owned Intellectual Property, unless otherwise agreed in writing. In accordance with this policy, however, Students who create ABOR-Owned Intellectual Property will be treated as employees for purposes of Intellectual Property revenue sharing.
4. If multiple covered persons are entitled to share in the distribution of revenue, the IP Official will release each covered person’s share concurrently. In situations where multiple qualifying covered persons are not to receive an equal share, the IP Official will not release the covered person distributions of Net Income until all qualifying Creators as appropriate have signed and provided the IP Official with a written agreement that unambiguously stipulates each Creator share. Such intra-Creator agreements must include all Creators who would hold rights to the Intellectual Property but for their duty to acknowledge ABOR’s ownership or to assign their rights to ABOR. If the affected Creators cannot agree in writing to a satisfactory Intellectual Property Net Income revenue split, the University will distribute the monies equally among the disclosed Creators.
5. Creators who comply with the Intellectual Property disclosure requirements outlined in this policy will be eligible to receive the Creator share of ABOR-Owned Intellectual Property Net Income as described

in Sections V(A)(2) and V(A)(3), unless countervailing terms are present in the covered person's employment contract or another applicable agreement with the University. The University will not construe Intellectual Property royalty-revenue sharing as wages or salary, but rather as separate income derived from ABOR-Owned Intellectual Property commercialization activities. Accrued Intellectual Property Creator revenue sharing rights will continue beyond the covered person's employment, enrollment, or other association with the University.

6. If a company in which an employee holds a substantial interest is given more favorable royalty or other financial terms than is usually granted in comparable cases in its Intellectual Property license with the University, the IP Official, in consultation with the Intellectual Property Committee, will determine whether that employee, who holds a substantial interest in the company licensing University technology developed by that employee, should receive a personal share of the licensing income or other consideration received by the University from that company in addition to that employee's equity or other financial interest in that company. If the University determines that the affected employee should not receive their personal share of University licensing income, then the share of licensing income that would otherwise be disbursed to the employee will be retained, administered, and distributed in accordance with this section. For purposes of this subsection, the interest owned by or otherwise committed to the employee at the time of the disclosure of the employee's relationship with the company will be the interest used in determining whether the employee has a substantial interest.

B. Managing Intellectual Property Income

In accordance with ABOR Policy 6-908, Sections (B)(2) and D(3)(b), all University Net Income derived from ABOR-Owned Intellectual Property administered by the University must be used exclusively to promote research and the development of Intellectual Property. The Vice President for Research will ensure that all such expenditures are used as required only for the promotion of or to support research, investigation, research fellowships, or other activities relevant to the development or generation of Intellectual Property. No less than annually, the Vice President for Research will provide the President and the Chief Financial Officer with a comprehensive report that documents these holdings and expenditures.

Section VI. – Administrative Responsibilities

A. Creator Responsibilities

As outlined in Section III, all covered persons must promptly and fully disclose in writing to the University all Intellectual Property, and all works, Works of Authorship, or Creative Works that may be eligible for copyright protection, made by that person or resulting from work carried on under that person's direction, in which ABOR may have an interest. Additionally:

1. Creators must cooperate fully with the University's technology transfer, protection, and commercialization activities relating to ABOR-Owned Intellectual Property. Specifically, the Creator will execute all documentation necessary for ABOR to establish, confirm, or perfect its ownership interest in ABOR-Owned Intellectual Property, including documentation necessary to assign ownership to ABOR for recordation or other purposes, and if necessary, to secure protection of ABOR-Owned Intellectual Property in countries designated by the IP Official. This includes cooperating fully with the University's applications for patent, trademark, or copyright legal protections as requested by the IP Official.
2. Creators must comply with all applicable laws and ABOR and University policies relating to conflicts of interest, including ABOR Policy 3-901.
3. Creators may not use the University's name, logos, trademarks, or other indicia or identifiers in any commercial context involving ABOR-Owned Intellectual Property without prior express written permission.

B. IP Official Responsibilities

1. The IP Official will administer all ABOR-Owned Intellectual Property in accordance with the requirements applicable law and ABOR and University policies.

2. The IP Official will review all agreements to assign, license, or otherwise transfer rights in ABOR-Owned Intellectual Property before such agreements are approved. It is the responsibility of the IP Official to ensure that all such agreements are approved in accordance with established University processes and are signed by a University official authorized to execute such agreements in accordance with the *Contract Signature Authority* policy.
3. The IP Official will review and approve as the President's designee all requests to reproduce or otherwise use copyrighted ABOR-Owned Intellectual Property.
4. The IP Official will use reasonable efforts under the circumstances to consult with the Creators of Intellectual Property who are then employed by the University during related negotiation processes.
5. The IP Official may, as is appropriate or advisable under the circumstances, exercise the IP Official's best professional discretion in deciding among the following options with respect to ABOR-Owned Intellectual Property.
 - a. The Intellectual Property may be licensed, assigned, or sold to its Creators subject to the following:
 - i. ABOR retains a paid-up, non-exclusive license to use the ABOR-Owned Intellectual Property for education, research, in furtherance of the University's public service mission, and for any other non-commercial purpose;
 - ii. The University will receive a minimal royalty or other appropriate consideration in the event of commercialization of the Intellectual Property; and
 - iii. The Creator may not use University facilities or other resources to improve upon the Intellectual Property without a written agreement that provides the University with adequate consideration in return for that use.
 - b. The Intellectual Property may be licensed or assigned to one or more Intellectual Property management organizations for commercial development;
 - c. The Intellectual Property may be licensed, assigned, sold, or optioned to a third party;
 - d. The Intellectual Property may be patented, or otherwise protected, by the University, appropriately marketed, and either licensed or assigned to another entity or organization for commercialization;
 - e. The Intellectual Property may be archived by the University; or
 - f. The Intellectual Property may be released or dedicated by the University to the public domain.

C. Intellectual Property Committee

In accordance with ABOR Policy 6-908, Section D(3)(c), the University has established an Intellectual Property Committee comprised of faculty and staff members. The Vice President for Research and the Provost (or designee) will serve as standing members of the Committee. The Vice President for Research will serve as the Committee's chair and, in consultation with the Provost, will nominate additional or replacement members for appointment by the President. The Committee's duties and activities include the following:

1. Serves as the University's primary entity charged with ensuring that the University meets its duties, responsibilities, and obligations as outlined in ABOR Policy 6-908, Section D(3);
2. Reviews disputes brought by covered persons or others with standing to bring such matters before the Committee and provides the President with its recommendations regarding their resolution; and
3. Reviews proposed changes to ABOR and University Intellectual Property policies and procedures and submits related recommendations through the IP Official for final approval by the President.

D. Third-Party Management or Administration of ABOR-Owned Intellectual Property

Any agreement entered into by the University to authorize a third party to manage ABOR-Owned Intellectual Property administered by the University is subject to prior ABOR approval and applicable ABOR policy, including any ABOR-approved changes to ABOR policy that may occur during the term of the agreement. The IP Official and the Vice President for Research may propose, and the President approves, whether the University will engage outside service providers or other third parties with respect to:

1. Docketing and monitoring of Intellectual Property activities;
2. Payment of maintenance and other fees as required and as directed by the IP Official according to written agreements or instructions;
3. Patenting and other protection of Intellectual Property; and
4. Any other service incident relevant to the protection and commercialization of ABOR-Owned Intellectual Property.

E. University Technology Transfer Report

In accordance with ABOR Policy 6-908, Section E the President reports annually to ABOR the University's technology transfer activities for the preceding year. The report must be in a format approved by the ABOR executive director. The report must include an analysis of income and expenditures detailed by source, such as licensing, royalty or fees, as well as the University's prevailing standards for measuring performance of patent management arrangements and the performance evaluation results.

Section VII. – Conflicts of Interest or Commitment

A. General

Employees are subject to and must comply with ABOR and University conflict of interest and conflict of commitment policies, practices, and directives, including without limitation, ABOR Policy 3-901, the University's *Standards and Expectations for Conduct and Conflict of Interest in Sponsored Projects* policies and expectations, and its *Conduct, Ethics, Reporting, and Transparency (CERT)* program.

B. Employee Financial Interests in Private Entities

1. Where an employee seeks to establish, create, or maintain a substantial interest in an entity that wishes to enter into a contract with the University that would sell or assign Intellectual Property rights to that entity, or when an employee holds a substantial interest in an entity engaged in a business relationship with such an entity, the advance approval of the IP Official and the employee's dean or comparable supervisor is required. Except as otherwise permitted in applicable law or policy, the employee also must refrain from participating in any manner in the contract, sale, purchase, or decision.
2. Where an employee seeks to establish, create, or maintain a substantial interest in a private entity that attempts to contract with the University to conduct research or to obtain a license for University technology, the employee must submit the appropriate disclosure documentation in writing to the Office of the Vice President for Research, the IP Official, and employee's dean or comparable supervisor, and the affected University departments or units. Approval of such an arrangement in principle does not eliminate the separate requirement for ABOR and/or the University to approve the contract and any related documentation. Except as otherwise permitted in applicable law or policy, the employee also must refrain from participating in any manner in the contract, sale, purchase, or decision.

C. Standard of Review

Requests for the approvals outlined in Section VII(B) must be reviewed in accordance with all applicable laws and policies, including ABOR 3-901 and its accompanying *Guidelines for Reviewing Licensing and other Transfer Agreements with University or Board Employees and Officers or Entities in which an Employee or Officer has a Substantial Interest*.

Section VIII. – Dispute Resolution

A. Disputing a Decision by the IP Official

1. Employees, other individuals receiving benefits in accordance with this policy, or officials representing an external Intellectual Property management organization under contract with the University, who disagree with an interpretation or decision made by the IP Official in the performance of the IP Official's duties may ask the Intellectual Property Committee to review the matter.
2. Such disputes will be resolved in accordance with the [Disputing a Decision by the IP Official](#) procedure that accompanies this policy.
3. Absent extraordinary circumstances, requests to review a qualifying interpretation or decision by the IP Official must be submitted in writing using the [Request for Review by the Intellectual Property Committee Form](#) within ten (10) calendar days of the decision. Decisions by the IP Official regarding the following matters, however, are not subject to review or challenge, provided that these decisions are made by the IP Official in accordance with the University's normal evaluative processes and financial considerations:
 - a. Who is considered the Creator(s) of Intellectual Property; and
 - b. Whether and to what extent to patent or otherwise protect ABOR-Owned Intellectual Property and the payment of associated costs with University or ABOR resources.
4. In response to any request to review or challenge a qualifying IP Official decision, the Intellectual Property Committee will review all relevant information submitted for its consideration and provide its recommendation for resolving the matter to the President, who will make the final decision.

B. Judicial Review

Individuals who have exhausted their dispute resolution rights as outlined herein may, in accordance with the Arizona Administrative Review Act (A.R.S. § 12-901, *et seq.*), seek judicial review of the matter within thirty-five (35) calendar days. Failure to complete the University's established procedure for disputing a decision made by the IP Official prior to seeking judicial review will constitute a failure to exhaust administrative remedies.

RESPONSIBILITIES

Creators: See Section VI(A).

Chief Human Resources Officer: ensures that all employees affirmatively assign all ABOR-Owned Intellectual Property they may create to ABOR and the University.

Covered Persons: know, understand, and comply with this policy.

Deans (and comparable officials): authorize in advance and in writing employ requests to conduct outside consulting work that may result in the creation of Intellectual Property in accordance with this policy; review and approve in advance where an employee under their supervision where an employee seeks to establish, create, or maintain a substantial interest in, an entity that wishes to enter into a contract with the University that would sell or assign Intellectual Property rights to that entity, or when an employee holds a substantial interest in an entity engaged in a business relationship with such an entity in accordance with this policy.

IP Official: see Section VI(B).

Intellectual Property Committee: See Section VI(C).

President: designates the IP Official; acts on the nominations of the Provost and the Vice President for Research to appoint individuals to serve on the Intellectual Property Committee;; determines whether the University will contract with third-parties to manage or commercialize University-administered ABOR-Owned

Intellectual Property; annually reports to ABOR the University's technology transfer activities for the preceding year; acts recommendations provided by the Intellectual Property Committee to resolve disputed interpretations or decisions by the IP Official.

Vice President for Research: supervises the IP Official and works to ensure proper compliance and enforcement of this policy; no less than annually, provides the President and the Chief Financial Officer with a comprehensive report that documents all Intellectual Property income, holdings, and expenditures; in coordination with the Provost, nominates individuals to serve on and chairs the Intellectual Property Committee while ensuring the proper performance of its duties.

PROCEDURES

Disputing a Decision by the IP Official

Intellectual Property Creators must promptly and fully disclose all Intellectual Property made by that person or resulting from work carried on under that person's direction in which ABOR may have an interest. View the [Inventor Portal Instructions](#) and use the [Inventor Portal](#) to submit such disclosures.

RELATED INFORMATION

Forms or Tools

[Inventor Portal](#)

Cross-References

[Conduct, Ethics, Reporting, and Transparency \(CERT\) Program](#)

[Conflict of Interest in Sponsored Projects](#)

[Contract Signature Authority](#)

[Standards and Expectations of Conduct](#)

Sources

[Arizona Board of Regents Policy 3-901](#)

[Arizona Board of Regents Policy 6-201](#)

[Arizona Board of Regents Policy 6-908](#)

[Arizona Revised Statutes § 12-901, *et seq.*](#)

[Arizona Revised Statutes § 38-502](#)

[Bayh-Dole Act](#)

APPENDIX*

[Inventor Portal Instructions](#)

[NAU Disclosing Your Inventions Website](#)

[NAU Innovations Website](#)

[NAU Intellectual Property Website](#)

[NAU Student Guide to Intellectual Property](#)

[U.S. Copyright Office Frequently Asked Questions](#)

*Disclaimer: all documents, links, or other materials included in this policy's appendix are provided solely for the user's convenience and are not part of official University policy.

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