



University System of Georgia

Creating A More Educated Georgia

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## 6.3 Intellectual Properties

### 6.3.1 Preamble

The USG is dedicated to teaching, research, and the extension of knowledge to the public. The personnel at its institutions recognize the production of new knowledge and the dissemination of both old and new knowledge as two of their major objectives.

Inherent in these objectives is the need to encourage the development of new and useful devices and processes, the publication of scholarly works, and the development of computer software. Such activities:

1. Contribute to the professional development of the faculty, staff or students involved;
2. Enhance the reputation of the institutions concerned;
3. Provide additional educational opportunities for participating students; and,
4. Promote the general welfare of the public at large.

Patentable inventions and materials often come about because of activities of USG faculty, staff, or students who have been aided wholly or in part through the use of USG resources. It becomes significant, therefore, to insure the utilization of such inventions for the public good and to expedite their development and marketing. The rights and privileges, as well as the incentive, of the inventor or creator must be preserved so that his/her abilities and those of other faculty, staff, or students at USG institutions may be further encouraged and stimulated.

The USG recognizes and encourages the publication of scholarly works as an integral part of the processes of teaching, research, and service. The Board of Regents acknowledges that faculty, staff, or students regularly prepare for publication, usually through individual effort and initiative, articles, pamphlets, books, and other scholarly works that may be subject to copyright and that may generate royalty income for the author. Publication may also result from work supported either partially or completely by the institution. With the advent of innovative techniques and procedures, the variety and number of materials which might be created in an institution community have increased significantly, causing the ownership of such copyrightable materials to become increasingly complex.

The USG recognizes the need for enhanced development and dissemination of software technology as a means of expressing both old and new knowledge. Inasmuch as the Board is aware of the dynamic nature of software and that the value of intellectual property comes from the ability of its owner to control its use and that such value is directly related to the degree of protection it enjoys under the law, the Board encourages USG institutions to protect such expressions of knowledge by the utilization of appropriate intellectual property laws and the creation of comprehensive software technology transfer policies and procedures.

In many instances, Intellectual Property will become, in whole or in part, the property of the Board of Regents. When this policy speaks to ownership of Intellectual Property by institutions, the Board shall be the owner, and unless ownership has been transferred by the Board to an affiliated nonprofit organization, authority to further allocate or to dispose of rights in such Intellectual Property is hereby delegated to the presidents of the institutions. Management of the Board's institution-specific or institutionally-identifiable intellectual property is entrusted to the presidents (BoR Minutes, February, 2007).

The foregoing considered, the Board of Regents of the University System of Georgia does hereby establish the following policy with respect to the development, protection, and transfer of rights to Intellectual Property resulting from the work of its faculty, staff, or students.

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## **6.3.2 Definitions**

### **6.3.2.1 Intellectual Property**

Intellectual Property shall be deemed to refer to patentable materials, copyrighted materials, trademarks, software, and trade secrets, whether or not formal protection is sought.

### **6.3.2.2 Patentable Materials**

Patentable Materials shall be deemed to refer to items other than software that reasonably appear to qualify for protection under the patent laws of the United States or other protective statutes, including Novel Plant Varieties and Patentable Plants, whether or not patentable thereunder.

### **6.3.2.3 Copyrighted Materials**

Copyrighted Materials shall include the following:

1. Books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals;
2. Lectures, musical or dramatic compositions, and unpublished scripts;
3. Films, filmstrips, charts, transparencies, and other visual aids;
4. Video and audio tapes or cassettes;
5. Live video and audio broadcasts;
6. Programmed instructional materials;
7. Mask works; and,
8. Other materials or works other than software that qualify for protection under the copyright laws of the United States (See 17 U.S.C. § 102 et seq.) or other protective statutes whether or not registered thereunder.

### **6.3.2.4 Software**

Software shall include one or more computer programs existing in any form, or any associated operational procedures, manuals or other documentation, whether or not protectable or protected by patent or copyright. The term "computer program" shall mean a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

### **6.3.2.5 Trademarks**

Trademarks shall include all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the USG or any of its institutions. (See 15 U.S.C. § 1127.)

### **6.3.2.6 Trade Secrets**

Trade Secrets means information including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers that:

1. Derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (See O.C.G.A. § 10- 1-761).

### **6.3.2.7 Patentable Plant**

Patentable Plant means an asexually reproduced distinct and new variety of plant (See 35 U.S.C. § 161).

### **6.3.2.8 Mask Work**

Mask Work means a series of related images, however fixed or encoded:

1. Having or representing the predetermined, three dimensional pattern of metallic, insulating, or semi- conductor material present

or removed from the layers of a semiconductor chip product; and,

2. In which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product (See 17 U.S.C. § 901).

#### **6.3.2.9 Novel Plant Variety**

Novel Plant Variety means a novel variety of sexually reproduced plant (See 7 U.S.C. § 2321 et seq).

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### **6.3.3 Determination of Rights and Equities in Intellectual Properties**

#### **6.3.3.1 Sponsor-Supported Efforts**

The grant or contract between the sponsor and the institution, under which Intellectual Property is produced, may contain specific provisions with respect to disposition of rights to these materials. The sponsor may:

1. Specify that the materials be placed in the public domain;
2. Claim reproduction, license-free use, or other rights; or,
3. Assign all rights to the institution. In those cases where royalty income is realized by the institution, the inventor or creator may appropriately share in the royalty income. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to sponsor and institution regulations.

#### **6.3.3.2 Institution-Assigned Efforts**

Ownership of Intellectual Property developed as a result of assigned institutional effort shall reside with the institution. However, sharing of royalty income with the inventor or creator is authorized as an incentive to encourage further development of Intellectual Property. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to institution regulations.

#### **6.3.3.3 Institution-Assisted Individual Effort**

Ownership of Intellectual Property developed by faculty, staff, or students of the institution where the institution provides support of their efforts or use of institution resources in more than a purely incidental way, unless such resources are available without charge to the public, shall be shared by the inventor or creator and the institution. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to institution regulations.

#### **6.3.3.4 Individual Effort**

Ownership rights to Intellectual Property developed by faculty, staff, or students of the institution shall reside with the inventor or creator of such Intellectual Property provided that:

1. There is no use, except in a purely incidental way, of institution resources in the creation of such Intellectual Property, unless such resources are available without charge to the public.
2. The Intellectual Property is not prepared in accordance with the terms of an institution contract or grant.
3. The Intellectual Property is not developed by faculty, staff or students as a specific institution assignment. The general obligation to produce scholarly and creative works does not constitute a specific assignment for this purpose. The nature and extent of the use of institution resources shall be subject to institution regulations and shall be determined by the institution.

#### **6.3.3.5 Other Efforts**

Ownership rights to Intellectual Property developed under any circumstances other than those listed in Sections 6.3.3.1 through 6.3.3.4 above shall be determined on an individual basis and approved by the president of the institution or his/her designated representative. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to institution regulations.

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### 6.3.4 Institutional Procedures

Each USG institution is required to develop policies and procedures for the administration of this Intellectual Property Policy. Each president shall appoint an institutional Intellectual Property committee, consisting of no fewer than three (3) or more than nine (9) members, one of whom shall be designated by the president to serve as chair. In each case the committee shall include a representative of the Office of Fiscal Affairs of that institution. The committee shall meet as necessary, and shall act in an advisory capacity to the president or his/her designee. Faculty, staff and students shall promptly report to the committee in writing, through the appropriate channels, all Intellectual Property invented or created by them that is reasonably likely to have commercial value.

The Intellectual Property committee of each institution shall recommend to the president or his/her designee the rights and equities in intellectual property created by faculty, staff, or students of the institution. Each institution's policies shall provide for an appeal procedure within the institution in the event of a disagreement as to the ownership and use of such materials.

In the implementation of its policies and procedures, each institution may elect, through its Intellectual Property committee and with the approval of the president, any of the following courses.

1. Develop and manage its licensing program through an independent assistance organization so as to secure competent evaluation of Intellectual Property, expeditious filing of applications for patents or other protection and aggressive licensing and administration of Intellectual Property.
2. Develop and manage its licensing program through an affiliated nonprofit corporation such as the Georgia State University Research Foundation, Inc., the Georgia Tech Research Corporation, or other nonprofit organizations established for this purpose.
3. Develop and manage independently its own licensing program.
4. Release Intellectual Property to which the institution has title or an interest to the inventor or creator for management and development as a private venture after the execution of an agreement providing for a suitable division of royalty income.

The foregoing notwithstanding, each institution may establish individual committees to address patents, copyrights, or software, or any of them. Each such committee shall be appointed by the president and consist of no fewer than three (3) nor more than nine (9) members, one of whom shall be a representative of the Office of Fiscal Affairs of that institution. They shall carry out the same functions as the Intellectual Property committee with respect to each type of intellectual property.

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### 6.3.5 Trademarks

All trademarks arising out of research by USG institutions constitute property of the Board of Regents of the University System of Georgia, and applications for registration, use of, and licensing of such trademarks shall be governed by the policies of the Board. Trademarks arising out of research done by a USG institution pursuant to an agreement with a cooperative organization shall be the property of such cooperative organization and such organization may file all appropriate applications and other documents necessary to protect such trademarks and may exercise all other rights consistent with ownership of the trademarks.

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### 6.3.6 Filing of Institutional Policies

Each institution shall file its Intellectual Property policy with the Office of Legal Affairs in the University System Office.

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