

SUL ROSS STATE UNIVERSITY

A Member of the Texas State University System

SRSU Policy: Intellectual Property

SRSU Policy ID: APM 5.26

Policy Reviewed by: Provost and Associate Provost for Research and Development

Approval Authority: Executive Vice President

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A. PURPOSE

The policy outlines the rights of the Sul Ross State University employees and students in terms of intellectual properties.

B. POLICY SCOPE

The policy applies to all persons including employees and students, using the facilities of Sul Ross State University. The Intellectual Property Policy of Sul Ross State University is governed by the of The Texas State University System *Rules and Regulations* Chapter III, Section 11 Copyright Policy and Section 12 Patents. To the extent that provisions herein may vary from the *Rules and Regulations*, the latter shall govern.

C. DEFINITIONS

1. Copyrightable work shall include but is not limited to any copyrightable material as defined by law. Examples include printed material including journal articles, textbooks, and reviews; works of art including paintings, sculpture, musical or dramatic productions; lectures, course material including lecture manuals, and technical works including computer software or databases, audio and visual material.
2. Patentable works shall include but are not limited to discovery, invention, process, composition of matter, article of manufacture, know-how, design, model, technological development, and any mark used in connection with these items.
3. Intellectual property includes all copyrightable works, and patentable works.
4. The University will refer to Sul Ross State University.

D. COPYRIGHT POLICY

1. Copyright is the ownership and control of the intellectual property in original works of authorship that is subject to copyright law. The purpose of the Sul Ross State University intellectual property policy is to outline the respective rights which members of its faculty, staff, and student body have in copyrightable materials created by them while affiliated with the University and, if necessary, how those ownership rights shall be determined.

2. Copyright ownership shall remain with the creator of the work except as otherwise provided by Section 3 of this policy.

3. Ownership of Copyright

- a. If a work is directed or contracted by the University, on a work-for-hire basis, the University then owns the copyright and all benefits of the materials.
- b. Consistent with academic tradition, the University shall grant to their faculty and staff the copyright of works they create within the scope of their employment which are created in the fulfillment of their teaching and scholarly responsibilities. The University shall retain a non-exclusive, nontransferable, perpetual, and royalty-free license to make educational uses of such works.
- c. Students own the copyright in works created in their role as a student, including research papers, essays, theses, dissertations, published articles, and visual works of art and/or audio/visual/digital recordings of artistic performances. Works created at the direction of or under contract with University faculty or staff as part of a student's employment with the University are considered works for hire.
- d. Where two or more individuals create a work and their contributions are inseparable, interdependent, and intended as a single work, the work shall be deemed a joint work. Copyright of the work shall be jointly owned by the creators. Each creator may individually register, enforce, or commercially exploit the copyright with or without approval by all joint owners, provided the other joint owners receive an equal share of any proceeds, unless otherwise agreed in writing.
- e. Copyright ownership in works that are created pursuant to sponsored or third-party research funding, including works funded by grants, shall be determined in accordance with the terms of any agreement governing such funding. If any such agreement is silent as to ownership, then the University shall own the copyright of such works.

4. Distribution of Copyright Royalties.

- a. Royalty income received by the University through the sale, licensing, leasing, or use of copyrightable material in which the University has a property interest may be shared with the creator(s) and the University where the material originated. When such sharing occurs, any distribution which grants the creator more than fifty percent (50%) of royalties shall require approval of the Texas State University System Board of Regents. In the event of multiple creators, the proper distribution of the fifty percent (50%) creators' share shall be determined by the creators through a written agreement.
- b. In the event that a creator contributes a personal work to the University, a written agreement accepting such contribution shall be executed. The terms of the agreement shall include a statement governing the division of royalties between the University and the creator.

- c. In cases of extramural funding, the terms of the funding agreement shall govern the division of any royalties that may result from commercialization of materials resulting therefrom. In the event that the funding agreement vests royalty rights in the University and does not provide any royalty share for the creator, the creator shall be entitled to the same proportionate share he or she would have received if the work had not been extramurally funded. Such a royalty payment to the creator, however, may not violate the terms of the funding agreement. Such share shall be a proportion of whatever share is owned by the Component under the terms of the funding agreement and this policy.

5. Revision of Materials

Materials owned by the University under the terms of this policy shall not be altered or revised without providing the creator a reasonable opportunity to assume the responsibility for the revision. If the creator declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the President.

6. Withdrawal of Materials

Materials owned by the University shall be withdrawn from use when the University in consultation with the creator deems such use to be obsolete or inappropriate. No withdrawal or other discontinuance shall take place that would violate the terms of any licensing or other agreement relating to the materials.

7. Noncompetitive Use

Copyright of courseware developed without specific direction or significant support of the University shall remain with the employee. No royalty, rent, or other consideration shall be paid to the employee or former employee when that courseware or a modification thereof is used for instruction by the University. The employee or former employee shall take no action that limits the University's right to use the instructional materials and shall provide written notice on the courseware itself indicating the University's right of use. See *Chapter V, Paragraph 4.76 of the Texas State University System Rules* for the policy on noncompetitive use of employee-owned courseware.

8. Use of Copyrighted Software

The Texas State University System and the University are committed to: (1) providing faculty, staff and students with the computer hardware and software necessary to perform their respective job tasks and instructional assignments; (2) protecting its computer environment from viruses; and, (3) maintaining compliance with the U.S. copyright laws and software license agreements and discouraging copyright infringement. This policy applies to all University computer users, including faculty, staff, and students. Employees and students, who illegally duplicate software and/or its documentation or otherwise fail to comply with Component third party software license agreements, will be subject to disciplinary action up to and including termination of employment or expulsion from school.

- a. The use of University-owned or leased hardware or software is limited to University business or instruction-related activities and incidental use (as authorized in TSUS

Policy Guideline: Appropriate Use of Information Technology Resources [*Appendix A-2 of these Rules and Regulations*]). Software that has not been purchased or licensed by the University or for which the individual user cannot demonstrate or certify purchase or license for business or instructional use may not be loaded onto University-owned or leased computers.

- b. Copyright Compliance. Users of licensed software must read and comply with the license agreement. When the University has contracted for a site or enterprise license, copying of the software media up to the number of licenses may be allowed, depending on the license agreement. The software user generally may: (1) Make only one backup copy of the software for archival purposes. If the underlying license is discontinued, this copy must be destroyed. (2) Make a copy if it is required as an essential step (and NOT AS A MERE CONVENIENCE) in installing the software on the computing equipment.
- c. Federal law requires compliance with the following restrictions when using software acquired by the University: (1) A user shall not install software on more than one computer, unless written evidence exists that the University has purchased the software, and the license gives the purchaser the right to install it. Should a user find such software, the user should immediately uninstall the software, remove the files from the computer, and destroy any media copies. (2) Manuals, and other copyrighted materials, shall not be copied without specific, written permission of the publisher. (3) Upgrading a software package does not release the software user from the terms of the original agreement unless the software developer changes the license agreement. The old version of the software may not continue to be used on a different computer or be distributed for use to others. (4) When concurrent use is allowed by the license agreement, the number of concurrent users of a local area network\ (LAN) version of purchased software may not exceed the number of licensed users.
- d. License Agreements. Each manufacturer includes a license agreement package with its software that details any restrictions on its use. University users must comply with the vendor's license provisions regarding the use of the software, even though the individual user has not personally signed the license agreement. License agreements differ among the various software vendors and some may grant additional rights, such as allowing use on a portable or home computer. The University shall hold the user responsible for reading, understanding and complying with provisions of the license agreement for each software package.
- e. University Responsibility. The University shall publish software copyright policies and operating procedures that articulate specific steps implementing this *Subparagraph 11.7* and covering, at a minimum, the following topics: (1) Guidelines for use of Component computer hardware and software; (2) Computer and Software Use—User Education; (3) Software Selection, Budgeting & Acquisition; (4) Software Inventory, Audit & Copyright Compliance.

E. PATENT POLICY

1. Purpose

- a. Sul Ross State University is dedicated to instruction, research and service. It is the policy of the University that its faculty, staff, and students carry out their scholarly work in an open and free atmosphere and publish results obtained therefrom freely. The University recognizes that patentable inventions and discoveries may occasionally arise during scholarly work conducted by the employees and students of it's the University. It is the purpose of this policy to ensure that such inventions and discoveries are used and controlled in a fashion that maximizes their benefit to the public, the inventor, and the University.

2. Applicability

- a. This policy shall apply to all persons employed by Sul Ross State University and to anyone using facilities owned or under the supervision of the University in connection with the development of a patentable product.

3. Condition of Employment and Enrollment

- a. The patent policy of Sul Ross State University as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee, including student employees, and of the conditions of enrollment and attendance by every student at the University.

4. Ownership

- a. Except as otherwise described in this policy, every invention or discovery or part thereof that results from research or other activities carried out at the University, or that is developed with the aid of the University's facilities, staff, or through funds administered by the University shall be the property of the University.
- b. Student Ownership. Ownership of inventions or discoveries developed by students using the University's facilities while engaging in coursework, including but not limited to capstone projects, senior design engineering projects, and maker space projects, may be owned by the student. The discovery or invention may not (1) be related to the student's roles, duties, or activities as an employee of the University Institution, (2) list a co-inventor who is employed by the University, or (3) have been funded, in whole or in part, by a sponsored program, grant, or contract received by the University. The inventor(s) of any such invention or discovery must disclose to the University administration.

5. Inventions Made on Own Time

- a. Inventions or discoveries made by the University employees or students in their personal time and not involving the use of the University's facilities are the property of the inventor except in case of conflict with any other applicable agreement.
- b. For purposes of this policy, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, extension, University service, or direction or conduct of research on University premises or utilizing "University facilities."

- c. The term "University facilities" shall mean any facility, including equipment and material, available to the inventor as a direct result of the inventor's affiliation with the University, and which would not be available to a non-University individual on the same basis.
- d. Persons who claim that inventions or discoveries are made on personal time and without the use of University facilities have the responsibility to disclose all such inventions to the University in accordance with the disclosure procedures applicable to inventions made on University time or with the use of University facilities. It shall be the responsibility of the inventor to demonstrate the basis of the inventor's claim that only personal time and no University facilities were utilized.
- e. If the inventor so desires, inventions or discoveries made on personal time and without the use of the University's facilities may be assigned to the University. Under this arrangement, the procedures will be the same as for inventions or discoveries made by the University personnel on University time or with the use of University facilities and materials.

6. Patents Arising from Government Sponsored Research

- a. Patents on inventions or discoveries arising from research financed by federal, state, or local government may be controlled by the terms of the grants and contracts specified by the government agency sponsoring the research, or by applicable law. In some cases, the sponsoring government agency may claim rights to patents resulting from the sponsored research.
- b. Except as provided by law or by government-supported grants or contracts, or when no patent rights are claimed by the government agency, or when such rights are waived by the government, patents arising from government sponsored research are controlled by this Patent Policy.
- c. When a patent arising out of research supported under government grants or contracts is owned by Sul Ross State University, the University will, if requested, agree to a non-exclusive royalty-free license for use of such a patent by the sponsoring government agency.
- d. If such a patent is owned by the sponsoring government agency, Sul Ross State University shall be free to use the invention so covered for its own scientific and educational purposes without payment of royalty or other charge, consistent with applicable law.

7. Patents Arising from Research Sponsored by Non-Governmental Entities

- a. Sul Ross State University must ensure that its facilities and the results of the work of its employees are applied in a manner which best serves the interests of the public. Likewise, the legitimate interests of a private sponsor who provides financial or other support to research carried out through the University must be considered.
- b. Sul Ross State University reserves the right to ownership of patents on inventions or discoveries arising out of research supported in whole or in part by grants or contracts with non-governmental organizations or firms. Contracts or agreements

which are entered into between the University and such organizations or firms should contain clauses setting forth such a reservation unless deviations therefrom are requested by the sponsor and approved by the University consistent with the public interest.

- a. In the interest of fair treatment to the non-governmental sponsors of research, upon request special provisions may be negotiated which grant ownership of patents arising out of research sponsored by a non-governmental organization or firm to the sponsor of such research. In such cases, Sul Ross State University will: (1) retain the right to use the invention or discovery for its own research, educational, and service purposes without the payment of royalty fees, (2) require the sponsor to use due diligence in the commercial use of the invention, and (3) retain the right to freely publish the results of its research after a reasonable period necessary to protect the rights of the parties and to allow for the filing of a patent application.

8. Component Patent Committee.

- a. Duty to Disclose Discoveries and Inventions. All individuals covered by this policy have a duty to disclose in writing their inventions and discoveries promptly to the President.
- b. The duty to disclose arises as soon as the individual has reason to believe, based on his or her own knowledge or upon information supplied by others, that the invention or discovery may be Patentable.
- c. Once a patentable invention and discovery is disclosed to the President, the President shall appoint a University Patent Committee, consisting of no less than three members, one of whom shall be designated by the President to serve as chairman of the Committee. Such Committee shall perform the duties delineated in this policy and such other duties as may be assigned to it by the President.
- d. Certainty about patentability is not required before a disclosure should be made.
- e. Individuals shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of patent rights, to ensure that title in such inventions shall be held by the University, where this policy indicates the University shall hold title, or by such other parties as may be appropriate under the circumstances.

9. Review By Patent Committee.

- a. The Sul Ross State University Patent Committee, after receiving disclosure of an invention, shall forward a recommendation to the University President concerning such discovery. Such recommendation shall include: (1) the committee's opinion whether the University has an ownership interest in the invention in question, or whether such invention was one developed on personal time and without use of University facilities, and (2) whether and how the University should assert and exploit its ownership interest in any invention or Discovery.

10. Waiver of University Interests.

- a. If the University President, after reviewing the recommendation of the University Patent Committee, concludes that an invention or discovery is one developed on personal time and without the use of University facilities, the President shall advise the inventor that the University asserts no ownership interest in the invention or discovery.
- b. If the University President, after reviewing the recommendation of the University Patent Committee, concludes that the University should not assert and exploit its interest in an invention developed on University time or with the use of University facilities, the inventor shall be notified that he is free to obtain and exploit a patent in his own right, and the University shall not have any further rights, obligations or duties thereto except as it may specifically reserve.
- c. Patent Management. The University, or any person designated by him, is authorized to negotiate with reputable agencies or firms to secure the University's arrangements for the management of inventions and discoveries in which the University decides to assert and exploit its ownership interest.
- d. Such management may include, but is not limited to, competent evaluation of invention and discovery disclosures, expeditious filing of applications for patents, and licensing and administration of patents.
- e. The University is authorized to administer its own patent management and licensing program without the use of a patent management agent, if it determines that such arrangement may better serve the University and public interests.

11. Licenses.

- a. The President of University may grant licenses for the use of inventions and discoveries in which the Component has an ownership interest.
- b. It is recognized under some circumstances the granting of an exclusive license may be appropriate because in the absence of such a condition some inventions or discoveries may not reach the marketplace for the public benefit.
- c. Normally, an exclusive license may be granted for a period not to exceed five years, although the President may grant a longer period of exclusive license when he deems it advisable.

12. Royalties

- a. In consideration of the disclosure and assignment of invention rights, the inventor, or the inventor's heirs, successors, and assigns, normally shall receive fifty percent (50%) of the net royalties or other net income arising from an invention or discovery, after a deduction for administrative and patent management costs. Administrative and patent management costs include, but are not limited to, the costs associated with the patenting, licensing, and protection of patent rights. The remaining fifty percent (50%) of net royalties shall accrue to the University. Special facts concerning an invention or discovery may warrant a different distribution of royalties.

- b. Agreements with respect to royalties shall be in writing and signed by the inventor and the President of the University.
- c. Any agreement which grants the inventor more than fifty percent (50%) of the net royalties shall require approval of the Texas State University System Board of Regents.
- d. Disposition of Income. In the disposition of any net income accruing to Sul Ross State University from patents, first consideration will be given to the promotion of research.

13. Avoidance of Conflicts

- a. Any employee covered by *Subparagraphs 12.(17)2, 12.(18)1, or 12.(18)2* of the Texas State University System *Rules and Regulations* Chapter 12 shall report in writing to the President of the University, or his designee, the name of any business entity as referred to therein in which the person has an interest or for which the person serves as a director, officer, or employee and shall be responsible for submitting a revised written report upon any change in the interest or position held by such person in such business entity. These reports shall be accumulated in the office of the President (or designee), who shall immediately thereafter file his report with the Texas State University System Administration. Upon approval by the Board of Regents, the report shall be submitted to the Governor and Legislature as required by the *Texas Education Code, Section 51.912*).
- a. Prior to signing any consulting agreement that deals with patent rights, trade secrets, or the like, where the University time, facilities, materials, or other resources are involved, University personnel and students must bring the proposed agreement to the attention of the appropriate administrators of the University and either obtain a waiver of University rights or otherwise modify the consulting agreement to conform with this policy, as is determined by the University in its discretion.

14. Equity Interests

- a. Owned by the University. In agreements with business entities relating to rights in inventions and discoveries owned by the University, the University may receive equity interests as partial or total compensation for the rights conveyed.
- b. Owned by an Employee. In accordance with *Texas Education Code, Section 51.912*, and subject to review and approval by the President of the University, employees of the University who conceive, create, discover, invent, or develop inventions or discoveries may hold an equity interest in a business entity that has an agreement with the University relating to the research, development, licensing or exploration of those discoveries or inventions.
- c. The University may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee as a part of an agreement between the University and a business entity relating to inventions and discoveries conceived, created, discovered, invented, or developed by the employee and owned by the University.

- d. Dividend income and income from the sale or disposition of equity interests held by the University pursuant to agreements relating to inventions and discoveries shall belong to the University and shall be distributed in accordance with the provisions of this policy.
- e. Dividend income and income from the sale or disposition of an equity interest held by a University employee pursuant to an agreement between the University and a business entity relating to rights in inventions and discoveries conceived, created, discovered, invented, or developed by such employee shall belong to the employee.

15. Business/Management Participation

- a. By Employees. Any Sul Ross State University employee who conceives, creates, discovers, invents, or develops an invention or discovery shall not serve as a member of the board of directors or other governing board or as an officer or an employee (other than as a consultant in accordance with Sul Ross State University and Regent policies and regulations) of a business entity that has an agreement with the University relating to the research, development, licensing, or exploitation of that invention or discovery without prior review and approval by the President of the University.
- b. For the University. When requested and authorized by the Board of Regents, an employee may serve on behalf of the Board as a member of the board of directors or other governing board of a business entity that has an agreement with Sul Ross State University relating to the research, development, licensing, or exploitation of inventions and discoveries.