



I. Policy Title

Intellectual Property (IP) Policy

II. Policy Purpose and Statement

The purpose of this Intellectual Property (IP) Policy is to encourage and recognize research and innovation by members of the Fort Valley State University (FVSU) Community, clarify ownership of intellectual property rights, and provide for the sharing of revenue with the creators of intellectual property.

Patentable inventions and copyrightable materials often come about because of the activities of FVSU faculty, staff and students who have been aided by the use of FVSU resources. It is important to insure the utilization of such inventions, creations and materials for the public good and to expedite their development and delivery to the public.

III. Policy Application and Effective Date

- a. This policy applies to all external and external FVSU Community (faculty, staff, students, visitors, etc.)
- b. This policy is effective August 16, 2018 .

Definitions

- a. "Biological Materials" shall include, but are not limited to, chemical compounds of biological origin, drugs, mutants, genetically engineered organisms, antibodies, hybridomas, cell lines, sera, supernatants, vectors, antigens, cDNAs, ESTs, and SNPs, and chemical compounds including enzymes and derivatives.
- b. "Commercialization" means the process of marketing and licensing IP to parties outside FVSU who, in turn, will develop products or services based on that IP to sell or license to others. By way of counter-example, this term does not apply to FVSU offering a course or seminar for a fee.
- c. "Copyrighted Materials" shall include but not be limited to: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes, compact disks, DVDs; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) mask works; and (8) software and other subject matter or works which 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.
- d. "Creator" means the individual or group of individuals who authored or were otherwise responsible for the creation of the IP.
- e. "Intellectual Property" shall be deemed to refer to patentable inventions, biological materials, copyrighted materials, software and trade Secrets, whether or not formal protection is sought, and trademarks.
- f. "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 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.)
- g. "Net Equity" means the value of the equity received by the University as a result of transferring rights in the IP, less the University's out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring that IP.

- h. "Net Income" means the gross monetary payments the University receives as a result of transferring rights in the IP, less the University's out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring that IP.
- i. "Novel Plant Variety" means a novel variety of asexually reproduced plant. (See 7 U.S.C. § 2321 et seq.)
- j. "Patentable Inventions" shall be deemed to refer to subject matter (i.e. a new, nonobvious, useful process, machine, manufacture, composition of matter or improvement thereof), which reasonably appears 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.
- k. "Patentable Plant" means an asexually reproduced distinct and new variety of plant. (See 35 U.S.C. § 161.)
- l. "Scholarly Work" means books, articles and other publications, artistic creations, literary manuscripts, visual and auditory creations, and musical works, irrespective of their medium of storage or presentation. The former items are meant to include software, computer programs, and databases, but only if they are accessory to or part of a scholarly text. Textbooks and related software developed as a Specific University Assignment are not considered a Scholarly Work for the purpose of this definition.
- m. "Significant Use of University Resources" and "Substantial University Support" refer to the use of University resources that is over and above the typical range of resources provided by the University in the ordinary course of employment.
- n. "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.
- o. "Specific University Assignment" means IP specifically ordered or commissioned pursuant to a written, signed agreement between the University and Creator.
- p. "Trademarks" shall include all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the University. (See 15 U.S.C. § 1127.)
- q. "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 which: (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.)
- r.

IV. Policy

The IP Policy serves to clarify the circumstances under which IP ownership resides with the creator or with FVSU and aims to establish incentives for the continued development of IP. The Policy is intended to balance the competing interests associated with fairly compensating faculty and staff for their role in developing IP, while also acknowledging FVSU interest in the IP as a byproduct of the creator using FVSU's name and/or resources. The aspirational desire is that a reasonable percentage of the funds generated from IP will go to the benefit of the faculty, staff and students working on the creation of additional research and development across FVSU. This Policy outlines the procedures associated with how FVSU manages IP, the committee assigned to provide administrative oversight, and other definitional and compliance related information relevant to our community members interested in engaging in the pursuit of monetized discovery.

Board of Regents (BoR) policy 6.3.3 et seq., states in relevant part that where royalty income is realized by FVSU, the inventor/creator may appropriately share in the royalty income, with the nature and extent of participation in royalty sharing being subject to the sponsor and FVSU regulations. Ownership of IP developed by faculty, staff, or students of FVSU where FVSU provides support of their efforts or use of FVSU resources in more than a purely incidental way, unless such resources are available without charge to the public, shall be shared by the inventor/ creator and FVSU, with the nature and extent of inventor or creator participation being subject to FVSU regulations. Where a) there is no use, except in a purely incidental way, of FVSU resources in the creation

of such IP, b) the IP is not prepared in accordance with the terms of an FVSU contract or grant, and c) the IP is not developed by faculty, staff or students as a specific FVSU assignment, ownership rights shall reside with the inventor/creator. Ownership rights to, and the nature and extent of participation in royalty derived from, IP developed under any circumstances other than those listed above shall be determined on an individual basis and approved by the President of FVSU or his/her designee.

Payment by FVSU of expenses associated with obtaining copyrights, licenses or patents will be based upon the recommendation of the Intellectual Property Committee (IPC), subject to availability of funds and the approval of the President or designee. IP rights accruing to FVSU or its employees and students are in all cases subject to state and federal copyright and patent laws and pre-existing rights of third parties. This IP Policy does not apply to performances by third parties unless otherwise agreed at the time of engagement.

FVSU recognizes and encourages the publication of scholarly works as an integral part of teaching, research, and service. FVSU acknowledges the rights held by individuals who publish articles, pamphlets, books, and other works created through individual effort and initiative that are protected by copyright. FVSU also recognizes that some publications may result from work supported, either partially or completely, by the University. Generally, while FVSU retains the rights to IP developed at the University, the University releases rights in scholarly works, as defined in this Policy, to the creators of such works.

Procedure

What follows is FVSU's procedure for the administration of IP, such as patents, copyrights and software (this is a non-exhaustive list), developed or created by faculty, staff or students. An IPC will provide oversight of this policy and procedure. The IPC consists of the incumbents in the following positions:

- **Chief Legal Officer or Director of Compliance**
- **Director of the Office of Sponsored Programs**
- **Director of Procurement**
- **The Dean of each FVSU College or designee**
- **Dean/Director of Research**
- **Faculty member as appointed by Provost**
- **Faculty member as appointed by Faculty Senate President**

The IPC members shall serve for an indefinite period of time. Because they serve at the pleasure of the President, they can be replaced at any time and for any reason whatsoever. The IPC shall meet as necessary, and shall act in an advisory capacity to the President and his/her Senior Leadership Team.

Prior to the completion of the creation of IP, or as early as possible in the creation of IP, the Creator shall seek a determination of whether the development of the IP involves significant use of university resources and may be patented or licensed by the university, by fully and openly disclosing the facts surrounding the creation of IP to either a member of the IPC, or alternatively to the Creator's Supervisor, Department Chair, Dean or Director. The supervisor or other FVSU official notified by the Creator shall, in turn, advise a member of the IPC of the IP in question. The IPC may request that the Creator submit a Disclosure Form that outlines the characteristics and current progress of the IP. Once the IPC is satisfied that it has received ample information about the IP, FVSU's interest in patenting and/or licensing the disclosed Intellectual Property, and financial interest in same, shall be determined.

As a part of its analysis, the IPC must determine whether the Intellectual Property falls into one of the three categories:

- Inventor/Creator-Owned, defined as property that was developed without substantial university support and infrastructure, and as such is solely controlled by the inventor/creator with FVSU having no rights of ownership

- University-Owned, defined as property that was developed with substantial university support and infrastructure, and to which FVSU is entitled a share of the royalties and benefits of the property as determined by the IPC
- Jointly-Owned with Third Parties, defined as property that the university substantially supported for a portion of the development time, and where ownership, royalties and benefits of the respective parties need to be determined by the IPC

Some examples of each category are:

<u>Inventor/Creator -Owned</u>	<u>University -Owned</u>	<u>Jointly -Owned w/3rd Parties</u>
Any IP released to the inventor/creator by FVSU.	Any IP developed by faculty and staff that the university patents, copyrights or trademarks.	Additional patents from continuation of research initiated at another institution.
Textbooks developed by a faculty member with an outside publisher.	Any IP developed by faculty or staff and posted on a university website, subject to pre-existing copyrights	Co-authored work sponsored by both FVSU and an entity outside the University.
Recordings of performances not sponsored by the University and not recorded on University property.	Recordings of performances sponsored by the University or on University property.	Outside sponsored research (federal, state, corporate and private sponsors, etc.) developed at the University.
Lecture notes, syllabi, assessment instruments and materials developed for classes outside the University.	Assessment materials and instruments developed for classes taught at FVSU.	IP developed by faculty and staff with a third party outside the University.
IP created by outside consulting of faculty and staff.	Works for hire done under contract with FVSU where it retains ownership rights.	

After preliminary evaluation by the IPC, the Committee will initiate one or more of the following actions within 45 business days of receiving the disclosure:

1. Initiate an external evaluation of the disclosed IP.
2. If rights in the disclosed IP are subject to the terms of a grant or contract, comply with the terms of the grant or contract.
3. If it is determined that the University has no interest in patenting or licensing the IP, assign title to the disclosed IP to the Creator.
4. If it is determined that the University has an interest in patenting or licensing the IP, make a recommendation to pursue development of the IP.

When the disclosure is referred to the IPC for a recommendation, the committee shall review the disclosure and, if appropriate, hear an oral presentation by the Creator. The committee may use appropriate ad hoc members, including external agencies, to assist in evaluating the IP.

The IPC shall issue a recommendation regarding the rights and equities in IP created by faculty, staff, or students of FVSU. If the inventor/creator disagrees with the recommendation, an appeal can be filed to the President or his/her designee within 10 working days of receipt of the recommendation. The appeal will be reviewed by the Senior Leadership Team which will, in turn, issue a recommendation to the President or his/her designee, who will then issue the final institutional decision on the matter. If FVSU does not decide to pursue development of the IP within a reasonable time period, generally not to exceed six-months from the date that a member of the IPC first learns about the IP in question (unless an extension of time, with a stipulated date for a decision, has been requested), the University shall have waived its rights to pursue development of the IP. If a Creator wishes to appeal the decision of the President, or if the decision is not made within the specified time period, the Creator may appeal to the BoR in accordance with the Bylaws of the Board.

Disclosure

Individuals covered by this Policy shall treat IP in a manner that is consistent with Trade Secret laws. The Creator shall execute such declarations, assignments, or other documents as may be necessary in the course of evaluating and protecting the ownership rights of IP to ensure that title in such IP shall be held by FVSU, or by such other parties as may be appropriate under the circumstances.

Investment in Business Entity

A Creator who holds an investment in a business entity that intends to license and commercialize University-Owned Intellectual Property shall disclose his/her investor status via the FVSU Conflicts of Interest form. Written approval of the Creator's Department Chair, Dean, and Vice President (or in the case of a staff member, the Creator's supervisor, division head and Vice President, as applicable) shall be obtained before the Intellectual Property is licensed. A Creator is encouraged to limit his/her role in such business entity to that of scientific or technical founder, member of a scientific advisory board, or consultant. A Creator should not serve on such entity's Board of Directors or as an officer. When necessary, a Creator may assume such roles only upon the written approval of the applicable Department Chair, Dean, and Vice President (or in the case of a staff member, the Creator's supervisor, division head and Vice President, as applicable). A Creator who holds an investment in an entity shall not negotiate nor attempt to influence the licensing terms between the University and such entity, unless consent is received by the IPC.

Distribution of Proceeds

Distribution of proceeds from IP will be weighted based on the contribution of the University to the development of the IP. Unless there is some alternative agreement between the parties based upon a recommendation of the IPC and with the approval of the president or designee, the following will apply:

- A. When income is derived from the commercialization of IP created by a student, staff or faculty member, Net Income will be distributed as follows.

Net Income Distribution

Creator(s)	Creator's Dept./Unit	Creator's College	FVSU Research
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First \$10,000 of 100%
Accumulated Net
Income

Accumulated Net 25% 25% 25% 25%
Income Over
\$10,000

- B. When equity is derived from the commercialization of IP created by a student, staff or faculty member, Net Equity will be distributed as follows.

Equity Distribution

Creator(s)	Creator's Dept./Unit	Creator's College	FVSU Research
25%	25%	25%	25%

With respect to income or equity derived from the commercialization of IP created by a staff member who is not employed within a college, the staff member's division will also receive the 25% allocable to the college in the case of a faculty member. If the Creator is a student, the College percentile remains the same. If the student is a student worker/employee at the time of the creation, the department s/he is assigned to will receive the departmental percentage above. If not, that percentage will be applied to the Campus Life department.

The IPC may recommend additional monetary incentives for filing a provisional patent and/or obtaining a patent award from the U.S. Patent Office.

If a Creator receives extraordinary compensation from or has a significant equity ownership interest in the company to which the IP is licensed, then such Creator shall not participate in any distribution of proceeds. Standard consulting fees shall not be deemed to be extraordinary compensation, but shall be disclosed to appropriate University officials in accordance with the University's Conflict of Interest Policy.

When the IP is the result of joint efforts, the Creator's share of Net Income or Net Equity will be divided equally among the Creators, unless a written agreement, signed by all the Creators, provides for a different distribution and is filed with FVSU prior to the first distribution of Net Income or Net Equity.

The President, in consultation with the IPC, may change the distribution of Net Income or Net Equity to the Creator's Department/Unit and/or College, if necessary, due to organizational changes or structures at the University, or if the Creator moves among units at the University. If there is otherwise a lack of clarity on where a specific percentile belongs, the funds will be applied to the benefit of the Office of Academic Affairs.

Publication

Nothing in this Policy shall be construed as affecting the rights of a Creator to publish the results of a scientific work, except that the Creator must agree to observe a reasonable period of delay in publication or external dissemination if the University so requests, and such a delay is necessary to permit the University to secure protection for any IP disclosed to it by the Creator.

Collaboration

Collaboration between FVSU personnel and persons not employed or associated with the University, including researchers at other universities or companies can result in the development of IP jointly owned by FVSU and other persons or their employers. Protection and commercialization of such joint IP can be difficult without extensive cooperation and written agreement among the Creators. Accordingly, it is important for University personnel involved in, or contemplating collaborative efforts with outside entities which may result in the development of IP to advise their immediate supervisors, the Office of Sponsored Programs, and/or the Research Director of such activities. An agreement in writing between the parties will need to be signed prior to the collaboration.

Heirs and Assigns

The provisions of this Policy shall inure to the benefit of and be binding upon the heirs and assigns of those individuals covered by this Policy.

Retention of Ownership

Ownership of IP will normally be retained by the FVSU. This is to ensure that all licensable knowledge, processes and devices created or invented will be available for public use. Licensing agreements granted by the FVSU will contain a due diligence provision which will require that the license revert to FVSU within a reasonable period of time if the licensee does not make the IP available to the public.

Compliance

Failure to comply with the provisions of this Policy is a violation of FVSU policies and may result in discipline of an individual in accordance with applicable FVSU policies and procedures.

V. Forms

VI. Appendices

N/A

VII. Related Resources

USG BoR Policy: 6.3 Intellectual Properties: <https://www.usg.edu/policymanual/section6/C352>

VIII. Responsible Party

Questions regarding this policy should be directed to:

Job Title: Director of Contracts and Compliance

Department: LARM

Phone: 478-825-4284

Email: terrellp@fvsu.edu

Fax: