

2.04 Intellectual Property Policy

2.04.01 Preamble

- The University and Community College System of Nevada (UCCSN) and its member institutions, which include the Desert Research Institute (DRI), are dedicated to teaching, research, and public service. The Personnel at DRI recognize as two of their major objectives the creation of new knowledge and the dissemination of both old and new knowledge. A byproduct of these objectives is the development of new and useful products and processes and the publication of scholarly works. Such activities:
 - contribute to the professional development of the individuals involved,
 - enhance the reputation of the institutions concerned,
 - provide additional educational opportunities for participating students and
 - promote the general welfare of the public at large.
- Inventions and Copyrighted Works that are conceived, created and produced by DRI Personnel, students and others are often aided in whole or in part by the use of Significant Institute Resources. The intent of this policy is to:
 - define the rights, privileges and incentives of Inventors and authors;
 - to ensure that these Inventors and authors are further encouraged and supported in their creative activities; and
 - to facilitate the commercialization and utilization of DRI Inventions and creative works for the public good.
- The foregoing considered, the President of the DRI and the Board of Regents of the UCCSN have established the following policy concerning Inventions, Copyrighted Works and other types of Intellectual Property that result from the use of Significant Institute Resources.

2.04.02 Definitions

- **“Inventions”** are defined as all new and useful processes (including computer programs), machines, manufactured products, compositions of matter, any new and useful improvements thereof, and any new uses for these products or processes that were unobvious to one skilled in the art at the time of invention.
- **“Inventors”** are defined as those persons who have contributed conceptually to at least one claim in an issued patent. A person who just reduces an Invention to

practice or suggests an idea of a result to be accomplished, rather than the means of accomplishing it, is not an Inventor or co-Inventor.

- **“Copyrighted Works”** are defined as original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Copyrighted works include: literary works (which include everything not specifically listed in the remaining categories, such as course materials and software); 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; and architectural works.
- **“Intellectual Property”** is a category of intangible property which includes: Inventions and issued patents; Copyrighted Works and registered copyrights; trademarks; trade secrets; know-how; mask works; and tangible research property.
- **“Net Income”** is defined as the income received by DRI from a UCCSN owned Invention, Copyrighted Work, or other form of Intellectual Property, minus a fifteen percent (15%) management fee and all third party payments directly attributable to patenting, copyrighting, trademarking, marketing, and transferring Intellectual Property.
- **“Personnel”** refers to all DRI employees.
- **“Work for Hire”** is defined as a work product prepared by an employee of DRI within the scope of his or her employment or a work specially ordered or commissioned under terms that have been expressly agreed upon in a written instrument that states that the work shall be considered a work made for hire.
- **“Significant Institute Resources”** is defined as the use of DRI or UCCSN facilities, materials, equipment, Personnel, or funds or other resources that are under the control of or administered by DRI, which are not excluded in Section 3, below.

2.04.03 Ownership of Intellectual Property

- Except as excluded in paragraphs 2 and 3 below, Intellectual Property that is not donated to the public and that is conceived or created by DRI Personnel as a Work for Hire or that results from their or anyone’s use of Significant Institute Resources, will be owned exclusively by the UCCSN on behalf of DRI in accordance with the provisions of this policy, unless expressly agreed upon in a prior written agreement between the UCCSN and a third party entity.
- In determining ownership of Intellectual Property, DRI and the UCCSN do not construe the normal use of office or library facilities or desktop personal computers for word processing, desktop publishing, electronic filing, or network communications as constituting the use of Significant Institute Resources.
- Copyrighted Works authored in whole or in part by DRI Personnel are the personal property of the authors, unless:

- the work is commissioned by DRI as a Work for Hire under a signed written agreement;
- the work is created under an agreement between the UCCSN on behalf of DRI and a third party that assigns copyright ownership to either the UCCSN or the third party, or
- the work is software created using Significant Institute Resources and the UCCSN files for patent protection or copyright registration on behalf of DRI.

2.04.04 Inventions

- Any Invention that has been conceived or reduced to practice by DRI Personnel or through the use of Significant Institute Resources must be disclosed to the joint UNR/DRI Technology Transfer Office, unless no third party entity has rights to such Invention and the Inventors have donated it to the public.
- **Ownership of Inventions** shall be determined as follows:
 1. Except when donated to the public or as otherwise specified in a written agreement between the UCCSN on behalf of DRI and a third party entity, Inventions shall belong to the UCCSN if:
 - a. the Invention is conceived or reduced to practice by DRI/UCCSN Personnel and the Invention is directly related to the field of expertise for which the DRI/UCCSN employee was hired, or
 - b. through use, by any person, of Significant Institute Resources such as facilities, materials, equipment, Personnel, funds, or other resources that are under the control of or administered by DRI. Inventors who are not DRI/UCCSN employees, have not used Significant Institute Resources, and are not under obligation to assign their ownership rights to the UCCSN shall retain ownership of their Inventions. Co-Inventors own an undivided interest in the Invention unless ownership is either assigned or is contractually obligated to be assigned to a third party.
 2. Inventors may acquire ownership in Inventions which are:
 - a. not within the field of expertise for which the DRI employee was hired and
 - b. do not involve the use of Significant Institute Resources. In certain instances, UCCSN may elect to release and transfer its rights in an Invention to the inventors.
 3. In the event that there is a question about the ownership of an Invention, the Invention must be disclosed to the joint UNR/DRI Technology Transfer Office. Such disclosure is without prejudice to the Inventor's ownership claim and shall be kept confidential. In determining ownership interests in an Invention, the Director of the Technology Transfer Office

may determine that the UCCSN has no property interest in the Invention because its conception or reduction to practice was unrelated to the Inventor's area of expertise at DRI, did not involve the use of Significant Institute Resources, or for such other reasons as may be set forth in writing and approved by the DRI President or his/her designee.

4. **Sponsor-Supported Efforts.** Prior to signing any consulting agreement with a third party sponsor where the use of Significant Institute Resources is involved or that may involve patent or Intellectual Property rights, DRI Personnel must bring the proposed agreement to the attention of the Institute by filing a potential Conflict of Interest disclosure according to the DRI Conflict of Interest Policy. All research and consulting agreements with private sponsors shall contain Intellectual Property terms that are consistent with this Policy. The sponsor may receive an option to license any resulting Intellectual Property or may under limited circumstances obtain an option for an assignment of Intellectual Property, on terms to be negotiated by the joint UNR/DRI Technology Transfer Office. Where ownership rights are vested in the UCCSN, the Inventor or author shall share in any Net Income received by DRI under the terms of this Policy.

2.04.05 Copyrighted Works

- The Board of Regents acknowledges that faculty, staff and students who are employees of DRI regularly prepare for publication, usually through individual effort and initiative, articles, pamphlets, books and other scholarly works which are subject to copyright and which may generate income. Publication may also result from work supported either partially or completely by the institution or other public or private sector entities.
- Copyright establishes ownership and control of original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. In contrast to a patent which protects novel and useful products and processes which at the time of conception were unobvious over those present in the prior art, copyright covers the “artistic expression” in particular:
 - literary works (which includes books, periodicals, manuscripts, advertising copy, computer programs, databases, and basically anything that does not fall under the following categories and that can be expressed in words, numbers, or other verbal or numerical symbols);
 - 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; and
- architectural works.

Copyright protection does not extend to any idea, concept, process, procedure, method of operation, or principle, regardless of the form in which it is described, explained, illustrated, or embodied. In contrast to patent protection, copyright is established automatically as soon as the work is fixed in any tangible medium of expression, but certain additional rights attach when the Copyrighted Work is registered with the United States Copyright Office at the National Library of Congress.

- It is the policy of DRI and the UCCSN that ownership of all Copyrighted Works shall remain with the author/creator unless:
 - the work is commissioned by DRI as a Work for Hire under a signed written agreement;
 - the work is created under an agreement between the UCCSN on behalf of DRI and a third party that assigns copyright ownership to either the UCCSN or the third party, or
 - the work is computer software that was created using Significant Institute Resources and the UCCSN files for patent protection or copyright registration on behalf of DRI.
- Under the copyright laws of the United States, commissioned works of non-employees are owned by the author/creator and not by the commissioning party, unless there is a written agreement to the contrary. Therefore, DRI or UCCSN commissioned contractors must enter into written agreements with the UCCSN that specify ownership to Copyrighted materials.
- Any recording, broadcasting or distribution of classroom, laboratory or other instruction must be approved in advance by the copyright holder. Unless such activity has been conducted under an executed agreement between the UCCSN and the parties involved, such activities shall not be considered to involve the Institute and shall not be covered by sovereign immunity. All use of Significant Institute Resources by persons who are not UCCSN employees must be undertaken under an executed agreement between the UCCSN and the parties involved.
- In all events, DRI shall have the right to perform its obligations with respect to Copyrighted Works, and other types of Intellectual Property under any contract, grant or other arrangement with third parties, including sponsored research agreements, license agreements and the like.
- Except as provided in [Ownership of Intellectual Property](#), or agreed upon by the President of DRI, Significant Institute Resources are to be used solely for DRI purposes and not for personal gain, personal commercial advantage, or for any other non- DRI purposes.

2.04.06 Administration of Intellectual Property

- The joint UNR/DRI Technology Transfer Office (TTO) shall be responsible for administering all Inventions, Copyrighted Works and other types of Intellectual Property owned by the UCCSN on behalf of DRI. In addition, an Intellectual Property Committee composed of DRI's Vice President for Research, Vice President for Government and Business Relations, Vice President for Financial Affairs, a faculty member appointed by the DRI Faculty Senate, the Director of the Technology Transfer Office, and others appointed by the DRI President shall make recommendations to the President regarding procedures, guidelines, and responsibilities for the administration and commercialization of Intellectual Property owned by the UCCSN on behalf of DRI, and such other matters as the President shall determine. The TTO shall report annually to the President of DRI and to the Chancellor of the UCCSN:
 - the number of Invention disclosures;
 - the number of patent applications filed;
 - the number of patents issued;
 - the number of copyrights registered;
 - the number and a short description of the technologies transferred to private sector entities; and
 - the amount of income generated from such technologies.
- It will be the responsibility of the Director of the TTO to determine ownership of Intellectual Property, to negotiate the terms of all technology transfer agreements, material transfer agreements and confidentiality agreements and to resolve disputes among co-Inventors and co-authors/co-creators.
- Any disagreement between the Inventor(s) or author(s)/creator(s) and the Director of the TTO concerning ownership of Intellectual Property may be appealed to the DRI President or his/her designee. 4. The income received by DRI from the transfer of Intellectual Property to third parties that is subject to this policy shall be shared with the Inventor(s) or the author(s)/creator(s) as stated in Section 7 below, it being understood that if there should be a plurality of Inventors or authors/creators, the portion accruing to the Inventors or authors/creators will be distributed on an equal share basis unless otherwise specifically agreed to in writing by all of the Inventors or authors/creators. The Inventor(s) or author(s)/creator(s) at or before the time of filing a patent application or copyright registration must agree to sign any required declarations or assignments and assist the TTO in perfecting title in the name of the UCCSN.

- In the implementation of DRI's policies and procedures with respect to the patenting or trademarking of UCCSN owned Intellectual Property, the Director of the TTO may elect any of the following courses:

- retain outside counsel, upon the Chancellor's approval, to draft, file, and prosecute patent or trademark applications;
- draft, file, and prosecute patent or trademark applications from within the TTO; or
- release and transfer title or DRI's rights in an Invention to the Inventor.

- In the implementation of DRI's policies and procedures with respect to copyright registration of UCCSN owned Copyrighted Works, the Director of the TTO may elect any of the following courses:

- retain outside counsel, upon the Chancellor's approval, to file for copyright registration;
- file for registration from within the TTO; or
- release and transfer title or DRI's rights in a Copyrighted Work to the author(s)/creator(s).

- In the implementation of DRI's policies and procedures with respect to the licensing of UCCSN owned Intellectual Property, the Director of the TTO may elect any of the following courses:

- develop and manage a licensing program through an independent patent assistance organization;
- develop and manage a licensing program through an affiliated nonprofit corporation;
- develop and manage a licensing program within the TTO; or
- release an invention to which the UCCSN has title or an interest to the Inventor for management and development as a private venture after the execution of an agreement providing for the division of income and for managing any potential conflicts of time, interest and commitment.

- In the implementation of UNR's policies and procedures with regard to distance education courses, UNR requires compliance with all federal copyright laws, including the provisions of the TEACH Act, 17 U.S.C. Sec. 110(2). In accordance with the TEACH Act, UNR requires, among other things:

- limitations on the use of copyrighted materials;
- limiting access to course materials to enrolled students;
- use of copyrighted material only as part of instructional activities;
- providing informational materials to students, faculty and staff regarding copyright laws;
- providing notice to students that course materials are subject to copyright laws;

- limitations on digitizing analog works;
- limiting retention of copies of course materials;
- preventing unauthorized transmission of digital materials; and
- non-interference with technological measures taken by copyright owners to prevent retention and distribution.

2.04.07 Distribution of Income

- The Inventor(s) or the author(s)/creator(s) of Intellectual Property that is owned by the UCCSN shall share sixty percent (60%) of the Net Income from the transfer of the Intellectual Property to private sector parties.
- The Inventors' or the authors'/creators' Research Divisions shall share twenty-five percent (25%) of the Net Income to:
 - pay for unrecovered technology development costs borne by the Divisions, and
 - stimulate additional research and scholarly activities within the Divisions
- The Central Administration of DRI shall receive fifteen percent (15%) of the Net Income to:
 - pay for unrecovered patent and technology transfer costs incurred by DRI, and
 - stimulate additional technology development activities within DRI

Created 3/23/2004; posted 7/2004 !