



Campus Administrative Policy

Policy Title: Intellectual Property Policy on Discoveries and Patents for their Protection and Commercialization – CU Anschutz

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Functional Area: Finance

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Supersedes: Distribution of Technology Transfer Income
(Jan. 14, 2004)

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Prepared by: Legal Counsel
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Responsible Officer: Executive Vice Chancellor for Administration
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Applies to: CU Anschutz Medical Campus

A. Introduction

Regent Policy 5J and Administrative Policy Statement 1013 require that every Discoverer or Included Person(s), as a condition of employment, and every Collaborator participating with an Included Person on a Discovery, will assign and hereby does assign any legal rights that may

exist in any Intellectual Property.¹ Regent Policy 5J and Administrative Policy Statement 1013 also state that each Chancellor will establish a campus policy to address how their campus will protect and commercialize Campus Discoveries.

This policy addresses how the campus will protect and commercialize Campus Discoveries. This policy supersedes all previous policies and will be used to distribute all Net Royalty Receipts, on any new and existing Campus Discoveries, received from the above Effective Date forward.

B. Policy Statement

1. Responsibilities of Discoverers

a. Discovery Disclosure

- 1) Involvement of Discoverers in all aspects of the intellectual property protection and commercialization process is essential for successful technology transfer. Discoverers are responsible for preparing a timely written disclosure of Campus Discoveries using the Anschutz Medical Campus' standard discovery disclosure forms.
- 2) Discoverers will cooperate with the Anschutz Medical Campus' Technology Transfer Office ("CU Innovations"), take all reasonable steps to fully complete discovery disclosure forms, provide a complete description of the Discovery, and execute assignments and other documents necessary for the protection of a Discovery or other documents conveying rights to Campus Discoveries.
- 3) Discoverers will also cooperate with CU Innovations in matters such as sharing contacts and leads for potential licensees, communicating or meeting with potential licensees, providing samples and information to potential licensees (when reasonably available), and other activities as

¹ This policy applies to all Discoveries including those made after work hours and off-campus.

reasonably requested by CU Innovations in support of efforts to secure, market, and transfer Campus Discoveries.

- 4) Should a Discoverer fail to cooperate with CU Innovations as determined by the Executive Director of CU Innovations, such noncooperation may result in the Discoverer permanently losing legal protection rights and/or becoming ineligible for the receipt of Net Royalty Receipts and may also result in disciplinary action by the Discoverer's Department Chair, supervisor, or Academic Dean for failure to comply with University policy.

b. Sponsored Programs, Corporate and Third-Party Obligations

- 1) Discoverers should provide CU Innovations timely, written notice of any proposed publication or Sponsored Program requirement that reports or describes any Discoveries at least thirty (30) days prior to publication.
- 2) CU Innovations will assist Discoverers in assessing whether or not a presentation or publication impacts securing legal protection, including patentability, and in explaining this policy to Collaborators.

c. Other Reporting Requirements

- 1) It is the responsibility of a Discoverer to provide CU Innovations with current contact information and an address to which the Discoverer's apportionment of Net Royalty Receipts should be sent.
- 2) Distribution of Net Royalty Receipts outlined in Section E will continue to be paid to the Discoverer after (1) the Discoverer leaves the University's employment and (2) the Discoverer's death.
- 3) It is the responsibility of the Discoverer and/or his or her estate to communicate updated contact information and an address for payment to CU Innovations. CU Innovations will not be liable for payments that cannot be made due to the failure of the Discoverer to comply with this Section B.2.c.

2. Responsibilities of CU Innovations

- a. The Executive Director of CU Innovations is the Principal Technology Transfer Officer for the Anschutz Medical Campus and has the primary responsibility for the implementation of this policy on behalf of the campus. Only the Principal Technology Transfer Officer and those campus officials who have specific Delegated Authority may undertake actions in the name of the University to execute this policy. The Principal Technology Transfer Officer will:
 - 1) Supervise the management of each case pursued by CU Innovations, including complete record keeping and required reporting of all actions;
 - 2) Determine whether the University or any other party has rights to Discoveries according to Regent Policy 5J, APS 1013 and this policy, and if so, the basis and extent of such rights;
 - 3) Determine, in his or her sole authority, whether to pursue legal protection of the Intellectual Property, including but not limited to, patent, copyright, trademark, and/or trade secret. For patentable Discoveries, in the absence of agreement on inventorship or when CU Innovations determines an inventorship analysis to be prudent, CU Innovations will work with counsel to determine the actual inventors pursuant to United States Patent Law. For copyrightable Discoveries, in the absence of agreement on authorship, CU Innovations will work with counsel to determine the actual authors pursuant to United States Copyright Law;
 - 4) Assess what steps should be taken with respect to the commercialization of Campus Discoveries including commercialization strategy, licensing, or use in the public domain;
 - 5) Negotiate and determine the terms of the commercialization strategy, licensing, or use in the public domain;
 - 6) Supervise the processes of CU Innovations for obtaining legal protection and/or arranging for licensing or other commercial

development in those cases in which CU Innovations elects to pursue its rights, including preparing and prosecuting applications for patent, copyright registration, and other legal protection, or obtaining counsel or other assistance for that purpose, negotiating or assisting in negotiation of licenses and related agreements, and monitoring the collection and distribution of Net Royalty Receipts; and

- 7) Review and negotiate sponsored research agreement terms which implicate Campus Discoveries and existing or future Campus Intellectual Property and in particular supervise compliance with government regulations concerning Campus Discoveries developed with government support.
- b. Only the Principal Technology Transfer Officer and/or those campus officials who have specific Delegated Authority may bind the campus in an agreement involving Campus Discoveries and Campus Intellectual Property. In addition, any agreement pertaining to a business venture, outside of the normal course of business for CU Innovations, between CU Innovations and a third party will require the signature of both the Principal Technology Transfer Officer and the Chancellor or his or her designee. Should a University employee not possessing such Delegated Authority sign an assignment or other grant of rights of Intellectual Property or an agreement seeking to bind the University, such an agreement will be null and void.

C. Process

The procedure for administration of Campus Discovery Disclosures by CU Innovations will be as follows:

1. Upon receipt of a Campus Discovery Disclosure, CU Innovations will make all reasonable efforts to work with the Discoverer to promptly evaluate the Discovery for Intellectual Property protection options, technical feasibility and commercial potential and may respond as follows: (a) request additional information, development, and data from the Discoverer to complete the Campus Discovery Disclosure; (b) proceed to file a patent, or other Intellectual Property protection, application on the Discovery; (c) develop a commercialization strategy

for the Campus Discovery; (d) market the Campus Discovery to potential licensees; or (e) formally decide not to proceed with protecting and/or marketing the Campus Discovery. In making this determination, CU Innovations will take into account licensing mechanisms for further academic research, open source licensing in the case of software, and the general missions of the University and the campus in the creation and dissemination of knowledge for the public good.

2. In all cases, based on reasonable cooperation by the Discoverer, CU Innovations shall endeavor to respond within four (4) months of receipt of a complete Campus Discovery Disclosure. Any response during the Determination Period, except a final decision not to pursue the Campus Discovery, shall be evidence of the University's continued interest in the Campus Discovery. Impending publication or other unique circumstances may motivate a decision sooner than the four-month period.
3. Should a Discoverer fail to cooperate with CU Innovations as determined by the Executive Director of CU Innovations, such noncooperation may result in the Discoverer permanently losing legal protection rights and/or becoming ineligible for the receipt of Net Royalty Receipts and may also result in disciplinary action by the Discoverer's Department Chair, supervisor, or Academic Dean for failure to comply with University policy.

D. Transfer of Rights in a Campus Discovery to the Discoverer(s)

1. Should CU Innovations decide not to attempt to protect, further develop, or market a Campus Discovery, then each Discoverer may request that the University assign its rights to the Discoverer to pursue commercialization of the Discovery, subject to any rights of other parties and the terms of the assignment.
2. Discoverer may submit a written request to CU Innovations stating that he or she desires the University to transfer all or a subset of its rights in the Discovery to the Discoverer, as allowed by law, APS 1013, subject to rights of sponsors and the right of the University to practice the Discovery for academic use. If there are multiple Discoverers, CU Innovations will contact all of the non-requesting Discoverers to notify

them of the request and will work with all of the Discoverers to consider the request.

3. Upon receipt of a written request by the Discoverer, the Principal Technology Transfer Officer will decide, in his or her sole authority, whether it is willing to transfer to the Discoverer the University's rights to the Discovery (or in the case of multiple Discoverers, the Principal Technology Transfer Officer will decide whether it is willing to transfer an undivided interest in the whole Discovery to all of the Discoverers, unless directed otherwise in writing by all Discoverers).
4. In the event the University decides to transfer the University's rights to the Discovery, the University will retain a fully paid-up, royalty-free license to use the Discovery for research, educational, and service purposes, and to permit other academic institutions and not-for-profit research institutions to do the same, for the legal life of the Discovery. Such release will also be contingent upon the approval by the company or agency that funded the research from which the Discovery was derived. CU Innovations will cooperate in obtaining the approval from the company or agency that funded the research.
5. As a condition of the transfer of rights in a Campus Discovery to the Discoverer, Discoverers may be required to reimburse CU Innovations for all external Discovery Expenses. Discoverers will also report Net Royalty Receipts on a regular basis and the Discoverer's associated records will be subject to audit. In addition, 10% of Net Royalty Receipts received in any year from any returned Discovery shall be paid to CU Innovations and shall not be subject to the Distribution of Net Royalty Receipts set forth in Section E below. The transfer of rights in a Campus Discovery to the Discoverer may be subject to additional, reasonable conditions as determined by CU Innovations.
6. Included Persons have the obligation to disclose to CU Innovations Discoveries that are improvements on returned Discoveries at the time such improvements are conceived or reduced to practice if such improvements are Campus Discoveries under this policy. Furthermore, transfer of rights under this Section D does not apply to improvements.

7. The Discoverers will agree not to use University resources, personnel, time, facilities, or assets to further develop, protect or commercialize the returned Discovery.

E. Distribution of Net Royalty Receipts

1. The following allocation methodology applies to the distribution of Net Royalty Receipts received from the commercialization of any Campus Discoveries, unless otherwise agreed to in writing on a case-by-case basis. The terms of such commercialization, including but not limited to the value assigned to the Intellectual Property, shall be decided by CU Innovations, in its sole authority.
2. This Section E does not apply to Strategic University Discovery Revenue; specifically, Strategic University Discovery Revenue received from strategically directed and/or funded initiatives (“Strategic University Discoveries”) as determined by the Chancellor or his/her designee.
3. With the exception of Strategic University Discoveries, Net Royalty Receipts will be distributed:
 - 25% to the Discoverer(s);
 - 25% to the University to support the Discoverer(s)’ research;
 - 25% to CU Innovations; and
 - 25% to the campus Chancellor.

The 25% distributed pursuant to the above to the Anschutz Medical Campus Chancellor will then be further distributed:

- 60% to the Discoverer’s department and used at the discretion of the Chair for investment in the departmental research enterprise;
- 20% to the relevant dean to be used for investment in the research enterprise of the school; and
- 20% to the Anschutz Medical Campus budget.

4. Distributions from all Discoveries other than Strategic University Discoveries² and software and educational videos protected by copyright³, whether disclosed and licensed on, before, or after the Effective Date, and irrespective of whether the Discovery is subject to a license agreement as of or prior to the Effective Date, will be governed by this Section E.
5. However, the allocation set forth above may be modified in instances of fiscal exigency, when the Anschutz Medical Campus Chancellor may modify the allocation methodology.
6. The above distribution schedule does not apply when it is in conflict with the terms and conditions of an approved third-party grant or contract with the University. In such case, the terms of the approved third-party grant or contract will control.
7. In the case of Net Royalty Receipts obtained for the upfront grant of Intellectual Property rights for a future Discovery, such as may occur under a sponsored research agreement, the personal Discoverer's (s') share will instead be allocated to a University campus account for support of the Discoverer's(s') research.
8. In the case of Net Royalty Receipts received from the commercialization of any Discovery or Discoveries created by more than one University campus, the respective Technology Transfer Offices for such University campuses will agree upon terms for sharing between/among the relevant campuses that takes into consideration the relative contribution between/among the Discoverers and that is consistent with standard agreements for sharing commercialization revenue between/among different campuses.
9. Any disputes that are unable to be resolved through discussions of the Principal Technology Transfer Officer and Interested Parties

² Strategic University Discoveries are not subject to Section E of this campus policy, however the other sections of this campus policy apply to Strategic University Discoveries.

³ In cases where software or educational videos are protected by copyright, the 25 percent allotted to the Discoverers personally will be allocated to the Discoverer's department for distribution as it determines reasonable.

related to the distribution of Net Royalty Receipts shall be presented to and resolved pursuant to Section I.

10. Discoverers may sign a royalty-sharing agreement that will govern the amounts allocated to each Discoverer from the Net Royalty Receipts. In the absence of such agreement, Net Royalty Receipts amounts allocated to Discoverers will be divided equally among them. However, individual Discoverers may enter into agreements to reallocate such amounts either among themselves or others who contributed to the research upon which the University Intellectual Property is based.
 - a. Participants in any apportionment also have the option of assigning their personal share to any account managed by the University. Such agreements must be in writing, signed by all of those affected and submitted to the Principal Technology Transfer Officer.
 - b. In order for Discoverers who desire to assign their personal share of Net Royalty Receipts to an account managed by the University to have no negative tax consequence, the assignment must occur before the first royalty or related payment is received by the University from the licensee. Discoverer should consult his or her tax professional before making decisions or arrangements that may have tax consequences.
 - c. If the Technology Transfer Office is unable to reach a Discoverer to provide the Discoverer his or her share of Net Royalty Receipts for a period of 24 months, such share of Net Royalty Receipts shall revert to CU Innovations.
 - d. When, in the judgment of the Principal Technology Transfer Officer, a reasonable basis exists for believing that Net Royalty Receipts subject to allocation and distribution under this policy may be required to be changed or otherwise expended, or that others may have a claim to such amounts, e.g. in the case of threatened or pending litigation, the allocation and distribution may be delayed for a reasonable period required for resolution of the matter. Payments made in good faith prior to such a resolution by the University to one or more claimants will fully

satisfy any obligations on the part of the University to all claimants for the amounts so paid. Awards, prizes, honoraria, and the like received by individuals primarily as recognition for invention achievement are not considered as Net Royalty Receipts.

11. No Net Royalty Receipts or income will be distributed to a Discoverer until a minimum threshold of \$1,000 has been met.

F. Special Circumstances Related to the Grant of a License to a Start-Up Company

1. CU Innovations, in consultation with the Discoverer, will make a determination as to whether University Intellectual Property has the potential to be licensed as the basis of a new company. If such determination is made, the company may receive either a time-limited exclusive option to the University Intellectual Property during which period the company should work to assemble the resources and information necessary for its successor an exclusive license.
2. Decisions about whether or not a potential licensee meets the requirements for a license will be made by the Principal Technology Transfer Officer. The University will have no obligation to cover any deficits or obligations of Start-Up companies. It is the sole responsibility of the faculty member engaging with a start-up company to abide by the campus conflict of interest policy.

G. Special Circumstances relating to Equity in Start Ups

1. The Board of Directors of University License Equity Holdings, Inc. has discretion to determine when the campus Technology Transfer Office will liquidate equity.

H. Software Discoveries

1. In order to determine whether or not software is within the scope of this policy, Included Persons will disclose all software intended for use outside of the University to CU Innovations. Software generally is covered by copyright protection; however, some software is patentable.

2. If the software is determined by CU Innovations to be patentable, it will be handled as patentable Intellectual Property under the scope of this policy.
3. If the disclosed software is determined by CU Innovations as not patentable or inappropriate for patenting, CU Innovations may either: (1) legally secure the software through copyright and market it to potential licensees, (2) distribute the software through open source licensing, or (3) assign University Intellectual Property in the software to the Discoverer under the terms of this policy.
4. If the open source licensing is chosen, the Discoverer will work with CU Innovations to ensure that no other parties claim rights to the software, no conflicts of interest would result from the open source license, and the appropriate type of open source license and disclaimer is being utilized in the software distribution.
5. CU Innovations will use its commercially reasonable efforts to determine these issues and recommend a course of action for disposition of software to the Discoverer in a timely manner.

I. Dispute Resolution

1. Discoverers may appeal any decisions made by CU Innovations regarding Intellectual Property to the Associate Vice Chancellor of Biotechnology or his or her designee. That decision may be appealed by request to the Chancellor or his or her designee. The Chancellor or his or her designee may refuse such requests. All decisions made by the Chancellor or his or her designee shall be final.

J. Definitions

“Campus Discovery(ies)” means a Discovery made by an Included Person(s) whose primary appointment is on a specific campus. Campus Discoveries include Strategic University Discoveries except that the split of Net Royalty Receipts related to a Strategic University Discovery is determined on a case-by-case basis and not by the Anschutz Medical Campus IP Policy.

“Collaborator” or *“Collaborators”* means any person or persons who participate with an Included Person on a Discovery.

“Delegated Authority” means the approval granted by the University to a University officer to execute agreements.

“Discovery” or *“Discoveries”* means any inventive idea and/or its reduction to practice which relates to, but is not limited to: new processes or methods of producing a new and useful industrial result; any composition of matter, including chemical and biological compounds; any new devices; any new plant; any new design in connection with the production or manufacture of an article; any new computer hardware and/or software programs; any clinical protocol or survey instrument; any know-how constituting a Discovery or supporting inventive ideas, systems, devices, compositions, programs or processes; and any new use or improvement of existing systems, devices, compositions, programs or processes.

“Discoverer” or *“Discoverers”* means any individual or group of individuals responsible for a Discovery.

“Discovery Disclosure” means the confidential document provided to the Technology Transfer Office by a University Discoverer which specifies the nature of the Discovery and which may include information useful to assess University ownership, patentability, technical feasibility and commercial viability of the Discovery.

“Discovery Expenses” means all documented legal service expenditures incurred by entities engaged by the University to analyze, prepare, file, register, record, prosecute, defend in litigation, issue, maintain, and analyze the value of University intellectual property, including but not limited to searches, opinions and expenses in connection with Discovery marketing, licensing, infringement protection and collection of license income. Discovery Expenses further include amounts owed to joint owners under Intellectual Property management agreements or inter-institutional agreements, and any proof of concept or seed funding provided by CU Innovations or by a CU Innovations-directed program to advance commercialization. Discovery Expenses do not include any compensation to University technology transfer employees or any other University employees.

“Included Persons” means all faculty members and other employees

(including students on appointment as University employees and any person who participates with an Included Person on a Discovery) of the University including those receiving salaries, research stipends, fellowships or other remuneration from the University, part-time employees, student employees, University employees on sabbatical who receive remuneration from the University, and employees on a leave of absence or University volunteers who partake in Substantial Use of University Resources.

“Intellectual Property” means any Discovery for which legal protection exists and/or is sought. For example, a Patent, Copyright, Know-how, Mask Work, Tangible Research Property, Trademark, Service Mark, Trade Secret, proprietary and confidential information, tangible materials, and other forms of intellectual property legally recognized now or in the future.

“Net Royalty Receipts” means all financial consideration received by the University or its agent from the transfer, license, development, or commercial exploitation of the Intellectual Property, less all unreimbursed Discovery Expenses for the Discovery or Discoveries that generated such financial consideration.

“Patent”, “Copyright”, “Mask Work”, “Trade Secret”, “Know-how”, “Trademark” and *“Service Mark”* have the meanings attributed to those terms by Federal statutes and case law.

“Principal Technology Transfer Officer” means the University officer for each University campus primarily delegated the responsibility to perform activities to execute this policy. On the Anschutz Medical Campus, the Executive Director of CU Innovations is the Principal Technology Transfer Officer.

“Sponsored Program” means a research, instruction or service activity either financially supported, authorized or managed by the University.

“Strategic University Discoveries” mean Campus Discoveries developed by an Included Person as a result of any strategically directed and/or funded campus-level initiative as determined by the Chancellor or his or her designee.

“Strategic University Discovery Revenue” means the financial consideration returned by an investment in a Strategic University Discovery, excluding Net Royalty Receipts.

“Substantial Use of University Resources” means use of University funds, personnel, programs, equipment, space or other physical assets that go above and beyond those customarily and currently provided to Included Persons. For purposes of this policy, offices, office equipment, library access, desktop and laptop computers, photocopy equipment, telephone, and fax machines, which are customarily provided would be excluded from determination of Substantial Use of University Resources.

“Tangible Research Property” means a tangible physical or biological entity that is, or may be, useful in research. Examples include models, devices, designs, avatars, computer software, storage media containing machine instructions, text, tissues, serum, fluids, organs, cell lines, antibodies, recombinant materials, chemical compounds and compositions, formulations, plant varieties, laboratory notebooks, clinical information, records and data related to Discoveries. Some Tangible Research Property may comprise University Discoveries.

“Technology Transfer Office” means the University campus units responsible for securing, protecting, marketing, licensing and managing University Intellectual Property.

“University Discovery” or *“University Discoveries”* means Discoveries made by any Included Persons while performing duties required by a University grant or contract, and/or made with the Substantial Use of University Resources, and/or made as a result of the use of Sponsored Program funds supplied or administered by the University, and/or made in fulfillment of an Included Person's Work Responsibilities.

“University Intellectual Property” means a University Discovery and/or any legal means which the University may employ to claim ownership of Intellectual Property according to this policy.

“Work Responsibilities” means any work, including consulting activity, that is related to an Included Person's activities or field of expertise at the University as evidenced by their research focus, or is otherwise

articulated in a faculty member's professional plan or an employee's position description.

Notes

1. Dates of official enactment and amendments:
 - January 14, 2014: Adopted/Approved by the Associate Vice Chancellor for Finance and Administration
 - March 17, 2023: Revised
2. Initial Policy Effective Date: January 14, 2014
3. Cross References/Appendix:
 - [Regent Policy 5J: Intellectual Property on Discoveries and Patents for their Protection and Commercialization](#)
 - [University of Colorado Administrative Policy Statement 1013: Intellectual Property Policy on Discoveries and Patents for their Protection and Commercialization](#)