

“Plain-language” summary of Harvard University’s Intellectual Property Policy and Guide to University-wide and School-wide Research Integrity/Misconduct Policies

Purpose. This document is intended to be a “plain-language” summary of the University’s “Statement of Policy in Regard to Intellectual Property” (the “IP Policy”) and a guide to University-wide and School-wide research integrity/misconduct policies (“Research Integrity/Misconduct Policies”). This summary document shall only be for general guidance and shall not serve as a substitute for either the IP Policy or the Research Integrity/Misconduct Policies. In all cases, including in the event of a conflict between this summary document and such a policy or policies, the language of the applicable policy or policies shall govern.

The IP Policy

Introduction. A wide range of intellectual property (“IP”) is created through research and other work conducted under the University’s auspices. So that the benefits of such IP may flow to the public at large, the IP Policy defines the universe of IP that Harvard is entitled to own and addresses key aspects of the management of that IP, consistent with the University’s public mission and the terms of its agreements with outside parties. Some examples of relevant agreements include those that provide funding (whether by sponsorship or gift), materials, data or equipment in support of Harvard research or other programs, those that enable collaboration with outside scholars or define the terms of Harvard’s participation in multi-institutional initiatives and, in some instances, those that govern the management of IP that is owned jointly with other organizations. Understanding that it may be necessary to modify the terms of the IP Policy in certain situations, *e.g.*, to facilitate a particular research program or other activity that requires cooperation between Harvard and at least one outside party, the IP Policy specifically provides that its terms may be modified by such agreements.

Significant questions of IP Policy interpretation may be taken up by the Committee on Intellectual Property (the “Committee”), a committee whose members are appointed by the University President. In addition to this important role, the Committee hears and decides certain appeals lodged by the creators of IP that is owned by Harvard (as described below), approves procedures developed by the Office of Technology Development (“OTD”) for implementation of the IP Policy in its day-to-day operations, and may, from time to time, propose amendments to the IP Policy. Unlike the ‘one-off’ modifications of the IP Policy described above, any formal amendment to the IP Policy must be approved either by the University President, Provost or the members of the Harvard Corporation.

The complete IP Policy is located online at: <https://otd.harvard.edu/faculty-inventors/resources/policies-and-procedures/statement-of-policy-in-regard-to-intellectual-property>

Scope of the IP Policy.

1. Who is covered. The IP Policy is applicable to all full- and part-time faculty, staff and employees, students, postdoctoral fellows and non-employees who use University funds, facilities or other resources, or participate in University-administered research, including visiting faculty, industrial personnel and fellows, regardless of obligations to other companies or institutions. This includes people who participate in research or any other activity under an agreement between Harvard and a third party, such as those described above.

2. What is covered. The IP Policy covers several categories of IP that an individual might generate through their Harvard activities:

- **Inventions** include “any patentable or potentially patentable idea, discovery or know-how and any associated or supporting technology that is required for development or application of the idea, discovery or know-how”. The University has rights in any:
 - **“Supported Invention”**, which is an Invention made through the inventor’s use of Harvard-administered funds, more-than-incidental use of other resources provided by or through Harvard, or work under an agreement between Harvard and a third party, such as those described above; and any
 - **“Incidental Invention”**, which is an Invention made through incidental use of resources provided by or through Harvard.

Each person has an obligation to report to OTD any Supported Invention or Incidental Invention to which he/she has contributed. OTD evaluates, and has sole responsibility for determining, whether a given Invention is a Supported Invention or an Incidental Invention.

Harvard has the right to own, and OTD has sole decision-making authority over the patenting and commercialization of, all Supported Inventions. An “Inventor” is a person determined to have met the standard of inventorship set by U.S. patent law, regardless of whether patent protection is sought for a given Invention. Each Inventor of a Supported Invention must cooperate with OTD in its efforts to pursue, maintain and enforce patent rights that cover that Invention. As such, each Inventor must keep OTD informed of their current contact information at all times while patents are pending or in effect.

Should OTD elect not to patent a Supported Invention, it still may commercialize any tangible property included within the Invention as an **Unpatented Material** (see below) and any associated intangible property, such as know-how, data or unpatented **Sponsored Computer Software** (see below). OTD may ‘open source’ the Invention, if it decides that doing so would best serve the public interest, or, at the request of its Inventor(s), may release the Invention to the Inventor(s). Harvard is under no obligation to release its rights in any Supported Invention, and any release is subject to both the terms of any agreement(s) under which the Invention was developed and those of the IP Policy, which allows OTD to place certain obligations on the Inventor(s) with respect to released Inventions.

Harvard does not own Incidental Inventions, but reserves the right to use them.

- **Computer Software** includes any computer program (including, without limitation, microcode, subroutines, and operating systems), regardless of form of expression or object in which it is embodied, together with any users’ manuals and other accompanying explanatory materials and any computer database. If Computer Software is developed through the Author’s use of Harvard-administered funds, more-than-incidental use of other resources provided by or through Harvard, or work under an agreement between Harvard and a third party, it is **“Sponsored Computer Software”**, which Harvard has the right to own. “Author” means any person covered by the IP Policy who creates a work of authorship qualifying for protection under U.S. copyright law.

Sponsored Computer Software, if it also is an Invention (*i.e.*, if it is potentially patentable), is a “**Sponsored Software Invention**”, and is treated like a Supported Invention for purposes of the IP Policy.

A Sponsored Software Invention must be reported to OTD *only* if it was developed under an agreement between Harvard and a third party *or* if its Authors would like to see it commercialized.

- **Copyrights (other than Computer Software).** In general, Authors are entitled to own the copyright and retain any revenue derived therefrom in books, films, video cassettes, works of art, musical works and other copyrightable materials of whatever nature or kind and in whatever format developed, except that:
 - Authors should consider the public interest in making any agreements to publish and disseminate their copyrighted materials; and
 - Section II(B) of the IP Policy lays out several exceptions under which Harvard is entitled to own, control or hold rights in Copyrights. These include situations in which:
 - the work of authorship was created under an agreement between Harvard and a third party containing terms relating to copyright or the copyrighted materials;
 - there was more than incidental University involvement in the creation and development of the copyrighted materials;
 - the work of authorship was created by non-teaching Harvard employees acting within the scope of their employment, in which case it will be a ‘work made for hire’ under copyright law and Harvard will be deemed the author and will own the copyright;
 - the work was commissioned by Harvard; and
 - Harvard has acquired rights in the work of authorship by agreement with the Author or other rightsholder.

The University has issued an Interpretation of what constitutes “more than incidental” University involvement in the creation and development of a work of authorship for the purposes of that exception. The Interpretation clarifies that “more than incidental” here means “substantial” and provides some examples:

1. substantial University financial, staff or other assistance*;
2. extensive use of special or rare University holdings, such as museum collections*;
3. significant use of voice or image of students or staff in a product, or substantial creative contribution by staff or students** to the preparation of the product; or
4. use of the name or insignia of the University or any of its units (other than for purposes of identification of individual faculty members) to identify or to promote the distribution of a product, or other identification or promotion that implies the approval or endorsement by the University or one of its units.

The Interpretation, along with footnotes omitted above, can be found at:

<https://www.otd.harvard.edu/faculty-inventors/resources/policies-and-procedures/clarification-of-copyright-section-of-ip-policy>

Harvard's Faculties may establish School-specific copyright policies that supplement the terms of the IP Policy, provided they are generally consistent with the principles of the IP Policy or are also approved at the University level.

- **Unpatented Materials (including biological materials)** include cell lines, organisms, proteins, plasmids, DNA/RNA, chemical compounds, transgenic animals and other materials useful for research or for commercial purposes for which patent applications are not filed or, if filed, do not issue. As with Supported Inventions and Sponsored Computer Software, Harvard has the right to own and administer Unpatented Materials that are developed through the Contributor's use of Harvard-administered funds, more-than-incidental use of other resources provided by or through Harvard, or work under an agreement between Harvard and a third party.

Unlike patents and copyrights, to which legal standards of inventorship or authorship apply, the determination as to who qualifies as a "Contributor" to Unpatented Materials falls to the head of the laboratory or leader of the research group in which the Unpatented Material was developed. In the event of a disagreement as to the naming of Contributors, appeals may be made to the Committee, which will decide the matter.

3. Royalty Sharing. Through OTD's commercialization efforts, the University may realize income above its out-of-pocket patenting and licensing costs for any Supported Invention, Sponsored Computer Software, Sponsored Software Invention or Unpatented Material, or for a Copyright that is assigned to Harvard to fulfill the terms of an outside agreement *per* the exception described in Section II(B)(1) of the IP Policy. The net income Harvard is entitled to retain is termed "Net Royalties", these various forms of IP are "Creations" and their respective Inventors, Authors or Contributors, as applicable, are "Creators" for purposes of Section V of the IP Policy, which describes how Net Royalties are handled.

Different formulas and procedures may apply to the allocation of Net Royalties among the Creators and the various internal Harvard units that have a stake in those funds. Which formula applies may depend on the date an Invention was reported to OTD and/or sources of support for the Invention (*e.g.*, whether funded by a Technology Development Accelerator). In some instances, the terms of an outside agreement may modify the formula. In each case, OTD will identify and implement the appropriate formula. So that they can benefit from the IP Policy with respect to Net Royalties, each Creator must keep OTD informed of their current contact information – including if they should relocate within the University - at all times during which it remains possible for their Creation(s) to generate income.

In general, unless modified by an outside agreement, the percentage of Net Royalties payable to Creators (the so-called "Creator personal share of Net Royalties") is:

- for Creations reported to OTD prior to October 4, 2011, 35%; or
- for Creations reported to OTD on or after October 4, 2011, 29.75%, which is 35% net of a 15% administration fee.

The Creator personal share of Net Royalties is "portable", *i.e.*, it remains payable to a Creator whether or not they remain at Harvard, or to their heirs, should the Creator die. (Other shares of Net Royalties, payable to the Creator's Department and research group, are portable on a limited basis: should the

Creator relocate within the University and remain fully bound by the IP Policy, those shares will move to his/her new Harvard research group and Department, as applicable.)

Where multiple Creators have contributed to a single Creation, the Creator personal share of Net Royalties is allocated among them either as agreed in writing among all Creators or, if there is no agreement, in equal shares, except that in the case of Unpatented Material, it is as apportioned by the head of the laboratory in which it was made.

In general, when multiple Creations are licensed as a package, and the license agreement does not assign specific values to them relative to one another, any Net Royalties realized for any two or more of those Creations is divided:

- among Creations reported to OTD beginning on July 1, 2019, in equal shares; or
- among Creations reported to OTD prior to July 1, 2019, if packaged with newer Creations, as follows:
 - as agreed in writing among all Creators of the relevant Creations, or otherwise in equal shares; *or, alternatively:*
 - at the request of any Creator, OTD will offer a determination as to the relative values of the Creations, and that determination becomes final unless, within 45 days, any Creator appeals to the Committee, in which case the Committee will make a final determination.

Two implementing procedures relevant to royalty sharing under the Policy, developed by OTD and approved by the Committee, as described above, are:

- Procedure as to limitations on claims to the Creator personal share of Net Royalties, which can be found at:

<https://www.otd.harvard.edu/faculty-inventors/resources/policies-and-procedures/procedure-as-to-limitations-on-claims-to-the-creator-personal-share-of-net/>

and

- Procedure for the allocation of New Net Royalties if a Creator is lost or unresponsive, which can be found at:

<https://www.otd.harvard.edu/faculty-inventors/resources/policies-and-procedures/procedure-for-the-allocation-of-net-royalties-if-a-creator-is-lost-or-unres/>

As is true for the IP Policy as a whole, the royalty sharing provisions of Section V may be changed at any time through a duly-approved amendment to the IP Policy.

Research Integrity/Misconduct Policies

Following is a guide to policies addressing research integrity and research misconduct, in place at Harvard University and the Schools.

University-Wide

<https://vpr.harvard.edu/pages/research-integrity>

<https://vpr.harvard.edu/data-ownership>

Faculty of Arts and Sciences (including SEAS, GSAS, DCE, and Harvard College)

<https://research.fas.harvard.edu/policies/principles-governing-research-harvard>

<https://research.fas.harvard.edu/research-integrity>

<https://research.fas.harvard.edu/research-compliance>

<https://research.fas.harvard.edu/policies/procedures-responding-allegations-misconduct-research>

Harvard T.H. Chan School of Public Health

https://cdn1.sph.harvard.edu/wp-content/uploads/sites/2352/2020/06/HSPH-Responding-to-Allegations-of-Research-Misconduct_ORARC-02_04-20-2015.pdf

Harvard Medical School and Harvard School of Dental Medicine

<https://ari.hms.harvard.edu/academic-integrity/integrity-science-policies>

https://ari.hms.harvard.edu/sites/g/files/mcu761/files/principles_and_procedures_for_dealing_with_all_allegations_of_faculty_misconduct.pdf

https://hsdm.harvard.edu/files/dental/files/dmd_20-21_guidebook.pdf (p. 6: Academic, Professional, and Scientific Conduct)

https://hsdm.harvard.edu/files/dental/files/2020_student_handbook_for_website_9_18_20.pdf?m=1600437708 (p. 48: Policies Related to Academic, Professional, and Scientific Misconduct)

Harvard Graduate School of Design

<https://www.gsd.harvard.edu/resources/gsd-student-policies/> (Ownership of Student Work, Intellectual Property Rights and Copyright; and Student Inventions and Software Creations)

Harvard Divinity School

https://hds.harvard.edu/files/hds/files/hds_handbook_for_students_2020-21.v2.pdf?m=1600119422 (p. 120, disciplinary policies for academic misconduct)

Harvard Business School

<https://www.hbs.edu/about/campus-and-culture/policies/Pages/digital-millennium-copyright-act.aspx>

<https://www.hbs.edu/about/campus-and-culture/Pages/community-values.aspx>

<https://www.hbs.edu/about/campus-and-culture/policies/Pages/mba-disciplinary-process.aspx>

Harvard Kennedy School of Government

<https://www.hks.harvard.edu/faculty-research/library-knowledge-services/research-services-resources/research-policies-0>

<https://www.hks.harvard.edu/educational-programs/academic-calendars-policies/student-handbook/general-regulations-and-1>

Harvard Law School

https://hls.harvard.edu/content/uploads/2020/09/2020-2021_HAP_Final.pdf (Pages 30-31: Multiple Use of Papers and Human Subjects Research within JD Written Work Requirement; Page 47: Additional Rules Relating to the LLM Written Work Requirement; Pages 70-71: Academic Honesty)

Harvard Graduate School of Education

<https://www.gse.harvard.edu/students/handbook/academic-integrity>

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