

## Faculty Manual

### Section IV.G. Patent Policy

#### 8. Division of Patent Royalties

a) All monetary proceeds from the commercialization of University-owned inventions are the property of the University or its assignee. The University or its designee will collect and distribute royalties, fees, equity interests, or dividends to inventors and the University in accordance with the procedures established by the University.

- (1) The University or its designee will deduct the costs of obtaining and maintaining legal protection, for each invention, to arrive at “adjusted income” unless other arrangements, agreed to by all parties that share in the income, are made by the relevant campuses, research unit or program in advance of the expense and agreed to with the OC. Such arrangements may include contracted marketing, licensing and business development. In such cases, any agreed upon expenses will be deducted to arrive at adjusted income.
- (2) The Office of Commercialization will deduct twenty percent (20%) from adjusted income and the remainder will be “net income.” This deduction is directed toward covering the expenses (excluding direct patent expenses) for administering the OC and provides initial funds for patent prosecution for other inventions without obvious commercial partners.
- (3) Net income will be distributed according to the following schedule.

Cumulative Net Income	Inventor/Contributor	University
\$1-\$10,000	100%	
Above \$10,000	50%	50%

University’s portion of the share will be distributed as follows:

30% to the University

20% to the college and department (or relevant campuses, research unit, or Program when appropriate) to be equally split between the two

See WSU Executive Policy 38 for more detail.

- (4) With consideration to other University priorities and policies, the University or its designee will distribute one-third of its share to the Office of the Vice President for Research to be invested in further research and technology efforts for the University, one-third of its share to be managed and maintained by the OC as an “enforcement fund” to be used for legal claims against University intellectual property, and the remaining one-third of its share to be used by the OC towards a “commercialization fund” to be reinvested in commercialization activities and projects.
- (5) The OC enforcement fund allocation will be deducted only when necessary to maintain a

\$150,000 balance for all inventions under this section; the distribution to the OC Enforcement Fund will cease while the Fund maintains a \$150,000 balance and the University share will then be distributed equally to the vice president for Research and the OC Commercialization Fund. Any enforcement expenses incurred above \$150,000 would be shared by all parties that share in the income, in the proportion of their share of income, for that specific invention and will be deducted as legal expense in step IV.G.8.a.1. Any net proceeds, after expenses, earned as a result of enforcement will be used to first replenish the enforcement fund. Any net proceeds remaining after replenishing the Enforcement Fund will be added to adjusted income.

An advisory body comprising a representative from each of the inventor/creator/breeder groups contributing to the OC enforcement fund and other appropriate faculty and administrators will make recommendations on the use of the OC enforcement fund to the president via the Office of Commercialization. The president may then make recommendations to the Board of Regents who have the final authority to initiate a legal action on behalf of WSU.

- b) In the event of multiple inventors, the inventors will agree among themselves as to the distribution of the income accruing to the inventors; distribution of the inventors' share shall be made only upon receipt of a signed agreement among the inventors.
- c) The University or its designee may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to inventions or Copyrighted Works. Any equity interests acquired pursuant to this section shall be held and managed by the Washington State University's designee. Neither the Washington State University nor its designee acts as a fiduciary for any person concerning equity nor other consideration received under the terms of this regulation. Upon liquidation, the proceeds from the equity interests held by the University designee will be distributed according to the schedule in section IV.G.8.a.
- d) Distribution of any research fees and royalties generated from unpatented biological materials, materials transferred through material transfer agreements, testing agreements, research tools licenses and other similar agreements as well as distribution of income from patentable biological materials will follow the schedule used in section IV.G.8.

*Section IV: University Policies Affecting Faculty | IV G. Patent Policy | 9. Public Released Agricultural Research Center Plant Varieties*

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## **9. of Plant Varieties Publicly Released Through the CAHNRS Office of Research**

a) The research and development, patent or plant variety protection, and public release of plant varieties requires the cooperation of the plant breeder(s), funding agency (USDA), Variety Release Committees, CAHNRS Office of Research (COR), Washington State Crop Improvement Association (WSCIA) or similar commodity groups, and the OC. The distribution of research fees and royalties will follow schedules in sections 9.b) and 9.c) below.

b) Varieties protected by PVP (seed propagated crops and potato)

(1) In the case of contracted marketing, licensing and business development, all monies remaining after contractor expense will be distributed to WSU.

(2) The University or its designee will then deduct the costs of obtaining and maintaining legal protection, for each plant variety to arrive at “adjusted income”.

(3) Ten percent (10%) of the adjusted income capped at twenty thousand (\$20,000) per fiscal year per PVP-protected variety, will be retained by the OC as an “enforcement fund for all PVP-protected Crops” to be used for legal claims against University intellectual property related to PVP-protected crops to arrive at “net income”. The OC Enforcement Fund allocation will be deducted only when necessary to maintain a one hundred fifty thousand (\$150,000) balance for all PVP-protected crops; ten percent (10%) of the adjusted income distribution to the OC Enforcement Fund will cease while the Fund maintains a one hundred fifty thousand (\$150,000) balance and the adjusted income will then be equal to the net income. Any enforcement expenses incurred above one hundred fifty thousand (\$150,000) would be shared by all parties that share in the income, in the proportion of their share of income, for that specific PVP-protected variety. Any net proceeds, after expenses, earned as a result of enforcement will be used to first replenish the Enforcement Fund. Any net proceeds remaining after replenishing the Enforcement Fund will be added to adjusted income.

An advisory body comprising a representative from each of the inventor/creator/breeder groups contributing to the OC Enforcement Fund and other appropriate faculty and administrators will make recommendations on the use of the OC Enforcement Fund to the president via the Office of Commercialization. The president may then make recommendations to the Board of Regents who have the final authority to initiate a legal action on behalf of WSU.

(4) Seventy percent (70%) of the net income will be distributed to the COR for enhancement of PVP-protected variety programs in consultation with the breeders that generated the income for this category.

(5) The remaining thirty percent (30%) of the net income will be distributed

10% to the OC

10% to WSU-COR

10% to plant breeder(s)/contributor(s)

c) Varieties protected by patents (vegetatively propagated crops other than potato)

(1) In the case of contracted marketing, licensing and business development, all monies remaining after contractor expense will be distributed to WSU.

(2) The University or its designee will then deduct the costs of obtaining and maintaining legal protection, for each plant variety to arrive at “adjusted income”.

(3) Ten percent (10%) of the adjusted income, capped at twenty thousand (\$20,000) per fiscal year per patented variety, will be retained by the OC as an “enforcement fund for all patented crops” to be used for legal claims against University intellectual property related to patented crops to arrive at “net income”. The OC enforcement fund allocation will be deducted only when necessary to maintain a one hundred fifty thousand (\$150,000) balance for all patented crops; ten percent (10%) of the adjusted income distribution to the OC enforcement fund will cease while the fund maintains a one hundred fifty thousand (\$150,000) balance and the adjusted income will then be equal to the net income. Any enforcement expenses incurred above one

hundred fifty thousand (\$150,000) would be shared by all parties that share in the income, in the proportion of their share of the income, for that specific patented variety. Any net proceeds, after expenses, earned as a result of enforcement will be used to first replenish the Enforcement Fund. Any net proceeds remaining after replenishing the Enforcement Fund will be added to adjusted income.

An advisory body comprising a representative from each of the inventor/creator/breeder groups contributing to the OC enforcement fund and other appropriate faculty and administrators will make recommendations on the use of the OC enforcement fund to the president via the Office of Commercialization. The president may then make recommendations to the Board of Regents who have the final authority to initiate a legal action on behalf of WSU.

(4) Fifty percent (50%) of the net income will be distributed to the COR for enhancement of patented variety programs in consultation with the breeders that generated the income for this category,

(5) The remaining fifty percent (50%) of the net income will be distributed as follows:

10% to the OC

10% to WSU-COR

30% for breeder(s)/contributor(s)

d) Additional considerations

(1) In the event of multiple breeders/contributors, for varieties protected by patents or PVP, the inventors will agree among themselves with guidance and approval from the CAHNRS Office of Research as to the distribution of the royalties accruing to the breeders/contributors.

(2) General guidelines for distribution of (1) royalties from essentially derived varieties and (2) utilization of advanced lines or clones from one breeding group for further advancement by another breeding group, are available from the COR or OC.

(3) In the event that multiple breeders/contributors cannot reach an agreement on distribution, the distribution will be resolved by the OC as described in section IV F (Intellectual Property) section of the Faculty Manual.

(4) Varieties for seed propagated crops that are not PVP protected shall follow the same distribution as those that are PVP protected, as in 9b.

(5) Varieties for vegetatively propagated crops (other than potato) that are not patent protected shall follow the same distribution as those that are patent protected, as in 9c.

## **IV J. Trademarks**

University trademarks include the names, designs, logos, and colors for “Washington State University”, “WSU”, “Cougars”, “Go Cougs”, “Ask Dr. Universe”, and others. Permission of the University is required before use of these trademarks. Commercial use requires licensing and payment of royalties. Royalty income from licensing of University and athletic trademarks is administered by the Washington State University Foundation. The trademarks officer may be contacted at <http://marketing.wsu.edu/staff/index.html>

From time to time other University trademarks are registered for software, plant varieties, or devices in conjunction with their patent or copyright protection. These trademarks may generate royalty through commercialization. Net royalty income received by the University or its designee shall be distributed according to the schedule used for Patents, IV.G.8, or for Plant Varieties, IV.G.9, as appropriate. In the event a University trademark is registered and in use in commerce and any intellectual property in conjunction with a patent and/or plant variety protection has expired, any net royalty income received by the University or its designee attributed to the trademark shall be distributed according to the schedule used for Patents, IV.G.8, or for Plant Varieties, IV.G.9. as appropriate.