

UNIVERSITY OF SOUTHERN CALIFORNIA INTELLECTUAL PROPERTY POLICY

April 3, 2001

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Section 1. Policy Objectives

A goal of the University of Southern California is to encourage creative activity and the prompt and open dissemination of ideas and inventions by recognizing and rewarding individual members of the faculty and staff. The commitment to develop new knowledge includes facilitating the practical application of that knowledge for public use. The University wishes to demonstrate that the public and private investment in funded research at USC results in the creation of ideas and inventions that benefit society.

The University wishes to preserve the academic tradition of faculty ownership of certain scholarly works within the context of applicable law. Both California and federal law provide that the University owns all intellectual property created or developed by an employee within the scope of his or her employment, including works developed under sponsored research or other agreements and works that make significant use of University funds or facilities. In seeking an appropriate balance between academic tradition and law, USC's Intellectual Property Policy recognizes certain exceptions to the law that are well-established traditions in the academic setting.

The purpose of this Policy is to educate members of the University community about their rights and responsibilities regarding intellectual property. This Policy also describes the ways in which USC faculty, staff and students can protect the intellectual property that they create for their benefit as well as preserve the interests of the University and the public. This Policy obviously cannot address every situation that may arise in the development, enforcement and management of intellectual property rights. Rather, this Policy is intended to serve as a set of guidelines for USC's faculty, staff, students and visitors.

It is anticipated that this Policy will be augmented from time to time by statements of policy or practice focused on particular types of intellectual property, especially those arising out of new or evolving media or technology. Further, this Policy itself may be amended over time to effect changes deemed to be in the best interest of the University community.

The principles discussed in this Policy apply to the University Park Campus, Health Sciences Campus and any other USC programs and locations.¹ Definitions of certain terms used in this Policy are located at the end of this Policy in Appendix 1.

¹ Childrens Hospital of Los Angeles has its own intellectual property policy that applies under certain circumstances to the faculty, staff and students at that location. Please contact the Office of the General Counsel for further information

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Provost and Senior Vice President, Academic Affairs

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Administration

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Section 2. General Policy

Section 2.1. Ownership of Intellectual Property

Unless otherwise stated in this Policy, the University is the owner, under federal and California law, of all intellectual property created by members of the University community which is:

- created or developed during the course of an individual's responsibilities to USC, including works made for hire; or
- created or developed pursuant to a sponsored agreement or pursuant to a written agreement to transfer ownership to USC; or
- created or developed with the significant use of University facilities, funds, resources or supplies.

Members of the University community own intellectual property that is developed on their own personal, unpaid time, in the absence of any sponsored project agreement or other agreement giving rights to USC, and with only incidental use of University funds or facilities.

Incidental use of University resources includes the following:

- only a minimal amount of unrestricted funds have been used; and
- only a minimal amount of time has been spent using University facilities, equipment, or resources other than the use of offices, libraries and routinely available office-type equipment such as desktop personal computers, all of which is regarded as incidental.

Section 2.1(a) Traditional Exceptions

Consistent with long standing academic tradition, the University does not claim an ownership interest in faculty-authored textbooks or scholarly publications, art works, musical compositions, or literary works, whether or not related to the professional fields of the faculty members and regardless of the medium of expression, unless the work is subject to contractual restrictions. This exception from the general ownership principle expressed above is applicable to all USC faculty. Note that this exception is not applicable to print, electronic and other forms of courseware, which are the subject of a separate University Courseware Policy.

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If in the absence of this Policy USC would be deemed the owner of any of the artistic or scholarly works within the traditional academic exception, the University will, upon written request, convey the copyright to the author(s) of those works. Any such request should be directed to the USC Office of the General Counsel.

Section 2.1(b) [Exception for Student Works](#)

The University acknowledges students' ownership of works created in the course of their education, such as dissertations, papers and articles. Students do not hold the copyright in these works if they are created:

- in the course of rendering services for which USC compensates the student; or
- as part of research performed pursuant to a sponsored agreement or project; or
- under a special agreement where the student assigns the copyright to the University or a third party.

Although a student retains copyright ownership to his/her thesis or dissertation or other student-created works, the student grants the University permission to use, reproduce and publicly distribute copies of those works.

If the student works contain software, patentable subject matter, inventions or other intellectual property and the student uses a significant amount of USC facilities, funds, resources and supplies in those works, the University owns the underlying intellectual property in the student works.

A specific application of this policy is found in the School of Cinema-Television. Generally the University owns the copyright in any student-produced film or other audiovisual work, as such works typically require significant use of University resources in the form of cameras, editing devices and other equipment and facilities. The student author, though, retains ownership (subject to a nonexclusive license to the University) of rights to the treatment, script or other written work product related to any such audiovisual work.

Section 2.2. [Public Domain](#)

Generally, members of the USC community are encouraged to publish research results and scholarly information if public access will promote widespread use, advance the University's mission and if such action does not violate any of the University's obligations to third parties, such as the federal government or other sponsors.

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Section 2.2(a) [Potential Effect on Rights](#)

Be aware that publication of an idea embodied in an invention or any other non-confidential disclosure, such as abstracts, websites and posters, bars the filing of a patent application in every country in the world except the United States. In the United States, the inventor has one year to file from the date of publication. For these reasons, publication has important implications, particularly if the University and the inventor desire to commercialize the invention. Inventors are encouraged to consult with the USC Office of Technology Licensing (“OTL”) prior to any publication if they are interested in pursuing commercialization of any invention discussed in the proposed publication, in order to determine the impact of the publication on the underlying intellectual property. For more information on patent protection, see Section 3.2 below.

Section 2.2(b) [Available Protections](#)

Faculty, staff and students should be aware that USC will, with the concurrence of the inventor/author, routinely license intellectual property without charge to other parties for research and other non-commercial purposes. This may be preferable to simply publishing information and potentially losing all proprietary rights. USC’s standard non-commercial license agreement can be obtained from the OTL.

Certain intellectual property, such as the expressive content of textbooks, scholarly publications, art works, musical compositions and literary works, is usually protected by copyright rather than patent. Copyright protects original works of authorship instantly and automatically from the moment of their fixation in a tangible medium of expression. As a result, publication or distribution does not necessarily impact the copyright protection afforded the work. It is recommended that faculty, staff and students attach a copyright notice as described in Section 3.3 to their copyrighted works.

Section 2.3. University Responsibilities

The University acknowledges the importance of encouraging the prompt and open dissemination of research findings and the importance of making its intellectual property available to industry and others for the benefit of society. In recognition of these important objectives, the University:

- (a) does not limit the right of faculty, staff and students to publish their own research results and other scholarly information unless the principal investigator has agreed to restrictions in the agreements supporting such sponsored research;

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- (b) recognizes that any individual who creates intellectual property should have a significant role in the determination of how such intellectual property will be publicized, commercialized or developed;
- (c) permits faculty, staff and student inventors/authors freedom to place their inventions in the public domain if they believe that would be in the best interest of science or technology transfer and that doing so would not violate the terms of any agreements [*but see Section 2.2(a) regarding the implications of placing intellectual property into the public domain*];
- (d) provides patent, copyright, licensing, and technology transfer services to assist in the protection, marketing and promotion of University-owned intellectual property;
- (e) provides legal advice and services to assist in the protection and commercialization of University-owned intellectual property;
- (f) provides services for registering trademarks and service marks;
- (g) in appropriate cases, provides the necessary financial resources for the protection and commercialization of intellectual property;
- (h) rewards authors and inventors through a generous sharing of royalties from inventions assigned to the University; and
- (i) rewards Schools and Departments for creating productive research environments by sharing a portion of the royalties from inventions assigned to the University.

Section 2.4. Faculty, Staff, Student and Visitor Responsibilities

Faculty, staff, students and visitors recognize their responsibility as members of the University's community of scholars to cooperate in the prompt and open dissemination of ideas and inventions by:

- (a) disclosing promptly and completely the creation of new intellectual property to the OTL, even if the University does not necessarily have rights to such intellectual property under the provisions of this Policy;
- (b) maintaining, consistent with applicable laws, regulations and customs, laboratory notebooks and similar written and digital records concerning research activities;
- (c) executing in a timely fashion all appropriate documents upon the University's request, such as an assignment of rights;

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- (d) adhering to restrictions on the assignment, sale, licensing, commercialization, distribution or transfer of intellectual property that belongs to the University;
- (e) not taking any action which is inconsistent with the University's exclusive ownership of its intellectual property;
- (f) cooperating in technology transfer activities in a manner consistent with University policy and procedure, including those governing conflicts of commitment and conflicts of interest (see Section 4.4); and
- (g) cooperating with the University in legal actions relating to intellectual property (e.g., including administration, infringement and ownership litigation).

Faculty, staff and students should contact the OTL prior to publication or dissemination of information that may have commercial value to ensure that such actions will not adversely impact the University's ability to protect or commercialize intellectual property.

Section 2.4(a) [Sponsored Agreements](#)

Contracts or grants sponsored by the federal government require that the University retain title to inventions conceived or reduced to practice in the performance of a sponsored project, subject to a royalty-free, non-exclusive license granted to the government. The same requirement frequently applies to copyrightable material developed in the performance of a sponsored project.

USC's standard contracts with non-government sponsors provide that the University retains ownership of all intellectual property conceived or reduced to practice while performing the sponsored project. The University will not accept or renew extramural contracts, grants or other agreements that restrict the rights of the faculty to free inquiry or to free scholarly dissemination of results within a reasonable time. The University may permit sponsor review and delay (normally not to exceed 30 days) to prevent premature disclosure of inventions which may be patentable or if a project involves use of proprietary data from the sponsor, but not denial of publication of results. The research sponsor frequently is granted an exclusive, time-limited option to license the rights to all or portions of such intellectual property.

The terms of such sponsored agreements apply not only to inventions/materials developed by faculty and staff, but also to students and other individuals participating in the project, whether or not they are paid by USC. Accordingly, it is essential that the principal investigators inform all participants of their responsibilities and obtain a written assignment of rights from all such participants.

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USC faculty and staff as well as others participating in a sponsored project should contact the Department of Contracts and Grants if they have any questions regarding the interpretation of agreement terms.

Section 2.4(b) Confidential Information with Potential Value

In the course of their research activities, members of the University community may develop confidential information, including inventions and discoveries related to processes, machines, manufacturing and compositions of matter. This confidential information, referred to as trade secrets in the industrial world, may have significant commercial value. The University, however, cannot maintain the commercial value of its confidential information without the assistance and cooperation of faculty, staff and students. Accordingly, before faculty, staff or students disclose USC's confidential or proprietary information to a third party, they should comply with the restrictions of any sponsored agreements and, at minimum, have that third party execute a non-disclosure agreement. Please contact the OTL if you require a non-disclosure agreement.

Similarly, if faculty or staff receive confidential or proprietary information from a third party under a confidentiality agreement, they have a duty not to disclose such information and to take necessary precautions to protect the confidentiality of such information. Students should be cautioned not to base their theses or dissertations on third-party confidential information, whether furnished by the third party or resulting from sponsored research.

Section 2.4(c) Copying of Works Owned by Others

Members of the University community should be aware of copyright and other intellectual property rights of individuals before they copy works -- in physical or digital form -- owned by others. As a rule of thumb, unless your use of the work is exempt or excused from liability for infringement under federal or state laws, you should obtain written permission from the copyright owner to use the work. Please contact the Office of the General Counsel for assistance regarding use of works owned by third parties, including copying for classroom or course use. Please contact the Dean's Office of the University Libraries for assistance regarding copying for library purposes.

Section 2.4(d) Outside Consultants

Federal copyright law specifies that copyrightable works created by non-employees, including consultants and independent contractors, are owned by the author or artist and not by the University unless there is a written agreement stating otherwise. Therefore, USC personnel who hire consultants or independent contractors should make sure that there is an agreement in writing that specifies that the University will

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own any resulting intellectual property. For copies of sample agreements, please contact the Department of Contracts and Grants.

Section 2.4(e) [Off-Site Consulting and Sabbatical Arrangements](#)

Members of the University community should be careful that their work off-site from the University, including work during sabbaticals, while visiting other institutions and while consulting with industry, does not conflict with their obligations and commitments to the University. It is the responsibility of the individuals to ensure that their agreements with third parties are in keeping with their obligations to the University. The Department of Contracts and Grants can provide suggested language for inclusion in consultant agreements with outside entities.

Section 2.4(f) [Visitors](#)

Visitors, including faculty members from other institutions and industrial personnel who visit USC, are subject to this Policy throughout their stay with the University and thereafter so long as activities initiated at the University continue. Visitors should disclose to their department chair or other supervising faculty member if they are subject to a potentially conflicting policy from their home institution, and such USC supervisors should seek to confirm with visitors that no such conflict exists. If a potential conflict is discovered, the OTL should be consulted for guidance.

Section 3. [Administration of the Policy](#)

This section describes the process by which faculty, staff, students and others can protect intellectual property covered under this Policy. It is intended as a guide so that members of the University community understand generally how decisions are made regarding intellectual property protection. Certain processes regarding the administration of this Policy may change over time, however, to respond to changes in the law as well as the needs of the University.

The University will determine ownership of intellectual property and will facilitate the licensing, commercialization or other transfer of USC intellectual property. This is the responsibility of the Vice Provost for Research in consultation with the OTL, the Trademarks and Licensing Services Office (“TLSO”) and the Office of the General Counsel.

The OTL, for example, evaluates and markets technologies, administers invention reporting, obtains patent and copyright protection for USC intellectual property, and negotiates licensing agreements, transfers of tangible research property, confidentiality

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agreements, and other agreements to distribute technology. The TLSO assists in clearing, registering, protecting and enforcing USC Marks, negotiating licensing and promotional agreements, and advising on trademark issues. The OTL and the TLSO work with the Office of the General Counsel to ensure that the agreements to be executed by the University are legally acceptable. The Vice Provost for Research is responsible for determining issues regarding ownership and transfer of intellectual property on behalf of the University.

USC faculty, staff, students and others who require advice regarding intellectual property protection should consult with the OTL or the TLSO, as appropriate, as well as their respective departments or deans.

Section 3.1. *Disclosure of Intellectual Property*

When a member of the University community creates potentially patentable intellectual property which, under this Policy, is owned by USC, the intellectual property should be disclosed promptly to the OTL. The OTL will furnish individuals with the disclosure forms and other documents necessary for the OTL to evaluate the intellectual property.

An invention disclosure provides information about the inventor(s), the nature of the invention, circumstances leading to the invention and activities by the inventor(s) subsequent to the invention. Typically, the inventor(s) also must submit manuscripts, sketches, drawings and other pertinent data or materials as part of the disclosure. An invention disclosure is also used to report technology that may not be patented but may be protected through other means such as copyrights.

Members of the University community are expected to use their own good judgment and common sense in determining whether an invention has commercial potential. If it does, the invention should be considered “potentially patentable” and should be disclosed to the OTL. In addition, failure to make timely and complete disclosure of an invention conceived or reduced to practice using any sponsored research funds may be a breach of contract or violation of law.

Section 3.2. *Patent Protection*

By securing patent protection for USC intellectual property, the University receives the right to exclude all other parties from making, using or selling products or methods covered by the patent for a specified term (usually 20 years from the date the patent application is filed). This exclusive right may be secured on a country-by-country basis upon filing and prosecution of patent applications, a process that may be time consuming and costly.

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Patent protection of inventions may be warranted if such protection will encourage the development of commercial products based upon such inventions, thereby enhancing the utilization of such inventions for the public benefit. Although patent protection may be sought for noncommercial reasons, USC typically will not seek patent protection for inventions that it determines do not have sufficient commercial potential to warrant further investment of University resources.

The decision to seek patent protection is made by OTL, based upon disclosures from the inventor(s), the potential commercial market for the technology and, when appropriate, input from the Director, Department of Contracts and Grants, and the Vice Provost for Research. Thus, the disclosure of inventions made by faculty, staff, students and visitors to OTL is essential, to permit the University's evaluation of the commercial potential of such inventions and to allow the University to satisfy its obligations to sponsors who contributed funding to the development of inventions. *[See also Section 3.1 above.]*

In making the decision about whether to file patent applications, OTL will also take the following factors into consideration:

- (a) whether and to what extent the University has ownership;
- (b) whether the inventor/author has made full and complete disclosure of the intellectual property to the OTL;
- (c) whether there are conflicts of interest and/or conflicts of commitment and, if so, whether they have been managed or resolved;
- (d) whether ongoing research is continuing at USC in the same or related areas as the intellectual property; and
- (e) whether the University is permitted to do so under sponsored agreements.

Any publication or other non-confidential disclosure that describes an invention even in minimal detail, or public use of such invention, prior to filing for a patent precludes patenting in many foreign countries and precludes protection in the United States unless a patent application is filed within one year from publication or public use. Questions regarding the implications of publication or public use upon patent rights should be directed to the OTL.

If USC elects not to commercialize a technology, the OTL will so advise the Dean of the School of the inventor's primary appointment and will give the Dean an opportunity to fund the commercialization. If the School decides to file or pursue patent protection in

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the U.S. or abroad, the OTL will manage the prosecution of the patent application on behalf of the University and the University will share net royalties as specified in Section 4.1 below.

Section 3.3. Copyright Protection

Copyright protection for books, articles, computer software, websites, musical compositions, artwork, sculptures, films, photographs, videos and other copyrightable works is important to the University to recognize authorship of the work and to guarantee that USC may license the material for publication, duplication, display and distribution.

In order to recognize authorship and protect the integrity of the work, USC requires a notice of copyright to be affixed to University-owned copyrighted materials in the following form:

“Copyright [year] or © [year] University of Southern California. All rights reserved”.

The date in the notice should be the year in which the work is first published.

USC also may elect to register certain copyrighted works with the United States Copyright Office in order to avail itself of certain statutory protections under the copyright laws.

Questions concerning copyright protection and registration should be directed to the OTL or the Office of the General Counsel.

Requests for reprints of USC copyrighted works should be directed to the school, department or unit that developed the copyrightable work.

Section 3.4. Tangible Research Property

Research materials that are created, discovered or developed in the course of University research frequently may be patented or copyrighted and licensed for commercial purposes. Such Tangible Research Property also may be distributed and exchanged for research or other educational purposes.

Tangible Research Property and other data may have economic value. The OTL will provide assistance to ensure that such property and data is properly protected before it is licensed or distributed.

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Section 3.5. Computer Software

Computer software may be subject to patent or copyright protection. If the software is owned by the University and the inventor/author wishes to make it publicly available for non-commercial use, the developer should, at minimum, include the following notice on the first screen prior to distributing the software:

Copyright [year] or © [year], University of Southern California. All Rights Reserved.

“This software is experimental in nature and is provided on an AS-IS basis only. The University SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

This software may be reproduced and used for non-commercial purposes only, so long as this copyright notice is reproduced with each such copy made.”

Faculty, staff and students should contact the OTL for an appropriate form of license agreement and related procedures before distributing University-owned computer software and to confirm that public distribution does not violate the terms of a sponsored agreement or applicable law (e.g., encryption software).

Section 3.6. Trademark Protection

Service marks and trademarks are among the University’s foremost assets and must be treated as such to maintain their viability. The USC name and related marks and graphical features are internationally recognized as symbols of the excellence achieved by members of the University community in a wide range of endeavors.

Service marks are designations of sources of origin for services such as educational services, entertainment services, financial services and health care services, and are created by use of a mark in advertising for the services. Trademarks are designations of sources of origin for products such as software, hardware, clothing and gift items, and are created by use of a mark on labels, tags, containers and packaging for the products or use of a mark directly on the products. Non-descriptive words, names, symbols, phrases, sounds and distinctive colors may be protected as trademarks and service marks.

Unlike a copyright or patent, trademark rights can last indefinitely if the mark is used continuously and properly. Trademark rights arise from (1) the use of the mark in interstate commerce; (2) the mark’s distinctiveness (as opposed to marks that simply

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are descriptive or generic); and (3) the mark's uniqueness — it must not be confusingly similar to a previously-used trademark.

In order to protect a trademark or service mark, it is important that the designation "TM" is used after the trademark or "SM" after a service mark until such time as it is registered with the United States Patent and Trademark Office (the "PTO") to give third parties adequate notice of ownership. The designation "R" inside a circle ("®") must be placed to the right of the mark after it is registered with the PTO, in order to preserve the trademark owner's rights in the event of an infringement.

It is not necessary to register a trademark with the PTO in order for the trademark to be protected in the United States. However, federal registration provides certain advantages. Among these are: (1) establishing a first use date, which gives the first user priority over later users of the trademark or service mark; (2) recovering lost profits, damages and costs in litigation with the possibility of treble damages and attorneys' fees; (3) status as the exclusive user of the mark in commerce for specific types of goods and services identified in the registration; and (4) a basis for filing trademark applications in foreign countries.

The University's service marks and trademarks (the "USC Marks") distinguish the University's services and products from those of other institutions, and confer on the University the exclusive right to use the USC Marks. For example, USC has registered or used a wide variety of marks in connection with certain products and services developed by the University's schools, departments or related entities, including the following:

USC®

University Seal (graphic)®

UNIVERSITY OF SOUTHERN CALIFORNIA™

Trojan Head (graphic)®

TROJANS®

SC (interlock)™

MOSIS®

NETCHEQUE®

Neither the University name nor any USC Mark may be used, apart from proper identification of University personnel (e.g., Thomas Troy, Professor of History, University of Southern California), without the prior written consent of the University,

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which may be obtained through the Trademarks and Licensing Services Office (“TLSO”). This principle also applies to the use of any USC Mark as part of an Internet domain name. Appropriate forms of agreement for sanctioning use of University Marks may be obtained from the TLSO.

Trademarks or service marks covered under this Policy should be registered through the TLSO. The TLSO also can assist in performing conflicts checks in connection with the use of a particular mark. All USC Marks must be graphically represented in a manner consistent with the University’s identity guidelines.

In summary, the preservation of the University’s exclusive rights to the USC Marks is predicated by law upon consistent and carefully monitored use of such marks, and any use of the USC Marks is subject to prior written approval by the University. Please contact the TLSO with any questions concerning the use or licensing of USC Marks.

Section 3.7. *University Response to Policy Violations*

A violation of this Policy, like all important University policies, is subject to sanctions, including those set forth in the Faculty Handbook, Staff Employment Policies and Procedures and SCampus. In such cases, the matter will be referred to the disciplinary process for faculty, staff or students, as the case may be. In student cases, the appropriate process will depend upon whether the violation arose out of the student’s work as a teaching assistant, research assistant or other compensated position. No such disciplinary action will preclude the University from pursuing the matter through civil or criminal legal action when warranted.

Section 4. *Commercialization*

Commercialization is one of the University’s priorities in developing and distributing USC owned intellectual property. Commercialization facilitates the transfer of USC’s technology for society’s use and benefit while generating unrestricted income to support research and education. USC’s success in commercializing its intellectual property, however, is largely dependent upon the efforts of the inventor/authors. The University’s goal of commercializing its technology may frequently coincide with the entrepreneurial interests of members of the University community.

The University’s efforts at commercialization are intended to benefit the University, the inventor/author and the public. While OTL takes into consideration the interests of these constituencies, as well as those of the inventor’s Department and school, ultimately OTL’s decisions are made on behalf of the University, with the goal of

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efficiently and effectively transferring technology consistent with this Policy and other University guidelines.

The OTL works closely with inventors to pursue commercialization of technology (whether patentable or copyrighted) through licensing and other means. Inventors are not just the source of inventions and copyrighted works to commercialize; they are also providers of valuable input in the commercialization process. Inventors frequently provide leads to potential licensees, professional input on the technical and market feasibility of an invention and guidance as to how best to commercialize technology. Inventors do not, however, control the negotiation of license or other agreements for the technology. The OTL has the responsibility, after appropriate consideration of the inventor's input, to negotiate appropriate licenses and other agreements with third parties, monitor progress of the licensees and distribute royalties in accordance with USC's policy.

When appropriate, USC may accept an equity position in a third party licensee in lieu of or in addition to cash royalties. Generally cash payments are preferred over equity, as cash has immediate value and equity may not even have future value. When equity is accepted as partial consideration for a license, additional considerations will apply. *[See Section 4.3 below.]*

For the following reasons, OTL generally will not commit future inventions to licensees even where improvements to technology or derivative works are anticipated. First, under certain tax laws and regulations, the University is restricted in the amount of ongoing privately-funded research that can be conducted in facilities funded by tax-exempt bonds. Second, federal regulations require the University to negotiate licenses involving federally sponsored research at fair market value. (Obviously, it is difficult for the University to determine accurately the fair market value of inventions that have not yet been developed.) Finally, there is a business risk in committing future inventions to licensees when the parties do not yet know the inventions' true value.

Section 4.1. *Royalty Sharing*

One of the objectives in the commercialization of USC technology is the generation of royalty income. Because USC is a research and service-oriented educational institution, it does not focus solely on the generation of revenues. The University does, however, seek to generate the greatest possible royalty revenue it reasonably can without compromising its research and education mission. This is done through the negotiation of fair, reasonable and consistent license and other agreements that serve as the base for a long-term relationship. The proceeds from such agreements are shared with inventor/authors in varying percentages depending upon the type of intellectual property and other factors, as detailed below. When revenue-producing

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technology is composed of several different types of intellectual property (such as technology that is protected both by patents and copyrights), the Provost in consultation with OTL will have authority to allocate revenues between the different types of intellectual property.

The extent of the University's sharing of patent royalties and other revenues with inventors is dependent upon the date of the inventor's commencement of employment with USC and the inventor's own choice. For inventors employed by the University prior to the effective date of this Policy, the patent sharing arrangement specified in Section 4.1(a) below will apply, unless such inventors elect in writing to be governed by Section 4.1(b). Any such election will be permanent and will apply to all future inventions created while the inventor is a member of the University community. For inventors employed after the date of this Policy, and for all others who so elect in writing, the patent sharing arrangement specified in Section 4.1(b) below will apply.

Section 4.1(a) Patent Sharing Arrangements Applicable to Inventors Employed Prior to Policy Date

In consideration of the invention ownership policy provided for above, the University has agreed to share with the employee inventor the net royalty income derived by the University from licensing and similar agreements related to the employee inventor's inventions. The extent of this sharing will be determined in the following manner:

The Senior Vice-President for Academic Affairs and Senior Vice-President for Administration will appoint an ad hoc committee at the request of the inventor, at the request of the University Patent Committee or on his/her own initiative. Such a committee will consist of the inventor, or his/her representative, a representative of the President and a third member from the faculty mutually agreed upon by the other two members. Determination of an inventor's share of any income derived from royalties will be made at the time the University is notified that the invention is patentable.

In general, the University will share 50 percent of the net royalty income, if any, derived from an invention with the invention's inventor(s). Since many circumstances surround the development of inventions by University employees, the exact division of income in each case is best determined by the ad hoc committee.

All University patent policy questions for inventors subject to treatment under this Section 4.1(a) are, unless waived in writing by the inventor(s), referred to the University Patent Committee, which reviews such questions and makes recommendations to the Provost and University Counsel. The committee consists of seven members who are appointed and serve at the pleasure of the President.

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All patent matters referred to the committee are considered promptly, and decisions are rendered at the earliest possible time after report of the invention to the University. In general, the committee will recommend one of the following procedures to the President:

- (1) That patent action be instituted by the University at its own expense or in the alternative transmittal of the idea or invention to a development organization under provisions of agreements between the University and these organizations; and/or
- (2) Transmittal of the idea or invention to the sponsoring agency as may be required under the terms of the agreement governing the research; or
- (3) Return of the idea or invention to the persons from whom it has been received with the written opinion that it does not warrant further patent action from the University and that the inventor is released from further responsibility to the University with respect to that particular invention.

Section 4.1(b) Patent Sharing Arrangements for Inventors Not Subject to Section 4.1(a)

All licensing and royalty payments derived from patents to which the University has rights under this Policy are administered by OTL. Cash payments received are applied first to the payment of any direct expenses not reimbursed by licensees, such as fees for patent searching, filing, prosecution, enforcement and maintenance, as well as marketing, licensing and auditing expenses. After application to such expenses, cash proceeds from license and other commercialization arrangements will be applied to a Commercialization Incentive Fund (CIF) fee equal to fifteen percent (15%) of such receipts. Annual awards will be made from the CIF to USC inventors/authors with promising inventions or copyrightable works, as described in Section 4.1(e) below.

The net royalty income after such deductions is distributed as follows:

- Thirty-three and one-third percent (33 1/3%) to the inventor(s) or the inventors' heirs or assigns;
- Thirty-three and one-third percent (33 1/3%) to the University;
- Sixteen and two-thirds percent (16 2/3%) to the inventor's School; and
- Sixteen and two-thirds percent (16 2/3%) to the inventor's Department or Institute.

The portion of net royalty income distributed to the University and each School, Department and Institute must be used for research or educational purposes only and

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may represent a source of unrestricted funds for such important activities as novel research, technical advancements and graduate fellowships. It is expected that the University and each School, Department and Institute receiving a share of net royalty income will report annually on the recipient's application of such funds.

If an inventor is not a faculty member or otherwise does not have an affiliation with an academic school, department or institute, the inventor may designate such a school, department or institute within the University to receive the share of net royalty income specified above for such a University unit. In the absence of any such designation, the University will receive the portion(s) of net royalty income specified for such school, department or institute, subject to the limitations on use discussed above.

A School may have a different royalty distribution arrangement with its faculty, staff and students if the School obtains written approval from the Senior Vice-President, Administration and the Provost and provided the University's share does not change. University approval is necessary because there are legal considerations related to the University's obligations under federally sponsored projects. In addition, the University must consider whether the arrangement is fair and equitable to faculty or staff members in the School.

The School also must have a written agreement with the inventor whereby the inventor acknowledges that the royalty-sharing arrangement differs from the standard University royalty distribution policy and waives any rights that he/she may have under such standard University policy.

Co-inventors are required to sign, at the time of disclosure, a Distribution Agreement regarding the percentage distribution to each co-inventor. If no such agreement is furnished to the University, the University may withhold royalty distributions, with no obligation for the payment of interest or any similar amount, until it has received written direction, signed by all co-inventors, as to the appropriate distribution of royalties.

If the Dean decides to fund patent protection on behalf of a School after the University has declined to do so, the School must reimburse OTL promptly for all patent and other directly related out-of-pocket expenses for that specific patent prosecution that arise thereafter, on an ongoing basis. If such patent and other directly related out-of-pocket expenses regarding that patent prosecution are later reimbursed by a licensee, OTL first will deduct any accrued OTL costs and the CIF fee described below, and then reimburse the School for its directly related patent expenses, before OTL makes any other distribution of net royalties. OTL will distribute net royalty income on the same basis as usual, as specified above in this Section 4.1(b).

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Section 4.1(c) Copyright Sharing Arrangements

All licensing and royalty payments derived from copyrightable works to which the University has rights under this Policy are administered by OTL. Cash payments received are applied first to the payment of any direct expenses not reimbursed by licensees, such as fees for registration and enforcement of copyrights, as well as marketing, licensing and auditing expenses, and then to payment of the CIF fee. The net royalty income after such deductions is distributed as follows:

- Thirty-three and one-third percent (33 1/3%) to the author(s) or the authors' heirs or assigns;
- Thirty-three and one-third percent (33 1/3%) to the University;
- Sixteen and two-thirds percent (16 2/3%) to the author's School; and
- Sixteen and two-thirds percent (16 2/3%) to the author's Department or Institute.

As with patent income, net royalty income derived from copyright licensing and distributed to the Provost will be used for research or educational purposes only and may represent a source of unrestricted funds for such important activities as novel research, prototype development and graduate fellowships. Similar to the patent rules discussed above, for copyrighted technology resulting from research funded by the federal government, net royalty income received by the University or any of its divisions must be applied to scientific research and education consistent with the requirements of federal law.

If an author is not a faculty member or otherwise does not have an affiliation with an academic school, department or institute, the author may designate such a school, department or institute within the University to receive the share of net royalty income specified above for such a University unit. In the absence of any such designation, the University will receive the portion(s) of net royalty income specified for such school, department or institute, subject to the limitations on use discussed above.

A School may have a different royalty distribution arrangement with its faculty, staff and students, subject to the principles and restrictions described in Section 4.1(b) above. In the case of co-authors, a Distribution Agreement must be filed with the University, and any failure to file such an agreement will have the consequences described in Section 4.1(b) above.

Section 4.1(d) Trademark Sharing Arrangements

The University will share net royalty income derived from University-owned trademarks and service marks as follows:

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Technology-based trademark licensing: after deduction of direct expenses not reimbursed by licensees and payment of the CIF fee, net royalty income is shared as follows:

- Thirty-three and one-third percent (33 1/3%) to the inventor(s) or the inventors' heirs or assigns;
- Thirty-three and one-third percent (33 1/3%) to the University;
- Sixteen and two-thirds percent (16 2/3%) to the inventor's School; and
- Sixteen and two-thirds percent (16 2/3%) to the inventor's Department or Institute.

USC Identity Extension Licensing:

- 50% to unrestricted student scholarships
- 50% to the relevant Department

School/Department/Institute Identity Extension Licensing:

- 25% to unrestricted student scholarships
- 75% to the relevant School, Department or Institute

Merchandise Licensing: the first \$100,000 to the athletic department, then of the net residue:

- 50% to unrestricted student scholarships
- 50% to the athletic department

Post season athletic event revenue:

- 25% to unrestricted student scholarships
- 75% to the athletic department

Net trademark royalty income is determined after USC has recouped direct expenses, including trademark design, searching, filing, prosecution, enforcement and maintenance, as well as marketing, licensing and auditing expenses, and the CIF fee applicable to technology-based trademark licensing.

Section 4.1(e) Commercialization Incentive Fund

The 15% CIF fee deducted from net royalty income pursuant to Section 4.1(b), (c) and (d) above will be accumulated as a Commercialization Incentive Fund (CIF). CIF awards will be made annually to USC inventor/authors as appropriate in the University's determination to enhance the likelihood of commercialization of selected USC technologies. Recipients of CIF awards will be recommended annually by a committee

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of faculty nominated by the Deans of the Schools. This CIF Committee will review written proposals from investigators and will make recommendations to the Vice Provost for Research who may seek additional expert advice before making awards. CIF awards may vary in size. Items proposed may include prototype or modeling expenses, feasibility studies and other commercialization assistance modalities.

In order to be eligible for consideration for CIF awards, USC inventor/authors and their team members must be subject to net royalty income treatment under Section 4.1(b), (c) or (d) of this Policy at the time of their nomination for a CIF award.

Section 4.2. *Licensing of USC's Rights to Third Parties*

The University, in its sole discretion may license intellectual property to a third party, subject to certain conditions, including:

- The license will, in the judgment of the University, enhance the transfer of the technology;
- The potential licensee meets USC's standard conditions, including commitments and capabilities to maintain insurance and protect the University from legal claims;
- The license is consistent with USC's obligations to third parties;
- Neither the potential licensee nor the inventors/authors have an unmanageable conflict of interest or commitment [*see Section 4.4*];
- The terms of the technology transfer are commercially reasonable.

Inventors/authors and inventor/author associated companies also may seek a license to commercially exploit USC owned intellectual property that they developed based upon these same guidelines. The inventors/authors must make a full and complete disclosure of their financial or other interests in the entities seeking such a license from the University.

Section 4.3. *Equity Interest*

The University seeks licensees that have the financial and other resources necessary to pay for obtaining and/or maintaining intellectual property protection and to develop and commercialize the technology.

Under certain conditions, USC will agree to accept an equity interest as partial or total compensation for any rights conveyed to a business entity to license or otherwise

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commercialize intellectual property owned by USC. The Provost and the Senior Vice-President for Administration must be advised before the University can enter into any agreement under which the University will receive an equity interest.

Before the University will grant a license to a business entity in which a USC inventor/author holds or will acquire an equity or founder's stock and/or option position, the inventor/author must disclose any potential or actual conflicts of interest or commitment related to the inventor/author and any other University employee and all such conflicts must be resolved to the University's satisfaction. *[See Section 4.4 regarding Conflict of Interest or Commitment.]*

The Office of the Treasurer will hold USC's equity or equity-related interests on behalf of the University, but does not hold equity on behalf of USC employees. The University exclusively decides whether and when to exercise or sell such equity.

When USC accepts equity in a company as partial consideration for a technology licensing-related transaction, the University requests that the inventor/authors receive their shares of equity directly from the company. However, the aggregate of the shares received by the University and all USC inventors/authors will be treated as part of the gross licensing revenue received by the University, subject to similar treatment as cash royalty payments. Thus, the University's share of gross revenue, including a CIF fee when applicable, will be assessed against the total number of shares issued to the University and all USC inventors/authors. It is the responsibility of USC authors/inventors to cooperate with the University in directing the licensing entity to issue shares to the USC-related parties consistent with this Policy.

In some cases, the company may not offer shares to inventors/authors, or the inventor/authors may elect not to receive shares directly from the company. In such cases, USC's Office of the Treasurer will promptly authorize the company or its transfer agent to transfer to the inventors/authors the portion of the shares allocable to the inventors/authors personally. If that is not practicable, income from the sale or disposition of equity interests held by USC on its own behalf will be distributed as net royalty income pursuant to the royalty distribution policy applicable to the inventors/authors under this Policy. However, unless the inventors/authors provide the University with a written agreement specifying an alternate allocation of income, each individual's share of such income under the applicable policy will be divided equally according to the total number of inventors/authors, net of the portion of such income allocable to any inventor/author(s) who obtained equity shares directly from the company.

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Section 4.4. Conflict of Interest or Commitment

Any of the following factors may signify a conflict of interest or commitment, which must be considered before USC can license its rights to an inventor or author or a licensee in which the inventor/author has an equity interest:

- The inventor/author, immediate family or significant others have, directly or indirectly, financial or personal interests that may compromise, or have the appearance of compromising, the inventor/author's professional judgment in performing his/her duties;
- An undue influence on the employment commitment of the inventor/author to USC in terms of time, effort and assigned area of duties;
- An adverse impact on USC's mission.

The following are some guidelines regarding conflicts of interest and commitment:

- Faculty may not hold management positions in the licensee organization without the prior written approval from the Senior Vice President, Administration or the Provost of the University, on the recommendation of the Dean;
- USC facilities may not be used for the business of the licensee absent a specific agreement between the University and licensee, on the recommendation of the Dean;
- Students may not work on the business of an inventor/author associated company while being paid as research assistants on sponsored projects or receive academic credit for the work performed for the company. If students are employed by inventor/author associated companies, their academic research should not be guided or directed by any employee or principal of the company, even if the employee is a faculty member. In addition, a student's ability to publish research results should not be restricted by the inventor/author associated company. Thus, students should not be put in a position of divided loyalty between their academic research program and their employment. Further, hiring and firing decisions by the company should not influence the academic program or progress of any student.
- Sponsored research funding from a licensee in which the University or a University faculty or staff member has an equity interest requires special oversight by the head of the department or unit and the Dean of the applicable school to ensure that actual or potential conflicts of interests are managed. Before the University will approve

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the use of its resources and facilities for such research funding, all such actual or potential conflicts of interest must be resolved or managed.

It is the responsibility of the inventor/author to disclose actual or potential conflicts of interest or commitment. The University may require the inventors/authors to certify in writing that they do not have a conflict of interest or commitment or, if so, how such conflict will be managed, before granting a license to an inventor/author associated company or entity or transferring ownership rights to an inventor/author. The Vice Provost for Research, in consultation with the Office of the General Counsel and the OTL, will determine if the conflict can be managed and options for resolution.

The University's policy regarding conflict of interest in connection with Public Health Service ("PHS") funded research and National Science Foundation funded research provides additional guidance regarding government requirements concerning potential or actual conflicts of interest. The Vice Provost for Research also can provide additional information regarding conflict of interest policies in connection with other funded research.

Section 5. Approval and Execution of Documents

The University has the sole right to negotiate and enter into agreements regarding the use, commercial development, distribution, publication, transfer and other exploitation of intellectual property which is owned by the University or to which the University otherwise has rights under this Policy.

Such agreements may only be executed by the Senior Vice-President, Administration or the Provost.

This Policy is effective as of the date set forth below. It is the University's intention to review the Policy from time to time following its adoption.

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Appendix 1. Definitions

CIF is the 15% Commercialization Incentive Fund fee deducted by the University from net royalty income and administered in accordance with Section 4.1(e) of this Policy.

Copyright applies to original works of authorship fixed in any tangible medium of expression, including literary, musical, dramatic, choreographic, pictorial, graphic and sculptural works, motion pictures and other audiovisual works and sound recordings. Examples of copyrightable works could include films, songs, artwork, software, computer programs and web pages. Examples that do not qualify as copyrightable works include ideas or concepts, mere facts, materials created by employees of the federal government or materials in the public domain. The owner of a copyright has the exclusive right to reproduce, distribute, perform and display the work and prepare derivative works.

Courseware includes all course syllabi, the expressive content of digital teaching media, CD-ROMs and Web publications and other materials created for the purposes of teaching or instruction or to support the teaching of a course.

Faculty includes all full-time, part-time, adjunct, voluntary and emeritus members of the USC instructional, research and clinical faculty.

Identity Extension Licensing occurs when a University, school or unit name is licensed by a third party provider of a product or service to signify a source- or sponsorship-designating relationship between that third party's product/service and the University. Identity extension is often used to expand the University's operations into non-traditional areas. Examples: Should USC license a group of immediate-care medical centers to be known as USC Immediate Care Clinics, the resulting business would be a USC identity extension. If the resulting business in the above example were to be known as the USC *Medical School* Immediate Care Clinics, it would be a school identity extension.

Intellectual Property encompasses numerous forms of intangible personal property. For purposes of this Policy, intellectual property includes but is not limited to copyrights and copyrightable materials, patented and patentable inventions, tangible research property, trademarks, service marks and trade secrets.

Inventor or **inventor/author** is the member of the University community who develops an invention, creates a copyrightable work or otherwise generates intellectual property subject to the provisions of this Policy.

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Licensing is the practice of transferring intellectual property rights to a third party, through a license agreement or other commercialization agreement.

Merchandise Licensing occurs when a third party clothing or gift manufacturer is licensed to sell products bearing USC insignia trademarks. Example: USC Bookstores carries merchandise licensed gift items.

Net Royalty Income is defined as gross revenues received by the University under a license or other commercialization agreement after deduction of any direct expenses not reimbursed by licensees, such as fees for patent searching, filing, prosecution, enforcement and maintenance, as well as marketing, licensing and auditing expenses and a CIF fee when applicable. If the University is obligated to share royalty income with a co-owner, research sponsor or other party, net royalty income does not include that portion of the gross revenues allocated to such party. The University may deduct a reserve from gross revenue when the University determines that further expenses may be incurred, which may not be covered by future royalty revenue. The unspent balance of any such reserve is distributed when it is no longer required. Research support received from licensees, including funds for postdoctoral positions, are specifically excluded from gross revenue in determining net royalty income.

OTL is the USC Office of Technology Licensing.

Patents may be issued for a new, useful and non-obvious process, machine, manufacture, or composition of matter, or new, useful and non-obvious improvements. By way of example, patent protection may be available for such inventions as chemical compounds, chemical processes, identification and purification of biological material, genetically engineered products or processes, electronic circuitry, electromechanical apparatus, software, machines or manufacturing processes. Patent protection is not available for ideas or concepts or materials in the public domain. The owner of a patent has the right to exclude others from making, using or selling the patented invention for a certain time period in the territory covered by the patent.

PTO is the United States Patent and Trademark Office.

Service Marks are any word, name, symbol or device or any combination thereof, adopted and used to advertise or promote a service and to distinguish that service from those of others.

Syllabi are the instructional outlines and related materials used by faculty to structure and effectively present the academic content of their courses.

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Tangible Research Property includes research materials that are created, discovered or developed in the course of university research, such as biological materials and computer software. Tangible Research Property may be protectable under copyright, patent or other intellectual property laws.

Technology - Based Trademark Licensing is employed when USC uses a new trademark to identify the source, origin or sponsorship of a copyrighted or patented product or service under license from the University. The new trademark would be licensed to technology licensees throughout the duration of the patent as well as after the expiration of the patent or copyright, thus creating a longer term revenue stream, provided the mark is maintained properly. Example: Stanford's SONDIUS trademark for sound production equipment.

TLSO is the Trademarks and Licensing Services Office.

Trademarks are any word, name, symbol or device or any combination thereof, adopted and used to identify the source of goods and distinguish them from those manufactured or sold by others.

Trade Secrets are all types of information, including formulas, patterns, inventions, knowledge, ideas, data, plans, devices, techniques or processes, that (a) derive independent economic value from not being generally known to the public or to those who could obtain economic value from disclosure or use of the information and (b) are the subject of reasonable efforts to maintain their secrecy.

University Community includes (a) all USC faculty and staff, (b) all USC students and postdoctoral fellows and (c) all USC visitors.

Visitors include all non-employees who participate in or intend to participate in research projects at USC (including visiting faculty, industrial personnel, fellows and others with similar positions).

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