

NOVA SOUTHEASTERN UNIVERSITY POLICY

Copyright and Patent

Issue Date: August 1987; revised June 1997, October 2004

Policy Number: 9

Policy Applies to: All Employees



ARTICLE I

Definitions

- A. The singular will include the plural.
- B. The masculine will include the feminine.
- C. **"Invention"** will mean any new process, design, machine, manufacture, or composition of matter or any new improvement thereof, including but not limited to, computer software and databases, biological materials, integrated circuits and firmware, circuit diagrams, engineering drawings, and prototype devices and equipment, whether patentable or copyrightable.
- D. **"Net Income"** will mean gross income less all expenses of commercial development and exploitation, including, without limitation, expenses relating to patenting, licensing, and marketing.
- E. **"Notice(s)"** will mean a writing which shall be deemed effective upon (i) personal delivery with a receipt obtained, (ii) receipt, refusal of receipt or the date noted as uncollected when sent by certified or registered mail, postage prepaid and return receipt requested, (iii) facsimile transmission with a receipt obtained for successful transmission, or (iv) the earlier of receipt or two (2) business days after deposit with a nationally recognized overnight delivery service (i.e., Federal Express).
- F. **"Patent Administrator"** will mean the President of the University or his/her appointed representative. In the event that an invention is conceived by the Patent Administrator, the Chairperson of the University's Board of Trustees will appoint a different Patent Administrator to represent the University in this special instance.
- G. **"Select Committee"** will mean a committee of three individuals appointed as follows: One individual will be selected by the affected Staff Member and a second will be selected by the Patent Administrator. The third individual, to be chosen by the first two (2) members, will be an attorney who is not acquainted with the Staff Member nor has done any work for

the University, and who has at least five (5) years of experience in the practice of copyright or patent law, depending on the type of matter involved. Neither the Staff Member nor the Patent Administrator will appoint himself/herself to the Select Committee. If the Staff Member and Patent Administrator cannot timely agree on the selection of an attorney to serve as the third member as set forth in Article V C. herein, then the Chairperson of the University's Board of Trustees shall choose such attorney.

- H. **"Sponsor"** will mean any individual, corporation, government agency, or other non-University source of funds for support of either a specific project or a specific Staff Member.
- I. **"Staff Member"** will mean any member of the faculty, staff, administration or a student-employee of the University.
- J. **"Time of Employment"** will mean the period of time during which the Staff Member is employed by the University.
- K. **"University"** will mean Nova Southeastern University.
- L. **"Works"** will mean instructional-related materials created by the Staff Member during his/her Time of Employment, including, but not limited to, course syllabi; tests, quizzes, exams, exercises, and assignments; lectures that are fixed in a print, audio-video, electronic, or digital form; reading lists; bibliographies and recommended readings; laboratory manuals (except to the extent such manuals are published by a publishing company for sale beyond the University); visual materials such as tables, charts, diagrams, transparencies, films, and film strips, photographs and illustrations; video and/ or audiotape readings, performances, programs; computer programs and software; and multimedia materials and projects incorporating some or all of the above. Notwithstanding the foregoing, excluded from the above definition of Works, and consequently reserved to the Staff Members, are the following items which are not created as an institutional initiative: books or chapters in books whether created in paper or electronic format (the term "books" includes manuals, supplements, and tests related thereto); manuscripts; theses and dissertations; articles; poems; musical work; dramatic works (including any accompanying music or artistic images), pantomimes and choreographic works, pictorial, graphic and sculptural works and other works of artistic imagination.

ARTICLE II

Preamble

Nova Southeastern University, with primary concern for the education and training of students and the advancement, preservation, and dissemination of knowledge, recognizes that its Staff Members may produce copyrightable materials, patents, and inventions, which further support these goals. The multiplicity and diversity of fields of endeavor, the complexities of technologies,

and the speed with which change occurs mandate the establishment of a coherent system which manages both the process of creation and discovery and the fruits therefrom. Thus, this policy intends to foster the sharing of the fruits of creation and discovery to support and encourage intellectual undertakings, subject to current laws and regulations.

ARTICLE III

Copyrights

A. All copyrights on Works will be reserved by the Staff Member, except as follows:

1. If the Works involve "commissioned materials" as defined below. *
2. Works as accomplished under contracts or grants where copyright specifications are delineated which do not expressly reserve the copyrights of the Works to the Staff Member.
3. If written agreements, other than those relating to commissioned materials, are entered into by the Staff Member and the University which expressly do not reserve the copyrights of the Works to the Staff Member.
4. If the Works are created utilizing any University Staff Members, facilities, equipment, funds or other resources or are used at or for the University.

* Commissioned materials will be those materials for which value is received by the Staff Member over and above the compensation received under the existing contractual relationship between the Staff Member and the University. The copyrights on commissioned materials will be reserved to the University.

B. If a dispute arises as to whether a copyright on a Work will be reserved to a Staff Member, then the dispute shall be resolved in accordance with the procedures set forth in Article V relating to patents.

C. All Works, the copyrights on which are not reserved to the Staff Member, may be used for educational (including, without limitation, instructional) purposes on a non-commercial basis by both the Staff Member, whether or not the Staff Member remains employed by the University, and the University. In connection with any such use by a Staff Member, honoraria or similar compensation earned from a presentation at a conference or other professional meeting shall belong entirely to the Staff Member. For purposes of this paragraph, the exploitation of a Work on a commercial basis shall mean its license, sale or transfer and the receipt of revenue therefrom, except that the University shall not be deemed to commercially exploit a Work when it is used for educational purposes within the University. With respect to the commercial exploitation of a Work, (i) the University shall

have no right to any Net Income concerning any Work the copyright on which is reserved to a Staff Member, and (ii) the Staff Member is entitled to receive fifty percent (50%) of the Net Income concerning any Work the copyright on which is not reserved to the Staff Member, subject to the rights of any third parties also entitled to receive Net Income. The University shall provide Notice to the Staff Member in the event the University commercially exploits any Work and the Staff member has a right to receive Net Income therefrom. Any affected Staff Member who leaves the employ of the University shall furnish Notice to the University of his/her business and residence address.

ARTICLE IV

Inventions and Patents

A. Staff Members of the University will participate in the fruits of scientific research under the following principles:

1. Inventions conceived or created by Staff Members, which do not fall within any of the items stated in A. 3 (i) through (iv) below, will belong to the individual Staff Members subject to the applicable provisions of this Article. Patents from such Inventions must be administered by the Staff Members so as to not involve the name or other identification of the University or any of its facilities.
2. Ownership and disposition of Invention rights resulting from research financed wholly or partially by Sponsors will be determined by the rules, regulations, and procedures of the Sponsors, the terms of the related research agreement, and the policies of the University. A Staff Member who elects to perform research on Sponsor projects undertaken by the University is required to sign such supplemental agreements as are necessary to enable the University to fulfill its legal obligations thereunder with respect to patentable Inventions and otherwise. Staff Members shall not enter into any agreements with any Sponsor without the prior written approval of the Patent Administrator.
3. Subject to the Staff Member's right to Net Income, as described in this Article IV below in the Section entitled "Sharing of Net Income", the University acquires one hundred percent (100%) ownership in all Inventions conceived or created by a Staff Member when such Invention is directly or indirectly related to the Staff Member's field or endeavor to which Staff Member's employment relates, provided that any of the following circumstances exist:
 - i. when the Invention is conceived or created during a special research assignment given to a Staff Member pursuant to a research contract or grant of the University, provided there are no provisions in such contract or grant to the contrary.

- ii. when the Invention is conceived or created by the Staff Member's use of University facilities, equipment, funds or other resources of the University.
 - iii. when the Invention is conceived or created by a Staff Member at the University or during the Staff Member's working hours for the University.
- iv. when the Invention is conceived or created in violation of the University policy relating to outside activities of Staff Members.

Staff Member Owned Patents

- A. Staff Member owned patents may, at the option of the Staff Member and with the written consent of the University, be assigned to the University for administration under University patent policies, or in accordance with specific agreement between the Staff Member and the University.
- B. At the request of the University, any Staff Member who conceives or creates an Invention in which the University has an ownership interest will execute any documents required to make application for patents in the United States and abroad, and for assignment of such patent applications or patents to the University or its designee. The expense of the patent proceedings undertaken by the University pursuant to this Policy is to be paid by the University or by its assignee, subject to reimbursement as provided for herein.

Disposal of Rights

- A. The University may dispose of its rights to any Invention as it determines in its sole discretion, including, but not limited to:
 - 1. Selling, licensing, assigning, transferring or otherwise exploiting such rights.
 - 2. Utilizing such rights for public use, if principles of charity or public policy in the determination of the University so demand.
 - 3. Releasing such rights to the Staff Member, provided he/she repays expenses already incurred by the University or its assignee.
 - 4. Including such rights in a research contract with a third party under which the rights are, either in advance or subsequently, assigned, licensed or otherwise transferred to a third party.

Sharing of Net Income

- A. For any Invention in which the University has an ownership interest, the University and the Staff Member will each share fifty percent (50%) percent of the Net Income therefrom unless otherwise provided in written agreements entered into between the Staff Member and the University. The University will have the option of choosing the marketing forum and format.
- B. In all cases in which the University has an ownership interest in an Invention as provided for herein, and either does not file a patent application within one year from its receipt of written disclosure of the Invention or fails to make a determination regarding its intent to

pursue a patent within a period three (3) months from the date of receipt of such disclosure, all of the University's rights will be reassigned to the Staff Member upon written request, subject only to such Sponsor restrictions which may apply, unless the University proceeds within twenty (20) working days following receipt of the written request by the Staff Member to begin the process of completing the documents required to file a patent.

Staff Member Cooperation

- A. The Staff Members of the University will fully cooperate with the University in all patent matters, which cooperation shall include, but not be limited to, the following:
 - 1. Maintaining clear and detailed records relating to their research and other work relating to the Invention.
 - 2. Promptly notifying their immediate superior and the Patent Administrator whenever, in their opinion, an Invention, patentable or not, is conceived or created.
 - 3. Assisting the patent attorney designated by the University or by the University's assignee in all stages of the patent application process.
 - 4. The obligations of Staff Members to so cooperate shall remain effective after the Staff Members leave the employ of the University.

ARTICLE V

Disclosure and Resolution of Disputes

- A. Any Invention conceived or created by a Staff Member during his/her Time of Employment shall be disclosed to the University in writing immediately upon conception or creation. The disclosure will provide such reasoning, references, data, sketches, and other pertinent material, which would aid the University in deciding the course of action to be taken with respect to the Invention. Such written disclosure shall be made by Notice to the Staff Member's immediate supervisor and the Patent Administrator. The Patent Administrator will provide to the Staff Member by Notice a written acknowledgment of receipt of the disclosure materials.
- B. If the Staff Member and the Patent Administrator cannot determine whether the University has an ownership interest in the Invention, then the question will be resolved by the Select Committee.
- C. The Select Committee shall be formed within thirty (30) days after the date that the Staff Member and the Patent Administrator are unable to determine ownership rights to the Invention. The Select Committee shall conduct its inquiry and render its written decision within thirty (30) days from the date the last member is selected. The decisions of the

Select Committee will be binding on all parties. Decisions of the Select Committee must be agreed upon by a majority of its members.

- D. When a decision is reached, at least two members of the Select Committee will sign and date each of two written statements of their decision. One of the statements will be transmitted by Notice to the Staff Member; the other statement will be transmitted by Notice to the Patent Administrator. The decision of the Select Committee is final and binding on the parties.
- E. The Select Committee will have free and complete access to any and all Staff Members who are believed to be in any manner connected with the resolution of the ownership of the Invention in question. Likewise, they will have free and complete access to any and all contracts, documents, and other records of both the Staff Member and the University that they believe would be helpful in their deliberations.

If it is determined that the University does not have an ownership interest in the Invention, then the University will relinquish, in writing, all claims to participation in the Invention. All rights to the Invention will then be vested in the Staff Member.

If it is determined that the University does have an ownership interest in the Invention, then the University will inform the Staff Member, by Notice within thirty (30) days of receipt of the decision from the Select Committee whether the University wishes to participate in the Invention.

- F. Waiver of any provision of this Patent Policy will be granted only in extraordinary and compelling circumstances, and pursuant to the procedure described below. All waivers must be in writing.
- G. A request for waiver of any of the provisions of this Patent Policy will be submitted to the Patent Administrator. Such a request will include an identification of the provision or provisions of the Policy requested to be waived, and a full explanation of the reasons for the waiver, including, but not limited to, the manner in which the waiver is consistent with the educational purposes of the University and the public interest. The Patent Administrator will provide the Staff member of his/her decision to waive any provision of this Policy within ten (10) days from the date of receipt of the request.
- H. The University recognizes that certain Sponsors may wish to impose as a condition of the grant or contract special provisions that are at variance with this Patent Policy. Under such circumstances, the Patent Administrator may entertain such proposals as requests for waiver under this Section H, subject to the additional condition that all Staff Members engaged in research to be supported by the proposed grant or contract containing such provisions will acknowledge and accept the same.

- I. Any expenses incurred pursuant to this Article V will be shared equally by the University and Staff Members.