2.8.1 Intellectual Property Policy

I. **Introduction**. This policy addresses the ownership, protection, and administration of intellectual property developed or used by the University of San Diego (USD), its employees, students, visitors or volunteers.

II. **Guiding Principles**. The following principles guide the interpretation of this policy:

A. USD encourages its students and employees to engage in creative, innovative, and entrepreneurial activities consistent with USD's mission.
B. USD affirms its commitment to academic freedom as articulated in its Academic Freedom Policy (Policy 4.1).
C. This policy does not apply to intellectual property developed before the developer came to USD or after the developer left USD.
D. This policy does not apply to intellectual property developed before the effective date of the policy.
E. USD affirms its commitment to consultation with the author(s) or inventor(s) of USD owned intellectual property.
F. The University Senate, in partnership with the Provost's office, will monitor the implementation of this policy (see section VI.G.)

III. **Definitions**.

A. Terms used in this policy that are defined by law have the meaning assigned to them by law.
B. Other terms used in this policy have their meaning in everyday speech when consistent with the purposes of this policy.
C. Trademarks include registered and unregistered trademarks, trade names, trade dress, domain names, and other similar property protected by federal or state law.
D. Inventions include any work that may result in a patent, trade secret, or protectable knowhow.
E. References to the President or Provost include employees to whom that USD official has delegated responsibility under this policy.

IV. Trademarks.

A. *Ownership.* USD is the exclusive owner of all trademarks held by or pertaining to the University of San Diego. No person shall use or register, or attempt to use or register, any trademark in any other name without advanced written permission of the President.

B. *Use.* Except as expressly permitted herein, all use of USD trademarks must be approved in advance by the President.
   1. Current employees may use USD trademarks to conduct University business within the scope of their work responsibilities.
   2. Current students may use USD trademarks for approved activities of registered student organizations subject to applicable policies governing student organizations.
   3. Individuals may use USD's name for personal purposes to identify themselves as a current or former employee, student, or volunteer.
   4. USD trademarks may not be used for political electoral campaign activities.
   5. The manner of authorized use of USD trademarks is subject to USD's applicable brand standards.

V. Copyright.

A. Except as provided below, a copyright that federal law vests in a USD employee, student or volunteer is the property of that person.

B. Except as provided below, a copyright that federal law vests in USD because it is a work made for hire is hereby assigned to its author(s), with USD reserving a royalty-free, non-exclusive, non-transferable, worldwide license for the life of the copyright for these internal, non-commercial educational purposes:
   1. To use as appropriate for compliance, legal, regulatory, accreditation, course content verification and certification purposes.
   2. To complete the delivery of a course or other educational activity in the event the faculty member hired becomes unavailable to do so during the course or activity period.
   3. To use for any purposes for which the creator has given prior written individually negotiated consent.

C. Where USD and the author(s) have concluded an individually negotiated written agreement about the ownership of a copyright, copyright ownership will conform to the written agreement.

D. In the event that one or more student employees are joint authors with one or more USD employees who are not students in creating a work made for hire, USD hereby assigns the copyright in the work to the employees who are not also students unless all joint authors have in writing agreed to a different disposition of the copyright, in which case USD will assign the copyright as set forth in that written disposition, retaining the license described in paragraph V.B.

E. USD will consult with the author(s) of USD-owned copyrights about their exploitation. USD will make ultimate decisions about exploitation.

VI. Inventions.

A. Ownership.

1. A USD employee or student who makes an invention within the scope of their work at USD hereby assigns the ownership in that invention to USD, except to the extent that the parties agree in an individually negotiated writing.
2. The University asserts no ownership rights to Inventions generated by a University employee that is not part of that employee's employment responsibilities and that is developed on his/her own time without making substantial use of University resources.
3. The inventors of a joint invention shall be considered equal inventors, unless they have made a different allocation in a written agreement, in which case the written agreement shall govern.
4. The University asserts no ownership rights to Inventions solely generated by students except where:
    a) the student made substantial use of resources not routinely made available to University students
    b) the Invention is created within the scope of the student's employment relationship with the University or the University paid the student to develop the Invention
    c) the Invention arises from collaborative research between the student and a University employee and in connection with a joint project; or
    d) the Invention is otherwise owned by a third party under the terms of a written agreement.

B. Procedure.

1. Responsibility for timely and complete disclosure to the University of potentially patentable Inventions rests with the Inventor. Inventions must be disclosed to the University through disclosure forms available from the Office of the Provost.
2. Upon disclosure of an Invention in which the University has ownership rights under this policy, the Office of the Provost will confirm that the disclosed Invention is one in which the University has ownership rights and will determine whether the University will assert its rights with respect to the Invention. This determination will be communicated in writing and will normally be made within 30 days of the University's receipt of the Invention disclosure; expedited decisions can be requested. If the University is unable to make an informed determination within 30 days, it should notify the Inventor(s) with an estimate of decision date. Any extension of time

to notify the Inventor(s) shall not exceed 15 days unless otherwise agreed to by the Inventor(s) and the University. If the University does not notify the Inventor(s) within the time limits set forth in this paragraph, ownership of the invention reverts to the Inventor(s).

3. The decision whether to pursue a patent or other legal protection, including the decision whether to convert a provisional patent to a full patent, for a University-owned Invention rests solely with the University. If the University elects to pursue a provisional patent, a full patent, or other legal protection, all costs shall be borne by the University. If the University determines to file a patent application, the University may request, and the Inventor(s) shall provide, reasonable cooperation from the Inventor(s) to proceed with the patent process.
4. In the event that the University elects to sell its ownership rights in an Invention rather than pursue a patent or other legal protection, the University shall give the Inventor the right of first refusal to purchase the ownership rights after the university has obtained a bona fide offer from a third party for the rights.
5. Inventor(s) will retain the right to create, use and publish academic works with respect to their Invention for education, academic, research and other non-commercial purposes, subject to the University's statutory and contractual obligations and subject to paragraph VI.F.

C. *Special Considerations for Inventions Discovered under Federal Projects*

1. Research funded by the federal government carries with it legal requirements for disclosure. The federal government requires the University to retain intellectual property to inventions created or reduced to practice under federal grants. The University may only assign its rights if it obtains federal approval to do so. Under federal regulations, the University must report all such inventions to the funding agency and elect to file for patent within a reasonable period of time. If the University elects not to file for a patent it must so inform the agency, which then has the right to file. Inventors must report all inventions with an Invention Disclosure Form.
2. Inventors whose inventive work is conducted under federal funding, regardless of amount, should be aware that the federal government retains a perpetual, nonexclusive license to all research results.

D. *Allocations*. If the University licenses or commercializes an Invention, the University will administer and share the revenue it receives from such licensing or commercialization with the Inventor(s) of the Invention and the University as follows:

1. Revenue derived from the commercialization or licensing by the University of an Invention and any related intellectual property rights will be received and administered by the Office of the Provost.
2. Direct expenses incurred by the University in the process of perfecting, transferring, protecting and/or licensing the rights in such Inventions will be deducted before calculating and distributing any revenue.
3. Unless otherwise agreed upon in writing by the Inventor(s) and the University, the distribution of revenue, after direct expenses, will be as set forth in the table below, noting that in the event of a Joint Invention, the allocation will be divided in accordance with a written agreement signed by all Inventors. In the absence of a written agreement, the revenue will be divided equally among them. Inventors are personally responsible for the payment of all required taxes on income derived by them personally from Inventions.
4. The Innovation Fund will be used to catalyze future innovations and inventions without a maximum carry forward balance. A committee constituted by the Provost, and advising the Provost, will make the determination about what gets funded.

Inventor	*Department or Academic Unit*	*School/College*	*Provost/General Fund*	*Innovation Fund*
50%	7.5%	7.5%	30% (15% Provost and 15% General Fund	5%

E. *Failure to exploit.* If the invention belongs to USD, and if USD takes insufficient steps to exploit the invention within one year of its notification, or if USD abandons attempts to exploit the invention, the inventor(s) may request in writing that USD undertake reasonable steps to exploit the invention within 60 days or convey all rights in the invention to the inventor(s) within a reasonable time. If the reasonable steps outlined in the letter are not taken within 60 days, USD will convey all rights in the invention to the inventor(s) unless USD's funding agreement with an outside funding source gives that source the right to refuse permission for USD to transfer its rights in the invention and the source refuses to permit the transfer.

F. *Confidentiality Obligations.* Disclosure of information about an Invention can severely limit or eliminate the ability to protect the intellectual property rights in the Inventions. Thus, any individual bound by this policy is required to maintain the confidentiality of the details of an Invention or its disclosure. Information about Inventions covered by this policy may not be shared with third parties except on a need-to-know basis.

G. *Reporting*. The Provost will report annually to the Senate at the start of the academic year the number of inventions reported, and other relevant information about commercialization of inventions, during the previous fiscal year. The Provost will also provide Inventor(s) with periodic updates about any inventions they have disclosed to the University and that the University owns.

VII. Any disputes that arise related to this policy shall be resolved by a three member panel selected as follows. One member shall be a faculty member who is elected by the Faculty Senate. One member shall be an administrator who is selected by the Provost. The third member may be either a faculty member or an administrator who is chosen by the other two members. The panel’s decision shall be based on written submissions from the parties involved in the dispute.

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