

Guidance for University of Rochester Research Community on Significant Use of University Resources and Intellectual Property Ownership

Under University policy, when an invention, software or other copyrightable material or tangible research property is developed by UR faculty, students, staff, visitors or others participating in UR programs, and the work uses significant UR funds or facilities, UR will own the patent, copyright or other tangible or intellectual property. Sometimes, University faculty, staff or students will have questions about whether significant University resources were used in the creation of the intellectual property. Pursuant to the University's Intellectual Property Policy, questions of whether someone has made a significant use of University resources will be resolved by the Provost after reviewing the recommendation of the Office of Technology Transfer.

This Guidance is meant to provide additional information on how the University will assess whether there was significant use of University resources in the creation of intellectual or tangible research property. Please note that the University will also claim ownership of intellectual property that is an institutional work, arises out of an externally sponsored research project or is a "work for hire", all as more fully set forth in our Policy. This guidance is not meant to cover ownership rights of the University in those cases. Moreover, University policy also allows for faculty-author ownership of textbooks, and this guidance is not meant to cover copyright ownership of textbooks.

The determination of whether significant university resources were used is based on the facts and circumstances of the work that led to the intellectual property. If you are working on a project that could result in intellectual property (e.g. something that is copyrightable or patentable), and you have any questions about whether the University might have an ownership in it (either in whole or in part) it would be prudent to discuss the facts and circumstances of the project with someone in the Office of Technology Transfer at the outset of the project. These professionals can assist you with the determination and help to avoid any surprises at the end of the project.

Generally, UR does not construe the use of office, telephone, library or personal desktop work stations and their related communication and storage servers as constituting significant use of UR space or facilities so long as

- the use is reasonable in duration and frequency, and there is little or no additional cost to UR,
- the use does not interfere with or disrupt the performance of official duties of the user or of other UR employees or students,
- the use does not compromise the security or integrity of UR property, information or software, and
- the use does not violate any other UR policy.

Moreover, the University's mere payment of salary is not usually sufficient to qualify as significant use of University resources unless all or a portion of the salary was paid specifically to support the development of the intellectual or tangible property.

Generally, an invention, software or other copyrightable material or tangible research property will not be considered to have been developed with a significant use of University resources if:

- a. No University funds were used to support the development; and
- b. The property was developed outside the assigned area of research of the inventor/author; and
- c. Only a minimal amount of time has been spent using UR facilities or only insignificant facilities and equipment have been used. As mentioned above, the use of an office, library or personal desktop workstations generally will be considered insignificant use of our facilities; and
- d. The development has been made on the personal, unpaid time of the inventor/author.

The assessment of whether there has been significant use of University resources is necessarily a fact-based one. Situations that are seemingly similar can result in different assessments of University ownership based on a change in a key fact.

To better illustrate this, the following case examples may be helpful:

1. A researcher in the Department of Chemistry uses her home workshop to create an ergonomic desk chair for those with chronic back problems. She sometimes uses her University computer and the Department copy machine to for general business matters, for instance, to communicate with the prototype manufacturer of the chair. This will not be considered as the significant use of University resources and the University would not claim ownership of it. If the facts change, for instance, so that sometimes University labs are used for the development of the project, or if a student intern in her Department helped her work on the development of the chair, or if the nature of the at-home project closely overlapped her assigned area of research in the University, the University might claim ownership.
2. A faculty member in the Biostatistics Department starts a business to assist pharmaceutical companies in statistical analysis of clinical trial results. He sometimes (e.g. an hour or two a day on one or two days each week) works from his work computer. This will not be considered the significant use of University resources and the University would not claim ownership of any of the work created by the faculty member for his separate business. If the facts change, for instance, so that the faculty member uses a unique, specialized software program that the University has licensed from a third party that is available only on his work computer, or if the faculty member's area of research is uniquely dedicated to the type of statistical analysis he is pursuing in his business, the University might claim ownership.
3. A faculty member in chemical engineering consults with a company on the development of a display device using unique quantum dots. Although all of the development of the device was done at the company, the faculty member used equipment available to him in his department to conduct the testing studies to detect the photoluminescence of the dots. The University would claim ownership (possibly joint ownership) of the device since using University equipment that is not general office equipment is considered the significant use of University resources.