

Executive Board

Public Review for UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations

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October 14, 2021

Roger Wakimoto
Vice Chancellor for Research and Creative Activities

Re: **UCLA Policy 956**

Dear Vice Chancellor Wakimoto,

At its meeting on September 30, 2021, the Executive Board reviewed your response about the proposed revisions to UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations. Members unanimously approved a motion to affirm the importance of creating documented criteria for exception to the policy. Further, members request the creation of a reporting process that includes an annual report to the Executive Board about any exceptions and reasons for those exceptions.

Sincerely,



Jody Kreiman
Chair
UCLA Academic Senate

Cc: Jessica Cattelino, Vice Chair/Chair Elect, UCLA Academic Senate
April de Stefano, Executive Director, UCLA Academic Senate
Shane White, Immediate Past Chair, UCLA Academic Senate

June 24, 2021

Shane White
Chair, UCLA Academic Senate

Re: UCLA Policy 956 – Your letter dates June 8 2021

Dear Dr. White,

We wish to thank the Academic Senate Executive Board endorsement of the proposed policy.

Your letter raises good points, below please find our explanations and answers.

1. The university contribution will be calculated on a case-by-case basis from information that will be collected from OCGA, TDG, department and school, e.g:
(X): Federal Funding \$300,000
Unreimbursed F&A \$50,000
Gifts \$150,000
Department support \$100,000

(Y): Royalty Sharing Award \$200,000
(Z) = 20%
Sponsor Share shall be = $20\%(200000/600000) = 0.066$ (6.6% from net revenue).
2. It is unlikely that university owned IP will arise with little or no university support. In such rare and unlikely event section 6 of the draft policy shall prevail and the university share shall not be less than 50% of net revenue.
3. ORCA will endeavor to allow as many awards as possible to move forward. Some examples we have seen to date that are likely to be declined include:
 - a. A sponsor asking for a significant revenue sharing from future and existing IP, without paying any F&A while providing a small research support.
 - b. Multiple revenue sharing obligations on a single patent, leaving the university without a return or potentially with a negative return.Since this is a new policy best practices and criteria will be developed overtime on a case-by-case basis. The landscape of revenue sharing is changing rapidly. Therefore, we cannot establish a rigid criterion for granting exceptions. Decisions will be made after consultation with impacted faculty, schools, and relevant administrative units.

4. Currently revenue sharing negotiations are performed by OCGA/TDG staff with little guidance and without the involvement of schools and my office. The new policy and process is a significant step towards transparency as compared to our current practice and will include continued dialog with faculty, schools, colleges and administrative units.
Once certain template terms are finalized with a given foundation, these terms will become available to all faculty members. We encourage faculty to consult OCGA staff before submitting a proposal to a foundation that might be subject to this policy.
5. In every invention disclosure inventors are asked to state the sources of funding they used in making the invention. This information is recorded in TDG's data base and is easily retrievable.

Unless I hear from you to the contrary until July 15, 2021 we will continue with the codification of this policy.

Sincerely,



Roger M. Wakimoto
Vice Chancellor for Research and Creative Activities

UCLA Policy 956: IP Revenue Sharing with Not for Profit Nongovernmental Organizations

DRAFT For Review

Issuing Officer: Vice Chancellor for Research and Creative Activities
Responsible Dept: Technology Development Group
Effective Date: TBD
Supersedes: New

I. PURPOSE & SCOPE

II. DEFINITIONS

III. POLICY STATEMENT

IV. RESPONSIBILITIES

V. REFERENCES

I. PURPOSE & SCOPE

With increasing frequency, non-profit non-governmental sponsors (“Sponsors”) of academic research are requesting revenue sharing from income received by the University if intellectual property (IP) created under a Research Support agreement (as defined below) is ultimately licensed to a third party and generates income to the University.

This Policy addresses issues that should be considered before UCLA accepts revenue-sharing terms in a Research Support agreement and applies to UCLA researchers, Schools, Office of Contracts and Grants Administration (OCGA), and the Technology Development Group (TDG).

This Policy does not apply to joint intellectual property owners and organizations such as Howard Hughes Medical Institute (HHMI) with whom the University has a separate signed agreement.

II. DEFINITIONS

For the purposes of this Policy:

Support refers to but is not limited to, financial; equipment; research materials; genetically engineered animals or animal models (e.g., knockout mice, transgenic mice); intellectual property, including software and data; and other resources.

Research Support refers to research Support received from Sponsors in the form of a legally binding agreement whether a grant, contract, material transfer agreement, or other agreement depending on the circumstances of each transaction.

University refers to The Regents of the University of California on behalf of its UCLA campus.

III. STATEMENT

Sponsor Research Support revenue sharing agreements have the potential to create overlapping or conflicting obligations for the University. A revenue sharing obligation with a Sponsor may overlap with obligations to other sponsors of research and/or current or future licensees of the impacted IP. These potentially conflicting obligations (such as making more than one payment for the same impacted IP) might lead to undesired and unforeseen consequences and limit the University’s ability to commercialize the IP for the public good.

- A. When a Sponsor requests a share of potential licensing revenue as a condition for Research Support, the following will apply:
1. Subject to applicable UC policy on F&A exceptions, Sponsors that require revenue sharing will pay full federal Facilities and Administration (F&A) costs.
 2. A revenue-sharing obligation will apply ~~only to~~ IP conceived and/or reduced to practice under a project directly supported by a Sponsor (“Subject IP”). For example, the Sponsor should not share

in revenue arising from prior foundational IP that the Sponsor did not support.

3. The University's revenue-sharing obligation will be capped at a specific multiple of the Sponsor's financial or money's worth Research Support that directly resulted in the Subject IP.
4. The Sponsor's share from UCLA's net revenue (after expenses) must be calculated as a percentage of net revenue received by UCLA after UCLA recoups its direct out-of-pocket expenses and pays any obligations to joint owners of the Subject IP, but prior to the inventor share and research share distributions, such that both the University and the inventor shares are reduced by the revenue sharing obligation to the Sponsor.
5. The Sponsor share will be a percentage of net revenue proportionate to the Sponsor's relative financial support to the research project that directly resulted in the Subject IP. This calculation takes into account contributions by the University and other sponsors, donors, and other supporting entities, including University contributions for unreimbursed F&A.

The Sponsor's share could be calculated as follows:

Y= financial value of the contribution by the Sponsor,

X = total contributions by the University and other sponsors that provided financial support to the Subject IP (government, infrastructure, gifts, not-for-profits, etc.) + Y

Z% = negotiated revenue sharing percentage,

The Sponsor's share will be: $Z*(Y/X)$.

6. The University's share (i.e., the campus share and research share, which under current University Patent Policy is 50% and 15%, respectively) of the net revenue after deduction of all third-party obligations (excluding joint IP owners) must not be less than 50% of the net revenue.
 7. The number of Sponsors of an individual project that request revenue sharing must be carefully considered. Multiple Sponsors that request revenue sharing associated with the same specific project will be considered only if the terms of the agreements allow for allocating a revenue sharing percentage relative to the Support given by each entity.
 8. Requests from Sponsors to share royalty revenue must be carefully examined to ensure that commitments to the Sponsor do not conflict with the University's commitments to the federal government, including without limitation those set forth in 37 CFR Part 401 and related regulations (the Bayh-Dole Act). In the event of a conflict, the University's obligations to the federal government will prevail.
- B. As a condition of accepting an agreement with a revenue-sharing obligation, the relevant Dean, PI and all other researchers (e.g., postdoctoral scholars, staff researchers, graduate students, etc.) performing research supported by a Sponsor will be required to sign an informed consent alerting them of possible financial and other ramifications of such a commitment.
 - C. In order to serve the University's best interests (e.g., financial interests, interest in enhancing innovation and technology transfer, responsibility to inventors, and the general UCLA mission of research, education and service), the Vice Chancellor for Research and Creative Activities after consultation with the Dean or the relevant School or College, TDG, and OCGA, may grant exceptions to this Policy.

IV. RESPONSIBILITIES

Office of Contract and Grant Administration is responsible for the negotiation, acceptance and administration of research contract and grant funding awarded by not-for-profit and government sponsors.

The Technology Development Group is responsible for negotiating revenue-sharing terms and conditions and, after consultation with faculty and schools, determination if revenue arising from licensed IP is subject to a revenue sharing agreement.

V. REFERENCES

1. UCLA Policy 955: Net Royalty Distribution of Non-Patented Intellectual Property
2. UCLA Procedure 955.1: Release of Patent Rights to Inventors
3. UCLA Procedure 955.2: Distribution of the University's General Pool and Research Share Portions of Net Royalties
4. UC Patent Policy

Issuing Officer

/s/ Roger M. Wakimoto

**Vice Chancellor for Research and Creative
Activities**

**Questions concerning this policy or procedure should be referred to
the Responsible Department listed at the top of this document.**

UCLA Academic Senate

June 8, 2021

Roger Wakimoto
Vice Chancellor for Research & Creative Activities

Re: UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations

Dear Vice Chancellor Wakimoto,

At its meeting on June 3, 2021, the Executive Board reviewed the proposed revisions to the UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations, and the responses of standing Senate committees (attached).

Members voted unanimously to endorse intent of proposal, but also to express concerns about issues raised by the proposal. Members agreed to a conditional approval contingent upon satisfactory a review of your response to the questions and concerns summarized below.

1. How is the university's contribution calculated per the formula in Section A5? Members observed that university's contribution is complicated to calculate, and the specific dollar amount is difficult to identify. Members recommended adding illustrative examples in the policy statement.
2. Has the institution considered scenarios in which UCLA will have limited involvement or no contributions (e.g. including facilitating only space) and the implications on IP revenue sharing?
3. What is the process by which, and the criteria for, the Vice Chancellor for Research to grant exceptions?
4. How does your office plan to change the institution to be more transparent and accountable in implementation of this policy?
5. Members expressed concern over section III. Statement A.2, "the Sponsor should not share in revenue arising from prior foundational IP that the Sponsor did not support." What efforts will the university undertake to properly document prior IP in such agreements to protect the university from invalid claims?

We respectfully request a written response to this letter and the enclosed materials by the end of August 2021. As always, we appreciate the opportunity to advise your office on the crucial issues facing the campus and look forward to working with you to address them.

Sincerely,



Shane White
Chair, UCLA Academic Senate

Encl.

Cc: Jody Kreiman, Vice Chair/Chair Elect, UCLA Academic Senate
Michael Meranze, Immediate Past Chair, UCLA Academic Senate
April de Stefano, Executive Director, UCLA Academic Senate

May 27, 2021

Shane White, Chair
Academic Senate

Re: Public Review for UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations

Dear Chair White,

At its meeting on May 12, 2021, the Council on Research (COR) had an opportunity to review UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations.

Members shared a few observations:

1. Has the institution considered scenarios in which UCLA will have limited involvement or no contributions (i.e. including facilitating only space and the implications on IP revenue sharing)?
2. The evident loophole is that the Vice Chancellor for Research can grant exceptions and the exception process is not clearly defined. Who makes decisions and under which conditions?
3. While members understand that the policy aims to introduce flexibility, it lacks transparency and accountability. How do we emphasize and motivate the institution to be more transparent?

Thank you for the opportunity to review and comment. If you have any questions for us, please do not hesitate to contact me at julianmartinez@mednet.ucla.edu or via the Council's analyst, Elizabeth Feller, at efeller@senate.ucla.edu.

Sincerely,

Julian Martinez, Chair
Council on Research

cc: Jody Kreiman, Vice Chair/Chair-Elect, Academic Senate
Michael Meranze, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Principal Policy Analyst, Council on Research
Members of the Council on Research

May 27, 2021

Shane White, Chair
Academic Senate

Re: UCLA Policy 956 Review

Dear Chair White,

At its meeting on April 28 2021, the Faculty Welfare Committee discussed the UCLA Policy 956. Committee members offered the following comments.

Members were in favor of having a formalized policy on IP revenue sharing. While they felt that the policy is necessary, they would appreciate further clarification on how the university's contribution, as indicated in the formula in Section A5, is calculated. Members observed that university's contribution is complicated to calculate, and the specific dollar amount is difficult to identify. The members suggested adding examples in the policy statement.

Finally, members indicated that it would be helpful to include a statement indicating why this policy is needed.

If you have any questions, please contact us via the Faculty Welfare Committee's interim analyst, Elizabeth Feller, at efeller@senate.ucla.edu.

Sincerely,

Huiying Li, Chair
Faculty Welfare Committee

cc: Jody Kreiman, Vice Chair/Chair Elect, Academic Senate
Michael Meranze, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Interim Analyst, Faculty Welfare Committee
Members of the Faculty Welfare Committee

May 7, 2021

Shane White, Chair
Academic Senate

Re: Public Review for UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations

Dear Chair White,

At its meeting on May 3, 2021, the Council on Planning and Budget (CPB) had an opportunity to review UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations. Members offered the following comments.

Members expressed concern over section III. Statement A.2, “the Sponsor should not share in revenue arising from prior foundational IP that the Sponsor did not support.” Members underscored the need to properly document prior IP in such agreements to protect the university from invalid claims.

If you have any questions for us, please do not hesitate to contact me at groeling@comm.ucla.edu or via the Council’s analyst, Elizabeth Feller, at efeller@senate.ucla.edu.

Sincerely,



Tim Groeling, Chair
Council on Planning and Budget

cc: Jody Kreiman, Vice Chair/Chair-Elect, Academic Senate
Michael Meranze, Immediate Past Chair, Academic Senate
April de Stefano, Executive Director, Academic Senate
Elizabeth Feller, Principal Policy Analyst, Council on Planning and Budget
Members of the Council on Planning and Budget



Office of the Vice Chancellor for Research and Creative Activities

To: Deans, Directors, Department Chairs and Administrative Officers

The Office of the Vice Chancellor for Research and Creative Activities in collaboration with various stakeholders have developed **UCLA Policy 956: IP Revenue Sharing with Not-for-Profit Nongovernmental Organizations**. In accordance with [UCLA Policy 100: Administrative Policies and Procedures](#), this new policy has been placed on the [UCLA Administrative Policy website](#) for a 30-day public review and comment period. Please encourage faculty and staff in your departments to review this new policy and submit comments via the webpage by May 7, 2021.

UCLA Policy 956 addresses issues that should be considered before UCLA accepts revenue-sharing terms in a Research Support agreement and applies to UCLA researchers, Schools, Office of Contracts and Grants Administration (OCGA), and the Technology Development Group (TDG).

Should you have any questions about the policy process, please contact Anna Joyce at ajoyce@conet.ucla.edu. Thank you for taking the time to review and provide feedback.

Sincerely,

Roger Wakimoto
Vice Chancellor for Research and Creative Activities