

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy -401.4 - Ownership of Commercially Valuable Software
Effective _____, 2005; Issued _____, 2005

Board Policy:

1. General Policy and Coverage.

- a. Any commercially valuable software created or developed by employees of the Montana University System, either in connection with their assigned duties or by the use of the System's facilities, shall be considered the property of the University System. Routine information gathering relating to the normal academic environment or the use of the campus library shall not by itself constitute "use of the System's facilities" for purposes of this policy.
- b. This policy applies to commercially valuable software whether or not it was, is or may be eligible for copyright or patent.
- c. Excluded from this policy are traditional scholarly works, which include but are not limited to books, journal articles, musical compositions, and works of art.
- d. Activities and materials covered by this policy are thereby excluded from the coverage of Policy 401.2 (Patent) and Policy 401.3 (Copyright).

2. Division of Income.

- a. Generally, net income shall be divided 50 percent to the employee and 50 percent to the campus at which the developer is employed. However, a campus shall retain 100% of the net income from commercially valuable software developed by an employee at the express direction of the employer or in return for specified payments or other consideration.
- b. Net income, for the purposes of this policy, means gross income minus costs of development and promotion, realized from the sale or licensing of the commercially valuable software.

3. Variance by Contract.

- a. This policy may be varied by a written contract between the University System and one or more University System employees. Such contracts may be between the University System and the employee or they may also involve an outside sponsor that desires to maintain certain rights in materials it is paying the University System employee to develop with University System approval.

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b. A campus chancellor or a University president may approve a contract that either reduces the University System's ownership rights or reduces the University System's share of net income if, in the chancellor's or president's judgment, the contract is in the best interests of the University System. In each such instance where the University System's ownership rights are reduced or the University System's share of net income is reduced to below 50%, the chancellor or president shall inform the commissioner of the contract and shall indicate the reason for approving it.

4. Relinquishment of University Rights.

a. The University System may, for fair value and upon the approval of a chancellor or president, relinquish commercially valuable software rights to the developer or any other person or entity. Such a right may be relinquished for no consideration only if the president or chancellor concludes that there is not a likelihood of the campus benefiting from the retention of the right in question.

b. Any agreement relinquishing such rights shall retain for the University System a perpetual, royalty free right to use, reproduce, and revise without restriction the material for the University System's own educational or research purposes, unless the president or chancellor concludes that such a clause is not in the campus's best interests and documents that conclusion in writing.

5. Patent and Copyright.

All employees who develop commercially valuable software shall assist the University System in securing and protecting a patent or copyright on the material.

6. Limitation on Use Outside the University System.

No person or entity may use software subject to this policy outside the Montana University System without the University System's prior written consent defining the scope of, and limits to, such use.