Category: HR / Labor Relations Responsible Office: Employee Relations	**Policy Title:** Computer Software Policy Document Number: 8101 Effective Date: January 16, 1998 This policy item applies to: State-Operated Campuses

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Summary

The policy requires State University of New York University (University) and The Research Foundation of the State University of New York (Research Foundation) employees to notify their campuses of software they develop and establishes rules for disbursing any revenues resulting from the creation of covered software.

Policy

Introduction

The use of computers within the University may result in the creation of computer software. Computer software can be either copyrighted or patented, depending on the particular circumstances, and can often be licensed for commercial use. This policy covers the various aspects of ownership, administration and promotion of such computer software.

The proprietary interests of several groups can be involved when computer software is generated within the University; the creator or creators, the University or the Research Foundation, or an outside sponsoring agency. The University wishes to clarify and protect the rights and interests of these parties.

This policy addresses only computer software and software support materials and not other literary and instructional works nor dramatic, musical, and artistic works created by faculty, employees, or students of the State University of New York.

Disclosure

Computer software and software support materials shall be disclosed promptly to the Research Foundation (Technology Transfer Office), which functions by formal agreement as the agent of State University of New York for the administration of such materials. All concerned shall cooperate to ensure copyright protection is secured when needed.

Ownership

Title to computer software and software support materials developed by faculty, employees, and students of the

State University of New York or employees of the Research Foundation shall belong solely to the State University of New York or the Research Foundation unless all of the following conditions exist, then it belongs to the creator:

1. the work was not created within the scope of employment of the creator;
2. the work created was not the result of a work-for-hire situation;
3. the work created was not a product or byproduct of sponsor funded or contracted activity; and
4. the work was not developed through the use of facilities, funds, or personnel of the University or the Research Foundation or under the control of the University or the Research Foundation.

Royalties

Where software is created within the scope of employment or is the result of a work-for-hire situation, the Research Foundation shall retain all royalties generated by commercialization, for distribution in accordance with the policies of the University or the Research Foundation.

If the work was developed through the use of University or Research Foundation facilities, funds, or personnel or resulted from sponsor funded or contracted activities, the creator shall receive forty percent of all gross royalties received for products or services which embody the creator's work, unless the payment exceeds the limits fixed by applicable regulations of the relevant sponsoring agency, which will control in such cases. The remaining royalties will be distributed in accordance with the policies of the University and the Research Foundation. (These remaining royalties, after deduction of an administrative fee, are deposited in a royalty account under the control of the campus president where the software was created. The originating academic units, laboratories, or centers, as determined by the campus president, may receive a percentage of the royalties thus returned to the campus.)

Exception or Waiver

In all cases, the creator of software is entitled to request a waiver or exception to the provisions of this computer software policy. This waiver or exception will be reviewed by the appropriate Patent Policy Board of the State University of New York, which will make a recommendation on the request to the chancellor.

Definitions

Scope of Employment – tasks assigned in a job description, letter of appointment, or other specific written documents.

Work for Hire – work done by faculty, employees or students under campus consulting, extra service or technical assistance arrangements either through contract, consultancy or purchase order, but not within the Scope of Employment.

Software – computer programs in machine readable or interpreted form, including printed listings or printout forms produced from machine-readable input, required operating documentation, input information, or format specifications necessary for operating of the program.

Software Support Materials – all additional materials pertaining to software including narrative and instructional documentation, user and operational guides, and program training guides.

Creator – one who originates the computer software code or who makes a significant contribution to structure or organization of the software.

Royalties – the gross amount of all payments received from the commercialization of software and software support materials.

Other Related Information

State University of New York Research Foundation website

State University of New York Copyright policy

Procedures

There are no procedures relevant to this policy.

Forms

There are no forms relevant to this policy.

Authority

The following link to FindLaw's New York State Laws is provided for users' convenience; it is not the official site for the State of New York laws.

NYS Civil Service Law, Article 14 (Public Employees' Fair Employment Act)

In case of questions, readers are advised to refer to the New York State Legislature site for the menu of New York State Consolidated

Board of Trustees Policies – Patents, Inventions & Copyright Policy (8 NYCRR §§ 335.28 & 335.29)

History

The software policy was negotiated between the State University of New York (University) and United University Professions (UUP) to establish a procedure for dealing with software developed by University professional and academic employees and was effective January 16, 1998.

Appendices

There are no appendices relevant to this policy.