

Boston Children's Hospital Intellectual Property Policy Guidance Document

Boston Children's Hospital adopted a new [Intellectual Property Policy on January 15, 2015 \(IP Policy\)](#). The goal of this document is to help answer questions that faculty have raised, such as the scope of Boston Children's ownership of Intellectual Property (IP) and management of IP for faculty with joint appointments. This document also explains the new process for the distribution of materials and the formation of startup companies. Please refer to the IP Policy for definitions of capitalized terms, and note that IP includes a broad range of creative works including patentable Inventions, Copyrightable Works, data and Software.

1. Ownership of Intellectual Property (IP Policy Section III)

Boston Children's ownership of IP is tied to the resources used to develop it. Specifically, Boston Children's owns IP when any of the following apply:

- a. The IP was developed in whole or in part using funds administered by Boston Children's; or
- b. The IP was developed in whole or in part using Boston Children's facilities; or
- c. The IP was developed in whole or in part using materials, funds or other resources owned or administered by Boston Children's;
- d. The IP is related to the inventor/author's responsibilities at Boston Children's.

2. Publication and Ownership Exceptions for Non-Software Copyrightable Works (IP Policy Section III, p. 5)

a. Academic Works

Copyrightable Works are original works of authorship that have been fixed in any tangible medium of expression, such as books, journals, websites and manuals. Copyrightable Works arising from programs or projects supported in whole or in part by funds, facilities or resources of Boston Children's are owned by the hospital. Academic Works are works of authorship that share, for the benefit of the public or the field, an activity or accomplishment within the scope of one's academic work. They may include articles, books, and commentaries (but exclude Software). In accordance with academic traditions, authors of Academic Works have the freedom to determine how they are disseminated and to keep any resulting income. ***To facilitate this, Boston Children's automatically grants to the author(s) of an Academic Work a perpetual, royalty-free right to assign or license the copyright non-exclusively or exclusively without the***

permission of Boston Children's. Such assignment or license must be for an academic or charitable purpose, with personal compensation "zero, *de minimis*, or limited to a reasonable honorarium or royalties." For example, market-rate royalties paid by a publishing house for sales of an Academic Work would be considered by Boston Children's to be reasonable amounts that the author(s) would be entitled to keep. Assignment or license of an Academic Work requires appropriate acknowledgement (e.g., "funded in part by Boston Children's Hospital"), and should include a reservation of rights by Boston Children's for its academic and clinical purposes.

b. Private Works and Textbooks

A private work of authorship, such as a textbook or novel, written without using Boston Children's IP or resources (other than incidentally, such as use of a computer) is the property of the author(s). ***The author(s) may hold the copyright and receive the full revenue stream.***

3. Joint Appointments and the Participation Agreement (IP Policy Section III)

The IP Policy applies to all Boston Children's faculty, including faculty with joint appointments at other institutions. Faculty members are asked to disclose to Boston Children's any obligations to other institutions upon signing the [Participation Agreement, which is appended to the IP Policy](#).

Boston Children's will respect a faculty member's obligations to other institutions. The Technology & Innovation Development Office (TIDO) will work with those institutions to determine how to fairly share the rights to any IP generated by a faculty member with multiple obligations. Boston Children's already has formal arrangements with many local institutions and expects to put others in place.

The **Participation Agreement** has a section for faculty to list their other appointments. Paragraph 5 of the Participation Agreement includes the following language: "I further agree to assign and do hereby assign to CHILDREN'S all Intellectual Property developed by me as a Covered Person, **subject to any existing obligations that I have identified on Exhibit A...**" By listing other affiliations on Exhibit A of the Participation Agreement, Boston Children's faculty with joint affiliations can sign the Boston Children's Participation Agreement without creating a conflict with their obligation to their home institution.

4. Distribution of Research Materials (IP Policy Section V)

The IP Policy allows researchers to send certain chemical and/or biological materials to other academic researchers with minimal TIDO involvement if the following conditions are met:

- a. The materials are not human tissue or other bodily samples; and
- b. The materials do not raise safety concerns; and
- c. The distribution of the materials is not subject to legal or regulatory restrictions such as laws pertaining to embryonic stem cells, or export control laws that prevent sending some materials to certain countries such as China, North Korea, Syria, etc.; and
- d. The transfer is not restricted by third party obligations, such as those that may exist if the materials were generated under industry sponsored research or were generated with materials obtained from a third party via a Material Transfer Agreement (MTA); and
- e. The materials are being distributed to other academics at non-profit research institutions for non-commercial purposes.

If all the above conditions are met, materials can be distributed without the need for an institutional signature under the terms of the Universal Biological Material Transfer Agreement (UBMTA). Researchers may download the UBMTA from the TIDO website [here](#), complete it and send it to the recipient institution for execution. Researchers may distribute the materials after returning the fully executed UBMTA to TIDO.

For all other transfers of materials, please email MTA@childrens.harvard.edu.

5. Deduction of Expenses from Intellectual Property Revenue Distributions (IP Policy Section VI and IX)

Net revenue received by Boston Children's from the sale or licensing of IP is distributed according to the IP Policy. All out-of-pocket costs incurred by Boston Children's attributable to patenting, copyrighting, litigation, marketing and other expenses are deducted before distribution. Extraordinary investments in research or development of Inventions by Boston Children's, Departments, Programs or Foundations are not deducted from revenue unless

formally agreed to in advance by the Department Chair, Boston Children's CEO, TIDO and the inventors. *See Section IX and the last three paragraphs of Section VI of the IP Policy.*

6. Startup Companies (IP Policy Section VII)

The IP Policy addresses forming and taking equity in startup companies. Boston Children's employees who are considering starting a company that utilizes Boston Children's IP should start by discussing their business plans with their TIDO case manager. TIDO is responsible for determining the best way to commercialize Boston Children's IP, and if a new company is advisable, can provide guidance on how to start the company. Forming a new company requires the approval of the inventor's Chief or Program Director, TIDO and the General Counsel. Once the decision is made to move forward with a startup, TIDO will help to ensure that the confidential information of Boston Children's is protected in all business conversations. When the time is right, TIDO will negotiate with the company to execute a license agreement or option to the IP.

Children's Hospital personnel may also wish to accept equity in a startup in conjunction with a role as founder, consultant, Scientific Advisory Board (SAB) member or other function. Accepting equity requires written approval in advance from one's Chief or Program Director, the General Counsel and TIDO.