

Research Data & Intellectual Property

MARCH 15, 2022

- Copyright in scholarly works
 - Policy Governing the Creation of Copyrighted Material
- Patents and potentially patentable inventions
 - Auburn University Patent Policy
- Research data

Copyright

- Faculty and staff own copyright in scholarly works
 - Eg, Teaching materials, syllabi, class notes, tests, lab manuals, study guides, lectures and related notes, classroom presentations, journal and similar publications
- Exceptions
 - Determined in advance; no surprises
 - Commissioned work (ie, written agreement)
 - Sponsored research (ie, written agreement)
 - Substantial commitment of AU resources (eg, NOT ordinary use of office equipment)

Patent

- Potentially patentable inventions must be disclosed to AU.
- Resulting inventions owned by AU.
- Royalties shared with inventors.
- AU may reassign ownership to inventors.

- Copyright in scholarly works
 - Policy Governing the Creation of Copyrighted Material
- Patents and potentially patentable inventions
 - Auburn University Patent Policy
- Research data

“Research Data” - Definition

- Sponsors define differently. A single definition must be broad.
- **“Recorded factual information associated with the research**, including but not limited to all records necessary for the reconstruction and evaluation of the results of research, regardless of the form or medium on which the material is recorded (such as **lab notebooks, photos, digital images, data files, data processing or computer programs (software), statistical records**, etc.”
- “Research and sponsored project data include **laboratory notebooks and field notebooks as well as any other records that are necessary for the reconstruction and evaluation of reported results of research or a sponsored project and the events and processes leading to those results, regardless of the form or media on which they may be recorded**. Furthermore the term includes software (computer programs, computer databases and documentation thereof), and records of scientific or technical nature. In practice scientific data include both intangible (statistics, findings, conclusions, etc.) and tangible data.”

Research Data – Basic Roles

- University owns research data generated by faculty while performing their institutional responsibilities, unless otherwise agreed.
- Researcher is the steward and custodian of research data.

Research Data – Overview

- Institutional ownership to meet institutional obligations.
- Researcher stewardship involves significant authority and responsibilities.
- Research data policies are common in higher education.

Research Data – Institutional Obligations

- Contract deliverables
- Data privacy & confidentiality
- Records retention
- Public accessibility
- Sponsor audit
- Sponsor ownership (industry)
- Pre-clinical and clinical data protections
- Data security standards
- IRB and IACUC protocols
- Export controls
- Research integrity
- Data breach notification
- Invention support
- Student research support

Research Data – Ownership Considerations

- OMB Circular A-110 (2 C.F.R. § 200.315):
 - “Title to intangible property acquired under a federal award vests upon acquisition in the non-federal entity.”
- NIH Grants Policy Statement, § 8.2.1 (“Publication and Copyrighting”)
 - “In general, recipients own the rights in data resulting from a grant-supported project. Specific terms and conditions of the award may indicate alternative rights, *e.g.*, under a cooperative agreement or based on specific programmatic considerations as stated in the applicable RFA.”
- HHS Office of Research Integrity (“Data Management Practices”)
 - “[R]esearch institutions claim ownership rights over data collected with funds given to the institution.”

Research Data – Ownership Considerations, cont.

- AU Principal Investigator Handbook (Aug. 2021) (“Data Ownership”):
 - “The policy of the funding agency, as stated in the award document, governs ownership of data. It is the responsibility of the Principal Investigator to read the conditions of his/her grant or contract.”
- Court opinions:
 - *Ex parte Talbott*, 215 So.3d 541 (Ala. 2015).
 - *Yuan v. Johns Hopkins Univ.*, 157 A.3d 254 (Md. 2017).
 - *Singh v. State*, 18 Wash. App.2d 1061 (Wash. 2021).
 - *Macswan v. The Arizona Bd. of Regents*, 2013 WL 12096526 (D. Ariz. 2013).
 - *Pemrick v. Stracher*, 2007 WL 1876504 (E.D.N.Y 2007).
 - *Washington Univ. v. Catalona*, 490 F.3d 667 (8th Cir. 2006).

Research Data – Overview

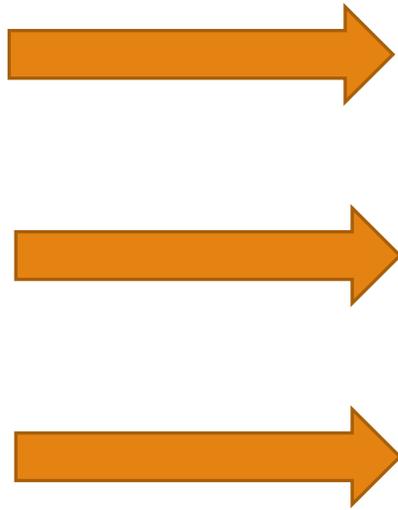
- Institutional ownership to meet institutional obligations.
- Researcher stewardship involves significant authority and responsibilities.
- Research data policies are common in higher education.

Researcher Stewardship

- Significant authority and responsibilities over research data:
 - Produce, gather, generate, collect, analyze, evaluate, use, manipulate, modify, transfer, share (or not share), collaborate, publish, dispose of...
- Right to exercise scholarly leadership with respect to nature and direction of research, sharing/collaboration, publication, and administrative project requirements.
- Departing researchers routinely seek and receive permission to take copies of research data.

Research Data: Institutional-Researcher Partnership

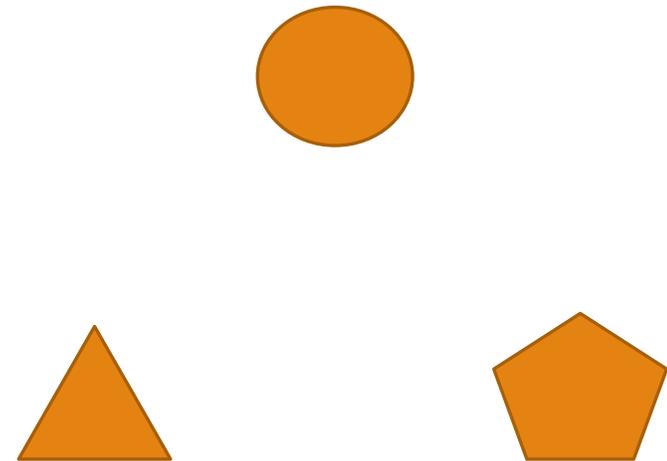
Sponsor, legal and compliance requirements and expectations



Institutional obligations, accountability and infrastructure



Researcher stewardship and scholarly leadership re: data



Research Data – Overview

- Institutional ownership to meet institutional obligations.
- Researcher stewardship involves significant authority and responsibilities.
- Research data policies are common in higher education.

Research Data Policies in Higher Education

Examples

Arizona State University

Cornell University

Duke University

Florida State University

Harvard University

Indiana University

Iowa State University

Johns Hopkins University

Louisiana State University**

Mississippi State University**

Northwestern University

Ohio State University

Pennsylvania State University

Stanford University

Texas A&M University

University of Alabama

University of Alabama -
Birmingham

University of Arkansas**

University of California system

University of Georgia**

University of Iowa

University of Kentucky

University of Michigan

University of Minnesota

University of New Hampshire

University of Pittsburgh

University of South Alabama

University of South Carolina

University of Tennessee

University of Virginia

Vanderbilt University

Yale University

Questions?

grant.garber@auburn.edu