

How Academic Freedom and Academic Principles are Preserved in Sponsored Research Agreements with Industry

University sponsored research agreements with industry safeguard academic freedom and the mission of the University (which is teaching, research, dissemination of information, and public service). The University's principles for contracting with outside entities are well promulgated at: <http://www.ucop.edu/ott/genresources/principles.html>

In individual corporate sponsored research agreements, academic freedom is preserved in the following ways:

- Researchers (PIs, postdoctoral fellows and students) decide for themselves whether or not they will participate in a given sponsored research project, regardless of the funding source.
- When Berkeley researchers choose to seek research funding from a company under a sponsored research agreement, they draft a proposed work plan, often called a “scope of work.” Scopes of work describe research that is academically appropriate for University researchers to perform and that will be published. The researcher and the sponsor then mutually agree on a budget that will fund the direct research costs of the work.
- Under master research agreements with companies when all scopes of work are not arranged in advance, individual scopes of work are funded under the terms of the master agreement, but the scopes of work are still drafted by the researchers, not by the company sponsor. Under a master agreement the scopes of work are typically drafted and submitted in response to a request for proposals to be funded under the master agreement; thus, the researchers are aware of the terms of the agreement at the time the work is proposed.
- The University owns intellectual property (IP) developed by its employees in our facilities, even if that IP arises from corporate funded research.
- As the owner of the IP, even when the University licenses IP rights to the sponsor (or to any entity) the University always reserves certain rights for itself. These include the right to practice the IP rights on our own behalf and to allow others in the nonprofit sector to use them for their own education and research purposes.
- Publication at the University is a fundamental right. In the typical corporate sponsored research agreement, sponsors receive the right to review publications (and public presentations) before they are disseminated. This is called a publication preview right. However, that preview period is typically limited to just 30 days. The publication preview period allows the company sponsor to:
 - 1) protect any of its confidential information that may have been inadvertently incorporated into the intended disclosure. If such information has been incorporated, the sponsor may ask us to remove it, but does not have direct editorial control; and/or
 - 2) request that the University file a patent application on any of the funded results

If the sponsor requests that the University file a patent application, then typically up to an additional 60 day publication delay may be allowed. The 30 day and 60 day time limits are standard at most research universities. A publication delay may be stopped by the University's filing of a patent application, so the actual delay is the shorter of the two; the patent filing preparation time or 60 days, whichever occurs first.

- Typical corporate sponsored research agreements also describe how IP developed under the agreement may be licensed by the corporate sponsor. The primary objective of University IP licensing programs is to benefit the public by enabling commercialization of basic research. Nearly all University-generated research outcomes are far from being a true commercial product and require large amounts of investment by the private sector to bring to the point of practical application. Corporate sponsored research agreements at Berkeley grant to the sponsor a time-limited, first right to negotiate a commercial license to IP developed in the funded project. Exclusive licenses to such IP always indemnify the University from commercial acts, and require that the licensee diligently commercialize the rights.

- The University is an open, academic institution with limited mechanisms to safeguard confidential information. The need for a company to provide researchers at the University with confidential information is likely to be low. When researchers DO choose, however, to receive company confidential information in order to advance a research project, the University and company confer on the appropriate agreement to govern the disclosure. Such agreements describe how confidential information will be managed by the recipient. They include standard clauses that describe when the duty ends, and when the information is no longer confidential. The University does not accept confidential information that is controlled by export laws.

Academic freedom is also safeguarded in corporate sponsored research agreements by research compliance procedures, such as standard conflict of interest procedures. Moreover, all contracts with unusual clauses are vetted by legal and policy experts. The most robust enforcer of academic freedom in place on campus is the academic tradition itself, that all principal investigators are familiar with, and have a strong motivation to preserve.

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