

OFFICE OF
TECHNOLOGY
DEVELOPMENT



DIVISION OF
RESEARCH



SOFTWARE

LICENSING
MANUAL



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This manual was created by the Office of Technology Development at Florida Atlantic University and is based in part on similar manuals created by Stanford University, the University of Massachusetts, and the University of Minnesota. It has been updated and modified to reflect the specific policies and procedures of Florida Atlantic University.

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Introduction

The **Office of Technology Development (OTD)** at FAU manages the protection and commercialization of intellectual property created by faculty, staff, and students. Software is a distinct type of intellectual property that presents a unique set of challenges not encountered by other kinds of innovations. This manual was created to help FAU researchers recognize and address those challenges. It is focused on explaining methods of legal protection for software and presenting options for licensing software. Determining an appropriate protection and commercialization strategy for a software innovation can be complicated, and decisions must be based on the particular facts and circumstances in each case. While this manual can help to answer general questions, researchers should contact OTD to discuss their specific innovation in more detail.



Ownership of Inventions

An invention that is made in the field or discipline in which the creator is engaged by the university or made with the use of university support is the property of the university. University support means the use of university funds, personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the university. An invention made outside the field or discipline in which the university engages the creator or for which no university support has been used is the property of the creator.

Ownership of Works

Independent Efforts

A work that is made in the course of independent efforts is the property of the creator. Independent efforts means that the ideas for the work came from the creator and the work was not made with university support.

University Supported Works

A university supported work is the property of the university. A university supported work means a work of a creator made using university support.

Traditional Works of Scholarship

The university will not assert rights to traditional works of scholarship. Traditional works of scholarship means university supported works such as theses, dissertations, books, and articles to the extent these works disseminate the results of academic research or scholarly study.

Regular Instructional Works

The university will not assert rights to regular instructional works. Regular instructional works means university supported works developed without the use of appreciable university support and used solely for the purpose of assisting or enhancing the creator's instructional assignment.

Software Ownership

The **FAU Intellectual Property Policy** determines ownership rights in inventions and works created by university personnel. Software may be defined as an invention or a work. The process of using the software is generally considered to be an invention and the software code is usually characterized as a work. Questions regarding policy interpretation may be directed to OTD.

Software and Copyright Law

What is copyright?

Copyright is a form of protection provided by law to authors of creative works. This includes literary, dramatic, musical, and artistic works as well as computer software. Copyright protects the creative expression of a work, but not the underlying facts, ideas, systems, or methods of operation.

What are the rights of a copyright owner?

U.S. copyright law provides the owner of a copyrighted work with the exclusive right to conduct and authorize various acts:

Distribute

Disseminate the work via print or electronic media

Perform Publicly

Stage a performance or demonstration of a work

Reproduce

Make copies of a work

Prepare Derivative Works

Create modified forms of a preexisting work

Display Publicly

Show a work in-person or online

How is copyright protection secured?

Copyright protection is automatically secured when an original work of authorship is fixed into a tangible medium of expression, which can mean written down on paper or saved on a computer.

A copyright notice is not required to have a valid copyright, but it is recommended to put others on notice that the copyright owner is enforcing its rights in a work. For works owned by FAU, the following notice should be used:

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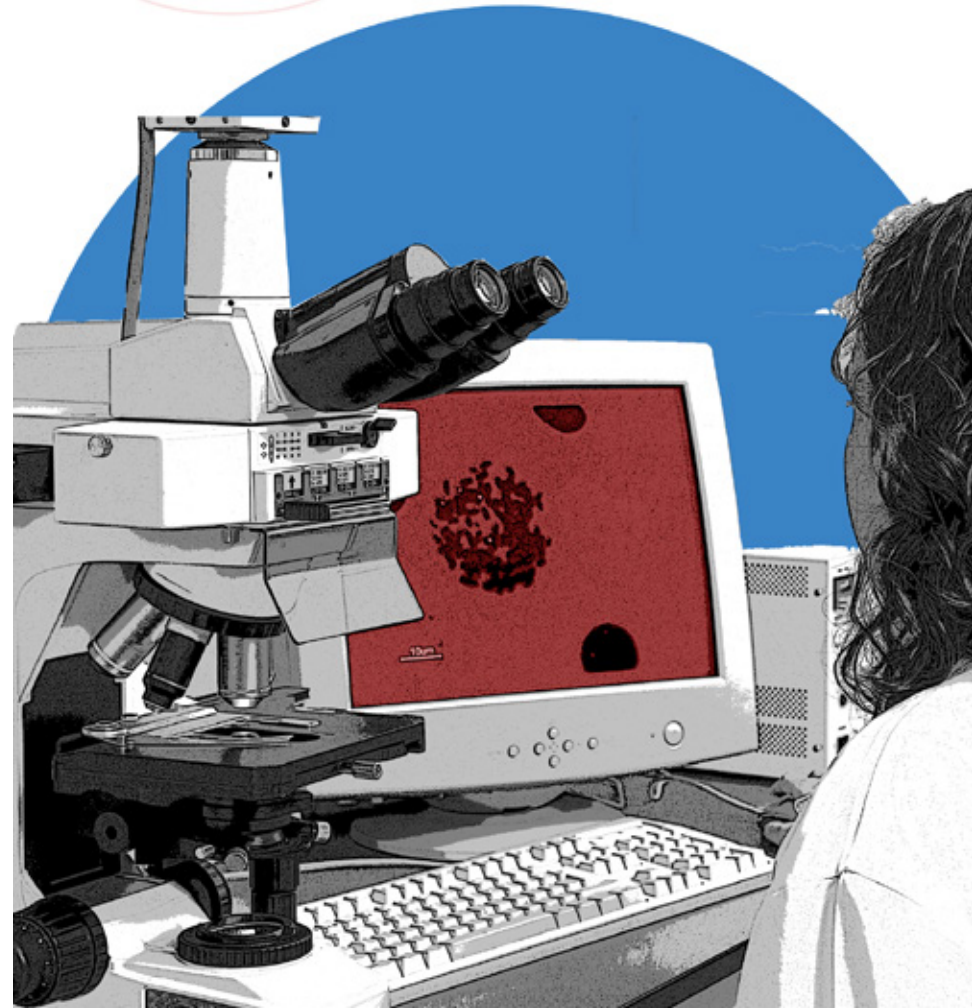
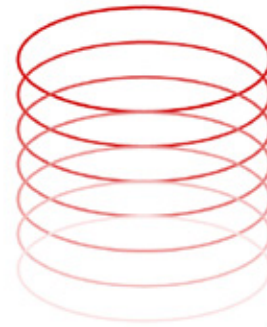
Copyright owners also have the option to register their work with the U.S. Copyright Office for a nominal fee. Registering a copyright creates a public record of ownership and enables an owner to file a lawsuit for copyright infringement.

How long does copyright protection last?

As a general rule, copyright protection lasts for the life of the author plus an additional 70 years. For works made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever expires first.

How does copyright law apply to software?

In the context of computer software, copyright protects the software program's lines of code, but not its function or use. According to copyright law, the author of computer software is the programmer that writes the code. Ownership of the software program originates with the author but may be subject to an obligation to assign to the author's employer.



Software and Patent Law

What is a patent?

A patent is a legal document that protects scientific or technical inventions. This includes any new and useful process, machine, article of manufacture or composition of matter and in certain cases computer programs. Patents do not protect laws of nature, physical phenomena, or abstract ideas.



What are the rights of a patent owner?

U.S. patent law allows the owner of a patent to exclude others from making, using, selling, or importing the claimed invention.

What are the requirements to obtain a patent?

Utility

The invention must have some application for beneficial use in society

Novelty

The invention must be demonstrably different from what is publicly available

Non-Obviousness

The invention cannot be obvious to a person having ordinary skill in the art

Written Description/ Enablement

The description of the invention must demonstrate possession of the invention and enable others to make and use the invention

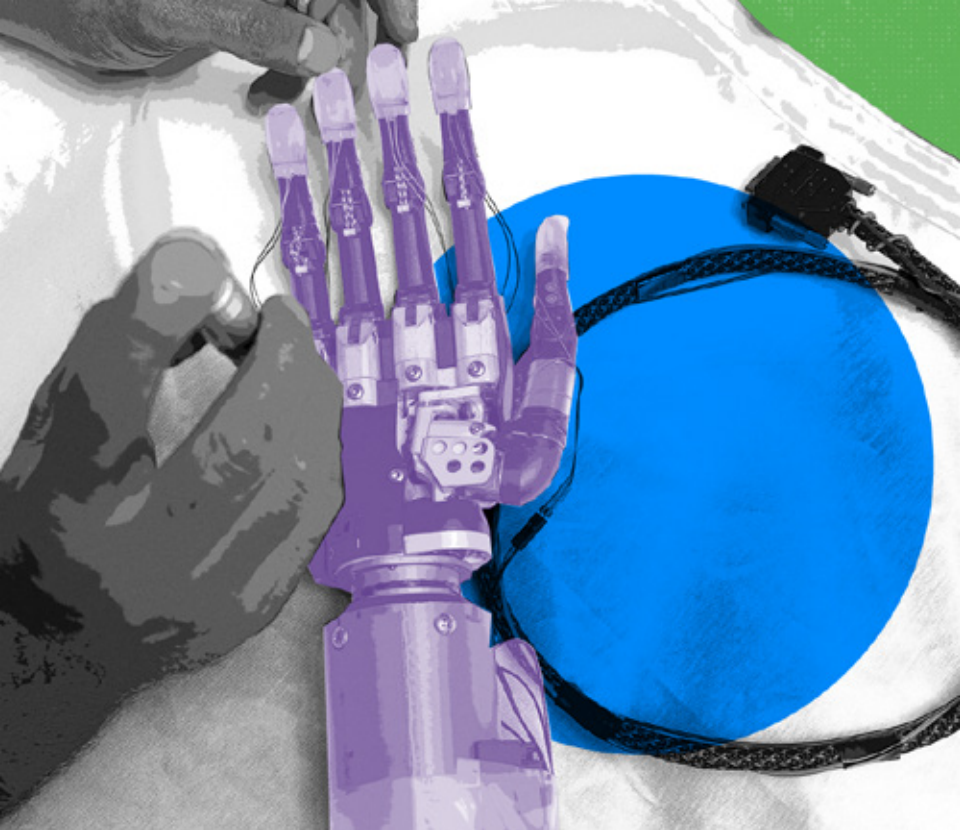
How long does patent protection last?

A patent is generally valid for 20 years from the date of application filing. Periodic fees are required to maintain the enforceability of the patent.

How does patent law apply to software?

Software innovations may or may not be considered patent-eligible subject matter. A patent cannot protect source code, but it can protect the underlying process embodied in software. According to recent case law, a computer process is patentable if it is tied to particular machine or apparatus or transforms a particular article into a different state or thing.





Software Licensing Options

Creators who want to disseminate their software can do so in several different ways. Determining which option is appropriate will depend upon the individual creator's goals. Prior to distributing software in any manner, the creator must verify ownership by identifying all individuals who contributed to the software and establish originality by confirming that no material was taken from other sources.

Public Domain

Software dedicated to the public domain is not protected by copyright. Anyone can reproduce, adapt, distribute, or display the software without permission or compensation to the owner. **The Creative Commons Public Domain Waiver ("CCO")** may be used for this purpose.

Publication

Published software is still protected by copyright. No one can reproduce, adapt, distribute, or display the software without the permission of the copyright owner.

Academic Use Agreement

Software can be distributed to academic colleagues without compensation through an academic use agreement prepared by OTD.

Open Source

What is open-source software licensing?

"Open source" refers to a distinct type of license that enables a creator to make software freely available for others to use and modify under certain terms and conditions. It is not the same as dedicating a work to the public domain because there are still restrictions on how the software can be used. The software remains protected under copyright law.

When can software be open-sourced?

Software created by faculty, staff or students may be open sourced as long as doing so would not conflict with any university contractual obligations (e.g. sponsored research). If software contains code from a third-party, the creator must obtain permission before distributing it under an open-source license.



How is an open-source license selected?

A creator should choose an open-source license that aligns with the specific goals for the software. It is important to read a license in its entirety before selecting it to ensure there is a complete understanding of the requirements of that agreement. If a creator is considering licensing software for commercial use this should be discussed with OTD.

What are examples of common-open source licenses?

BSD/MIT/Apache

These “permissive” licenses grant rights to use, modify, and create derivative works of software, and those modifications or derivative works can be used for commercial purposes and distributed under a different license.

GPL/LGPL/AGPL

These “copyleft” licenses grant rights to use, modify, and create derivative works of software, and those modifications or derivative works can be used for commercial purposes but must be distributed under the same terms as the original license.

Commercialize Through OTD

Software that may be of interest to industry as a tool to use or a product to sell can be licensed through OTD. The creator must disclose the software to OTD to evaluate its commercial potential. Patent protection may be pursued by OTD if necessary. If OTD successfully licenses the software the revenue generated under that agreement is distributed in accordance with the [FAU Intellectual Property Policy](#).

Exclusive vs. Non-Exclusive Licensing

OTD can pursue either an exclusive or non-exclusive licensing strategy to commercialize software. An exclusive license grants rights to only one company while a non-exclusive license grants rights to multiple companies. An exclusive license is generally the best option for an early-stage software innovation because it incentivizes the company to invest in further development. Some companies do not need a competitive advantage and simply want access to the software, in which case a non-exclusive license is appropriate.

Licensing Paths

Software Development Firm

A third-party software development firm can help develop early-stage software into a product that is ready for commercial use.

Direct to End-user

Software that is already successfully used internally and is easy to use can be licensed directly to individual end-users.

Software Distributor

A distributor can assist with licensing high-quality, complex software and provide technical support to end-users.



Resources

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[FAU Intellectual Property Policy](#)

[Office of Information Technology](#)

[FAU Libraries](#)

[U.S. Copyright Office](#)

[U.S. Patent and Trademark Office](#)

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[Software Licenses in Plain English](#)

[OSS Watch](#)



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