

Data Rights and Responsibilities Guidance 1.0 February 2011

General:

The University claims ownership rights to intellectual property, including data¹, generated with significant University resources including grant funding.² University faculty and researchers have a responsibility to maintain research data and make that data available for preservation by the University both as a matter of research integrity, and because of the University's ownership rights. Increasing numbers of granting agencies and entities now also impose specific planning for data preservation and access as a condition of grants compliance.

All principal investigators must familiarize themselves carefully with all grant terms and conditions, including those relating to intellectual property and data responsibilities. NSF grants now require a data management plan. <http://www.nsf.gov/bfa/dias/policy/dmp.jsp> Investigators have a responsibility to cooperate in the deposit of research data in any University repository being made available for preservation purposes.

UVA Policy specifically provides:

Recording and Storage of Laboratory Data:

The retention of accurately recorded and retrievable results is of the utmost importance in the conduct of research, and it is the responsibility of each investigator to maintain such records in a secure location.

Data and notebooks resulting from sponsored research are the property of the University of Virginia. It is the responsibility of the principal investigator to retain all raw data in laboratory notebooks (or other appropriate format) for at least five years after completion of the research project (i.e., publication of a paper describing the work, or termination of the supporting research grant, whichever comes first) unless required to be retained longer by contract, law, regulation, or by some reasonable continuing need to refer to them.

¹ The NSF Data Management and Sharing FAQs provide a rough definition of data at: <http://www.nsf.gov/bfa/dias/policy/dmpfaqs.jsp#1> . The NIH data sharing guidelines are found at: http://grants.nih.gov/grants/policy/data_sharing/data_sharing_guidance.htm#def

² **“Significant” University Resources:** The use of University resources is “significant” when it entails substantial and dedicated use of University equipment, facilities, or personnel. The use of a computer in a faculty office, incidental supplies and occasional use of University personnel or shared facilities would typically not be considered significant use. In contrast, utilization of University laboratories or special instrumentation, dedicated assistance by University employees, special financial assistance or extensive use of shared facilities would constitute significant use.” **“Sponsor-Provided Resources:** Funds and facilities provided by governmental, commercial, industrial or other private organizations which are administered and controlled by the University shall be considered University resources for purposes of this policy.” See UVA RES-001 “Ownership Rights in Copyrightable Material” <https://policy.itc.virginia.edu/policy/policydisplay?id='RES-001'>

If the principal investigator leaves the University of Virginia, he or she may transfer such data to another institution, provided that the Vice President for Research and Graduate Studies is informed of this transfer and approves of it. This shall be subject to the proviso that the University is given written assurance that the data will be retained for the required five-year minimum retention period.

*The notebook or logbook shall be kept in a secure location where it cannot be removed by an unauthorized person.*³

Publication:

Publication rights and responsibilities are complex in any academic environment. Determination of publication rights to research results is primarily the responsibility of the principal investigator, with the expectation that principled standards of scientific conduct, appropriate acknowledgement of collaborators and contributors, and sharing of results in the interest of the broader scientific community, are core standards expected of each member of the University community. The Office of the Vice President for Research provides guidance on these issues and has the responsibility for addressing disputes arising out of the application of these policies. **For questions, please contact: David Hudson, djh2t@virginia.edu or 243-0900.**

Licensing and Commercialization:

As a general matter, employees of the University (faculty and staff) and students working in lab and research environments do not develop personal rights to or interests in research data or results. However, all University employees, including student employees, can have rights to share in any profits that might be realized if/when the University disseminates or licenses intellectual property commercially. For more information on this, the University's Patent⁴ and Copyright⁵ policies should be consulted. The Office of the Vice President for Research provides guidance on the application of these policies and has the responsibility for addressing disputes arising out of the application of these policies. **For questions, please contact: David Hudson, djh2t@virginia.edu or 243-0900.**

³ See <https://policy.itc.virginia.edu/policy/policydisplay?id=%27RES-002%27>

⁴ See <http://www.virginia.edu/polproc/pol/xve2.html>

⁵ See <https://policy.itc.virginia.edu/policy/policydisplay?id=%27RES-001%27>

Data Rights and Responsibilities - Example Questions and Answers [INTERNAL USE]

Q #1: NSF-funded faculty research project in science department, researcher is employed by UVA, uses UVA research facility, employees 10 graduate students and 5 undergraduate students to work in the lab. Who owns the data for this project?

*Answer: The most critical factor here is that NSF funding is granted to the **institution**, not to **individuals**. PI's have significant personal responsibilities in their submission of grants and receipt of funding. However, sponsored research agreements are executed with the institution. Research institutions must accept responsibility in a very broad range of areas (e.g. drug-free work place; human subjects; fiscal and reporting standards; time and effort reporting; research misconduct; many more). The NSF expects the institution to own the data, and may impose special requirements regarding preservation or open access to the data so that the broader research community has access.*

Q #2: NSF-funded faculty research project in science department, researcher is 100% funded by grants administered through UVA. Research data are collected entirely in the field, using publicly-funded equipment/instrumentation. Analysis and publication is done while at UVA. No students involved. Who owns the data for this project?

Answer: In general, see answer to question #1. The NSF funding is provided to an institution. Nothing is changed by the fact that the PI is 100% funded by grants; s/he is nevertheless an employee of the home institution, in this case, UVA, not an employee of the granting agencies.

Q #3: A long-term career UVA researcher is retiring and has an enormous amount of research data in her possession. Neither the institution nor the public has made any claim on these data at any point during her career. The majority of this research was publicly-funded. She won't be continuing her research in retirement, and thus has no use for the data. Who owns the data and what obligation does the researcher have to find it a home?

Answer: One key indicator is the fact that this question notes the research was "publicly funded." In this case, the expectation would be similar to that noted in response to Question #2 above. For a number of reasons, the individual does not have the right to discard the data. Funding agencies expect the recipient institution (UVA) to own and be responsible for the data. The guidelines for data retention differ somewhat by agency and use of the data (e.g. data used in support of an FDA New Drug Application might have different retention standards, regardless of funding source). The faculty member should have retained copies of her grants and work with appropriate staff to transfer the research data to a viable repository or storage location as required in the grants or

pursuant to UVA policy. {Clearly some very old data from decades past under this hypothetical, may no longer be subject to retention requirements.}

Q #4: A graduate student has been working on his PhD for 10 years now and has collected a substantial amount of data during this period. All of this data were collected on instrumentation located at UVA and funded by the NSF. The graduate student has finally completed his dissertation, and wants to publish the dissertation and make the data publicly available to support his research. Afterwards, he wants to take this data with him to his first faculty position so that he can continue building upon this work.

***Answer:** The "right to publish" is complicated. Typically there are discipline-specific expectations about authorship (e.g. who is and who is not an author) but in any case, this should have been a topic for discussion early in the life of the project and one which continued throughout the progress of the research project. A UVA faculty member must be supervising this project, and is likely to have been the PI on the NSF grants that supported the student's research activity. That faculty member should help the student understand his/her role in the project as well as the role of others with regards to authorship. A trivial example: the contributions of a lab technician who did the glassware washing, and occasionally injected animals, collected tissue specimens, and input data into a computer program, while quite important to the project, may not rise to the level of authorship. Even if they did, the rules also provide reasonable expectations about who should be the first author; thus, the technician would not likely find it reasonable to submit this as "their" work.*

Because this question stipulates that the research was funded by the NSF, that agency will impose the usual institutional approach to data ownership, stewardship and transfer as described in response to other questions.

Finally, under UVA policy, students who are not University employees, have sole rights to the intellectual property in their authored works, unless the works are the product of significant university resource investment. Typically, a student's thesis or dissertation would be considered their intellectual property, and the student's desire to publish the work would be their decision. However, because this question makes clear that the NSF provided the funding to support the research here, the student should work with his or her faculty advisor to sort out the publications rights and responsibilities. Whether the student can take the data to another university to begin an independent research program there must be explored with the faculty advisor. In the case of a conflict, the Office of the Vice President for Research should be consulted.

Q #5: NSF-funded faculty research project in science department, researcher is employed by UVA, uses UVA research facility/national laboratories/collaborator's facilities. Who owns the

data for this project? Given use of the national laboratories, is the data inherently public property? Does the location of the data determine its ownership?

Answer: The location of data collection is not as important as the NSF-funding location as described in the answers above. Under some circumstances, though, the access to, and research in a national lab or with a collaborator, may require a sub-contract. The sub-contract recipient conditions may specify, under some circumstances, other data ownership, storage and/or use provisions. The faculty member in charge of the project should be well aware of the specific data storage, use and ownership issues through their review of the contracts that provided funding whether directly, or via sub-contract.

Q # 6: A private company funded faculty research project in a science department. The researcher is employed by UVA, uses UVA research facilities, employees 10 graduate students and 5 undergraduate students to work in the lab. Who owns the data for this project?

Answer: The contract conditions in the agreement between the company and UVA would have to be reviewed to answer this question. In general, UVA is reluctant to accept funding if there will be any restrictions on our rights to publish or disseminate the data and results. Generally, great care is taken during the contract review process to ensure that ownership rights to resultant intellectual property are well understood by all parties. Provided that there are no any special conditions in the funding contract, UVA owns the data as in the other examples above.

Q # 7: A faculty member has discovered a process that has commercial value. The research was funded by NSF. Is the researcher still obligated to share the data? Who owns the data for this project? Who gets the rights for the discovery? Who get compensated for anything commercially created from this research?

Answer: The data and the discoveries may be subject to different requirements which require careful attention and some reconciliation. Typically, any obligation to share the data as set forth by a granting agency such as the NSF will be framed in ways that do not override the ability to also protect data that might be part of patentable inventions under the federal Bayh-Dole Act. In general the data ownership is as above - the institution. The rights to the discovery are built into the UVA patent policy, which to simplify, says UVA owns the invention, but the researcher clearly is credited as the person responsible for the discovery. If the research results are ultimately commercialized through the efforts of the Patent foundation, all revenue is shared with the researcher(s) according to patent policy - a portion of the revenues are given to the inventors, pro-rated based on each inventor's participation in the invention.

If the invention was not related in any way to the faculty's funded research project, or research area (e.g. a researcher invents a peanut press to make peanut oil, or a scuba dive fin, none of which relates to his or her teaching, research or grants at UVA), and

significant university resources were not otherwise used, then the researcher would likely own the rights to the discovery.