UNIVERSITY OF CALIFORNIA

Research
Policy Analysis
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Guidance Memo

23-03

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To: Authorized Licensing Offices (ALO)

Subject: Guidance on Managing Conflict of Interest in License Agreements

Purpose

This guidance provides information on managing conflict of interest in license agreements when the California Political Reform Act applies to University employees. This guidance supersedes previous guidance on this topic, “Managing Potential Conflicts of Interest in Licensing Under the California Political Reform Act" (OTT Operating Guidance 01-02).

Background: California Political Reform Act

The California Political Reform Act (PRA) is California’s conflict-of-interest law. The PRA’s major provisions regulate conflicts of interest of public employees arising from employees’ financial interests and connections. The PRA includes several conflict-of-interest requirements, one of which is that all public employees refrain from participating in or influencing business decisions between the University and entities in which the employee has a financial interest.

Definitions

License Agreement: A contract between the University and a third party allowing the Licensee to use and develop University property and/or intellectual property rights commercially.

Licensee: An external party who has entered into a License Agreement with the University.

Conflicted Employee: A University employee who has a Financial Interest (defined below) in a potential Licensee.

How does the PRA impact University employees and licensing?

As employees of a public institution, University employees are public employees. Therefore, the PRA applies to all University employees when there is potential to become involved in University licensing decisions. This includes (i) University inventors of patent rights, (ii) University creators of tangible materials licensable under bailment agreements, and (iii) University authors of copyrightable materials licensable under copyright licenses.

The PRA prohibits Conflicted Employees from influencing the University in selecting Licensees and/or negotiating License Agreement(s).

Under the PRA, a University employee has a Financial Interest if the Licensee is:

- Any person or organization that gave or promised the University employee income totaling $500 or more within twelve months prior to the University licensing decision; or
- Any person or organization that gave or promised the University employee gifts totaling $590 or more within twelve months prior to the University licensing decision (increases bi-annually depending on Consumer Price Index); or
- Any business entity in which the University employee is a director, officer, partner, trustee, or employee, or holds any position of management; or
- Any business entity in which the University employee or the employee's spouse or domestic partner or dependent children have an investment worth $2,000 or more.
- If the University employee or the employee's spouse, domestic partner, or dependent children will receive a $500 financial benefit or loss in any 12-month period from a University licensing decision, the employee has a Financial Interest in the Licensee.

When shares of a business entity are not publicly traded, the University assumes that any shares, including founders' shares, qualify as a Financial Interest. University payments to an inventor under University Policy do not, by themselves, constitute a Financial Interest.

Guidance on Managing Conflicts of Interest When the PRA Applies to University Employees

Campuses can manage conflicts of interest in licensing by establishing policies and procedures to identify conflicts of interest, and then restricting the Conflicted Employee's role in licensing decisions. RPAC suggests the following practices for managing conflicts of interest in licensing:

1. The Authorized Licensing Office (ALO) is responsible for making licensing decisions in the best interest of the University. ALOs decide whether to request or receive input from University employees and other experts to inform licensing decisions. ALOs have the sole discretion to determine the breadth and extent of input and choose whether/how to use the information received. In all cases, ALOs retain delegated authority to make licensing decisions.

2. Conflicted Employees should consult their ALO and campus policy. Campus policies may:

    a. describe when University employees should complete a statement regarding licensing related financial interests;
    b. allow one or more legally permissible exceptions under 2 C.C.R. § 18704(b) (PDF);
    c. expressly note the prohibition against lobbying higher-level University decision makers on licensing decisions;

   d. state that University inventors remain responsible for managing all non-University obligations owed to outside companies, including confidentiality or fiduciary duties; and/or
   e. remind University inventors of their duty to perform their obligations to the University and maintain the confidentiality of University information.

3. The role of the Conflicted Employee in the licensing process should be kept to the minimum necessary to achieve the University's objectives in marketing and licensing. Campus policies and practices must be in accordance with PRA and should not unnecessarily diminish University employee involvement in patent prosecution. Conflicted Employees may only participate in or influence licensing decisions if permitted by the ALO (per guideline 1) and campus policy.

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