

# Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – Intellectual Property

1. Ref.: [2 CFR Part 200.448](#)

2. Effective Date: July 1, 2015

3. Originating Office/Agency: Office of Management and Budget

4. Key Words: Program income; defray program costs; period of performance; intellectual property

## Scope

Certain costs related to securing patents and copyrights and subsequent royalties may be charged by the university to a Federal award when they are germane to the activities supported by the Federal program.

### Allowable Patent and Copyright costs include:

- Preparation of disclosures, reports and other documents required by the Federal award, and the cost of searching the art to the extent necessary to make such disclosures;
- Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States (US) patent application where a title or royalty-free license is required by the Federal government to be conveyed to the Federal government; and
- General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (see also Professional Service Costs – [2 CFR Part 200.459](#)).

### Unallowable Patent and Copyright costs include:

- Preparation of disclosures, reports and other documents and the cost of searching the art to make such disclosures not required by the Federal award; and/or
- Costs in connection with filing and prosecuting any foreign patent application, or any US patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal government.

### Allowable Royalties and Other Costs for Use of Patents and Copyrights include:

- Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights hereto, necessary for the performance of the Federal award except as described below.

### Royalties and Other Costs for Use of Patents and Copyrights are unallowable when:

- The Federal government already has a license or the right to free use of the patent or copyright;
- The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

- The patent or copyright is considered to be unenforceable; and/or
- The patent or copyright is expired.

## **Guidance**

The university is responsible for exercising special care in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's length bargaining, such as royalties paid to persons, including corporations, affiliated with Eastern Washington University; royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made; and royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity. Further information on "reasonableness" may be found in the Office of Grant and Research Development's memorandum on "cost considerations" and in [2 CFR Part 200.404](#) of the Uniform Guidance.

In addition, any case involving a patent or copyright formerly owned by the university, the amount of royalty allowed must not exceed the cost which would have been allowed had the university retained title thereto.

Project Directors and Principal Investigators that develop intellectual property as a result of a Federal award are also responsible for compliance with the university's Intellectual Property Management Policy ([302-04](#)) and for not disclosing proprietary or confidential information in accordance with the university's Ethical Standards ([901-01](#)) and Social Media ([203-04](#)) policies.