

Licensing Income Distribution

Limited Exception For Plant Breeding Programs

Cornell University's Policy 1.5, Inventions and Related Property Rights, http://www.policy.cornell.edu/vol1_5.cfm prescribes a uniform procedure for the distribution of all net licensing income (Policy Distribution). Under compelling circumstances the Vice President for Technology Transfer, Intellectual Property and Research Policy (VPTT) may, when feasible, grant a Limited Exception from this Policy Distribution, if in the determination of the VPTT such an exception would better advance the research and land grant missions of the institution. In the case of Cornell's Plant Breeding Programs that are carried out within the College of Agriculture and Life Sciences (CALs) the VPTT will consider granting such a limited exception upon the submission of a written petition by the leader, the principal breeder, of any individual plant-breeding program within CALs. This petition must be accompanied by the written endorsement of the CALs Dean, or official designate of the Dean, and by specific supporting documentation. The scope of this Limited Exception, the procedure by which it will be established for each plant breeding program, and the general practice that Cornell will employ in managing its plant breeding intellectual property and distributing licensing income are as set forth below:

1. The principal breeder of each breeding program may petition in writing for an exception to the Policy Distribution for an annual amount that is *up to but does not exceed* 125% of the average annual net licensing revenue of the program for any three (3) of the five (5) immediately preceding years (Exception Ceiling). The petition must include, as an attachment, documentation of these five years of prior income. If the petition is approved by the VPTT, the net licensing revenue for the current year and for any future year that is below or up to the Exception Ceiling shall be distributed in a 80/20 ratio with 80% going to the breeding program to support its activities and 20% retained by the university. Net licensing revenue for any future year that exceeds the Exception Ceiling shall be distributed according Cornell's prescribed Policy Distribution¹. Once a Limited Exception petition is submitted and approved, and hence the Exception Ceiling is determined, it will generally be considered fixed for either the lifetime of the program, or the tenure of its leader, modified only by an annual inflation adjustment as provided for in Paragraph 4 below. In rare circumstances an investigator may petition for a change in the Exception Ceiling 10 or more years after the Ceiling was first established. The basis for such a petition must be that significant changes in the breeding program related to the

¹ In the case of a Cornell invention, the university, through CTL, will receive all license revenue and, in recognition of the efforts and contributions of the inventor, distribute total net license revenue as follows:

- One-third (33.3 percent) to the university inventor(s) in recognition of their contribution. In the case of university co-inventors, this distribution will be shared.
- One-third (33.3 percent) will be divided as follows: (a) 60 percent to the inventor's research budget, sub-unit (typically the inventor's department, school, section, or center) and university unit (typically the inventor's college) in a manner to be determined by the dean of the unit (or, for research centers in the Research Division, the Vice Provost for Research), and (b) 40 percent to the university for general research support
- One-third (33.3 percent) to the university to provide CTL with operating funds to cover the cost of service provided to the university with regard to intellectual property matters and particularly to cover direct costs, where license revenue or other cost recovery has not been achieved.

development of new plant varieties and cultivars and the related Land Grant mission have occurred necessitating consideration of a new Exception Ceiling. The petition must first be filed with the Department Chair who in turn will communicate with the CALS Senior Associate Dean, both of whom must endorse the petition and communicate as such to the VPTT. Final approval rests with the VPTT.

2. When a new breeding program is established, an Exception Ceiling shall be automatically set at 100% of net licensing income for each of the first five (5) years of the new program, unless the principal breeder chooses not to petition for an exception to Cornell policy but chooses to follow the prescribed Policy Distribution. Thereafter, upon a second written petition of the principal breeder, the Exception Ceiling may be increased up to 125% of the average annual net licensing revenue of that specific new program for the best three (3) years of the five (5) initial years of the program. When a new individual is appointed to lead an existing plant breeding program, the new principal breeder may petition that the Exception Ceiling for that program continue as is, subject to the annual inflation adjustment. Alternatively, the new principal breeder may petition that at the completion of the first three (3) years of tenure in this position a new Exception Ceiling be set at 125% of the average net licensing income of those three (3) years. In the absence of a written petition at the conclusion of the first three years of the tenure of new principal breeder, Cornell's prescribed Policy Distribution will apply to that plant-breeding program.

3. Once a petition for the licensing income distribution exception is submitted and approved by the VPTT, a process that determines the Exception Ceiling, the principal breeder may not request further changes for 10 years, including withdrawal, from this Policy Exception. After 10 years and only in rare situations, the Exception Ceiling may be reconsidered as previously described; however, withdrawal from the Policy Exception is never allowed.

4. The Exception Ceiling for all approved programs will be automatically adjusted annually and will be equal to Cornell's own annual internal budget adjustment percentage that is set by and available from the Provost's Office of Budget and Planning. The first adjustment will be applied to the revenues received in FY2010 and to be distributed therefrom. Distributions of income received in FY2008 and in FY2009 will not be subject to any adjustment.

5. Each principal breeder shall have the duty to inform in writing all present participants (co-breeders) in his/her breeding program of the personal financial consequence of that program having an Limited Exception from Cornell's Policy Distribution in advance of the submission of a petition seeking that exception, and has the on-going responsibility to similarly inform all future participants, before they join the program, of the existence of this Limited Exception.

6. For net licensing revenue that exceeds the Exception Ceiling if the principal breeder and any co-breeders agree to waive the personal inventor shares under the Policy Distribution then that waived amount will be distributed to the principal breeder's academic unit to be used, subject to the discretion of the unit administration, for the benefit of her/his breeding program. The non-inventor (breeder) shares will be distributed according to Policy 1.5. Breeders are advised that once such a waiver is made it cannot be revoked, and will remain in force for all future years of the program income from a particular license.

7. For any existing program with contracts previously entered into and administered by the New York Seed Improvement Project (NYSIP) or by an individual principal breeder and for which program the principal breeder petitions for, and has approved by the VPTT, an Exception

Ceiling, CTL will honor the terms and conditions of such contracts and will assume the administration responsibilities associated therewith. Such responsibilities shall include matters relating to contract compliance, timely reporting to the sponsors and Cornell administration, and financial accounting according to Cornell policies.

8. Provided that NYSIP operates cooperatively and in good faith with CTL, and is effective in the provision of services, when appropriate, in the marketing, promotion, production, cleaning, certification, storage, delivery and other customary services of plant materials for the breeding programs, CTL will share with NYSIP half of the 20% of the amount retained by the university under the Exception Ceiling. For any net licensing income above the Exception Ceiling, CTL, from its retained one third (1/3) share under the Policy Distribution, will provide NYSIP with 10% of that income, under the same conditions. Cornell reserves the right to terminate such sharing if NYSIP fails to provide services to CTL in a cooperative and satisfactory manner in the management of Cornell plant materials.

9. The VPTT reserves the right to suspend, alter or terminate this practice of granting Limited Exceptions to Cornell's Policy Distribution as the environment of Cornell or the breeding programs changes.

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