

Policy Manual

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18. Right to Publish

General Principle

In no case can the sponsor of a study be given absolute control over the right of the investigator to publish; to do so represents an unacceptable infringement on academic freedom and may jeopardize the tax-exempt status of CARES.

As responsible members of the scientific and academic community, we must be wary and resist taking or allowing actions and efforts which will erode the bedrock of American scientific productivity, academic freedom. It is also recognized that private and commercially-driven science are crucial components of the pre-eminent American scientific community and that their interests must also be respected and protected.

IRS Considerations

One of the tests the IRS uses in determining whether an organization qualifies for tax-exempt 501(c)3 status as a scientific research institution asks if the research “is carried out in the public interest”. The IRS has determined that research will be regarded as carried out in the public interest if, among other things, the research results are made available to the interested public on a non-discriminatory basis. The easiest way to do this is to meet the IRS publication/presentation requirements. These specify that: publication or presentation at research conferences or other symposia must be adequate and timely; some public disclosure beyond that which flows naturally from the issuance of a patent is required; the publication or presentation should disclose substantially all of the information concerning the results of the research which would be useful or beneficial to the interested public. The IRS allows publication to be delayed for a reasonable time to permit a commercial sponsor to obtain patent rights. Also, the IRS allows the publication or presentation to be “sanitized” to set forth only the scientific principles developed, without disclosing confidential information of the sponsor.

Copyright

Section 105 of the U.S. Copyright Act of 1976 specifically excludes United States Government works from copyright protection. Subsequently, works created by employees of the U.S. Government as part of their duties are inherently in the public domain, free for use by anyone and therefore not to be copyrighted. Publishers should be informed that your work as a U.S. Government employee is exempt from copyright transfer.

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