

Bayh-Dole Reporting for Copyrights

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With the passage of the [Bayh-Dole Act](#) in 1980, researchers are generally allowed to establish rights to their data, even when their research was supported by federally funded grants. For intellectual property that is protectable by copyright, the federal reporting responsibilities under the Bayh-Dole Act are complex, time-dependent, and highly detailed. All copyrightable works, including publications and data, may be copyrighted by the grantee (University) without NIH approval, unless stated otherwise in the terms and conditions of the award. Under awards whose primary purpose is educational, these data rights extend to fellows, students, and trainees as well. Grantee institutions may apply for copyright protection for their research results as well as any data that result from a federally funded research study. “Data” as defined by the NIH is quite broad and encompasses all of the following: recorded information, regardless of the form or media on which it may be recorded, and includes writings, films, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedural manuals, forms, diagrams, work flow charts, equipment descriptions, data files, data processing or computer programs (software), statistical records, and other technical research data. Data, however, excludes any physical objects, including laboratory samples, and also excludes any personnel or medical information, particularly any Protected Health Information, or other information that could be used to identify a particular person in a research study.

As with any federally funded invention, the grantee is required to disclose any invention to the sponsoring agency, in the case of most agencies this can be done through iEdison. Bayh-Dole however does not directly address whether the federal government, through the sponsoring agency, is given a right to use non-patentable inventions like those solely consisting of copyrighted or copyrightable works, as the definitions of “invention” and “subject invention” reference inventions protectable under US patent law. Federal regulations do however grant the federal government, through the awarding agency, a royalty-free, irrevocable, and nonexclusive license to utilize “intangible property” including copyrightable works and may authorize others to do so, for Federal purposes. These regulations are outlined in the Code of Federal Regulations, and more specifically in [2 CFR 200.315](#).

These obligations regarding copyrightable works are in line with the requirements for patentable technologies under the Bayh-Dole Act which sets forth “the policy and objective of the Congress to use the patent system to,” among other things, “ensure that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.”

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