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## 4.1.10 Intellectual Property

### Objectives

Inventions, discoveries, copyrightable and other creative works that have the potential to be brought into practical use may result from the activities of university employees in the course of their duties or through the use, by any person, of university resources such as facilities, equipment, or funds.

The primary purpose of this intellectual property policy is to provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and its transfer for the public benefit; a secondary purpose is to guide the generation of revenue for the University and the creators. The University is guided by the following objectives:

1. To optimize the environment and incentives for research and for the creation of new knowledge at the University;
2. To ensure that the educational mission of the University is not compromised;
3. To bring technology into practical use for the public benefit as quickly and effectively as possible; and
4. To protect the interest of the people of Illinois through a due recovery by the University of its investment in research.

Initiating body: Office of the Provost

Contact: Assoc. Vice President for Research (309-438-2528)

Revised on: 11/18/1999

### Definitions

**A. Intellectual Property:** The term "intellectual property" as used herein is broadly defined to include inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative or artistic works. Intellectual property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs, and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

**B. Traditional Academic Copyrightable Works:** "Traditional academic copyrightable works" are a subset of copyrightable works created independently and at the creator's initiative for traditional academic purposes. Examples include class notes, books, theses and dissertations, educational software (also known as course ware or lessonware), articles, non-fiction, fiction, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, or other works of artistic imagination that are not created as an institutional initiative.

C. **Creator:** "Creator" refers to an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.

D. **University Resources Usually and Customarily Provided:** When determining ownership and license rights in copyrightable works, "university resources usually and customarily provided" includes such support as office space, library facilities, ordinary access to computers and networks, or salary. In general, it does not include use of students or employees as support staff to develop the work, or substantial use of specialized or unique facilities and equipment, or other special subventions provided by the University unless approved as exceptions.

Exceptions are expected in units where the tradition is to provide subvention to some faculty in the form of graduate assistants to help prepare traditional academic copyrightable works. Exceptions are also expected in situations where creators use university provided facilities and resources in the creation of works of artistic imagination, for example, use of studios, potter wheel, or kilns for the creation of paintings, sculpture or ceramics; use of high end computer hardware and software in the creation of artistic graphical images; and so on. Other individual exceptions may be approved on a case-by-case basis.

## Application

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This policy as amended from time to time shall be deemed a part of the conditions of employment for every employee and a part of the conditions of enrollment and attendance at the University by students. It is also the policy of the University that individuals (including visitors) by participating in a sponsored research project and/or making significant use of university-resources thereby accept the principles of ownership of intellectual property as stated in this policy unless an exception is approved in writing by the University. All creators of intellectual property shall execute appropriate assignment and/or other documents required to set forth effectively ownership and rights as specified in this policy.

This policy applies only to intellectual property disclosed after the effective date of the policy.

## Copyrights

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### A. Ownership

Creators retain all rights to traditional academic copyrightable works as defined above except under conditions listed below.

The University shall own copyrightable works as follows:

1. Works expressly commissioned through written contract with the University. Such works are frequently referred to as "work for hire" in legal documents. The term "commissioned work" is used in this policy to describe a copyrightable work prepared under a written agreement between the University and the creator when (a) the creator is not a university employee or (b) the creator is a university employee but the work to be performed falls outside the normal scope of the creator's university employment. Contracts covering commissioned works shall specify that the author convey by assignment, if necessary, such rights as are required by the University.
2. Works created pursuant to the terms of a university agreement with an external party.

3. Works created as a specific requirement of employment or assignment with the University, that may be specified, for example, in a written job description or an employment agreement. Such specification may define the full scope or content of the employee's university employment duties comprehensively or may be limited to terms applicable to a single copyrightable work. Absent such prior written specification, ownership will vest with the University in those cases where the University provides the motivation for the preparation of the work, the topic or content of which is determined by the creator's employment duties and/or when the work is prepared at the University's expense.

4. Works that are also patentable. The University reserves the right to pursue multiple forms of legal protection concomitantly, if available. Computer software, for example, can be protected by copyright, patent, trade secret and trademark.

## B. University Rights in Creator-Owned Works

Traditional academic copyrightable works created using university resources usually and customarily provided are owned by the creators. Such works need not be licensed to the University.

Traditional academic copyrightable works created with the use of university resources over and above those usually and customarily provided shall be owned by the creators but licensed to the University. The minimum terms of such license shall grant the University the right to use the original work in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights when justified by the circumstances of development.

Where University service units (such as media production department) are involved with the production of a substantially completed copyrightable product, royalties shall be distributed between the copyright owner, i.e., faculty or staff creator, and the University as provided for in a written agreement concluded prior to work being done. Note: See section IV.A.3 for rights of employees who create copyrightable works as part of their employment. However, in those instances in which a written agreement has not been finalized prior to the completion of the copyrightable product, the standard distribution of royalties with a 50 percent (50%) division of the net income between the University and the creator when mass production and distribution are accomplished by the University or a 50 percent (50%) division of the gross income between the University and the creator when mass production and distribution are accomplished by an outside entity. If this standard is unacceptable to either party, the matter shall be referred to the Associate Vice President for Research.

## C. Student Work

Unless subject to the provisions of ownership or provided otherwise by written agreement, copyrightable works prepared by students as part of the requirements for a university degree program are deemed to be the property of the student but are subject to the following provisions:

1. The original records (including software of an investigation for a graduate thesis or dissertation) are the property of the University but may be retained by the student at the discretion of the student's major department.
2. The University shall have, as a condition of the degree award, the royalty-free right to retain, use and distribute a limited number of copies of the thesis, together with the right to require its publication for archival use.

## D. Disposition

The final responsibility for the determination of the disposition of University copyrights rests with the President of the University. The President may direct that any University copyright be (a) retained and used for and by the University, or (b) released to the originator, or (c) released to an involved sponsor, or (d) released jointly to a sponsor and originator.

The President may designate another person(s) to represent him/her and to act in his/her behalf in these matters.

University-owned works should be protected by copyright notice in the name of the Board of Trustees of Illinois State University. Such copyright notice should be composed and affixed in accordance with the United States Copyright Law.

#### E. Copyright Revenues

The University may pursue the generation of revenue from University owned copyrights. Revenue sharing and distribution shall be governed by contract arrangements.

#### F. Originator Obligation

The originator(s) of a University-owned copyright is obligated to produce all information and submittals necessary for registrations and the defense of the copyright, and all examples of the work.

#### G. Compliance with the Copyright Act

University units that administer activities involving any usage regulated by the Copyright Act are responsible for knowing applicable regulations, monitoring their continuing evolution, and conducting programs in full compliance with the applicable laws and regulations. All University faculty, staff, and students will comply with University guidelines for use of copyrighted materials.

### Trademarks

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A trademark is a specific name, term, logo, design or symbol that is used to identify the source, product, producer, or distributor of goods or services.

**A. Ownership:** The University shall own all trademarks associated with the University, its name, its activities, and its slogans.

**B. Disposition:** The University shall register and manage the use and application of its trademarks.

**C. Protection and Promotion:** The University or its designated agent shall assume full responsibility for the protection and promotion of University trademarks. Consult University Communications for University program for use of trademarks.

### Other Intellectual Property

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**A. A. Ownership:** Except as otherwise specified herein or by the University in writing, intellectual property (including patents) shall belong to the University if made:

1. By a university employee as a result of the employee's duties, or
2. Through the use by any person, including a University employee, of University resources such as facilities, equipment, funds, or funds under the control of or administered by the University.

## Intellectual Property Administration

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### A. Administrative Structure:

Illinois State University shall provide an adequate administrative structure to support the needs of its intellectual property interest. The administration of trademarks is the responsibility of the Vice President for University Advancement. Administration of patents and copyrights shall be the responsibility the Office of the Associate Vice President for Research. These responsibilities shall include determination of ownership, assignment, protection, licensing, marketing, maintenance of records, oversight of revenue or equity collection and distribution, approval of individual exceptions, and resolution of disputes. The administration of patents and copyrights shall be assisted by

1. Patent and Copyright Officer: The Associate Vice President for Research shall designate a person to serve as the University's Patent and Copyright Officer. This officer shall provide expertise and administrative management for the University's patents and copyrights. The Patent and Copyright Officer shall receive all disclosures of patents or University owned copyrights (as defined in the Illinois State University Intellectual Property Policy) from the faculty or others, facilitate the evaluation of same and convey the disclosure and its evaluation to the Associate Vice President for Research for appropriate action. This position shall be responsible for securing legal counsel to obtain patent protection and for such other matters as may be required in support of University's intellectual property policy. The Patent and Copyright Officer shall exercise such authority as may be required to register copyrights on behalf of the University. As appropriate, this officer shall select third parties and have executed such agreements as may be required to market and license patents and copyrights owned by Illinois State University.

2. Intellectual Property Committee: The Associate Vice President for Research shall appoint an Intellectual Property Committee. This Committee shall include the Associate Vice President for Research, the Patent and Copyright Officer, members of the faculty, and other institutional employees with appropriate expertise, as needed. This Committee shall be advisory to the Associate Vice President for Research in these matters.

### B. Disclosure:

All intellectual property in which the University has an ownership interest under the provisions of this policy and that has the potential to be brought into practical use for public benefit or for which disclosure is required by law shall be reported promptly in writing by the creator(s) to the Associate Vice President for Research. The disclosure shall constitute a full and complete disclosure of the subject matter of the discovery or development and identify all persons participating therein. The creator(s) shall furnish such additional information and execute such documents from time to time as may be reasonably requested.

Confidentiality shall be maintained in association with all inventions and applications for patent protection shall be filed by the creator(s) or a third party only with the written consent of the University. Any publication or presentation, scholarly or otherwise, or any use of inventions or information describing inventions, is prohibited until written authorization allowing disclosure or use has been granted by the University. Permission to disclose an invention ordinarily will be granted to the creator(s) in writing

by the Associate Vice President for Research within ninety days (90 days) after disclosure of the invention. However, the University may extend this ninety-day period for reasons determined by the Associate Vice President for Research.

This disclosure process and confidentiality requirement must be observed even in cases where there is some question regarding ownership.

In the event there is a question as to whether the University has a valid ownership claim in intellectual property, such intellectual property should be disclosed in writing to the University by the creator(s) as described above. Such disclosure is without prejudice to the creator's ownership claim. The University will provide the creator with a written statement as to the University's ownership interest.

#### C. Disposition

The final responsibility for the determination of ownership and the disposition of intellectual property, except trademarks, rests with the Associate Vice President for Research. Management of trademarks is the responsibility of the Vice President for University Advancement. A determination concerning disposition shall be given prompt consideration in a manner that is in the best interest of the University, the inventor(s), sponsor(s), and the public. The Associate Vice President for Research may direct that an invention be (a) retained and further developed for and by the University, or (b) released to the inventor(s), or (c) released to an involved sponsor, or (d) released jointly to a sponsor and inventor(s). In the event the University retains ownership, it shall endeavor to obtain a patent, market the invention, and defend the patent.

The Associate Vice President for Research may designate another person(s) to represent him/her and to act in his/her behalf in these matters.

#### D. Evaluation and Exploitation Decisions:

After evaluation of the intellectual property and review of applicable contractual commitments, the University may develop the property through licensing, may release it to the sponsor of the research under which it was made (if contractually obligated to do so), may release it to the creator(s) if permitted by law, or may take such other actions as are determined to be in the public interest. Exploitation by the University may or may not involve statutory protection of the intellectual property rights, such as a filing for patent protection, registering the copyright, or securing plant variety certification.

#### E. Disclosure of University Ownership:

The university will inform principal creator(s) of its substantive decisions regarding protection, commercialization and/or disposition of intellectual property which they have disclosed. However, specific terms of agreements with external parties may be proprietary business information and subject to confidentiality restrictions.

#### F. University Abandons Intellectual Property:

Should the University decide to abandon development or protection of university-owned intellectual property, ownership may be assigned to the creator(s) as allowed by law subject to the rights of sponsors and to the retention of a license to practice for university purposes. The minimum terms of such license shall grant the University the right to use the intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive

basis. The University may retain more than the minimum license rights, and the assignment or license may be subject to additional terms and conditions, such as revenue sharing with the University or reimbursement of the costs of statutory protection, when justified by the circumstances of development.

#### G. Commercialization by Creator(s):

The University may, at its discretion and consistent with the public interest, license intellectual property to the creator(s) on an exclusive or non-exclusive basis. The creator(s) must demonstrate technical and business capability to commercialize the intellectual property. The creator(s) may be required to assume the cost of statutory protection. Agreements with creators will be subject to review and approval of conflict of interest issues in accordance with applicable university policy.

#### H. University Acceptance of Independently Owned Intellectual Property:

The University may accept assignment of intellectual property from other parties provided that such action is determined to be consistent with the University's mission. Intellectual property so accepted shall be administered in the same manner as other university-owned intellectual property.

#### I. Consulting Agreements:

Employees engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with university policy or with the University's contractual commitments. Such employees should make their university obligations known to others with whom they make such agreements and should provide other parties to such agreements with a statement of applicable university policies regarding ownership of intellectual property and related rights.

#### J. Externally Sponsored Agreements:

Sponsored projects agreements shall provide that all intellectual property developed as a sponsored project shall belong to the University unless otherwise specified in writing. The sponsor may receive an option to license such resulting intellectual property on terms to be negotiated, said option to be exercised within a specified period following the disclosure of the intellectual property. When the nature of the proposed activity allows identification of a specific area of intellectual property or application which is of interest to the sponsor, the University may accept agreements with terms which entitle the sponsor to specific commercial rights with the defined field of interest. Otherwise, the specific terms of licenses and rights to commercial development shall be based in negotiation between the sponsor and the University at the time of exercise of an option by the sponsor and shall depend on the nature of the intellectual property and its application, the relative contributions of the University and the sponsor to the work, and the conditions deemed most likely to advance the commercial development and acceptance of the intellectual property. In all cases where exclusive licensing is deemed appropriate, such license agreements shall require diligent commercial development of the intellectual property by the licensee. The University may also determine, on a case-by-case basis, that it is in the University's best interest to assign ownership of resulting intellectual property to the sponsor as an exception to the policy when circumstances warrant such action, in accordance with guidelines established by the University.

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## Proceeds Distribution

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### A. Proceeds:

For purposes of this policy, "proceeds" shall refer to all revenue and/or equity, as defined below, received by the University from transfer, commercialization, or other exploitation of university-owned intellectual property.

1. Revenue. "Revenue" shall mean cash from payments including, but not limited to, royalties, option fees, license fees or from the sale of the University's equity interest.
2. Equity. "Equity" shall include, but not be limited to, stock, securities, stock options, warrants, buildings, real or personal property, or other non-cash consideration.

### B. Revenue Distribution:

When revenue is received by the university, all out-of-pocket payments or obligations (and in some cases, a reasonable reserve for anticipated future expenses) attributable to protecting (including defense against infringement or enforcement actions), marketing, licensing or administering the property may be deducted from such income. The income remaining after such deductions is defined as net income.

1. Creator's Share. The creator(s) or creator's heirs, successors, and assigns) normally shall receive fifty percent (50%) of net revenue. If there are joint creators, the net income shall be divided equally among them absent a mutual agreement to the contrary.
2. University's Share. The University normally shall receive 50 % of net revenue. Distribution of the University's share shall be allocated in support of its academic and research programs as determined by the Associate Vice President for Research.

### C. Equity Distribution:

In any instance wherein the University executes an agreement with a corporation or other business entity for purposes of exploiting intellectual property owned by the University and the University receives or is entitled to receive equity, such equity or the proceeds of the equity shall be shared among the creator(s), the originating unit(s), and the University in the same proportions as revenue.

Special facts or circumstances may warrant a different distribution of proceeds than specified above. Such distributions will be determined on a case-by-case basis under the authority of the Associate Vice President for Research

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## Intellectual Property Policy Amendment

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Illinois State University reserves the right to amend this Intellectual Property Policy statement at any time without notice, while preserving any rights vested prior to such amendment(s).

