

Missouri State University**INTELLECTUAL PROPERTY POLICY**

This policy was approved by the Board of Governors on May 19, 2000.

SECTION 1. OBJECTIVES**SECTION 2. DEFINITIONS****SECTION 3. APPLICATION****SECTION 4. COPYRIGHTS****SECTION 5. OTHER INTELLECTUAL PROPERTY****SECTION 6. TRADEMARKS****SECTION 7. INTELLECTUAL PROPERTY ADMINISTRATION****SECTION 8. PROCEEDS DISTRIBUTION****SECTION 1. OBJECTIVES**

Inventions, discoveries, copyrightable works 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 enhance the generation of revenue for the University and the creators. The University is guided by the following objectives:

- (i) To ensure that the educational mission of the University is not compromised;
- (ii) To optimize the environment and incentives for research and for the creation of new knowledge at the University;
- (iii) To bring the products of creative efforts into practical use for the public benefit as quickly and effectively as possible; and
- (iv) To protect the interest of the people of Missouri through an equitable recovery by the University of its investment in research.

SECTION 2. 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 which have value. 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, demonstration software, 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 courseware 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 (as specified in Section 4.A.2. below).

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, including Internet access and space for course pages, 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 support provided by the University unless approved as an exception.

E. *Sponsored Projects.* Sponsored projects are activities funded in whole or in part by funds provided from internal University sources or provided by grants, contracts or other agreements with external entities. Internal sources of funding include, but are not restricted to, formally identified programs in which faculty, staff and/or students compete for support, as well as other instances wherein funds are provided from unit budgets.

Exceptions are expected in units where the tradition is to provide support 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, pottery wheels, or kilns for the creation of paintings, sculpture or ceramics. Other individual exceptions may be approved on a case-by-case basis (see Section 7.J.).

SECTION 3. APPLICATION

This Policy as amended from time to time shall be deemed a part of the conditions of employment for every employee of the University 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 project and/or making significant use of University-administered 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 upon request execute appropriate assignment and/or other documents required to set forth effectively ownership and rights as specified in this Policy.

SECTION 4. COPYRIGHTS

A. *Ownership.* Unless subject to any of the exceptions specified below, creators retain all rights to traditional academic copyrightable works as defined in Section 2.B. above. (See, however, Section 4.B.2. below.) This includes all works developed by employees outside of University time and without use of University resources inaccessible to the public.

The University shall own copyrightable works as described following. Revenues generated by University-owned intellectual property shall be distributed according to the provisions of Section 8, unless otherwise determined in writing.

1. Works created pursuant to the terms of a University agreement with an external party, or
2. Works created as a specific requirement of employment or as an assigned University duty 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. Works created by University staff and administrative employees shall be considered to fall within this category, unless and except as specified by written agreement to the contrary, approved by the appropriate Vice President and the President of the University.

3. Works specifically commissioned by the University. The term "commissioned work" is hereafter used to describe a copyrightable work prepared under a written agreement between the University and the creator when (1) the creator is not a University employee or (2) 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.

4. Copyrights owned by the faculty member under this Policy will not transfer to the University simply because the work is also patentable. However, if the University pursues a patent of the work, the University will own the patent rights and the faculty member will share in royalties as set forth in Section 8. The faculty member will also license to the University the copyright for the University to use the work for the purposes of the patent and the right to sublicense to third parties for purposes of commercialization of the patent.

B. *University Rights in Creator-Owned Works*

1. 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.

2. Traditional academic copyrightable works created with 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 seven-year royalty-free, non-exclusive basis. The University may retain more than the minimum license rights when justified by the circumstances of development. By definition, any course developed for any Missouri State University - MSU network, including Intranet, LAN, WAN, or Internet course, workshop, or other educational course work, shall be considered created with use of University's resources over and above those usually and customarily provided. The University's license shall include the rights to copy, store and modify at any time.

3. This policy shall be administered consistently with Section 2.8.2 of the *Faculty Handbook*.

C. *Student Works*. Unless subject to the provisions of paragraph 4.A. 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. In cases of dispute, the matter shall be referred to the University Intellectual Property Committee.

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.

3. Creative works developed by a student employed by the University are owned, not by the student, but by the faculty member or the University as provided by this Policy.

D. Copyright Registration and Notice. University-owned works should be protected by copyright notice in the name of the Board of Governors of Missouri State University. Such copyright notice should be composed and affixed in accordance with the United States Copyright Law. Registration of the copyright for University-owned works shall be in accordance with the operational guidelines and procedures established by the Associate Vice President for Academic Affairs and Dean of the Graduate College. The University may also decide to release a work to the public domain and if so, should so indicate.

E. University Publications. University publications, such as the *Journal for Public Affairs*, shall be responsible for copyright registration of works owned by the University and published for administering contracts with its authors. Such contracts shall define the rights and obligations of the author and the University and shall be processed as are other University contracts.

F. 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 their programs in full compliance with the applicable laws and regulations.

SECTION 5. OTHER INTELLECTUAL PROPERTY INCLUDING PATENTS

Ownership. Except as otherwise specified herein or by the University in writing, intellectual property 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. (See also Section 4.A.4. above.)

SECTION 6. TRADEMARKS

Trademarks and service marks are distinctive words or graphic symbols identifying the source, product, producer, or distributor of goods or services. Registration of trademarks or service marks, at the state or federal level, shall be approved by the appropriate campus or University level officer. Proceeds received from commercialization of a mark that is related to an intellectual property license will be shared with all creator(s) of the associated property as specified in Sections 8.B. and 8.C. below. Except as provided herein or unless subject to prior

written agreement between the creator(s) and the University, the University will not share the proceeds from commercialization of a mark with the individual(s) who created the mark.

SECTION 7. INTELLECTUAL PROPERTY ADMINISTRATION

A. 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). This disclosure is to be submitted to the Associate Vice President for Academic Affairs and Dean of the Graduate College with a copy to the Unit Head (*i.e.*, academic department or staff unit). The Associate Vice President for Academic Affairs and Dean of the Graduate College will handle the disclosure in accordance with procedures developed for evaluation of the potential merit of the intellectual property. The Unit Head will review the disclosure and provide recommendations on the potential merit of the intellectual property and convey this to the Associate Vice President for Academic Affairs and Dean of the Graduate College through standard administrative routing. 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.

B. 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 project 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 filing for patent protection, registering the copyright, or securing plant variety certification.

C. Questions Related to University 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) in accordance with Section 7.A. 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.

D. Informing Creators of Decisions. The University will inform principal creators 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.

E. 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.

F. 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.

G. University's 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 public interest. Intellectual property so accepted shall be

administered in a manner consistent with the administration of other University-owned intellectual property.

H. 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. Employees of the University have no authority to enter into agreements inconsistent with this Policy.

I. Statement by Creators. The creators of intellectual property owned by the University under the terms of this Policy may be required to state that to the best of their knowledge the intellectual property does not infringe on any existing patent, copyright or other legal rights of third parties; that if the work is not the original expression or creation of the creators, the necessary permission for use has been obtained from the owner; and that the work contains no libelous material nor material that invades the privacy of others.

J. Administrative Responsibility. The President has ultimate authority for the stewardship of intellectual property developed at the University. Primary responsibility is delegated through the President to the Vice President for Academic Affairs and the Associate Vice President for Academic Affairs and Dean of Graduate College for establishing operational guidelines and procedures for the administration of intellectual property, including but not limited to 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 among

creators and/or unit executive officers.

K. *Contractual Authority.* Licenses, options for licenses and other agreements related to commercialization or exploitation of intellectual property will be granted in the name of the Board of Governors of Missouri State University.

L. *Administrative Guidelines and Procedures.* General guidelines and procedures for the administration of intellectual property shall be established by the President in consultation with the University Intellectual Property Committee (as specified in Section 7.M. below) and the campuses. Detailed operational guidelines and procedures for the administration of campus-based responsibilities shall be established by the Associate Vice President for Academic Affairs and Dean of Graduate College.

M. *University Intellectual Property Committee.* The University Intellectual Property Committee shall be appointed annually by the President, composed of eight (8) members, no fewer than four (4) of which shall be full-time ranked faculty, to make recommendations to the

President regarding procedures, guidelines, and responsibilities for the administration and development of intellectual property and such other matters as the President shall determine.

N. *Appeals.* After following the administrative guidelines and procedures established by the University, creator or unit executive officer may appeal to the University Intellectual Property Committee to seek resolution of complaints or questions regarding the matters addressed in this Policy.

O. *Preferential Treatment of Sponsors.* Sponsored project agreements shall provide that all intellectual property developed as a result of the 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 project allows identification of a specific area of intellectual property or application which is of interest to the sponsor, the University may accept project agreements with terms which entitle the sponsor to specific commercial rights within the defined field of interest. Otherwise, the specific terms of licenses and rights to commercial development shall be based on 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 interest to assign ownership of resulting intellectual property to the sponsor as an exception to this Policy when circumstances warrant such action, in accordance with guidelines approved by the University Intellectual Property Committee.

P. *Summer Fellowships, Educational Leaves, and Sabbaticals.* Summer fellowships, educational leaves, and sabbaticals will be considered "University resources usually and customarily provided" when determining ownership and license rights in traditional academic copyrightable works.

Q. *Exceptions to Policy.* Recommendations for exceptions to the provisions in this Policy shall be made by the University Intellectual Property Committee to the President for presentation to the Board of Governors. For individual exceptions, see Section 7.J.

SECTION 8. PROCEEDS DISTRIBUTION

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 direct payments or obligations attributable to protecting (including defense against infringement or enforcement actions), marketing, licensing or administering the property may be deducted from such income. In some cases, a reasonable reserve for anticipated future expenses will be withheld upon agreement between the University and the creators. The income remaining after such deductions is defined as net revenue.

1. *Creator's Share.* The creator (or creator's heirs, successors, and assigns) normally shall receive forty percent (40%) 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. *Originating Unit's Share.* The originating unit normally shall receive twenty percent (20%) of net revenue. If a creator is affiliated with more than one originating unit or if there are joint creators from different units, the originating unit(s) share shall be divided among such units as agreed in writing by the responsible unit executive officers.

3. *University's Share.* The University normally shall receive forty percent (40%) of net revenue. Distribution of the University's share shall be allocated in support of its technology transfer activities and academic and research programs as determined by the Associate Vice President for Academic Affairs and Dean of Graduate College.

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 distributions (except as specified in Section 8.D. below).

D. *Exceptions When the Creator(s) Have No Entitlement.* If the University accepts support in the form of a sponsored project agreement or unrestricted grant as part of the consideration in an intellectual property license in lieu of an option fee, license fee or royalty, the creator(s) shall have no entitlement to receive a share as personal income. For the subset of equity that is buildings, real or personal property, or other non-cash consideration, the creator(s) shall have no entitlement to receive a share as personal income.

E. *Special Distributions.* Special facts or circumstances may warrant a different distribution of proceeds than specified above, and such distributions will be determined on a case-by-case basis under the authority of the Associate Vice President for Academic Affairs and Dean of the Graduate College.

F. *Revenue From Actions for Defense or Enforcement of Intellectual Property Rights.* When the University receives revenue from third parties that results from successful actions for the purpose of defending or enforcing the University's rights in its intellectual property, such revenue may first be used to reimburse the University (or the sponsor or licensee, if appropriate) for expenses incurred in such actions. The creator(s) and their originating unit(s) shall be entitled to recovery of lost royalties from the remaining net revenue, in the same proportions as specified in Section 8.B. above. The remaining net revenue shall be allocated in support of the University's technology transfer activities and academic and research programs as determined by the Associate Vice President for Academic Affairs and Dean of the Graduate College.