

## **Governing Policy: Creation of Intellectual Property**

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### **I. INTELLECTUAL PROPERTY POLICY STATEMENT**

The University's policy on intellectual property pertains to patentable inventions and copyright-protected works **created** by its faculty members, staff members, postdoctoral appointees, and students. Guidance on the use of other individual or university's copyright-protected material is governed by G3.04-3 Use of Copyrighted Materials for Educational Research Purposes located at:  
<http://www.missouristate.edu/policy/copyrightpolicy.htm>.

Because there are differences between the legal and academic treatment of patentable inventions and copyright-protected works, the University provides two companion policy statements: a Patent Policy and a Copyright Policy. Missouri State University encourages the creation of intellectual property by the dedicated efforts of its employees, faculty and students. It is the University's intent to protect the rights of all parties, including the individual, the University, and the sponsoring entity (if applicable), and to share the benefits in the event these creations have commercial value.

University resources are to be used solely for University purposes and not for personal commercial activities. Commercialization of research, with knowledge and approval by the University, is permitted and encouraged among faculty and staff.

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. "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.

After consultation with the Creator, the University reserves the sole right in its exclusive discretion to make agreements regarding the retention, ownership, patenting, licensing, accessing, and any other use or disposition of any right, title or interest in University Intellectual Property. The University and/or its designee will determine whether to commit funding to obtain patent, copyright, or trademark protection for particular disclosed University Intellectual Property and/or to seek to identify one or more licensees who will bear the cost of obtaining that legal protection. No creator of University Intellectual Property has the capability or authority to assign, license or otherwise dispose of University Intellectual Property except to the University or its designee pursuant to this Agreement. University personnel engaged in outside activities shall have no authority to enter into an Intellectual Property agreement that conflicts with this policy. Persons who wish to confirm that a consulting, employment, or other agreement that addresses assignment of intellectual property associated with a proposed outside activity does not conflict with this policy should submit a copy of the agreement for review.

This Policy 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 for all students. All individuals (whether or not employed by, compensated by or enrolled at the University) participating in a sponsored project and/or making significant use of University-administered resources shall accept this Policy unless an exception is approved in writing by the University.

Significant use of University resources may include: use of substantial funds received by the University through a contract or grant, use of funds allocated from internal discretionary pools, assistance of support staff outside of the inventor's department or unit (assistance of support staff from the inventor's department when such is assistance is greater than that normally provided others in the department). Significant use of University resources also may include use of shared research equipment or facilities.

The following, when customarily provided to researchers in their respective disciplines and units, generally are **not** considered significant use of University resources: salary, developmental assignment or award, library resources, computers, communications technologies, secretarial services, assigned offices and laboratories, and utilities, instructional technology (Mediasite), software (e.g. Respondus), or hardware, including use of University media production facilities. Developmental assignment or awards include Sabbatical Leaves, Summer Fellowships, and Faculty Research Grants which are internal awards of the University made on a competitive application basis; therefore, these are not considered significant use of University resources.

Outside activities authorized by the University for University faculty or staff remain subject to this policy to the extent that they involve or relate to the use of University resources. 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.

Works created as assignments. Any work created by faculty, staff members, or student employees whenever such work is the product of their assigned tasks or is a reasonably expected product of their employment generally are subject to institutional ownership because they are either assigned tasks or reasonably expected outcomes of employment, **excluding** seated, online, and blended courses, individually or jointly developed. Course content, whether seated, online or blended, shall be owned by the Creator(s) unless the content was developed under a specific agreement or with the use of substantial University resources. Other individuals do not have a license to use course content for any other purpose, except as approved by University and Creator. Any license for the University to otherwise use course content or course materials developed by faculty Creator(s) shall be individually negotiated with those Creator(s). In addition, the University acknowledges that a limited number of professional staff members have certain prerogatives to set their own research, scholarly, pedagogical, or creative tasks.

Accordingly, the University is prepared to acknowledge personal ownership of works arising from these professional endeavors subject to other conditions of this policy. While the University acknowledges that generally a thesis or other written research product has intellectual property ownership with the student, the University has a license in the research product in those instances in which a faculty member at the University supervises and has contributed substantially to a thesis or laboratory working group. In such cases, any publication that arises from a thesis shall be put forward as a co-authored work by the student and the faculty member, unless the faculty member or Intellectual Property Committee agrees otherwise.

## **II. PURPOSE OF THE POLICY**

The primary purpose of this Intellectual Property Policy is to provide the necessary incentives and protections to encourage the discovery and development of new knowledge and its application and transfer for the public benefit, and to enhance the generation of revenue for the University and the creator(s).

The University is guided by the following objectives:

- A. To ensure that the educational mission (discovery, learning and engagement) of the University is not compromised;
- B. To optimize the environment and incentives for research and for the creation of new knowledge at the University;
- C. To bring the products of creative efforts into practical use for the public benefit as quickly and effectively as possible;
- D. To protect the interest of the people of Missouri through a recovery by the University of its investment in research; and
- E. To recognize and protect the interests of the public, of the individual creators of novel concepts, inventions and materials, of the University, and of the sponsors of research.

## **III. ENTITIES AFFECTED BY THE POLICY**

All individuals (whether or not employed by, compensated by, or enrolled at the University) who are members of the University community are subject to this policy.

## **IV. ADMINISTRATION OF INTELLECTUAL PROPERTY POLICY**

The University Intellectual Property Policy, comprising its Patent Policy and its Copyright Policy, shall be administered under the oversight of the Dean of the Graduate College (hereinafter referred to as "Dean"). The Dean shall appoint an Intellectual Property Committee. The role of the Intellectual Property Committee shall be to advise the Dean regarding intellectual property matters including, but not limited to, the resolution of disputes arising from the application of the policy; in addition, the committee shall advise the Dean of any need for altering the policy or its administrative implementation. In appointing members of the Intellectual Property Committee, the Dean shall seek to include members from all constituencies affected by the policy.

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 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 who created the mark.

This policy shall apply prospectively to all inventions and copyright works disclosed on or after the date of its approval, October 28, 2011.

## **V. UNIVERSITY PATENT POLICY**

### **A. Introduction.**

1. Nature of a patent. Patent protection provides the owner with a limited period of time in which the owner can exclude others from making, using, offering to sell, or selling the invention. The resulting temporary exclusive rights to the invention can provide an incentive for a patent owner or a licensee to invest the resources required to advance the invention toward commercialization and use by the public. In return for offering temporary exclusive rights to the owner of a patent, a government requires the owner of the patent to make details of the invention available to the public in the patent document. Under United States law, the life of a patent extends 20 years from the date of application.

A patent is the grant of a property right by a government to the owner of an invention. Unlike copyright protections, patent rights do not follow automatically from the act of creation. The inventor or the patent's owner generally must request patent protection from the government of each country in which a patent is desired. The Patent Office in each country then will examine the application against its own laws and regulations and will—in due course—either deny or allow the grant of a patent in its jurisdiction. Because patent laws and associated administrative procedures are fairly complex, patent applications generally are prepared and prosecuted by specialists working on behalf of the inventor or owner.

2. Inventions eligible for patent protection. In the United States, an invention or discovery may be eligible for patent protection if it is a process, a machine, a manufactured object, a composition of matter, or a new use or improvement of any of the preceding. Courts have interpreted the patent statute (see [www.uspto.gov/main/patents.htm](http://www.uspto.gov/main/patents.htm)) to extend to software-related inventions when there is some connection to a useful, concrete result and to biological substances when there is some evidence of human intervention. For example, isolated DNA sequences or their purified protein products can be patented because in their “natural” states they are neither isolated nor purified. New uses of “products of nature” also may be patented, as may genetic modifications of otherwise natural organisms.

If an invention meets the threshold eligibility conditions for patenting, it still must meet additional criteria in order to earn a patent. Under U.S. law, a patented invention must be useful, novel, not obvious, and supported by adequate information.

3. Nature of inventorship. To be named as an “inventor” on a patent, an individual must have made an original contribution to the conceptualization of the invention as it is defined in the patent. The aspects of a patent that assert the defining

elements of an invention are called the “claims” of the patent. If an individual has made a contribution to the conceptualization of any one defining claim of patent, then he or she is an “inventor” of the claimed invention. If any individual is responsible for all the claims of a patent, then he or she is the sole inventor of the patent. In any other situation, the patent will have more than one co-inventor. One is not an inventor if his or her contribution was limited to “reducing to practice” the conception of the invention.

4. Objectives of the University Patent Policy. The primary objective of the University Patent Policy is to enable the public to use and benefit from inventions originating at the University. In pursuing this objective, the University will seek to manage inventions in a way that advances the academic missions of the institution, including research and scholarship. The Patent Policy further provides a framework for the orderly transfer of academic inventions to the private sector in exchange for compensation to the institution as well as to individual inventors. In keeping with the University’s academic objectives, the policy directs that portions of the institutional earnings from any patent will support research broadly across campus, research related to the patent, and administrative efforts to secure and manage additional patents.

#### B. Policy.

1. Summary of the Patent Policy. The University will assume ownership of patents on qualifying inventions made by its employees and appointees, except as stated in item V.B.4. In a limited number of situations, the University, through its designee, will assume ownership of patents on qualifying inventions made by students and institutional visitors. Earnings from patents subject to this policy will be distributed according to the provisions of this policy.
2. Applicability of the Patent Policy. The policy applies to inventions meeting either of the criteria below. For convenience, inventions meeting either of these criteria will be designated as “qualifying inventions.” In the criteria below, “employees” includes faculty members, staff members, part-time employees, and student employees.
  - a. Inventions made by University employees or postdoctoral appointees in the course of their employment or appointment, or in a field or discipline reasonably related to the inventor(s)’ field(s) of employment or appointment.
  - b. Inventions enabled by significant use of University resources when made by University employees, postdoctoral appointees, students whose inventive contribution did not arise from employment by the University, or institutional visitors not employed by the University.
3. Disclosure required. Any individual who believes that he or she has made, or contributed to the making of, a qualifying invention must disclose the invention in writing to the Dean for Graduate Studies and Research on the [Invention Disclosure Form](#) provided by the Office of Research and Sponsored Programs. The originating faculty, other employee, or student is the inventor.
4. University rights in qualifying inventions. The University shall assume ownership of patents to qualifying inventions. In order for the University to assume ownership, inventors subject to this policy shall assign to the University their

entire right in the invention and shall provide reasonable assistance to the University in obtaining patent protection and in licensing the patent rights to others. In the case of qualifying inventions arising from federal research support, this assertion of ownership rights follows from federal law. In other contexts, the University's right to require assignment from its employees or appointees will be understood as a condition of employment or appointment. Similarly, the limited right of the University to claim ownership of patents in inventions made by students will be understood as a condition of enrollment, whereas the limited right of the University to claim ownership of patents to inventions made by institutional visitors will be understood as a condition of their access to institutional resources. Institutional visitors must acknowledge in writing their awareness of this policy before making use of institutional resources.

If the University informs in writing the University inventor(s) that it does not wish to file a patent application in any territory based on a disclosure by the inventor(s), the inventor(s) may request from the University an opportunity to take on the prosecution of the patent application. The inventor(s) may request that the University waive its rights to the invention in the territory(ies) in which the University has elected not to file. The University will not unreasonably deny such a request. However, any waiver of rights will be subject to the interests of any third parties, including, but not limited to, sponsors of the research leading to the invention. In addition, any waiver of the institution's rights in the patent application will expressly allow the University to continue to use the invention for research purposes and will be limited to the scope of the invention as disclosed and as used as a basis for the University's determination not to file an application in the territory(ies). The University's waiver of institutional interest in an invention may result in personal ownership of the invention by University inventor(s) who wish to conduct further research on the invention within the institution. Such inventor(s) should be mindful that use of personally owned patents in an institutional setting may create a conflict of interest requiring disclosure and management under the institution's policies pertaining to conflict of interest.

The University has approved an exception (POLICIES & PROCEDURES NO. 135-09, Updated and Approved July 31, 2009) for intellectual property associated with the research conducted with the Jordan Valley Innovation Center (Center for Applied Science and Engineering and Center for Biomedical and Life Sciences). Assignment of ownership rights of intellectual property developed through projects of the Roy Blunt Jordan Valley Innovation Center in collaboration with businesses may be assigned, at the discretion of the President of the University, to these businesses providing that such assignments are consistent with applicable laws and regulations of external organizations sponsoring these collaborations and the University Intellectual Property Policy, and that any such assignments acknowledge the contribution of University faculty, staff and students. The authority for negotiation and approval of these assignments of ownership rights are delegated through the President to the Vice President for Research and Economic Development. Nothing in this paragraph alters Paragraphs 1 and 3 or the other provisions of this paragraph of this policy.

5. Licensure of inventions assigned to the University. Consistent with the objectives of this policy and subject to the rights of any other parties, the University will seek diligently to license to others the right to use inventions under patents assigned to it.

6. Distribution of proceeds of licensure. The University shall receive all payments due under a license and shall distribute such earnings under the terms of this policy within 90 days from the end of the quarter in which the earnings were received. Prior to any distribution, the University shall recover any out-of-pocket expenses incurred in applying for the licensed patent(s), maintaining the licensed patents(s), or defending the licensed patent(s). Also prior to any distribution under this policy, the University shall make any payments to others required by agreements, including but not limited to inter-institutional agreements for the management of jointly owned patents. Gross University earnings, less its out-of-pocket expenses, less payments required to others, are designated as "distributable income." Distributable income shall be allocated as follows:
  - a. The first \$50,000 of distributable, cumulative income earned under a single license will go to the inventor(s).
  - b. After the first \$50,000 is distributed to the inventor(s), any further distributable income will be allocated as follows unless income in any fiscal year triggers the conditions below:
    - (i) 40% of distributable income to inventor(s)
    - (ii) 40% of distributable income to the University
    - (iii) 20% of distributable income to the department from which the invention arose

When more than one University inventor is named on any licensed patent, the inventors will receive equal portions of the share of distributable income allocated to that patent unless there is a modifying written agreement signed by all inventors and approved by the University.

If an inventor is appointed in more than one department, the related departmental shares will be equivalent to the share each contributes to the inventor's salary. If the appointing departments are in different colleges, the related collegiate shares will be pro-rated on the same basis as the departmental shares. From time to time, it may be appropriate to allocate a portion of income otherwise granted to an academic department to an organized research unit. Any share granted to a "center," "institute," or other similar, formally acknowledged organized research unit will be determined by the Dean after consultation with the organization's director as well as relevant academic officers. In making any such determination, the Dean should consider the optimal means of advancing research at the institution.

#### C. Administration of the Patent Policy.

1. Patent Advisory Group. The University Intellectual Property Policy, of which this Patent Policy is a component, shall be administered under the oversight of the Dean. The Dean shall be advised on matters pertaining to the Patent Policy by the Patent Advisory Group, a subcommittee of the University Intellectual Property Committee. The Intellectual Property Committee, the responsibilities and composition of which are set forth above in Paragraph IV of the University's

overarching Intellectual Property Policy, shall be appointed by the Dean, who also shall designate those of its members who will comprise the Copyright Advisory Group.

The role of the Patent Advisory Group shall be to advise and make recommendations to the Dean regarding patent matters, including, but not limited to, the following:

- a. Determine the value of proceeding for a patent.
- b. Resolve disputes concerning the application and interpretation of the Patent Policy;
- c. Suggest Amendments to the Patent Policy resulting from technological and legislative changes affecting patent; and
- d. Make changes to administrative procedures involved in the implementation of the Patent Policy.

In addition, the Patent Advisory Group shall provide a forum to which faculty, staff, and students may refer questions and recommendations about the Patent Policy. Further, the Patent Advisory Group may advise the University on the disposition of selected invention disclosures.

The day-to-day administration of the Patent Policy will be performed under the supervision of the Dean.

2. Appeal process. Within 14 calendar days of the Patent Advisory Group's decision, any University faculty member, staff member, postdoctoral scholar, or student who believes he or she is adversely affected by any action or non-action of the Patent Advisory Group pursuant to the Patent Policy may request in writing the Group reconsider such action or non-action in writing to the Dean, who shall consult with the Patent Advisory Group in considering the request for reconsideration. The resulting decision of the Dean may be appealed in writing to the President of the University within 10 calendar days of the Dean's decision. Where the action or non-action forming the basis for the dispute is that of the Dean rather than the Patent Advisory Group, appeal may be made in writing directly to the President of the University.

The foregoing process does not preclude the use of either informal means to resolve the dispute or applicable grievance procedures normally available to the individual based on his or her University status.

#### D. Examples.

1. Case Patent (P)1: Working in her chemistry laboratory, faculty member A of the Department of Chemistry develops a synthesis protocol for a novel compound that has potential for industrial applications. A patent literature search reveals no competing patent and the University invests \$16,000 in the process of gaining a patent. Faculty member A is the inventor [V.A.3.] and the University assumes ownership of the patent [V.B.1.] and [V.B.4.] Company Z negotiates with the University for an exclusive license for use of this patented protocol. This agreement includes (a) an understanding that Company Z will make reasonable

efforts to develop a marketable product based in part on the patent, and (b) for use of the license the Company will pay the University \$5,000 annually or 3% of the net profit from product sales, whichever is greater.

- Year 1 after licensure Company Z has not produced a marketable product, but the \$5,000 fee is paid to the University. The income funds are retained by the University. [V.B.6.]
  - In Year 2 Company Z has marketed a product and makes royalty payments of \$25,000 to the University. The University retains \$11,000 to recoup the initial expense of filing the patent. The remaining \$14,000 is distributed to Faculty Member A[V.B.6. and V.B.6.a]
  - Company Z pays the University \$70,000 royalty in Year 3. Faculty member A receives \$36,000. The remaining \$34,000 is distributed 40% to Faculty A, 40% to the University, and 20% to the Department of Chemistry [V.B.6.b.(i-iii)]
2. Case P2: In the course of his Limnology research, Faculty member B of the Department of Biology develops a unique sampling device. A significant portion of the work was accomplished while B was funded by a University competitively awarded Summer Fellowship. A scientific instrument company is interested in this device. The University applies for a patent and subsequently licenses the right to produce this device to this company. [V.B.5.] Faculty member B will receive royalties after the patent costs have been recouped. [V.B.6.] The salary of the Summer Fellowship is *not* considered a University cost to be recouped, since the Fellowship is a regular aspect of employment offered in competition to other faculty. [I]
  3. Case P3: Faculty Member C, a molecular biologist and member of the Department of Agriculture, isolates and characterizes a gene promoter DNA sequence from crop Z. Faculty C reveals her work and seeks to have the University apply for patent protection on the promoter DNA sequence and its applications she has demonstrated in her laboratory. After evaluation of the “invention” and the probability of monetary returns that might result, the University determines not to seek patent protection. The faculty member is not happy with this decision and insists that there would be good value in a patent. She requests a release acknowledging she can pursue a patent as the owner and inventor. The University provides, in writing, the requested release of ownership, including a statement holding the University harmless in the case of any deleterious applications of this DNA. [V.B.4] The faculty member pays the filing cost of the patent process. The University has no future claim to proceeds that may be derived from the patent.
  4. Case P4: Faculty member D makes an invention while working under the terms of a federal research grant. The University assumes ownership of the related patent. [V.B.2.a and V.B.4]
  5. Case P5: Faculty member E is an acknowledged expert in cancer therapy. Working at her desk at home on Saturday, she designs a chemical compound that may fight non-Hodgkin’s Lymphoma. The University assumes ownership of the related patent. [V.B.2.a and V.B. 4]

6. Case P6: Staff member F is employed by the University to fabricate medical devices. Working in his garage on Saturday, F invents a unique spray head that has potential applications for efficient pesticide applications. The University may not assume ownership of the related patent and the Staff member F is free to seek a patent on his own. [V.B.2.a and V.B.4.]
7. Case P7: G is a researcher spending a year-long leave at the University. G is not an employee of the University but is assigned a laboratory at the University and is provided access to University research equipment. Working in a University laboratory, G invents a device for detection of extremely small airborne quantities of a toxic chemical. The University will have ownership of the related patent. [V.B.1, V.B.2.b. and V.B.4] Note that prior to beginning his leave at MSU, G should have acknowledged in writing his awareness of the University's Patent Policy. [V.B.4]
8. Case P8: As a result of a class assignment, Student H invents a novel method of manufacturing a fire retardant compound. The University's review of H's obligatory disclosure determines that H did not make significant use of University resources in making the invention. The University may not assume ownership of the related patent. [V.B.2.b]
9. Case P9: Working on her dissertation in her adviser's laboratory and with regular mentoring of her advisor, Student I invents a novel method for the manufacture of a pharmaceutical agent. Review of I's obligatory disclosure determines that I *did* make significant use of University resources in making the invention. The student and the advisor are both listed as inventors, given the significant input provided by the advisor. The University assumes ownership of the related patent. [V.A.3 and V.B.2.a-b]
10. Case P10: Faculty member J makes an invention in collaboration with a colleague at another University. By application of its own patent policy, the employer of J's collaborator has an ownership right in the resulting patent because of the collaborator's inventive contribution. Similarly, the University has an ownership right in the resulting patent as a result of J's inventive contribution. The University and the employer of J's collaborator enter an inter-institutional agreement specifying that the joint ownership rights shall be licensed together and that any earnings from such a joint license will be divided equally. In the event the University is designated in the inter-institutional agreement as the manager of the jointly owned patent, it would receive earnings attributable to both parties. After out-of-pocket expenses are recovered, the University would disburse to its partner University its share of earnings, with the retained remainder treated as distributable income under this policy. [V.B.6]

## **VI. UNIVERSITY COPYRIGHT POLICY**

### **A. Introduction.**

1. What is copyright? A copyright is a form of intellectual property protection provided by law for certain original works including written works, software, and selected audio, visual, or performed compositions. More detailed information on copyrights is available at <http://www.copyright.gov>.

The copyright protects the particular form of expression rather than the subject

matter or content of the work. One cannot copyright an idea, only the particular expression of the idea. Unlike patent protection, copyright protection exists from the time an original work is created and vests immediately when the work is fixed in a “tangible medium” for the first time. Such tangible media might include paper, a computer disk, or granite.

Holding a copyright allows the owner certain exclusive prerogatives including the right to reproduce and distribute the protected material, the right to prepare derivative works based on the protected material, and (in the case of various artistic works) the right to display or perform the protected work. The owner of a copyright may convey to others all or some of the rights inherent in the copyright. For example, the owner of a copyright may “assign” all interest in the protected material to another. Alternatively, the owner of a copyright may grant a limited permission that allows another to use the protected material. In some cases, the owner of a copyright may grant a license to another that specifies the nature of any permitted uses of the copyright material.

2. Importance of an academic copyright policy. Members of the University community—faculty, staff, and students—create each day large volumes of material that are subject to copyright protection. These various creations include such dissimilar works as scholarly monographs and journal articles, musical compositions, novels, textbooks, lectures, class outlines, poems, administrative software, dances, paintings, experimental software, promotional brochures, administrative correspondence, sculptures, multimedia teaching materials, videotapes, and policy documents. Many of these works have various functions and origins within the academic context. Some works arise directly from the pursuit of scholarly or creative activity and serve to convey the results of these activities; other works do not. Because copyright law and its policy-based application at the University will attribute both ownership rights and the associated rights to control subsequent uses of the protected works, an academic copyright policy must carefully balance a number of important objectives. These objectives must accommodate the various functions and origins of copyright works created at the institution.
3. Objective of the University Copyright Policy. The objective of the University’s Copyright Policy is to advance the mission of the University by:
  - a. Encouraging and supporting the exercise of academic freedom, innovation, and creativity;
  - b. Structuring the rights of ownership and the rights to use copyright materials created by members of the University community in a way that:
    - (i) Enables the timely dissemination of materials resulting from the scholarship, teaching, research, and creative activities of faculty, staff, and students;
    - (ii) Permits the University to retain a copyright in and/or use materials created by members of the University community under certain circumstances;
    - (iii) Permits the University to meet contractual obligations to outside entities; and

- (iv) Accommodates and is consistent with related University policies.
- c. Assuring compliance with applicable laws and regulations in the management of copyright materials.

## B. Policy.

1. Summary of the Copyright Policy. In order to meet the preceding various objectives, this policy allocates the ownership of copyrightable works created by faculty, staff, and students. Consistent with academic tradition and the expressed desire to encourage dissemination of the results of scholarship and research, the University agrees that in most cases, individual creators of copyrightable works of scholarship, research, or pedagogy, as well as creators of original works of art and literature, typically will hold personal copyright ownership of those works. The policy also specifies a limited body of works that will be owned by the University. In some cases, "individual" ownership might be distributed over a group of joint authors or creators. In other cases, an individual or group of individuals might hold joint ownership with the University. Guidance on the use of other's copyrighted material is contained in the Missouri State University Copyright Use Policy.

### 2. Application of the Copyright Policy.

- a. Individual ownership of copyrights. The University does not claim ownership of copyright in pedagogical, scholarly, artistic, or research works regardless of the mode of expression except when a work is described in section [VI.B.2.b.] below. Therefore, in those instances where the University does not claim ownership of a copyright, the copyright will be owned by those defined as authors or creators under copyright law unless there is a contrary contractual or statutory obligation. This disclaimer of University ownership interest in copyright materials applies to faculty and staff employees of the University, postdoctoral scholars, and to students when the works are created in the course of their educational pursuits. However, for works created by a student solely in the course of the student's employment by the University, the University may claim ownership if section [VI.B.2.b.(v)] applies. The University claims no ownership of copyright in any work created outside the scope of any employment within the University. By way of illustration, see [VI.D.4-6] below, Cases C4 through C6.

The University understands that academic authors may be asked to assign to a publisher the personal copyright ownership in works treated in this section of the policy. The University encourages academic authors to seek to retain such personal ownership in the articles and reports they publish in scholarly journals and equivalent publications. University policy does not encourage academic authors to seek to retain personal ownership in published works when doing so would not be feasible or when efforts to retain personal ownership would impede eventual publication of the work. The University is prepared to assist faculty members, staff members, students, and postdoctoral appointees wishing to retain personal ownership of works that may be published in scholarly journals and the like.

- b. University ownership of copyrights. The University has ownership, or the right

to obtain ownership by assignment, of copyright in:

- (i) Any particular and identifiable work created pursuant to either an oral or written agreement between the creator and the University (see [VI.D.7] Case C7);
- (ii) Works created in the context of carrying out administrative duties for the University (see [VI.D.9] Case C9);
- (iii) Any work created by a team of faculty, staff, postdoctoral scholars, and/or students of such size or over such an extended period of time that determination of a discrete number of creators would be impossible, impractical, or potentially unfair (see , [VI.D.10] Case C10);
- (iv) Any work created under the terms of a contract or other binding agreement with an entity, other than the University, when such contract or agreement requires University ownership of the work (see , [VI.D.11] Case C11);
- (v) Any work created with a significant use of University resources as outlined in Section I, Intellectual Policy Statement, above.

For these purposes: The University may determine that it has an ownership interest in a particular copyright work developed with grant or contract funding when creation of the specific work in question was an identified objective of the grant or contract. Given this rationale, specific journal articles, monograph, or textbooks arising from grant or contract funding commonly would not be construed as identified objectives of the grant or contract but would be treated as academic benefits of having worked under grant or contract funding. In the event that creation of a copyrighted work, such as a textbook, is an identified objective of a grant or contract, the institution will make a reasonable accommodation with the author consistent with established academic tradition.

In any case where the University has the right to ownership under the provisions of this policy, the University may require all persons who are employed by the University and who might otherwise have a potential claim to such work to execute a document as a condition of their employment in which they 1) state they have no rights to the work, or 2) assign to the University those rights they may hold. Any University employee who makes an assignment of a work to the University can request and will be granted a non-exclusive royalty-free license to reproduce, adapt, perform, or display the assigned work for his or her own scholarly, research, or creative purposes.

- (vi) For cases not covered by VI.2.B.2.B.(i)-(v), ownership and exclusive rights to license for course materials created by an individual will reside with the creator except as follows: For course content developed for a course for which the usual practice is to share such course content among two or more instructors (e.g., for multi-section laboratory courses), the creator will maintain ownership of the copyright but the University will retain a license for its use within the University.

c. Disclosure. Personally owned copyright works subject to [VI.B.2.a.] of this

policy need not be disclosed. However, certain works created subject to [VI.B.2.b.(iv)] of this policy should be disclosed. The creator of any work in which the University may have an ownership interest under [VI.B.2.b.(iv)] of the Copyright Policy shall disclose the work promptly in writing to the University using the disclosure form provided by that group. Such disclosure shall be made as soon as possible when any of the following criteria apply: 1) a third party has a contractual basis for asserting a right to use the work (e.g., as a consequence of a sponsored-research agreement); 2) a third party has expressed interest in obtaining rights to use the work; 3) the creator(s) of the work believe that a third party could become interested in obtaining rights to use the work if made aware of an opportunity to do so; 4) the creator(s) of the work wish to assert personal copyright ownership in the work and so wish to request an institutional determination of their personal standing under the terms of this policy.

In those cases when a disclosure is made in order to request a determination of copyright ownership, the University will provide a copy of the disclosure to the Dean and to the appropriate academic and/or administrative official(s) (department head, dean, or other supervisor) familiar with the circumstances in which the work in question was created. Such official(s) then in turn will provide any available information relevant to the questions of copyright ownership, rights to any proceeds, and other issues deemed relevant to the situation and prepare an assessment for the Dean. The final determination on these questions shall be the responsibility of the Dean, subject to the right of the creator(s) to appeal any such determination to the President of the University as provided in [VI.C.1.] below. Upon final resolution of the issues raised by the disclosure, the creator(s) and the University, where appropriate, will execute such agreements as are necessary to document clearly the rights and responsibilities of the parties.

- d. Distribution of income. The University shall receive all payments due under a license and shall distribute such earnings under the terms of this policy within 90 days from the end of the quarter in which the earnings were received. Prior to any distribution the University shall recover any out-of-pocket expenses incurred in applying for the licensed copyright(s), maintaining the licensed copyright(s), or defending the licensed copyright(s). Also prior to any distribution under this policy, the University shall make any payments to others required by agreements, including but not limited to inter-institutional agreements for the management of jointly owned copyrights. Gross University earnings, less its out-of-pocket expenses, less payments required to others, are designated as “distributable income.” Distributable income shall be allocated as outlined below. For clarity, please note the following: 1) The distribution protocols outlined do not apply to personally owned copyright but only to copyrights owned by the University on behalf of the institution; 2) in order to qualify for a share of distributable income allocated to “author(s),” an individual must have held a mutually acknowledged ownership interest in the copyright to the subject work and must have assigned any legitimate copyright ownership he or she held to the University; 3) in the event that no authors have assigned personal copyright ownership to the University, no author(s) share will be allocated. In this case, all distributable income shall be allocated pro rata to the other recipient groups under [VI.B.2.d.(ii)] below:
  - (i) The first \$50,000 of distributable, cumulative income will go to the

author(s).

- (ii) After the first \$50,000 is distributed to the author(s), any further distributable income will be allocated as follows unless income in any fiscal year triggers the conditions below:
  - (a) 40% of distributable income to author(s)
  - (b) 40% of distributable income to the University
  - (c) 20% of distributable income to the department from which the copyright arose
  - (d) Handling copyright works that may be subject to patent protections. Certain works—particularly software—are subject to both copyright protection and patent protection. In the event that a work created at the University is subject to both copyright protection and patent protection, a finding under this policy that copyright to the work will be owned by the author or authors will not obviate the University's right to claim ownership in any associated patent or patents. The University's rights in patentable inventions are defined in the University Patent Policy (see [V.B.4.] above).

#### C. Administration of Copyright Policy.

1. Copyright Advisory Group. The University Intellectual Property Policy, of which this Copyright Policy is a component, shall be administered under the oversight of the Dean. The Dean shall be advised on matters pertaining to the Copyright Policy by the Copyright Advisory Group, a subcommittee of the University Intellectual Property Committee. The Intellectual Property Committee, the responsibilities and composition of which are set forth above in Section IV of the University's overarching Intellectual Property Policy, shall be appointed by the Dean, who also shall designate those of its members who will comprise the Copyright Advisory Group.

The role of the Copyright Advisory Group shall be to advise and make recommendations to the Dean regarding copyright matters, including, but not limited to, the following:

- a. Resolution of disputes concerning the application and interpretation of the Copyright Policy;
- b. Amendments to the Copyright Policy resulting from technological and legislative changes affecting copyright; and
- c. Changes to administrative procedures involved in the implementation of the Copyright Policy.

In addition, the Copyright Advisory Group shall provide a forum to which faculty, staff, and students may refer questions and recommendations about the Copyright Policy.

The day-to-day administration of the Copyright Policy will be performed on

behalf of the University by the Dean.

Appeal process. Within 14 calendar days of the Copyright Advisory Group's decision, any University faculty member, staff member, postdoctoral scholar, or student who believes he or she is adversely affected by any action or non-action of the Copyright Advisory Group pursuant to the Copyright Policy may request in writing the Group reconsider such action or non-action in writing to the Dean, who shall consult with the Copyright Advisory Group in considering the request for reconsideration. The resulting decision of the Dean may be appealed in writing to the President of the University within 10 calendar days of the Dean's decision. Where the action or non-action forming the basis for the dispute is that of the Dean rather than the Copyright Advisory Group, appeal may be made in writing directly to the President of the University.

The foregoing process does not preclude the use of either informal means to resolve the dispute or applicable grievance procedures normally available to the individual based on his or her University status.

D. Examples. The following examples illustrate how the policy would apply to specific situations and are accompanied by references to the governing policy sections.

1. Case C1: Faculty member A writes an article using a computer and supplies provided by the University. Copyright in the article belongs to A. Faculty member A may choose to assign ownership of this copyright to a journal as part of a publication agreement without institutional involvement. [VI.B.2.a]
2. Case C2: Faculty member B creates a painting using supplies and facilities of the University customarily provided to other faculty members in the unit. Copyright in the painting belongs to B. [VI.B.2.a] Two years later, B sells the painting for \$400. Faculty member B has no obligation to share the proceeds of the painting sale with the University.
3. Case C3: Music faculty member C writes several songs which she proceeds to record on Compact Disc and subsequently markets. In the preparation of the CD, C sought the help of the University and received a \$4,000 grant for the specific purpose of funding studio time and associate equipment rental for making the CD. Faculty C retains the music authorship. [VI.B.2.a.] The University may determine that it has rights by assignment of ownership in the CD. [VI.B.2.a.(v.)]
  - a. The CD is marketed and generates \$60,000 in royalties in the first year. If the grant was an internal competitive research grant, Faculty C would retain all rights to the CD and collect all royalties.
  - b. The CD is marketed and generates \$60,000 in royalties in the first year. If the grant was from internal discretionary funds or the University provides significant use of University resources, the University may determine that it has rights by assignment of ownership in the CD [VI.B.2.a.(v.)] and the first call on royalty income would be \$4,000 to defray the investment costs. The next \$50,000 would go to the author, and remaining royalties would be divided according to policy.
4. Case C4: Graduate student D writes a dissertation while serving as a University

research assistant. The student owns the copyright in the dissertation since it is an academic requirement, but the supervising University faculty member has a license to use research product and student must show joint authorship if published in a scholarly journal. [VI.B.2.a]

5. Case C5: Staff member E, a nurse, writes a novel at home. Copyright in the novel is owned by E since the work was not created within the scope of University employment. [VI.B.2.a]
6. Case C6: Staff member F, a senior research associate, writes a journal article based on original research conceived by and conducted by F. F owns the copyright in the journal article since it is a scholarly work and is not a specified outcome of F's employment by the University. [VI.B.2.a and VI.B.2.b]
7. Case C7: The Department Head of an academic department asks faculty colleague G to write a summary of the department's history for inclusion in the University's *General Catalog*. G agrees to do so. Copyright of the summary history belongs to the University since it is a specific work created as a consequence of an agreement between faculty member G and a colleague acting on behalf of the institution. [VI.B.2.b.(i)]
8. Case C8: The University employs a recently retired administrator H to have her write a history of the University which is to be published. The University owns the copyright and receives any royalties of sales of this history subject to any portion of the agreement with H that would dictate a split of royalties. [VI.B.2.b.(i)]
9. Case C9: Faculty member I drafts a departmental self-study for the University as part of an academic review of his department at the University. Copyright of the self-study belongs to the University since I created it while carrying out an administrative assignment from the University. [VI.B.2.b.(ii)]
10. Case C10: For a number of years, faculty member J worked collaboratively with faculty and staff colleagues to develop successive versions of software designed to control a research apparatus in J's laboratory. Over the years, the various collaborators did not document their individual contributions to the software and memory of any specific individual contributions to the earlier work has faded. Copyright of the current version of the software belongs to the University since any assessment of individual copyright ownership of the current software would be impractical and could result in an unfair determination. The failure to document individual contributions would not, itself, generate institutional ownership, but in this instance documenting the contributions might have made recovery of forgotten facts easier. [VI.B.2.b.(iii)]
11. Case C11: Faculty researcher K is principal investigator on an institutional contract with an agency of the state. The contract is for the creation of teaching materials for the on-the-job training of social workers employed by the state government. The terms of the contract provide that the state will have an option to license the county government, or to other states and agencies. While K may be the owner of the copyright in the software under copyright law, K has the obligation to assign this ownership to the institution so that the University may meet the contractual requirement to offer the grantee their right to distribute the work. Even though K is the principal investigator (PI) on the original contract proposal, grants and contracts are awarded to the University and not to the PI.

[VI.B.2.b.(iv)]

12. Case C12: Faculty researcher L is principal investigator on a federal grant that provides significant funding to meet the proposed objective of development of a particular piece of medical imaging software. The terms of the federal award neither compel nor empower the University to take ownership of the copyright in the resultant software. Even so, the University has a policy-based opportunity to require L to assign copyright ownership in the software to the institution since use of the grant funds constitutes “significant use of University resources.” In assessing its rights to request assignment of a copyright because of the use of grant funds, the University will consider requesting assignment only of copyrights to works specified as objectives of the grant-funded work. In this example, the University would not seek ownership of the copyright in other related works such as journal articles, monographs, or textbooks that may arise from the grant funding since these works are not commonly construed as identified objectives of the grant. To avoid any dispute, faculty member L should work with the Dean prior to distribution of any grant funds to lay the groundwork for the future resolution of any potential conflicting copyright claims. [VI.B.2.b.(v)]
13. Case C13: Faculty member M is principal investigator of a grant that provides faculty member F with travel funds to visit a library in a foreign country so that F can do research. Later F produces an article based upon this research. Even though faculty member F’s efforts were supported by a grant, the copyright belongs to F. Even if preparation of a publication is a specified objective of a grant, the University will not seek assignment of the copyright in that work. [VI.B.2.a]
14. Case C14: Faculty member N begins to create a copyrightable web-based work that will help high school students select a college. After three months, N realizes that the work cannot be completed without substantial use of University staff computer experts. N requests and receives permission to have access to this expertise. Faculty member N would have been entitled to the copyright in work under this policy if there had been no infusion of substantial resources. However, because of the infusion of University resources, the University may have a claim. Faculty member N should consult with the Dean at the time assistance is requested to lay the groundwork for the future resolution of any potential conflicting copyright claims. [VI.B.2.b.(v)]
15. Case C15: A professional staff writer, O, at the University prepares original text for a brochure describing research in a college. Even though O prepared original text, the University owns the copyright in the brochure material since it is a reasonably expected product of O’s employment. [VI.B.2.b.(v)]
16. Case C16: Undergraduate student P is an hourly-wage, graphics designer in a University unit. In the course of this work, P prepares a poster for an institutional lecture series. Even though P is a student, the University owns the copyright in the poster design since it was prepared as a consequence of P’s employment by the institution and not as part of P’s educational pursuits. [VI.B.2.b.(v)]
17. Case C17: Faculty Q receives a faculty research grant of \$6,000 that allows her to travel to several major libraries for researching a segment of Civil War history. Eventually, Q uses the material gained from this research in the preparation and subsequent publication of a monograph published by Academic Press at no

expense to the University. Even though some assistance came from a faculty research grant, Q owns the copyright and may convey right of license to the press in return for royalties. The University has no claim on royalties of this publication. [VI.B.2.a and VI.B.2.b.(v)]

18. Case C18: Faculty R creates a learning module while teaching an online course at the University that she later sells to an online textbook publisher. R owns the copyright on the module and rights to profits, but the University retains an ownership interest and right to use the module, but only if the module was created under a specific agreement or using significant University resources. [VI.A.3.b.(ii) and VI.B.2.a.]
19. Case C19: Faculty Member S develops an online class for the University. Per course Faculty Member T teaches one section of the online class for the University. S holds the copyright, the University holds a license, and T has a license to use the content to teach the course at the University. T takes the content of the course developed by S to another institution. T has violated both the MSU Creation of Intellectual Property Policy and the MSU Use of Copyright Policy. [I. and VI.B.2.a]
20. Case C20: Faculty U writes a textbook using a University office, computer, software, internet connection, e-mail, phone, and basic office support. U retains all rights to the book and can assign the copyright to a publisher and retain all royalties. [VI.B.2.a]
21. Case 21: Faculty V develops handouts for a multi-section course, using a University office, computer, software, internet connection, e-mail, phone, and basic office support. The course normally has several sections taught by different instructors, but other than a common syllabus and common exams, each instructor works independently. V retains all rights to the handouts. [I,VI.B.1 and VI.B.2.B.vi]
22. Case 22: Faculty W develops laboratory write-ups for a multi-section laboratory course, using a University office, University laboratory space, computer, software, internet connection, e-mail, phone, and basic office support. The laboratory is normally taught by several different instructors using the same instructional materials for the laboratory. W retains ownership of the materials, but the University maintains a license to use the materials for internal use. [VI.B.2.B.vi]

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