

## Appendix A

### Board Policy

210.1

#### I. Patent and Copyright Polity

##### A. Preamble

As a state-supported institution of higher learning, the University of Arkansas has a responsibility for and an interest in the advancement of knowledge and creative work that will enhance its educational mission and promote the economic and social welfare of the public it Serves, particularly the people of the State of Arkansas. This responsibility and interest are advanced by engaging in research, the results of which may, on occasion, have commercial applications which are patentable or copyrightable, While Inventions and copyrightable works are not the primary objectives of University Research, when they occur the University has the responsibility of insuring that such Inventions and Works are used and controlled in a manner that benefits the public, the Inventor or Author and the University to the fullest extent possible.

To achieve this purpose, the University adopts this policy to meet the following objectives:

1. Assist the faculty, students, and staff in matters related to Inventions, patents, and copyrights and provide an environment that will encourage the disclosure and development of meaningful Inventions and Works;
2. Obtain the proper benefits for Inventors and Authors and for the University from commercial applications of University Research and apply funds accruing to the University from these applications to the support of research and other scholarly activities at the University;
3. Encourage and facilitate collaborations with sponsors of University Research by appropriately allocating the rights to Inventions and Works which result from Sponsored Research consistent with federal laws; and
4. Determine the rights and interests of all parties in University Research and Sponsored Research according to established uniform procedures.

##### B. Definitions

The following definitions are employed in interpreting and implementing this policy:

1. "University" means the University of Arkansas and any entity or activity under the authority of the Board of Trustees of the University of Arkansas.
2. "University Research" means any research or development activity which is directly related to the duties and responsibilities for which a person has been compensated by or through the University or for which facilities owned, operated,

or controlled by the University are used.

3. "Sponsored Research" means University Research for which the University has received external support. (For purposes of this policy) external support includes funds received by the University as part of a license agreement.)

4. "Invention" refers to any material capable of legal protection arising out of University Research and includes any discovery, invention, process, know-how, design, model, computer software (if patentable), strain, variety, or culture of an organism, or portion, modification, translation) or extension of these items but excludes works as defined hereinafter which are not patentable. It includes marks used in connection with these. (The term "mark" refers to trademarks) service marks, collective marks, and certification marks.) It also includes tangible research property. i.e., tangible items produced in the course of research such as, but not limited to, e.g., biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. (Items of tangible research property may be associated with one or more intangible properties such as patents, copyrights, and trademarks.)

5. "Inventor" means a person who creates develops or discovers an Invention and includes the definition of "inventor" used in United States Patent Law.

6. "Work" means an original work of authorship arising out of University Research which is protect able by copyright. It includes books) journals) software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works and other similar works.

7. "Author" means a person who develops or creates a Work and includes the definition of "author" used in the United States Copyright Act. The University may also be an Author under certain circumstances such as when a Work constitutes a "University Work."

8. "University Work" means a Work created specifically for institutional purposes in the course of a person's employment with the University.

### **C. Statement or Policy**

1. It shall be the policy of the University to acquire and retain legal title to all Inventions created by any person or persons to whom this policy is applicable. This policy is established in furtherance of the commitment of the University to the widest possible distribution of the benefits of University Research, the protection of Inventions resulting from such research, and the development of Inventions for the public good.

2. Inventors shall retain rights in Inventions which the University has chosen not to

claim under this policy or pledged to a third party as a result of a grant, contract, cooperative agreement, or other Sponsored Research agreement,

3. Rights to Works shall be determined according to the provisions of this policy which apply to copyrights.

#### **D. Applicability of Policy**

1. This policy shall apply to all persons employed, compensated or appointed by the University and to anyone using facilities owned, operated, or controlled by the University. It shall also apply to all Inventions and Works financed, in whole or in part, from funds under the control of the University.

2. Employee engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with this policy or with contractual commitments of the University. Such employees should provide affirmative notice to the other parties to such agreements, informing them of the obligation of the employees to the University and the possible applicability of this policy to such agreements.

#### **E. Obligations of Inventors and Waiver and Notice Rights**

1. **Disclosure.** All persons to whom this policy is applicable shall furnish to the University a full and complete disclosure of any Invention promptly after it is created or conceived or first reduced to practice. Such persons shall cooperate in a timely and professional manner with the University or with patent or other counsel in protecting Inventions and perform all acts necessary for the University to fulfill its obligations under University Research, including the execution of assignments. The University may require technical advice and assistance from Inventors in the development and licensing of their Inventions.

2. **Assignment.** All persons to whom this policy is applicable shall; upon request, assign all Inventions and patents to the University, except those which might be owned by third parties pursuant to Sponsored Research agreements and those which might result from independent work or permissible consulting activities without use of facilities owned, operated, or controlled by the University.

3. **Waiver.** If the University chooses not to protect or commercialize an Invention, the University may, at its sole discretion, waive its rights to the Invention and assign ownership of the Invention to the Inventor as allowed by law, subject to the rights of third parties and to the reservation by the University of a license to practice the Invention for University purposes. The minimum terms such license shall grant the University the right to use the Invention in its internally

administered programs of teaching, research, and public service on a perpetual royalty-free 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 reimbursements of the costs of statutory protection, when justified by the circumstances of development.

4. **Notice.** The University will inform Inventors in a timely manner of its substantive decisions regarding protection, commercialization and/or disposition of Inventions which are disclosed under this policy. The initial notice of such a decision to an Inventor should be given no later than six (6) months after disclosure of the Invention to the University.

5. **Independently-Owned Patents.** The University may accept assignment of patents or other intellectual property from parties to whom this policy *does not* apply provided that such action is determined to be consistent with the public interest and educational mission of the University. The patents or other intellectual property so accepted shall be administered in a manner consistent with the administration of Inventions under this policy.

#### **F. Distribution of Revenue**

1. In consideration of the disclosure and assignment of Inventions) the Inventor, or the Inventor's heirs) successors, or assigns shall receive fifty percent (50%) of the first two hundred thousand dollars (\$200,000) of Net Revenue from the commercialization of an Invention, The remaining fifty percent (50%) shall be distributed to the University in the following manner: forty-five percent (45%) to the chief executive officer of the Inventor's campus or division for distribution within the campus or division for patent administration and research purposes; and five percent (5%) to a fund to be managed and distributed by the University of Arkansas for patent administration and research purposes. Any Net Revenue above \$200,000 shall be distributed as follows: (a) thirty-five percent (35%) to the Inventor or the Inventor's heirs, successors, or assigns; "(b) sixty percent (60%) to the chief executive officer of the Inventor's campus or division for distribution within the campus or division for patent administration and research purposes; and (c) five percent (5%) to a fund to be managed and distributed by the University for patent administration and research purposes.

2. "Net Revenue" shall mean for this purpose all Revenue received by the University from the commercialization of Inventions and Works minus the costs for patenting, licensing, and the protection and maintenance of patent and copyright rights.

3. "Revenue" shall mean cash from payments including) but not limited to, royalties, option fees, license fees or from the sale of Equity but shall not include research support received by the University as part of the consideration for licensing an Invention or Work in lieu of an option fee, license fee or royalty. Inventors shall

have no entitlement to a share of such research support as personal income.

4. Net Revenue will be distributed normally on an annual basis) with payments being made within sixty (60) days after the end of a calendar year in which Net Revenue from the Invention has accrued.

### **G. Equity**

1. In agreements with business entities relating to rights in Inventions and Works, the University may receive Equity as partial or total compensation for the rights conveyed. In any such instance) the University shall share any such Equity with the Inventor or Author in the same manner as Net Revenue is shared pursuant to Section I-F above. Consistent with Arkansas Code § 19-11- 717 and campus or component conflict of interest policies) and subject to renew and approval by the Chancellor or other chief executive officer of the component of the University, the President and the Board of Trustees. Inventors or Authors may hold direct, individual Equity in a business entity that has an agreement with the University relating to the commercialization of Inventions or Works. The University, in its sole discretion, may require an Inventor or Author who holds direct, individual Equity in such a business entity to waive any right which the Inventor or Author may have to share in Equity and/or Net Revenue through the University under Section I.F above.

2. Dividend income and income from the sale or disposition of Equity held by the University pursuant to agreements relating to the commercialization of Inventions or Works shall belong to the University and be distributed in accordance with the provisions of Section I.F unless an Inventor or Author has been required to waive such rights under Section I.G.1 above- Such Equity shall be sold or disposed of at a time and in a manner selected solely at the discretion of the University, subject to restrictions imposed by law, the underwriters of the stock issuance or the business entity. Dividend income and income from the sale or disposition of Equity held directly by an individual Inventor or Author shall belong to the Inventor or Author and may be sold or disposed of at a time and in a manner selected solely at the discretion of the Inventor or Author, subject to restrictions imposed by law) the underwriters of the stock issuance or the business entity.

3. An Inventor or Author shall not serve as a. member of the board of directors or other governing board or as an officer or an employee (other than as a consultant) of a business entity that has an agreement with the University relating to the commercialization of Inventions or Works and in which the University has Equity without prior review and approval by the Chancellor or the chief executive officer of the component of the University. When requested and authorized by the University, an employee may serve on behalf of the University as a member of the board of directors or other governing board of a business entity that has an agreement with the University relating to the commercialization of Inventions or

Works and in which the University has Equity.

4. "Equity" shall include, but not be limited to, stock, securities, stock options, warrants, buildings, real or personal property, or other non-cash consideration. Inventors shall not be entitled to receive a share of the subset of University-owned Equity which consists of buildings, real or personal property, or other non-cash consideration.

#### **H. Sponsored Research**

Rights to Inventions and Works made under Sponsored Research are determined by the contractual or grant agreements between the University and the sponsor. Except in limited circumstances where the University determines that the waiver of such rights is appropriate in fulfilling its educational mission, allocation of rights to Inventions and Works made under Sponsored Research shall be consistent with this policy.

#### **I. Publication Rights**

In all Sponsored Research, the right shall be reserved for Inventors, Authors and the University to publish and disseminate the knowledge gained and the results obtained. The University may grant a sponsor a limited review period (normally thirty (30) days) prior to submission for publication in order to protect proprietary information and any technology which may be the subject of a patent application.

#### **J. Copyrights and Computer Software**

1. Copyrights to, and royalties from, textbooks, reference works, submissions to scientific journals, and other Works (excluding computer software and Technology Enhanced Course Materials) produced by persons to whom this policy is applicable as a part of their normal teaching, scholarly and aesthetic activities at the University or on approved off-campus duty assignments, and which do not result from projects specifically funded in whole or in part by the University or by a sponsor of the University, shall belong to the Author or Authors and may be retained or assigned by them" If, on the other hand, the University provides its own funds, or a sponsor's funds, to finance (in whole or in part) a specific research or educational project (herein "commissioned Works") and such Works are produced by persons to whom this policy is applicable as a result of the project or the Works constitute University Works ownership of copyrights and Revenue rights therein shall reside in the University. Revenue generated by the commercialization of such Works may be shared with the Authors or creators according to Section I.F of this policy or on other terms as set by the University in its sole discretion.

2. All rights to computer software, including computer programs, computer data bases, and associated documentation (herein "computer software"), whether

copyrightable or patentable, produced by any person to whom this policy is applicable shall belong to the University, with the exception of software which constitutes Technology Enhanced Course Materials governed by Board Policy 210.2. Revenue generated by the commercialization of computer software shall be shared with the Authors/Inventors according to Section I.F of this policy. Computer software produced on an Author's own time or through permissible consulting activities and without the use of facilities owned; operated, or controlled by the University shall belong to the Author and all rights thereto may be retained or assigned by the Author.

3. It shall be the responsibility of the Author or creator to notify the University of the development of all commissioned Works, University Works and computer software.

## **II. Patent and Copyright Policy Administration**

### **A. University Patent and Copyright Committee**

The President shall appoint a University Patent and Copyright Committee of nine (9) members with one (1) representative from each of the four (4) four-year campuses, the Medical Sciences campus and the Division of Agriculture and a single representative agreed upon by a consensus of the two-year campuses and other components of the University. The specific representative of the two-year campuses and other components of the University may be selected on a rotating basis with a limit on the number of consecutive annual terms that a person from any one of such entities may serve. The Vice President for Finance and Administration and the Associate Vice President for Legal Affairs shall be ex officio members of the Committee. The General Counsel shall serve as legal advisor to the Committee. A chairman shall be elected from among the membership of the Committee. The Committee shall meet at least annually and at other times upon the request of the chairman or the President. The Committee shall be responsible for:

1. Reviewing the operation of the University Patent and Copyright policy and proposing policy changes if needed;
2. Reviewing proposed exceptions to the established policy;
3. Resolving issues referred by campus patent and copyright committees;
4. Advising the President on patent and copyright policy matters as requested.

### **B. Campus Patent and Copyright Committees**

1. Each campus of the University shall establish a committee composed of faculty and staff which shall be responsible for implementing the University patent and

Copyright Policy on the particular campus. Any campus which has received less than five (5) Invention disclosures during a fiscal year shall not be required to establish or maintain a committee and may request assistance from such committee of any other campus in implementing this policy. The committees shall consist of no less than five (5) members, appointed by the Chancellor or chief executive officer, and shall meet 110 less than on a quarterly basis. A chairman shall be elected from among the membership of the committees.

2. For the Fayetteville campus only, the committee shall be composed of no less than eight (8) members; three (3) of which shall be appointed from the Division of Agriculture by the Vice President for Agriculture. Disclosures for patentable or copyrightable material emanating from the Fayetteville campus and the Division of Agriculture shall be administratively controlled by the Fayetteville campus committee.

3. In matters of a substantive legal nature, the committees shall seek the advice and assistance of the General Counsel and/or the Associate vice President for Legal Affairs.

### **C. General Responsibilities**

The committee shall have the general responsibility of:

1. Reviewing Invention disclosures submitted to the University for patenting consideration;
2. Evaluating Inventions for patentability, as well as scientific merit and practical application;
3. Appointing ad hoc technical subcommittees to assist the committee in evaluating Inventions;
4. Seeking University approval of outside technical assistance in evaluating Inventions;
5. Determining patent or related property rights or equities held by the University in an Invention;
6. Providing scientific and technical assistance to approved patent management organizations to achieve the realization of full benefits of University Inventions that have commercial potential;
7. Seeking initial resolution of campus disputes relating to rights in Inventions and Works; and



8. Reviewing Works (including computer software) submitted for copyright consideration .

#### **D. Committee Procedure**

Normally within thirty (30) days of the receipt of an Invention disclosure, the committee will submit to the Chancellor or other chief executive officer or the Vice President for Agriculture its recommendation regarding the disposition of an Invention. Such recommendation shall be forwarded within ten (10) days of receipt to the President. In most instances, the recommendation will consist of one of the following:

1. University should proceed to secure a patent or register a copyright or a trademark;
2. The matter should be submitted to a patent management organization with which the University has a contract for review, report, and possible management by the patent management organization;
3. Negotiations should be entered into with industry whereby continued research and development within the University will be funded pursuant to contract with a corporation or firm which would receive certain rights regarding the Invention in return for Revenue or, under limited circumstances, an assignment in return for payment of additional sums;
4. Commercial or education values involved are so slight and/or incompatible with the interests of the University as to indicate that the University should relinquish any property interest to the Inventor or Author or his/her assigns.

\_\_\_\_\_(Revised)  
June 13, 1986 (Revised)  
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