



## **Texas Tech University**

### **Operating Policy and Procedure**

#### **OP 74.04: Intellectual Property Rights**

**DATE:** November 29, 2004

**PURPOSE:** It is recognized that research and scholarship on the part of members of the faculty, staff, and students of the Texas Tech University System\* (hereinafter referred to as TTUS) will result in inventions, biological materials and other proprietary materials, plants, manuscripts, patentable and non-patentable, computer software, and trade secrets or other products, medical treatments, and devices that are potentially marketable.

(\* Texas Tech University (TTU) and all of its subordinate units, for example, but not limited to: Texas Tech University Center at Junction; TTU Farm at PanTex; TTU Farm at New Deal; International Textile Center; Reese Center; and the Texas Tech University Health Sciences Center (TTUHSC) and all of its subordinate units, for example, but not limited to: Texas Tech Medical Center at Amarillo; Texas Tech Medical Center at El Paso; Texas Tech Medical Center at Odessa; School of Pharmacy in Amarillo; and School of Allied Health in Midland.)

It is the policy of the Board of Regents to encourage scholarly activity without regard to potential gains from royalties and other forms of income. In all cases, however, the affected individuals are subject to their obligations and those of TTUS under grants, contracts, or research agreements with governmental agencies and sponsors. All TTUS policies governing patentable or copyrightable inventions, publications, or other marketable products will provide adequate recognition and incentives to sponsors, inventor's assignees, and authors and, at the same time, assure that TTUS's duty to serve the public interest will be served.

**REVIEW:** This Operating Policy/Procedure (OP) will be reviewed by December 1 of every even-numbered year by the managing director of Technology Transfer and Intellectual Property, the vice president for research, technology transfer, and economic development with recommendations for revisions presented to the provost by January 1.

### **POLICY/PROCEDURE**

#### **1. General Policy**

This intellectual property policy, as adopted, shall apply prospectively to all persons employed by the component faculties of TTUS, to all students of TTUS, and to anyone using TTUS facilities or under the supervision of TTUS personnel. Every employee, faculty, staff, or student is expected to be aware of the TTUS policies regarding such developments or discoveries protectable by copyright, patent, or contract and agrees to accept and abide by them as a

condition of employment or enrollment. All intellectual property disclosures made prior to the date of this policy shall be governed by the prior established policy.

It is the intent of this policy to foster the traditional freedoms of the TTUS faculty, staff, and students in matters of publication and invention, through a fair and reasonable balance of the equities among authors, inventors, sponsors, and TTUS. The purpose of the policy is to outline the respective rights that members of the faculty, staff, and students have in intellectual materials created while they are affiliated with TTUS.

As a public institution, TTUS is entrusted with the responsibility to facilitate application of scientific, technical, artistic, and intellectual endeavors of its faculty and staff for public use and to provide for an equitable disposition of interests among the authors and inventors, TTUS, and, where applicable, the sponsoring or contracting funding source.

## **2. Ownership of Discoveries**

In general, inventions, innovations, discoveries and improvements, biological materials and other proprietary materials and plants (i.e., intellectual property - see section 11), made with the use of TTUS facilities or during the course of regularly assigned duties of the faculty and staff shall become the property of TTUS. Employees and others who are subject to this policy by virtue of their use of TTUS services or facilities shall, upon request, assign all applicable intellectual property to TTUS, except those which might be owned by third parties pursuant to sponsored research agreements and those resulting from independent work or approved consulting activities not utilizing TTUS facilities.

## **3. Research Involving Third Party**

In research sponsored by or involving third parties, provisions for the control of and compensation for patents should normally be consistent with the general policy stated herein. However, nothing in this policy shall be interpreted as precluding the acceptance of a contract, grant, or agreement that provides for ownership of intellectual property by the sponsor with appropriate compensation.

## **4. Disclosure of Intellectual Property**

All intellectual property shall be promptly disclosed to the Office of Technology Transfer and Intellectual Property (OTTIP). At least once a year, coincidental with a regular board meeting, the director of OTTIP shall prepare for the chancellor and the Board a report listing the titles and a brief description of each disclosure received since the last report.

## **5. Intellectual Property Administration**

When TTUS elects to protect intellectual property in its name, it shall award to the inventor or creator a reasonable share (as defined hereinafter) of net proceeds from royalties or other income or value after deduction of the directly assignable costs of patenting, marketing, licensing and protection of intellectual property rights.

## **6. Determinations by the Office of Technology**

### **a. Transfer and Intellectual Property**

The Office of Technology Transfer and Intellectual Property for the TTUS shall make determinations as to:

- (1) The potential value of the intellectual property to TTUS;
- (2) The rights and equities of the inventor or creator, TTUS and any third parties; and
- (3) The required actions to maximize the benefits of any intellectual property to the public, TTUS, and the inventor or creator.

## 7. Implementation

The following guidelines shall be applicable to license agreements with private entities including those formed primarily for the purpose of developing and/or commercializing intellectual property created at TTUS subject to the terms of sponsored research agreements that may have led to the creation of such intellectual property:

- a. No entity shall be granted the exclusive rights to the development and/or commercialization of all intellectual property created at TTUS. Agreements should grant rights only on a specific project basis.
- b. If an entity is granted the exclusive rights with respect to a particular invention, product, process or other item of intellectual property, the agreement should provide that such rights will revert to TTUS in the event the entity fails to diligently develop and commercialize the property within a specified period of time that is appropriate to the particular circumstances.
- c. An entity that is granted exclusive rights to develop or commercialize intellectual property that is patentable should be required to reimburse TTUS for all expenses incurred by TTUS in obtaining a patent or, if a patent has not been obtained, should be required to prosecute and bear the expense of obtaining patent protection for the benefit of TTUS and, in either event, the entity should be required to take all actions necessary, including litigation, to protect and preserve such patented rights from infringement.
- d. TTUS and its officers and employees should be protected and indemnified from all liability arising from the development, marketing, or use of the particular intellectual property.
- e. Restrictions on use by the component institution for research and teaching purposes and the publication rights of researchers should be minimized.
- f. If the entity fails to develop and commercialize the property, any and all rights the entity has been granted in TTUS's property shall be returned and granted back to TTUS so that another entity may be offered the right to develop and commercialize the technology.
- g. The entity should be required to comply with all applicable federal, state, and local laws and regulations, particularly those concerning use of animals, biological materials and necessary testing, human subject protection and approval by the Federal Drug Administration or other relevant federal or state agency.
- h. The entity should be required to maintain confidentiality with regard to any unpatented technology or know-how.
- i. An entity that grants a license or sublicense to some other entity for property or technology that is in whole or in part derived from or based on that which is licensed to the entity by TTUS, should be required to share with TTUS: at least 40 percent of any royalty received by the entity and at least 40 percent of any equity position to which the entity may be entitled.

- j. License agreements should contain such other provisions as may be determined by the OTTIP and the Office of General Counsel to be in the best interest of TTUS.
  - k. The director of OTTIP is authorized to negotiate and execute license agreements.
8. The chancellor shall report annually to the Board of Regents concerning the status of license agreements, including the distribution of revenues earned from such agreements. The chancellor will inform the board at the first meeting following the end of each calendar quarter of any license agreements entered into by the TTUS Office of Technology Transfer and Intellectual Property and not previously reported.
  9. In compliance with Section 51.912 of the *Texas Education Code*, the Board of Regents must file a report identifying all employees who have an equity interest in or serve as employees, officers, or members of the board of directors of business entities that have agreements with TTUS relating to the research, development, licensing, or exploitation of intellectual property in which TTUS has an ownership interest. The report will be filed in accordance with the requirements of Section 51.005 of the *Texas Education Code*. The OTTIP will submit the report through the chancellor or his/her designee to the Office of the Board of Regents. The Board office will obtain the signature of the chairman of the Board and will transmit the report to the governor's office and other required entities.
  10. Any request by a TTUS employee to participate as an employee, officer, or member of the board of directors of a business entity that has agreements with TTUS relating to the research, development, licensing, or exploitation of intellectual property in which TTUS has an ownership interest must be submitted to the Board of Regents for approval.

## 11. Definitions

For the purposes of this regulation, the following terms are defined as follows:

- a. **Invention:** A process, method, discovery, device, plant, composition of matter, or other invention that reasonably appears to qualify for protection under the United States patent law, Chip Design Protection law or plant protection schemes (utility patent, plant patent, design patent, certificate of Plant Variety Protection, etc.), whether or not actually patentable. An invention may be the product of a single inventor or a group of inventors who have collaborated on a project.
- b. **Copyrightable Work:** An original work of authorship which has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, such as books, journals, software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works, etc. A copyrightable work may be the product of a single author or a group of authors who have collaborated on a project.
- c. **Trademark (including service mark):** A distinctive word, design, or graphic symbol, or combination word and design that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with plant varieties or computer programs.
- d. **Tangible Research Property:** Tangible items produced in the course of research including such items as biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of tangible

- research property may be associated with one or more intangible properties, such as inventions, copyrightable works and trademarks. An item of tangible research property may be the product of a single creator or a group of individuals who have collaborated on a project.
- e. Intellectual Property: Collectively, all forms of intellectual property including but not limited to inventions, copyrightable works, trademarks, and tangible research property.
  - f. Intellectual Property Committee: A standing committee, the majority of whom are faculty members, appointed by the chancellor based on recommendations of the vice presidents for Research at TTU and TTUHSC, representing the various components of TTUS, whose purpose is to provide a forum for discussion of policies and procedures affecting intellectual property and to advise the chancellor and OTTIP regarding intellectual property matters when called upon, including comment on disputes that may arise regarding the handling of intellectual property and technology transfer and suggestions for policy or procedure changes with respect to this policy. The committee will meet at least twice each year, or more often as called by the chancellor or the director of OTTIP.
  - g. The Office of Technology Transfer and Intellectual Property: The TTUS (OTTIP) administrative office whose mission is to promote the transfer of TTUS technologies for society's use and benefit while generating unrestricted income to support research and education. The OTTIP is responsible for administration and implementation of TTUS's intellectual property program, and for assisting and advising TTUS's faculty and staff.

## 12. Ownership Further Defined

- a. An invention or tangible research property resulting from activities related to an individual's employment responsibilities and/or with support from TTUS funds, facilities or personnel shall be owned by TTUS.
- b. An invention or tangible research property unrelated to an individual's employment responsibilities that is developed on his or her own time without TTUS support or use of TTUS's facilities is not owned by TTUS.
- c. Ownership of an invention or tangible research property developed in the course of or resulting from research supported by a grant or contract with the federal government (or an agency thereof) or a nonprofit or for-profit nongovernmental entity, shall be determined in accordance with the terms of the sponsored grant or contract, or in the absence of such terms, shall be owned by TTUS.
- d. Present and prospective employees of TTUS shall, upon request by the chancellor or by OTTIP, to perfect intellectual property rights, execute an invention assignment agreement in a form prescribed by and available from the OTTIP to set forth effectively the ownership and rights to inventions. Executed invention assignments shall be maintained in an office location designated by the chancellor.

## 13. Disclosure, Assignment, and Protection

- a. All persons subject to these regulations shall promptly disclose to the OTTIP any invention or economically significant tangible research property covered by this regulation, including those made under sponsored research or cooperative arrangements. Disclosure shall be made on a disclosure form prescribed by and available from the OTTIP. Such persons shall cooperate with TTUS and the OTTIP in protecting intellectual property rights in the

- invention, to the best of their ability. If TTUS decides to patent or seek other available protection for the invention, it shall proceed through the OTTIP.
- b. All inventors shall execute appropriate assignment and/or other documents required to set forth effectively the ownership and rights to inventions and tangible research property.
  - c. The OTTIP will determine whether TTUS desires to commit funding to obtain protection for the invention, and shall so notify the inventor of the decision. In many cases, the OTTIP will identify one or more licensees who will bear the cost of obtaining patent protection before making a final decision.
  - d. In those instances where the inventor perceives that delay would jeopardize obtaining the appropriate protection for the invention, the inventor may request that TTUS expedite its decision as to whether or not it shall proceed to file a patent application or take other steps to obtain available protection. If TTUS has not acted within six months after a request to expedite, and the inventor or creator has cooperated in good faith, TTUS will release its rights and section 22 shall apply.

#### 14. **Obligation to Sponsors**

The OTTIP, in cooperation with the respective Office of Research Services or Office of Sponsored Programs, shall coordinate reporting requirements and other obligations to research sponsors regarding Inventions or economically significant tangible research property developed under a research contract or grant, including but not limited to obligations to the U.S. Government under 37CFR Part 401.

#### 15. **Management of Copyrightable Works**

It is specifically noted that this intellectual property rights policy does not address rights in material specifically prepared for distance learning. To the extent that a future policy specifically directed to distance learning is approved, where that future policy and this policy are in conflict, the specific policy directed to distance learning shall prevail.

TTUS encourages the preparation and publication of copyrightable works that result from teaching, research, scholarly and artistic endeavors by members of the faculty, staff and student body of TTUS. Authors shall be permitted maximum freedom with respect to their copyrightable works, consistent with the obligations to TTUS. Copyrightable works may be created under a variety of circumstances and conditions that impact the ownership and subsequent management thereof, as follows.

##### a. **Ownership of Copyrightable Works**

###### (1) **Books, Articles, and Similar Works**

In keeping with academic tradition, and except to the extent required by the terms of any funding agreement, TTUS does not claim ownership to pedagogical, scholarly, or artistic works, regardless of their form of expression. Such works include but are not limited to faculty-prepared works such as textbooks, course materials and refereed literature. Such works include those of students created in the course of their education, such as dissertations, papers and journal articles. Furthermore, TTUS claims no ownership in popular nonfiction, novels, poems, musical compositions or other works of artistic imagination that are not works for hire (see (2) below). If title to copyright in works defined within this section vests in TTUS by law, TTUS will, upon request and

to the extent consistent with its legal obligations, convey copyright to the authors of such copyrightable works.

(2) **Institutional Works or "Works for Hire"**

TTUS shall retain ownership of copyrightable works created as institutional rather than personal efforts (i.e., created for institutional purposes in the course of the creator's employment) including, but not limited to, simultaneous or sequential contributions over time by numerous faculty, staff, or students. For instance, work assigned to programmers is institutional work or "work for hire" as defined by law, as is software developed for TTUS purposes by staff working collaboratively. Brochures, training programs, CD-ROMs, videos, and manuals for which staff members are hired to develop are other examples of institutional works, or work for hire. TTUS owns all right, title and interest in such institutional works.

(3) **Works Developed with Significant Use of Resources**

Copyrightable works that are not works for hire (see (2) above) but are works that are developed with integral and significant use of funds, space, hardware, or facilities administered by TTUS, where use was essential and substantial rather than incidental, shall be owned by TTUS. Furthermore, copyrightable works that are not works for hire (see (2) above) but are works that are developed in the course of or resulting from research supported by a grant or contract with the federal government (or an agency thereof) or a nonprofit or for-profit nongovernmental entity, or by a private gift or grant to TTUS, shall be determined in accordance with the terms of the sponsored grant or contract, or in the absence of such terms and to the extent consistent with copyright law, shall be owned by TTUS. TTUS recognizes and affirms the traditional academic freedom of its faculty and staff to publish pedagogical, scholarly or artistic works without restriction. In keeping with this philosophy, TTUS will not construe the provision of offices or library facilities as constituting significant use of TTUS resources, except for those instances where the resources were furnished specifically to support the development of such copyrightable works. Nothing in this section is intended to change the traditional manner in which TTUS faculty, staff and employees assign the copyright ownership of works intended for publication in scholarly journals.

(4) **Hybrid Works**

Changing technology can give rise to creative efforts that fall into more than one category, for example, a book (traditionally owned by the author) coupled with an interactive CD ROM (perhaps software in which TTUS may have rights to under this policy). Such hybrid works should be brought to the attention of the OTTIP, which shall negotiate a reasonable sharing arrangement or issued release as may be appropriate. Should the OTTIP and the inventor or creator be unable to agree, the matter shall be finally resolved by the chancellor or his or her designee.

(5) Present and prospective employees of TTUS shall, upon request by the chancellor or by the OTTIP to perfect intellectual property rights, execute an assignment agreement in a form prescribed by and available from the OTTIP to set forth effectively the ownership and rights to copyrightable works. Executed copyright assignment agreements shall be maintained in the respective department head's office, in the OTTIP, or in a similar office as determined by the chancellor.

## 16. Disclosure, Assignment, and Protection

- a. Authors of copyrightable works that are not owned by TTUS own the copyrights in their works and are free to publish them, register the copyright, and to receive any revenues that may result therefrom.
- b. Authors of copyrightable works that are not works for hire [see section 15.a.(2)] but are works that are owned by TTUS under paragraph 15.a.(3) shall promptly disclose to the OTTIP any work of authorship covered by this regulation (including those made under sponsored research or cooperative arrangements). Disclosure shall be made on a disclosure form prescribed by and available from the OTTIP and a copy shall be filed with that office. Such persons shall cooperate with TTUS and the OTTIP to the best of their ability in protecting intellectual property rights in the work of authorship. Furthermore, upon request by the OTTIP to perfect intellectual property rights, such persons shall warrant that, to the best of his/her knowledge, the work does not infringe upon any existing copyright or other legal rights, that work not identified as quotations is the expression or creation of the author, and that necessary permission for quotation and the use of third party works has been obtained.

### c. Negotiation and Execution of Agreements for Copyrightable Works

Agreements permitting a party to use, develop, or otherwise commercialize copyrightable works owned by TTUS are encouraged. The OTTIP has primary responsibility for negotiating with third parties having an interest in using, developing, or otherwise commercializing copyrightable works.

### d. Software as Patentable Subject Matter

In recent years, the U.S. Patent and Trademark Office has determined that software which meets certain technical and legal criteria may be patentable. In the case where software originally disclosed as a copyrightable work subsequently is determined to be patentable subject matter, and TTUS chooses to seek patent protection for the software, then such software shall be managed under this regulation as an invention.

## 17. Distribution of Income from Commercialization and Licensing

- a. Where TTUS has an ownership interest in the intellectual property pursuant to this policy, the following provisions will govern the distribution of royalties and other income after TTUS has recouped all direct costs associated with the processing of the patent or copyright application and marketing and licensing the technology:

<u>Net Royalty</u>	<u>Individual</u>	<u>TTUS</u>	<u>Department*</u>	<u>Unit**</u>
\$0-\$100,000	50%	30%	10%	10%
\$100,001-	\$50,000	30%	15%	15%
\$500,000	plus 40% of amount over \$100,000	30%	15%	15%

\$500,000 -up	\$210,000 plus \$30% of amount over \$500,000	30%	As set by Board of Regents
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\* Department, center, or institute

\*\*College or school

Net royalties are to be paid according to the above schedule as the net royalties are earned; that is, the individual will receive 50 percent of the first \$100,000, and 30 percent of all net royalties over \$100,000. Funds received by the department and college will be placed in unrestricted accounts under their control. Such funds will not be used to substitute for funds budgeted for expenditure in the routine annual operating budget that is approved by the Board of Regents.

- b. This OP recognizes that in addition to the traditional academic units such as departments and colleges, research, and specifically interdisciplinary research, can be sponsored by other academic units, such as centers and institutes. Because of the many different combinations that may occur, this OP cannot specify how the royalties are to be allocated. It is, however, the general policy of the intellectual property OP to allocate royalties to the units that have provided the substantial level of indirect support that triggers TTUS's ownership of the intellectual property. The policy encourages voluntary agreements between such units prior to the development of intellectual property (to allocate the percentage of royalty share that is appropriate for each unit). In the event that no agreement can be reached prior to the generation of royalties, the president or his or her designee will resolve the allocation question.

The division of net royalties and other income from patents and copyrights managed by a patent or copyright agent will be controlled by TTUS agreement with such agent, as approved by the TTUS Board of Regents. Any deviation from this rule requires the prior approval of the TTUS Board of Regents.

## 18. Distribution of Income from Copyrightable Works

All monetary proceeds from commercialization of copyrightable works, including royalties, equity interests, and dividends, are the property of TTUS component from which the work emerged. Income received from commercialization of copyrightable works will be distributed as follows:

- a. Institutional Works [see section 15.a.(2)]: TTUS shall be entitled to all income from distribution or commercialization of institutional works.
- b. Works Developed with Significant Use of Resources [see section 15.a.(3)] and commercialized by the OTTIP on behalf of TTUS: In cases where the OTTIP conducts the commercialization or distribution of the copyrightable work on behalf of TTUS, the distribution of income shall be made in accordance with steps outlined in section a. above.
- c. Works Developed with Significant Use of Resources [see section 15.a.(3)] and distributed by TTUS: In cases where TTUS conducts the commercialization or distribution of the copyrightable work, the distribution of net income after expenses of creation and distribution shall be as follows: fifty percent (50%) to TTUS and fifty percent (50%) to the author.

In the event of multiple authors, the authors will agree among themselves as to the distribution of the income accruing to the authors; distribution of the authors' share shall be made only upon receipt of a signed agreement between the authors. In the event that an author is a joint employee of two or more components, or in the event that authors represent two or more components, the components will agree as to the distribution of the income accruing to the components, considering such factors as annualized FTE by component and relative contributions of the authors to the work.

#### 19. **Equity and Other Non-monetary Returns**

TTUS may negotiate, but shall not be obligated to negotiate, for equity interests in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to Inventions or copyrightable works.

- a. Inventors and authors may receive up to fifty percent (50%) of any equity or other non-monetary consideration (or, in the discretion of TTUS, its monetary equivalent) received by TTUS or its components under this section. However, TTUS may choose to receive the consideration under terms that restrict its ability to sell, distribute, or otherwise deal with the equity interests. In such cases, any restrictions on the interests of TTUS shall be equally applicable to the interest of the inventor or author, unless waived or varied in writing and signed by the director of the OTTIP and the inventor (for inventions), or the authors (for copyrightable works).
- b. TTUS does not act as a fiduciary for any person concerning equity or other consideration received under the terms of this regulation.
- c. The division of net royalties and other income from patents and copyrights and marketing and licensing the technology managed by a patent or copyright agent will be controlled by TTUS agreement with such agent, as approved by the TTUS Board of Regents. Any deviation from this rule requires the prior approval of the TTUS Board of Regents.

#### 20. **Equity Ownership**

This policy allows equity ownership and business participation by TTUS faculty, staff, and students consistent with state law as presently stated in *Texas Education Code* 51.912 or any other future statutory provision relating to the subject matter of this intellectual property policy.

#### 21. **Trademarks**

In most situations, a trademark identifies an item of intellectual property, such as a computer program or a plant variety. In other situations, a trademark identifies an educational, service, public relations, research, or training program of TTUS or its components. TTUS, or the applicable TTUS component, owns all right, title and interest in trademarks related to an item of intellectual property owned by TTUS or its components, or to a program of education, service, public relations, research, or training program of TTUS or its components. All income from the licensing of a trademark shall belong to TTUS, or the TTUS component, as applicable.

#### 22. **Tangible Research Property**

- a. TTUS owns all right, title and interest in tangible research property related to an individual's employment responsibilities and/or developed with support from TTUS-administered funds, facilities, equipment, or personnel.

- b. For purposes of management of the asset, tangible research property shall be managed as an Invention under sections 11, 12, and 13, with distribution of income from the distribution or commercialization of such tangible research property made in accordance with section 17.

### **23. Provisions for Release of Rights to Inventors and Authors**

Absent a contractual obligation to a research sponsor, TTUS may release to the inventor(s) its rights to an invention, and TTUS may release its rights to a copyrightable work, with the following provisions.

- a. TTUS shall retain for TTUS and all components thereof a perpetual, royalty-free license to use the invention or copyrightable work, and any corresponding patents or copyrights, for research, education, and service purposes.
- b. TTUS shall receive a share of all proceeds generated from commercialization of the invention or copyrightable work after the inventor or author has recovered documented out-of-pocket costs for obtaining legal protection for the invention or copyrightable work, the amount of such share to be negotiated at the time of the release. Should the OTTIP and the inventor or creator be unable to agree, the matter shall be finally resolved by the chancellor or his or her designee.
- c. In the case of release of rights to the inventor or author, the inventor or author shall not be entitled to a share of proceeds received by TTUS under section b above.

### **24. Offers of Intellectual Property**

- a. If an individual chooses to offer to TTUS certain intellectual property in which TTUS has no claim, TTUS may accept ownership of the intellectual property provided that:
  - (1) The individual makes the offer to TTUS as if the intellectual property had been created within TTUS;
  - (2) The individual agrees to all provisions (including distribution of income provisions) of this policy;
  - (3) The individual warrants that he or she owns all right, title and interest to the intellectual property, and that to the best of his or her knowledge, the intellectual property does not infringe upon any existing copyright or other legal rights.
- b. The OTTIP will decide whether to accept or reject such offers.
- c. Should TTUS agree to accept the offer of intellectual property, the individual will execute an assignment agreement transferring all right, title, and interest in the intellectual property to TTUS, and acknowledging that the individual agrees to all provisions of this policy, such agreement available from the OTTIP. In cases in which the individual has already expended funds toward obtaining patent or other legal protection for the invention, the individual and TTUS may negotiate terms to allow recovery of legal and/or patent expenses from license fees and/or royalty income. Such an agreement would modify normal royalty sharing provisions until such expenses are recovered by the party entitled to recovery of the expenses.
- d. TTUS may accept charitable donations of intellectual property from governmental or private organizations. Upon the transfer of title in the intellectual property to TTUS, the intellectual property will be managed in accordance with this regulation.

## 25. Grievance Procedure

### a. Foreword

The university operates under a philosophy that emphasizes the importance of ensuring the rights of its faculty. Both personnel and operating policies are formulated in order to assist administrators and faculty in working harmoniously toward the collective goals and objectives set forth by the Board of Regents. When a situation arises that results in a grievance by an individual faculty member, efforts will be made to determine the facts surrounding that grievance and to respond appropriately and justly.

The purpose of these procedures is to address grievances of faculty members related to the actions or decisions of the director of Technology Transfer and Intellectual Property ("director") and to provide a mechanism for resolving them.

Whenever possible, problems should be solved at the administrative level at which they arise. However, each member of the Texas Tech University faculty shall have the right to a hearing and an appeal for redress of grievance through established channels. Access to these channels is restricted to university employees or those who were employees when the action or inaction leading to the grievance occurred.

In conformance with Article 5154C, Sec. 6, *Vernon's Annotated Civil Statutes*, a faculty member has the right to present grievances individually or through a representative who does not claim the right to strike.

A faculty member holding an administrative position will have access to these procedures with regard to faculty duties, but will not have access to the procedures with regard to administrative duties.

After the grievance is presented, the time periods for action prescribed in these procedures should be followed unless reasonable extension is required by unusual circumstances or because a deadline occurs between semesters or in summer, when relevant persons are away for extended periods. In the absence of the foregoing conditions, times for action should be extended only for university holidays or by mutual agreement of the parties and, in an appeal, with concurrence of the Grievance Committee.

### b. Grievance Initiation and Hearing

- (1) The grievant will present a written description of the grievance and proposed resolution to the director. The grievance will be presented within 21 calendar days after the grievant becomes aware of the action constituting the grievance. The grievant and director will meet within 21 calendar days of receipt by the director, and the director's written decision on the grievance will be provided to the grievant within ten calendar days after the meeting is concluded. If the decision is not acceptable, or if the director does not render a written decision within ten calendar days, the grievant may appeal following the procedures below.
- (2) The grievant or the director may request mediation of the grievance within ten calendar days of receipt by the director. If both parties agree, a person acceptable to both parties will mediate the grievance. If the parties are unable to agree upon a mediator within ten calendar days of the agreement to mediate, the chancellor or his delegate will select a mediator qualified under section 154.052 of the *Texas Civil Practice and Remedies*

*Code.* The grievance will be presented for mediation within 21 calendar days after the mediator has been selected.

If mediation fails to resolve the grievance, the administrator will provide a written decision to the grievant within ten calendar days after the mediation is concluded. If the decision is not acceptable to the grievant, the grievant may appeal as set out below.

**c. Appeal to the Chancellor**

- (1) The appeal procedure is initiated by the grievant providing a written request to the chancellor asking that the decision of the administrator be reviewed. The grievant will provide copies of the original grievance, written decisions, and a proposed resolution to the chancellor. The appeal will be filed within 15 calendar days of the grievant's receipt, or lack thereof, of the written administrative decision to which the grievant objects.
- (2) The chancellor will solicit a recommendation that will resolve the grievance from a Grievance Committee composed of five persons, which will be chosen within 15 calendar days of receipt of the appeal by the chancellor.

If the grievant is a member of the faculty of TTU, the Texas Tech University Faculty Senate shall select 12 members of the faculty whose names shall form the pool from which the Grievance Committee is formed. Members will be chosen by lot from the pool by the president of TTU or his or her representative.

If the grievant is a member of the faculty of a school of TTUHSC, the faculty of each school of the Health Sciences Center shall select three members whose names shall form the pool from which the Grievance Committee is formed. Members will be chosen by lot from the pool by the President of TTUHSC or his representative.

If the grievant is a member of the TTU staff, the Texas Tech University Staff Senate shall select 12 members of the staff whose names shall form the pool from which the Grievance Committee is formed. Members will be chosen by lot from the pool by the president of TTU or his or her representative.

If the grievant is employed by or affiliated with TTU in a capacity other than as a staff member or faculty member, the Grievance Committee membership shall be selected according to the process for selection in the case of a faculty member of TTU.

If the grievant is employed by or affiliated with TTUHSC in a capacity other than as a faculty member, the Grievance Committee membership shall be selected according to the process for selection in the case of a faculty member of TTUHSC.

Persons drawn for service on the committee will be allowed to present reasons to the chancellor why a recusal should be granted. After these determinations are made, the names of the remaining individuals will be presented to the parties. Each party to the dispute may challenge not more than two persons selected for the committee. After challenges by all parties, the first five names will comprise the Grievance Committee. The chancellor or his or her representative will then convene the committee, give the committee its charge, assist the committee in identifying the parties to be involved in the process, provide it with guidelines to afford the parties due process, and a copy of the grievance and all supporting documentation to each committee member.

- (3) At the request of the Grievance Committee, the chancellor may appoint a faculty member with expertise in intellectual property to serve as a nonvoting facilitator to provide the Grievance Committee with background information only.

**d. Grievance Committee Hearing**

- (1) Upon receipt of a request from the chancellor, the Grievance Committee will schedule a hearing. This hearing must be held within 21 calendar days after receipt of the request from the president. The Grievance Committee will elect its own chairperson. The chairperson's notice scheduling a time and place for the hearing must be delivered to the parties involved seven calendar days prior to the hearing. These time limits are guidelines and may be changed for University holidays and by mutual written agreement of the Grievance Committee and the parties to the grievance.
- (2) The formal hearing will be conducted in accordance with procedures established by the Grievance Committee. The grievant or the grievant's representative(s) or counsel will present the grievant's case. The grievant has the right to present information, written or oral, considered relevant or material to the grievance, including the calling of witnesses. This information may be presented in written or oral form.

After the presentation by the grievant, the director's case will be presented under the same rules as those that were applied for the grievant. The director may be represented in the process as well. The Grievance Committee may call witnesses, as it considers appropriate. The grievant and the director may question all witnesses.

- (3) Evidence considered in the hearing must relate to the grievance. After all evidence is received, the Grievance Committee will meet and consider the case. The opinion held by the majority of the members will constitute the committee's recommendations. The committee must provide its recommendations in writing to the chancellor, with copies to the parties to the grievance, within 15 calendar days after the hearing is concluded. Minority opinions of the committee may also be submitted to the chancellor. Recommendations to the chancellor are advisory in nature.
- (4) If the Grievance Committee has requested and the chancellor has appointed a nonvoting faculty member facilitator as permitted by section 25.c.(3), the faculty member facilitator may attend the hearing at the request of the committee. The faculty member facilitator shall not be permitted to be present during the committee's deliberations.

**e. Chancellor's Decision**

The chancellor will send a written decision, with copies to the Grievance Committee and parties to the grievance, within 15 calendar days of receipt of the Grievance Committee's recommendations. The chancellor's decision is the final decision on the grievance. No further appeal is allowed.

**f. Resolution by the Parties**

The parties may agree to a resolution of the grievance at any time from initiation of the grievance procedures until the chancellor's final decision.

*Addendum: Creation, Use, Ownership, Royalties, Revision, and Distribution of Distance Learning Course Materials*