

Chapter 10 -- Intellectual Property Rights ~~03/17/2015~~, 7/15/2015

10.01 Statement of basic philosophy and objectives.

- 10.01.1 Intellectual property is a valued aspect of scholarship (e.g. teaching, inquiry-driven learning, research). Further, research is a core element of new knowledge generation, discovery, and public benefit.

Research is part of the core mission of faculty and as such is central in the evaluation of faculty for tenure and promotion. Accordingly, the creation of intellectual property is one form of scholarship faculty can point to in their applications for tenure and promotion. This rule of the Texas Tech University System (TTUS) as defined in Rule 00.01.6 is intended to adhere to cherished principles that enhance academic freedom of discovery, while providing a clear pathway to pursue commercialization for those faculty members interested in this aspect of scholarship. The purpose of the policy is to outline the respective rights and responsibilities that members of the faculty, staff, and students have in intellectual materials created while they are affiliated with TTUS.

- 10.01.2 This policy anticipates that the scholarly efforts of TTUS, faculty, staff, and students may result in intellectual property that is potentially marketable and benefits humanity.
- 10.01.3 A good faith partnership between the creator(s) and TTUS is essential. Therefore, in the development and disposition of their creations, the Creator(s) wishes will be respected to the degree consistent with other priorities expressed in this Policy.
- 10.01.4 It is the policy of the board to encourage scholarly activity without regard to potential gains from royalties and other forms of income. It is further

Shannan Carl 5/21/15 3:20 PM

Formatted: Strikethrough

Debbie Aguirre 3/17/15 8:39 AM

Deleted: 3

Shannan Carl 3/13/15 2:53 PM

Deleted: 8/13/14

Debbie Aguirre 7/15/15 2:18 PM

Deleted: 05/21/2015

board policy, however, that, to the extent and to the degree described in this policy, intellectual property owned by TTUS which has commercial value should be appropriately exploited to further the mission of TTUS. In all cases, however, the property rights of the affected individuals or entities may be subject to individual or TTUS entity obligations under grants, contracts, or research agreements with governmental agencies, individuals, and non-governmental entities.

- 10.01.5 The Office of Research Commercialization of Texas Tech University (the “ORC”) or any successor office thereof and its Director (the “ORC Director”) is charged with the responsibility of implementing and executing the board policy with respect to commercialization of intellectual property.

Debbie Aguirre 3/17/15 8:28 AM

Deleted: and

Debbie Aguirre 3/17/15 8:29 AM

Deleted: Vice Chancellor

Debbie Aguirre 3/17/15 8:29 AM

Deleted: Vice Chancellor

- 10.01.6 This revision of Chapter 10 of the Regents’ Rules shall replace the prior revision of Chapter 10 edited 12/12/2008. This revision shall become effective immediately upon approval by the Board of Regents of the Texas Tech University System.

10.02 Definitions. For the purposes of this policy, the following terms are defined as follows:

- 10.02.1 “Commercialization.” The process of producing revenue by licensing intellectual property or assigning ownership of the intellectual property to a commercial party for the purpose of developing it into a commercial product or service.
- 10.02.2 “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, including but not limited to, books, journals, software, computer programs, musical works, dramatic works,

videos, multimedia products, sound recordings, and pictorial and graphical works. A copyrightable work may be the product of a single author or a group of authors who have collaborated on a project.

10.02.3 “Creator.” A creator is an individual or group of individuals or entity or group of entities subject to this policy who invent(s), develop(s), or author(s) intellectual property as defined below.

10.02.4 “Covered Person.” Any person employed by TTUS or any of its component institutions, all undergraduate and graduate students of any TTUS component institution, and any person using TTUS resources or under the supervision of TTUS personnel. Without any intent to limit the scope of persons included, this definition also includes adjunct and visiting faculty as well as persons pursuing post-doctoral fellowships. The term also includes undergraduate or graduate students of any TTUS component institution either employed by such institution to assist in research or engaging in research under the direction and supervision of faculty.

10.02.5 *Distance Learning: Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A class is considered a distance education class if students receive more than one-half of the instruction at a distance. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s):*

- (1) *Other than the “main campus” of a senior institution (or “on-campus”), where the primary office of the chief executive officers of the campus is located; and*
- (2) *Via instructional telecommunications to any other distance location, including electronic delivery of all types. *Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter 3, Rule §4.103*

10.02.5 “Intellectual property”. Collectively, all forms of patented and unpatented inventions, tangible research property, copyrightable works, copyrights, trademarks, and trade secrets. The term also includes copyrightable or copyrighted works which are system or component manuals or such

Shannan Carl 3/13/15 2:46 PM

Formatted: Indent: Left: 0.2", Hanging: 0.8", Right: 0.12", No bullets or

Shannan Carl 3/13/15 2:47 PM

Formatted: Font: 11.5 pt

materials or works, such as software, which may be a part of or embedded in a larger comprehensive design, system or device.

10.02.6 “Invention.” A process, method, discovery, device, plant, composition of matter, software, or other invention that reasonably appears to qualify for protection under United States patent law, Chip Design Protection law or plant protection schemes, whether or not actually patentable. An invention may be the product of a single creator or a group of creators who have collaborated on a project.

10.02.7 “Office of Research and Commercialization” or “ORC.” The administrative mission of the TTUS Office of Research and Commercialization is to promote the transfer of TTUS technologies for society's use and benefit while generating income to support TTUS research and education. The ORC is responsible for administration and implementation of the TTUS intellectual property program, assisting and advising TTUS faculty, staff, and students with regard to matters covered by this policy and providing leadership and support through public and private sector engagement.

10.02.8 “ORC Director,” refers to the Director, Office of Research Commercialization in the Office of the Vice President of Research, Texas Tech University.

10.02.9 “Software.” In this policy the term “software” is used in its broad sense to refer to any computer program that may be copyrightable or patentable.

10.02.10 “Tangible research property.” Tangible items produced in the course of research including but not limited to 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

Debbie Aguirre 3/17/15 8:30 AM

Deleted: vice chancellor

Debbie Aguirre 3/17/15 8:30 AM

Deleted: means the TTUS vice chancellor for the Office of Research and Commercialization

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 or entities who have collaborated on a project.

- 10.02.11 “Trademark” (including “service mark”). A distinctive word, design, or graphic symbol, or combination word, design, or graphic symbol that distinguishes and identifies the goods and services of one party from those of another, such as names or symbols used in conjunction with [products, services, programs](#), plant varieties or computer programs.
- 10.02.12 “Trade Secrets” means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.
- 10.02.13 “TTUS Resources” means TTUS funds [including without limitation, funds derived from outside grants, contributions and research contracts](#), supplies, facilities, computer systems (hardware and software), space, tangible and intangible property, and personnel, except that, where used herein, the term “use of TTUS resources” is not intended to apply to the incidental use of such resources.
- 10.02.14 “Work made for hire.” A work specially ordered or commissioned by TTUS for use as an institutional document or a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas. The term also includes software, computer programs or written instructions, protocols or training aids created by TTUS employees as a regular part of their duties. [For faculty, works for hire are works derived from defined tasks that fall outside the normal teaching and research mission](#)

of the university. Work that occurs within the normal scope of academic employment in the teaching and research mission of the university may be “work for hire” when accomplished pursuant to written directive and agreement.

10.03 Ownership.

- 10.03.1 Except as may be specifically provided in research agreements sponsored by third parties, and except as provided in section 10.03.3 below, intellectual property or tangible research property created by covered persons with the use of TTUS resources or during the course of covered persons’ University responsibilities is automatically owned by TTUS. All covered persons must, and do hereby, assign their rights in such intellectual property to TTUS. Intellectual property that is developed on a covered person’s own time without TTUS support or use of TTUS resources ~~and unrelated to the person’s field of expertise~~ is not owned by TTUS. 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), a state agency or a nonprofit or for-profit non-governmental entity, an individual, or by a private gift or grant to TTUS shall be determined in accordance with the terms of the sponsored grant, contract, or gift agreement, or, in the absence of such terms, shall be owned by TTUS.
- 10.03.2 Consulting Activities. TTUS encourages external faculty consulting as an effective mechanism for professional development and/or establishing good relationships with industry. However, a consulting agreement between a Creator and a potential user, assignee or licensee of intellectual property developed by the Creator creates an inherent conflict of interest. Any Creator who is a party to such a consulting agreement must fully disclose the existence and terms of such agreement to the Creator’s

Shannan Carl 5/21/15 3:26 PM
Formatted: Font color: Custom
Color(0,176,80)), Strikethrough

immediate supervisor and, with respect to intellectual property disclosed to the ORC, such disclosure to the ORC must include full disclosure of such conflict. Before entering into a consulting agreement, the TTUS employee must ensure that rights to intellectual property owned by TTUS are not compromised or lost as a result of the consulting activities. Further, consulting activities must not violate TTUS rules, regulations or policies or violate federal or state law.

10.03.3 Ownership of copyrightable works. TTUS encourages the preparation and publication of copyrightable works that result from teaching, research, and scholarly and artistic endeavors by members of the faculty, staff and student body of TTUS. TTUS recognizes its employees' freedom with respect to their copyrightable works, consistent with the employees' obligations to TTUS. Copyrightable works may be created under a variety of circumstances that impact the ownership and subsequent management thereof, as follows:

- a. Books, articles and similar works. In keeping with academic tradition, and except to the extent required by the terms of any valid 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 syllabi, textbooks, course materials, course lectures and refereed literature. Such works include those of students created in the course of their education, such as dissertations, papers and journal articles. However, all faculty-prepared pedagogical, scholarly or artistic works are subject to, and TTUS does hereby retain, a non-exclusive right to utilize such works for student instructional purposes. Furthermore, TTUS claims no ownership in popular non-fiction; novels, poems, musical compositions or other works of artistic imagination that are not work made for hire. If title to copyright in works defined within this section vests in TTUS by law, TTUS will, upon request and to the

extent allowed by law, convey copyright to the creators of such copyrightable works.

- b. Further, 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.
- c. TTUS reserves the right to record faculty lectures and to allow students registered for the class for which the lecture was given to view recorded lectures that may be posted online.
- d. Work made for hire. Except as provided in 10.03.3(a) above, TTUS shall retain ownership of all copyrightable works made for hire.
- e. Works developed with use of TTUS resources:
 - (1) Except as stated above in paragraph 10.03.3(a), copyrightable works that are not work made for hire but are works that are developed with use of TTUS resources shall be owned by TTUS and shall be disclosed to the ORC. In the case of a disagreement as to whether a work fits into this section the Provost of the applicable TTUS component institution shall make a determination.
 - (2) Copyrightable works that are not work made for hire (see Section 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), a state agency or a non-profit or for-profit non-governmental entity, an individual, or by a private gift or grant to TTUS, shall be determined in accordance with the terms of the sponsored

grant, contract, or gift agreement, or, in the absence of such terms and to the extent consistent with copyright law, shall be owned by TTUS.

f. Distance learning course content generally will be treated as traditional course content as described in subsection 15(a)(1), above. However, such content and materials may be “work for hire” if developed as such (see definition.) With respect to all distance learning course content, whether work for hire or not, TTU automatically retains payment-free license for use of all or part of such content for use in its ongoing teaching and research mission. In the case of distance learning course content which is work for hire, such license shall be exclusive unless otherwise agreed in writing.

g. Copyrightable works not owned by TTUS. Creators 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. Copyrightable works to which TTUS has no ownership rights (see foregoing Section 10.04.3 where conditions for TTUS ownership are defined) may still be submitted for publication and published by TTUS. Upon TTUS publication acceptance, the independent creator shall transfer copyright of the work by contract to the specific TTUS publication. The ORC shall maintain a record of all executed transfer agreements. A transfer agreement obtained from the ORC shall be executed by the ORC Director and maintained in the ORC.

Shannan Carl 3/13/15 2:51 PM

Deleted: d

Debbie Aguirre 7/15/15 2:33 PM

Deleted: vice chancellor

10.04 **Research involving third party.** In research sponsored by or involving third parties, provisions for the control of and compensation for intellectual property must be consistent with this policy. However, nothing in this policy shall preclude acceptance of a contract, grant or agreement that provides for ownership of intellectual property

by the third-party sponsor under appropriate terms, including adequate compensation to TTUS.

10.04.1 The ORC, 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 United States Government under 37 CFR Part 401.

10.04.2 The ORC ~~Director~~ shall approve all sponsored research agreements that provide for the ownership of TTUS developed intellectual property by a sponsoring party.

10.04.3 This policy is written acknowledging that some research conducted by TTUS may be funded in part or in whole by the United States government and that ownership of intellectual property derived therefrom is governed by federal statute and regulation. To the extent that such statutes and regulations allow for transfer of ownership of such intellectual property back to the respective university or creator, in cases in which disclosures have been made to the ORC, the ORC in cooperation with the respective Office of Research Services will assist in making applications for transfer of ownership.

10.05 **Disclosure of intellectual property.** Except for the exclusions identified for certain copyrightable works in section 10.03.3, above, all intellectual property created by covered persons, including intellectual property developed through sponsored research agreements and consulting contracts, shall be promptly disclosed to the ORC by the creator(s) and an Assignment of Rights form shall be executed. Disclosure and Assignment shall be made on a form prescribed by and available from the ORC. Creators shall cooperate with TTUS and the ORC in protecting intellectual property rights in the invention.

Debbie Aguirre 3/17/15 8:31 AM

Deleted: vice chancellor

10.06 **Offers to assign external intellectual property to TTUS.** If an individual or entity chooses to offer to TTUS certain intellectual property in which TTUS has no claim, TTUS may accept an ownership or other interest in the intellectual property subject to Regents' Rules Ch. 6 provisions concerning gift acceptance, if the offer is intended to be a gift, provided that:

10.06.1 The offeror agrees to all provisions (including distribution of income provisions) of this policy;

10.06.2 The offeror warrants that it owns all right, title and interest to the intellectual property, and that to the best of its knowledge, neither the intellectual property nor its transfer infringes upon any existing copyright or other legal rights.

10.06.3 The ORC will decide whether to accept or reject such offers.

10.06.4 Should TTUS agree to accept the offer of intellectual property, the individual or entity will execute an ORC assignment agreement transferring all right, title, and interest or other agreed rights in the intellectual property to TTUS, and acknowledging that the individual or entity agrees to all provisions of this policy. In cases in which the individual or entity has already expended funds toward obtaining patent or other legal protection for the invention, the individual or entity and TTUS may negotiate terms to allow recovery of legal and/or patent expenses from license fees, royalty, and other income. Such an agreement shall modify normal revenue sharing provisions until such expenses are recovered by the party entitled to recovery of the expenses. The portion of net revenue that is allocated to a department or unit under Section 10.10.2 shall be retained by the ORC. Further, to the extent such intellectual property is subject to ownership by the United States government, but is

subject to release pursuant to federal law, the ORC shall assist in obtaining such release. (See paragraph 10.04.3, above.)

10.07 Acquisitions of Intellectual Property in connection with New Faculty Employment. To the extent that a TTUS component institution proposes to provide separate compensation to a proposed new faculty or research hiree or the hiree's prior institution (s) for Intellectual Property owned by the hiree or another institution, the TTUS component institution shall advise the ORC of the nature, value and patent status of such Intellectual Property at the time of employment.

10.08 **Assessments by the ORC.** The ORC shall make assessments as to: the potential value of the intellectual property to TTUS; the rights and equities of the creator, TTUS and any third parties; and the required actions to maximize the benefits of any intellectual property to the public, TTUS, and the creator. Once an invention disclosure has been made to the ORC, the ORC shall respond to the creator(s) in writing within 90 calendar days of the date of disclosure of its desire to pursue commercial development of the intellectual property. The ORC is also hereby delegated the authority to waive TTUS rights in intellectual property in the exercise of its sound discretion. If the ORC decides not to pursue commercial development, it shall also notify the creator(s) in writing and upon written request from the creator(s) shall release ownership rights as provided in Section 10.08.1.

10.08.1 Provisions for release of rights to creators. Absent a contractual obligation to a research sponsor or contracting party, TTUS may release its intellectual property ownership rights to a creator by written agreement, 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.

Debbie Aguirre 7/15/15 2:27 PM

Deleted:

Shannan Carl 3/13/15 2:52 PM

Deleted: 7

- b. TTUS shall retain the right to a specified share of net revenue [not to exceed 5%] generated from commercialization of the released invention or copyrightable work after the creator 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. In the event that, prior to release by TTU, the university has incurred out of pocket costs with outside parties to analyze or seek legal protection for the released invention or copyrightable work, the written agreement must provide for reimbursement of such costs to TTU either by payment at the time of release or by agreement for TTU to retain a revenue percentage in excess of 5%. Should the ORC and the creator be unable to agree on the terms of the release, the matter shall be finally resolved using the process outlined in Section 10.13 of this policy.

- c. In the case of release of rights to the creator, the creator shall not be entitled to a share of proceeds received by TTUS under Section 10.10.

10.09 **Reasonable Cooperation.** With respect to intellectual property that the ORC has elected to develop, Creators shall cooperate with the ORC and assist the ORC in its development efforts. In addition, Creators shall sign such assignments, license or other documents as may be reasonably necessary to actively develop the commercial potential of the intellectual property. TTUS, in any development, assignment or licensing agreement it may make, shall, to the maximum extent possible, protect the creator's right to continue to conduct basic and tangential research and publish such research. The creator understands that any publication of the invention that they elect to make prior to securing intellectual property may limit TTUS from obtaining intellectual property protection through the United States Patent and Trademark Office and through foreign patent agencies as well. The creator will not hold TTUS liable for any loss of IP associated with publication of the invention.

Shannan Carl 6/16/15 3:19 PM

Deleted: 20%

10.10 **Implementation of Licensing Agreements.** The ORC shall execute license agreements using a prescribed license agreement template that has been approved by the TTUS Office of General Counsel. In addition, the following guidelines apply to license agreements including entities formed primarily for the purpose of developing and/or commercializing intellectual property created at TTUS, subject, however, to the terms of any sponsored research agreements or other contracts which may have led to the creation of such intellectual property. Grants of rights of first option must be negotiated on a case-by-case basis.

10.10.1 The ORC Director is authorized to negotiate and execute non-disclosure agreements, license agreements, assignments, material transfer agreements, copyright transfer agreements, and releases in accordance with TTUS rules, policies, and regulations, including this Regents' Rule, and shall consult with the chancellor and the appropriate VP for Research or other appropriate component officer and the Office of General Counsel when extraordinary factors are part of the agreement being negotiated. The ORC shall maintain records of all agreements executed by the ORC Director.

Debbie Aguirre 3/17/15 8:31 AM

Deleted: vice chancellor

10.10.2 An individual or 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 pursuing a patent and, if a patent has not been obtained, must be required to prosecute and bear the expense of obtaining patent protection for the benefit of TTUS and, in either event, the individual or entity should be required to take all actions necessary, including reasonable litigation, to protect and preserve such patented rights from infringement.

Debbie Aguirre 7/15/15 2:27 PM

Deleted: vice chancellor

10.10.3 An individual or entity may be granted a right of first option for the development and commercialization of intellectual property created at

TTUS. Such agreements may only grant rights on a specific-project basis, and shall be subject to the following restrictions:

- a. Any grant of a right of first option may only be authorized by the vice president for research with approval by the ORC Director.
- b. The right must exclude work where the underlying research has or will be sponsored by another party and such a right is granted as a condition for such sponsorship.
- c. The right must have limited duration to allow for assessment of relationship and relative effectiveness in moving technologies to market.

Debbie Aguirre 7/15/15 2:28 PM

Deleted: vice chancellor

10.10.4 Equity and other non-monetary returns. TTUS may negotiate, but shall not be obligated to negotiate, for equity interests and other non-monetary returns (“equity and other consideration”) in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to intellectual property. Revenue from equity interests shall be distributed, upon payment, in accordance with Section 10. 12.

- a. TTUS may receive equity and other consideration under terms that restrict its ability to sell, distribute or otherwise deal with that consideration. In such cases, any restrictions on TTUS’ interest shall be equally applicable to the interest of the creator, unless waived or varied in writing and signed by the ORC Director and the creator.
- b. After notice to a creator’s academic supervisor, and subject to any relevant policies, TTUS may enter into agreements with creators for ownership of equity interests by creators to the extent authorized by

Debbie Aguirre 7/15/15 2:29 PM

Deleted: vice chancellor

Section 51.912, *Texas Education Code*, as that Section may be amended from time to time.

- c. TTUS does not act as a fiduciary agent or provide legal advice for any person concerning equity or other consideration received under the terms of this policy.

10.11 No agreement by TTUS may provide, and no agreement may be deemed to imply, any restriction on future research, development or improvements by TTUS of any intellectual property, product or process which is the subject of such agreement. Further, no such agreement shall be deemed to create a conflict of interest which in any way, will preclude future development of any intellectual property by TTUS.

10.12 **Distribution of revenue from license agreements and assignments.**

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

10.12.2 The following provisions will govern the distribution of royalties and other income for TTUS owned intellectual property, including but not limited to license fees, prepaid royalties, minimum royalties, running royalties, milestone payments, and sublicense payments ("revenue"), after TTUS has recouped all costs associated with the processing of the patent or copyright application and marketing and licensing the technology and any litigation costs that may be associated with the intellectual property ("net revenue"):

Distribution of Net Revenue and other Income

<i>Creator(s)</i>	<i>OCR</i>	<i>University</i>	<i>Department*</i>	<i>Unit**</i>
40%	30%	10%	10%	10%

*Department, center, or institute

** College or School

- 10.12.3 For intellectual property that is not owned by TTUS but voluntarily offered to TTUS where ownership has been assigned to TTUS for the purpose of commercialization, creator(s) shall be entitled to 60% of all royalties and all other income received after the deduction of directly assignable costs including patenting, marketing, licensing and protection of intellectual property. The remaining 40% of proceeds shall be distributed as may be agreed by the officers of the relevant University, Department and Unit. Otherwise, the remaining 40%, shall be distributed 10% to the OCR and 10% each to the relevant University, Department and Unit.
- 10.12.4 Under extraordinary circumstances, the distribution of revenues from license agreements and assignments may be changed with the written approval of the president of the respective institution.
- 10.12.5 Net revenue is to be paid according to the above schedules as the net revenue is received; taking into account previously paid distributions. 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 which is approved by the board. If a covered person entitled to net revenue is no longer employed by TTUS or a component institution, payments will be made in accordance with TTUS accounts payable rules. If a covered person entitled to net revenue dies while still employed by TTUS or a component institution, payments will be made in accordance with TTUS payroll rules concerning the death of an

employee. No amount or value of any distribution made to a creator under this policy shall be considered as compensation for purposes of calculation of benefits which the creator otherwise receives under any benefit plan provided by TTUS or the State of Texas.

10.12.6

10.12.7 If TTUS receives revenue as a result of settlement or litigation related to the enforcement of TTUS' rights in intellectual property, such revenue will be first used to reimburse TTUS for expenses related to such actions. The creators are entitled to a portion of the remaining net revenue according to the distribution formulas outlined in this section.

10.128 In the event of multiple creators, the creators must reach an agreement as to the allocation of their distribution percentage consistent with the terms of this policy. Such final determination of each creator's share shall be made by written agreement signed by all parties and filed with the ORC. In the event that creators can't agree as to the allocation percentage, the ORC may apply equal distribution among the creators.

10.12.9 This policy 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.

- a. In such instances, because of the many different combinations that may occur, this policy does not specifically provide how net revenue is to be allocated. It is, however, the general policy of Intellectual Property Rights, Chapter 10 of the *Regents' Rules*, to allocate net revenue to the units that have provided the substantial level of support that triggers TTUS' 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 net revenue that is appropriate for each unit). If no agreement can be reached prior to the generation of net revenue, the president(s) of the applicable institution(s) will resolve the allocation issue.

- b. The division of net revenue from patents and copyrights managed by a patent or copyright agent will be controlled by TTUS' agreement with such agent, as approved by the board. Any deviation from this rule requires the prior approval of the board.

10.13 Distribution of revenue from commercialization of copyrightable works.

10.13.1 Net revenue from commercialization of copyrightable works is the property of the TTUS component from which the work emerged. Net revenue received from commercialization of copyrightable works will be distributed as follows:

- a. Works made for hire: The TTUS component institution funding the work made for hire shall be entitled to all net revenue from distribution or commercialization of works made for hire.
- b. In cases where the TTUS unit conducts the commercialization or distribution of the copyrightable work, the distribution of net revenue after expenses of creation and distribution shall be as follows: 50% to the TTUS unit and 50% to the creator. In the event of multiple creators, the creators will agree among themselves as to the distribution of the net revenue.
- c. Works developed with use of TTUS resources: In cases where the ORC conducts the commercialization or distribution of the copyrightable work on behalf of TTUS, the distribution of net

revenue shall be made in accordance with steps outlined in Section 10.10.2 ?

10.14 **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, training, or athletic program of TTUS or its components. Except to the extent the trademark is licensed to a third party, 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 to a program of education, service, public relations, research, training program or athletic program of TTUS or its components. All income from the licensing of a TTUS trademark not licensed to a third party shall belong to TTUS, or the TTUS component, as applicable.

10.15 **Complaint procedure.**

10.15.1 The purpose of these procedures is to address complaints of covered persons related to the actions or decisions made in accordance with this policy and to provide a mechanism for resolving them. Complaints regarding intellectual property shall be administered by the ORC as set forth herein.

- a. Any covered person shall have the right to a hearing for redress of complaints through established channels.
- b. After the complaint is presented to the ORC Director, the time periods for action prescribed in these procedures are guidelines only, but should be followed unless a request for extension is granted for good cause by the vice president for research of the applicable institution. In granting extensions, the ORC may give consideration to any extension agreements made by the parties.

Debbie Aguirre 3/17/15 8:32 AM

Deleted: OCR

Debbie Aguirre 3/17/15 8:32 AM

Deleted: vice chancellor

10.15.2 The complainant will present a written description of the complaint, with appropriate supporting documentation, and a proposed resolution to the ORC Director within 14 calendar days after the complainant becomes aware of the action constituting the complaint. The complainant and ORC Director will meet within 14 calendar days of receipt by the ORC Director and attempt resolution of the complaint. If resolution is not reached, the ORC Director's written decision will be provided to the complainant within 3 calendar days after the meeting. If the decision is not acceptable to the complainant, or if the ORC Director does not render a written decision within 3 calendar days, the complainant may proceed as set forth below.

Debbie Aguirre 3/17/15 8:32 AM

Deleted: vice chancellor

Debbie Aguirre 3/17/15 8:32 AM

Deleted: vice chancellor

Debbie Aguirre 3/17/15 8:32 AM

Deleted: vice chancellor

Debbie Aguirre 3/17/15 8:37 AM

Deleted: vice chancellor's

Debbie Aguirre 3/17/15 8:37 AM

Deleted: vice chancellor

10.15.3 Appeal to the president.

a. The appeal procedure is initiated by the complainant providing a written request to the president of the applicable component institution asking that the decision of the ORC Director be reviewed.

Debbie Aguirre 3/17/15 8:37 AM

Deleted: vice chancellor

(1) The complainant will provide copies of the original complaint, with appropriate supporting documentation, a copy of the written decision of the ORC Director and a proposed resolution.

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

(2) The appeal to the president shall be filed within 14 calendar days of the complainant's receipt of the written decision of the ORC Director, or, in the event the ORC Director fails to render a timely decision, then within 17 days of the meeting held pursuant to 10.13.2, above.

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

b. The president will consider all materials submitted and render a written decision to the ORC Director and the complainant, within 15

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

calendar days of receipt of the written request. The decision of the president is final.

- c. The ORC Director and complainant may agree to a resolution of the complaint at any time from institution of the complaint until receipt of the president's decision.

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

10.16 Reports to the board.

- 10.16.1 At least once a year, coincidental with a regular board meeting, the ORC Director shall prepare for the chancellor and the board a report listing the titles and a brief description of each invention disclosure received since the last report, all license and assignment agreements entered into by the ORC, and the status of existing license and assignment agreements, including the distribution of revenues earned from such agreements.

Debbie Aguirre 3/17/15 8:38 AM

Deleted: vice chancellor

- 10.16.2 Board notification of employee participation in business entities. Any request by a TTUS employee to participate as an employee, officer or member of the board of directors of a business 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 reported to the chancellor by their respective institution and will be added as an informational item to the agenda of the Board of Regents.

- 10.16.3 Reports to the State of Texas. In compliance with Section 51.912, *Texas Education Code*, as that Section may be amended from time to time, the board 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, *Texas*

Education Code. The ORC ~~Director~~ will submit the report through the chancellor or his/her designee to the Office of the Board of Regents. The Office of the Board of Regents will obtain the signature of the chair and will transmit the report to the Governor's office and other required entities.

Debbie Aguirre 3/17/15 8:39 AM
Deleted: vice chancellor

DRAFT