

[Major revision –posted 8/2/16 (replaces 7/30/14 edition)]



TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

**OP 74.04: Intellectual Property Rights**

**DATE:** August 2, 2016

**PURPOSE:** This Texas Tech University (TTU) Operating Policy is intended to implement Chapter 10 of the Texas Tech University System (TTUS) *Regents' Rules*, Intellectual Property Rights. It is recognized that research and scholarship on the part of members of the faculty, staff, and students of the TTUS component institutions will result in inventions, biological materials and other proprietary materials, plants, manuscripts, patentable and non-patentable, computer software, copyrightable works, and trade secrets or other products, medical treatments, and devices that are potentially marketable.

While it is the policy of the Board of Regents (BOR) to encourage scholarly activity without regard to potential gains from royalties and other forms of income, it is also incumbent upon the BOR, administrators, and faculty to assure that TTUS will meet its obligation to serve the public interest in the management and commercialization of intellectual property when warranted. Further, TTUS policies governing patentable or copyrightable inventions, publications, or other marketable products should provide adequate recognition and incentives to sponsors, creators, and assignees. In all cases, however, the affected individuals are subject to their obligations and those of TTUS under grants, contracts, or research agreements with governmental and non-governmental agencies and sponsors.

**REVIEW:** This OP will be reviewed in July of even-numbered years by the director of the Office of Research Commercialization (ORC) and the vice president for research, with substantive revisions presented to the provost and senior vice president.

**POLICY/PROCEDURE**

**1. General Policy**

This intellectual property rights policy, as adopted, shall apply prospectively to all covered persons as that term is defined in Chapter 10, *Regents' Rules*. All employees, faculty, staff, and students of TTU are expected to be aware of university policies regarding such developments or discoveries protectable by copyright, patent, or contract, and agree 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 OP (posted 7/30/14).

As a public institution, TTU 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, TTU,

and, where applicable, the sponsoring or contracting funding source.

It is the intent of this policy to foster the traditional freedoms of the TTU faculty, staff, and students in matters of publication and invention, through a fair and reasonable balance of the equities among creators, sponsors, and TTU. 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 TTU.

## 2. Ownership of Discoveries and Creations

- a. Chapter 10, *Regents' Rules*, governs the degree to which TTU owns intellectual property and the exceptions thereto. The rule defines the terms “covered person” and “creator” to describe the individuals subject to the rule, “TTUS resources” to describe the TTU resources which may be relevant to an ownership determination, and the terms “intellectual property” and “work for hire” among other terms. In general, TTU will own “intellectual property,” including “tangible research property,” created by “covered persons” with the “use of TTUS resources” or “during the course of covered persons’ university responsibilities.” And, in general, intellectual property that is developed on a person’s own time without TTU support or “use of TTUS resources” is not owned by TTU. (See *Regents' Rules* Section 10.03.1). Further, Chapter 10, *Regents' Rules* provides broad exceptions of copyrightable material within the realm of traditional pedagogical, scholarly and artistic works produced by faculty. (See *Regents' Rules* Section 10.03.3.) Finally, the rule also provides that the terms provided by sponsored research agreements with respect to intellectual property created as a result of such funding will govern ownership of such intellectual property.
- b. Intellectual property created by a student who is not a covered person or is not created as a work for hire is owned by the student, and is not required to be disclosed to the ORC or assigned to TTUS. Ownership of a student’s copyrightable work is as set forth in *Regents' Rule* Section 10.03.3 and OP 74.04 Section 15. It is not possible to address every possible situation in which a student may create IP either alone or in collaboration with a third party; situations not covered below will be evaluated on a case-by-case basis using the principles described below.
  - (1) A student is a covered person ~~when they are employed by TTU, and:~~
    - (i) the student is employed by TTU, and then only to the extent the student’s TTU employment responsibilities relate to or resulted in the development of the intellectual property ~~relates to or is a direct result of said employment;~~
    - (ii) the student, in their role as an employee, used TTU resources to create the intellectual property and the use was not incidental or used TTU resources to create IP in collaboration with a third party; or
    - (iii) regardless of employment status, the student’s work developing the IP was under the supervision of TTUS personnel, including work assisting or engaging in faculty directed and supervised

**Commented [RMR1]:** It may be necessary to define resources further. A student that is acting in the role of a student, i.e., engaged in an academic course or exercise, has by their tuition payment gained access to TTU resources (faculty member). The question that needs to be considered is whether those resources have already been encumbered by the very fact that tuition has been paid.

This would not apply to students that are employed by the university and have access to those resources as a condition of their employment.

research, or in connection with a TTU sponsored research or similar agreement.

- (2) A student's use of TTU resources is incidental to the extent the use is permitted by the terms of the student's enrollment (e.g., the TTUS resources used are those that the student is permitted to use as a result of having paid tuition and fees) and is not in connection with activities that cause the student to be a covered person or creating a work for hire. Examples of incidental use of TTU resources include: the student's use of office; library; traditional desktop computers; and certain tools and equipment intended for use by enrolled students.
- (3) Students are not required to disclose to the ORC or assign to TTU intellectual property that is owned by the student.
- (4) Examples of situations in which a student owns intellectual property created by the student who is not a covered person or creating a work for hire include when the student creates intellectual property:
  - (i) as the result of work for TTU courses in which the student is enrolled unless the course project is based on intellectual property submitted by TTUS (e.g., when the ORC submits TTUS intellectual property for potential development in a course of study) or when the course project is based on intellectual property submitted by a third party (in which case ownership of the intellectual property will be by agreement of the student and the third party); or
  - (ii) during extracurricular activities, and, if TTU resources are used, that use is incidental (i.e., the student only uses TTU resources available to the student as a result of the student's enrollment, and for which the student has tuition and fees).
- (5) In the event that IP is created as a result of collaboration between a TTU student and a third party not affiliated with TTU, which involved the use of TTU resources, the IP will be owned as follows. In all cases, any background IP owned by the TTU student and the third party must be disclosed in writing to TTU prior to the use of TTU resources:
  - (i) **Third party not bound by IP policies of another institution of higher education or similar entity; and TTU is paid for use of resources:** If TTU resources have been or will be paid for under a contract or other agreement (e.g., through a membership at TTU's Innovation Hub at Research Park) with TTU, then IP ownership will be determined according to the terms of the contract or other agreement. Otherwise, IP will be owned by TTU
  - (ii) **Third party not bound by IP policies of another institution of higher education or similar entity; and TTU is not paid for use of resources:** IP will be owned by TTU.
  - (iii) **Third party is bound by IP policies of another institution of higher education or similar entity.** TTU and the other institution must enter into an interinstitutional agreement prior to the use of TTU resources.

**Commented [RMR2]:** This would only hold true if the student was a TTUS employee. If the TTUS personnel engaged the student as a consultant, rather than an employee, IP would be subject to the terms of such an agreement.

As this paragraph is preceded by "A student is a covered person when they are employed by TTU" (paragraph 2.b.1), student's that are not employees would be excluded.

It might be prudent to include "compensated consultant" or some similar phrase in paragraph 2.b.1.

For example: "A student is a covered person when they are employed by TTU, or they are compensated as a consultant, and:"

**Commented [RMR3]:** Should there be a clause that speaks to TTUS resources that are awarded to a third party (e.g., reference the Texas Tech Accelerator Program). In this situation, TTUS may or may not have ownership of IP already in existence. The contract with the third party includes the use of certain TTUS resources as part of the award. As the agreement now stands, TTUS has no claims on the IP or equity in the third party at the conclusion of the one year agreement.

**The agreement does provide a membership (un-paid) in the Innovation Hub. If the dues-paid membership cited in 2.B.5.i. above was amended to read simply membership, this issue might be covered.**

See next note.

**Commented [RMR4]:** This issue has been addressed by removing the restriction "dues-paid" from the previous paragraph, 5(i), above.

IP ownership will be determined according to the terms of the interinstitutional agreement or, in the absence of terms addressing IP ownership, will be jointly owned by TTU and the other institution.

- (6) In certain courses, students may be presented with the opportunity to participate in projects in which the ownership of resulting intellectual property must be assigned either to TTUS or to a sponsoring entity. Students will not be required to participate in activities requiring the assignment of their intellectual property and the student's grade will not be affected by the student's decision to participate or not participate in projects requiring their assignment of intellectual property. Students involved in such courses should be advised that the assignment of intellectual property is a legally binding agreement that will affect the student's property rights, and that the student has the right to seek independent legal advice at their own expense. Example language of the Assignment of Rights is provided on the attached form.

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

Agreements for 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 third-party sponsor under appropriate terms, including adequate compensation to TTU.

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

All intellectual property shall be promptly disclosed to the ORC. At least once a year, coincidental with a regular BOR meeting, the director of ORC shall prepare for the chancellor and the BOR a report listing the titles and a brief description of each disclosure received since the last report, all license and assignment agreements entered into by the ORC, and the status of existing licensing and assignment agreements, including the distribution of revenue earned from such agreements.

### **5. Consulting**

With respect to intellectual property owned by TTUS, faculty and staff engaged as consultants should avoid conflicts of interest. 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 immediate supervisor and, with respect to intellectual property disclosed to the ORC, such disclosure to the ORC must include full disclosure of such conflict. Faculty and staff members engaged as consultants nevertheless continue to be obligated to safeguard the university's intellectual property. (See *Regents' Rules* Section 10.03.2 and OP 10.20).

### **6. Intellectual Property Administration**

When TTU elects to protect intellectual property in its name, it shall award to 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 of patenting, marketing, licensing and protection of intellectual property rights.

#### **7. Determinations by the Office of Research Commercialization**

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

The ORC shall make determinations as to:

- (1) The potential value of the intellectual property to TTUS;
- (2) The rights and equities of the 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 creator.

#### **8. Implementation**

The following guidelines shall be applicable to license agreements with entities, including those formed primarily for the purpose of developing and/or commercializing intellectual property created at TTU, 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 TTU. Agreements should grant rights only on a specific property or 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 TTU 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 TTU for all expenses incurred by TTU 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 TTU 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. TTU 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 of the intellectual property by TTU for research and teaching purposes and the publication rights of researchers should be minimized.
- f. If the entity fails to develop and commercialize the intellectual property, any and all rights

the entity has been granted in TTU's property shall be returned and granted back to TTU 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 intellectual property or technology that is in whole or in part derived from or based on that which is licensed to the entity by TTU, should be required to share with TTU: 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 ORC and the Office of General Counsel to be in the best interest of TTU.
  - k. The director of ORC is authorized to negotiate and execute license agreements. . The authority to execute such documents that involve a commitment of funds or resources is restricted to documents that have been approved by the vice president for research (or the equivalent of that position) and approved as to form, law, and compliance by the vice chancellor and general counsel
9. In compliance with Section 51.912 of the *Texas Education Code*, the BOR 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 TTU relating to the research, development, licensing, or exploitation of intellectual property in which TTU has an ownership interest. The report will be filed in accordance with the requirements of Section 51.005 of the *Texas Education Code*. The ORC will submit the report through the chancellor or his/her designee to the BOR office. The BOR office will obtain the signature of the chair of the BOR and will transmit the report to the governor's office and other required entities.

~~10.~~ Any request by a TTU employee to participate as an employee, officer, or member of the board of directors of a business entity that has intellectual property agreements (IPA) with TTU must be submitted to the BOR for approval. Said approval from the BOR will not be withheld, unless:

- ~~a. There is a demonstrated conflict of interest between the employee's responsibility to TTU and the responsibilities as an employee, officer, or member of the board of directors for said business entity, or~~
- ~~b. The engagement as employee, officer, or member of the board of directors of said business entity infringes on the responsibilities and/or obligations as an employee of TTU.~~

#### 11.10. Definitions

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

- a. Copyrightable Work: An original work of authorship which has been fixed in any

**Commented [DS5]:** This change makes the OP consistent with the language in the Regents Rules.

**Commented [RMR6]:** The original paragraph might inhibit the success of the business entity, which would be counter indicative for TTUS as well.

This might inhibit the inventor from employing a research associate or a strategic advisor, if said associate is not a named party on the IP.

Short of demonstrating a direct conflict of interest, this appears to infringe upon the governance rights of the business entity. Why would the creator be allowed to be an employee, while a party contributing to the viability of the business entity might be excluded?

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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, 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.

- b. Distance Learning: Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A course is considered a distance education course if students receive more than one-half of the instruction at a different location than the instructor. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s) through electronic correspondence or other means.
- c. 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 administration or component institution manuals or materials or works, such as software, which may be a part of or embedded in a larger comprehensive design, system or device.
- d. Intellectual Property Committee: A standing committee, the majority of whom are faculty members, appointed by the chancellor based on recommendations of the vice president for research at TTU and TTUHSC, representing TTUS component institutions, whose purpose is to provide a forum for discussion of policies and procedures affecting intellectual property and to advise the chancellor and ORC 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 ORC.
- e. Invention: A process, method, discovery, device, plant, composition of matter, software, technology or other work 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.
- f. Office of Research Commercialization (ORC): The TTU administrative office whose mission is to promote the transfer of TTUS intellectual property for society's use and benefit, while generating unrestricted income to support research and education. The ORC is responsible for administration and implementation of the TTUS intellectual property program, and for 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.
- g. 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 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 creators who have collaborated on a project.

- h. Trademark (including “service mark”): A distinctive word, design, or graphic symbol, or a combination of words, designs or graphic symbols that distinguish and identify 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, computer programs, or entities.
- i. TTU Resources: TTU 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 TTU resources” is not intended to apply to the incidental use of such resources.
- j. Work for Hire: A work that is specially ordered or commissioned by TTU for an institutional document or a contribution to a collective work, including 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 an atlas. The term also includes software, computer programs or written instructions, protocols or training aids, institution- directed. Where these works are created by TTU employees as a regular part of their duties, these works are automatically owned by the university and require no disclosure. 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 will not be “work for hire,” unless accomplished pursuant to written directive and agreement.

#### 12.11. Disclosure, Assignment, and Protection

- a. Except for the exclusions identified for certain copyrightable works set forth in Chapter 10, *Regents’ Rules* and below [section 15. a (1, 4, and 5)], all persons subject to these regulations shall promptly disclose to the ORC any intellectual property covered by this regulation, including intellectual property created under sponsored research or cooperative arrangements. Disclosure shall be made on a disclosure form prescribed by and available from the ORC. Such persons shall cooperate with TTU and the ORC in protecting property rights in the intellectual property, to the best of their ability. If TTU decides to patent or seek other available protection for the property, it shall proceed through the ORC.
- b. All creators shall execute appropriate assignment and/or other documents required to set forth effectively the ownership and rights to intellectual property owned by TTU.
- c. Assessments by the ORC: The ORC shall make assessments as to the potential value of the intellectual property to TTU; the rights and equities of the creator, TTU and any third parties; and the required actions to maximize the benefits of any intellectual property to the public, TTU, 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 TTU 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 below.

#### 13.12. Provisions for release of rights to creators. Absent a contractual obligation to a



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research sponsor or contracting party, TTU may release its intellectual property ownership rights to a creator by written agreement, with the following provisions:

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- a. TTU shall retain for TTU 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. TTU shall retain the right to a specified share of net revenue (not to exceed five percent) 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 five percent. 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 24.
- c. In the case of release of rights to the creator, the creator shall not be entitled to a share of proceeds received by TTU under this section.

#### **14.13. Obligation to Sponsors**

The ORC, in cooperation with the respective Office of Research Services or Office of Research Accounting, 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 37 CFR Part 401.

#### **15.14. Management of Copyrightable Works**

TTU 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 TTU. Authors shall be permitted maximum freedom with respect to their copyrightable works, consistent with the obligations to TTU. 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, TTU 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, TTU 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 TTU by law, TTU will, upon request and to

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

(2) Institutional Works

TTU 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, as is software developed for TTU purposes by staff working collaboratively. Brochures, training programs, CD-ROMs, DVDs, videos, and manuals for which staff members are hired to develop are other examples of institutional works. TTU owns all right, title and interest in such institutional works.

(3) Work for Hire

- a. TTU shall retain ownership of "work for hire" as defined in this policy and Chapter 10, *Regents' Rules*.
- b. Faculty "Work for Hire" Procedure: If an academic task done in the normal scope of academic employment within the teaching and research mission of the university is intended to create a copyrightable work for hire as defined in section 11 (j) above, a written directive signed by the faculty member's direct supervisor, (e.g., department chair) and college dean (or equivalent) and the faculty member is required. The document should reasonably outline the intended task and work product and must disclose that any resulting copyright will be retained by TTU or the external entity contracting the task, such as a granting entity. If a task is assigned as an extra duty of the faculty member, the signed document additionally should include the terms, if any, for extra compensation or alteration of teaching research or administrative duties to which the faculty member and supervisor have agreed.

(4) Works Developed with Use of TTU Resources

Except as provided in paragraph (1), above, or Chapter 10, *Regents' Rules*, copyrightable works that are not works for hire [see (2) above] but are works that are developed with the use of TTU resources as defined in Chapter 10, *Regents' Rules* shall be owned by TTU. 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), a state or other governmental agency, a nonprofit or for-profit nongovernmental entity, or an individual, or by a private gift or grant to TTU, 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 TTU. TTU 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, TTU will not construe the provision of offices, routine computer support and services or library facilities as constituting use of TTU resources, except for those instances in which 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 TTU faculty, staff and employees assign the copyright ownership of works intended for publication in scholarly journals.

(5) 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 TTU may have rights under this policy)]. Such hybrid works should be brought to the attention of the ORC, which shall negotiate a reasonable sharing arrangement or issued release as may be appropriate. Should the ORC and the inventor or creator be unable to agree, the matter shall be finally resolved by the chancellor or his/ her designee.

(6) Distance learning course content generally will be treated as traditional course content as described in paragraph (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 a 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 that is work for hire, such license shall be exclusive unless otherwise agreed in writing.

(7) Present and prospective employees of TTU shall, upon request by the chancellor or by the ORC to protect intellectual property rights, execute an assignment agreement in a form prescribed by and available from the ORC 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 ORC, or in a similar office as determined by the chancellor.

#### **16.15. Disclosure, Assignment, and Protection**

- a. Authors of copyrightable works that are not owned by TTU 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 or institutional works but are works that are owned by TTU under Section 15.a.(3) shall promptly disclose to the ORC 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 ORC and a copy shall be filed with that office. Such persons shall cooperate with TTU and the ORC to the best of their ability in protecting intellectual property rights in the work of authorship. Furthermore, upon request by the ORC, to protect 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 TTU are encouraged. The ORC 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 that meets certain technical and legal criteria may be patentable. In the case when software originally disclosed as a copyrightable work subsequently is determined to be patentable subject matter, and TTU chooses to seek patent protection for the software, then such software shall be managed under this regulation as an invention.

#### 47.16. Distribution of Income from Commercialization and Licensing

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

***Distribution of Net Revenue and Other Income***

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

\* Department, center, or institute

\*\* College or school

Net revenue is to be paid according to the above schedule as the net revenue is received. 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 BOR.

- 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 is not intended to specify how net revenue is to be allocated within departments. It is, however, the general policy of this intellectual property OP to allocate net revenue to the departments and units that have provided the substantial level of indirect support that triggers TTU'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 net revenue share that is appropriate for each unit). In the event that no agreement can be reached prior to the generation of revenue, the president or his/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 TTU agreement with such agent, as approved by the BOR. Any deviation from this rule requires the prior approval of the BOR.

**Commented [RMR7]:** Revenue as defined by this paragraph refers to the net revenue from royalties and licensing fees only and should not be construed as the revenue of the business entity as a whole.

#### **18.17. Distribution of Income from Copyrightable Works**

All monetary proceeds from commercialization of copyrightable works owned by TTU, including royalties, equity interests, and dividends, will be distributed as set forth above [Section 17 (a)].

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.

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

TTU 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. Creators may receive up to 50% of any equity or other non-monetary consideration (or, in the discretion of TTU, its monetary equivalent) received by TTU or its components under this section. However, TTU 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 TTU shall be equally applicable to the interest of the creator, unless waived or varied in writing and signed by the director of the ORC and the creator.
- b. TTU 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 revenue from patents and copyrights and marketing and licensing the technology managed by a patent or copyright agent will be controlled by TTU agreement with such agent, as approved by the BOR. Any deviation from this rule requires the prior approval of the BOR.

#### **20.19. 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.

#### **21.20. 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.

#### 22.21. Tangible Research Property

- a. TTU owns all right, title and interest in tangible research property related to an individual's employment responsibilities and/or developed with support from TTU resources.
- b. For purposes of management of the asset, tangible research property shall be managed as an invention under sections 13 and 17, with distribution of income from the distribution or commercialization of such tangible research property made in accordance with section 17.

#### 23.22. Offers of Intellectual Property

- a. If an individual chooses to offer to TTU certain intellectual property in which TTU has no claim, TTU may accept ownership of the intellectual property provided that:
  - (1) The individual makes the offer to TTU as if the intellectual property had been created within TTU,
  - (2) The individual agrees to all provisions (including distribution of income provisions) of this policy,
  - (3) The individual warrants that he/she owns all right, title and interest to the intellectual property, and that to the best of his/her knowledge, the intellectual property does not infringe upon any existing copyright or other legal rights.
- b. The ORC will decide whether to accept or reject such offers.
- c. Should TTU 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 TTU, and acknowledging that the individual agrees to all provisions of this policy, such agreement available from the ORC. In cases in which the individual has already expended funds toward obtaining patent or other legal protection for the invention, the individual and TTU 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. TTU may accept charitable donations of intellectual property from governmental or private organizations. Upon the transfer of title in the intellectual property to TTU, the intellectual property will be managed in accordance with this regulation.

#### 24.23. Grievance Procedure

Complaints under this policy will be administered in accordance with the complaint procedure described in *Regents' Rules* Section 10.15. The complaint procedure is available to covered persons. Students have the ability to use this procedure to complain that TTUS ORC has treated the student as a covered person or has otherwise determined that intellectual property created by the student is owned by TTUS when the student does not believe that determination is correct.