5.2.2. KSU Intellectual Property Policy

Introduction

Kennesaw State University ("University") is dedicated to teaching, research, and the extension of knowledge to the public. Among its primary objectives are the development of new and useful devices, processes, computer software, and artistic and literary works; and the publication and creation of scholarly works. Such activities:

- contribute to the professional development of the faculty, staff and students involved;
- enhance the reputation of the University;
- provide additional educational opportunities for participating students; and
- promote the general welfare of the public at large.

In some cases, patentable inventions, copyrightable materials, and other intellectual property may be developed through activities of University faculty, staff, or students who have been aided in their efforts by University resources. In such cases, the University has an interest in insuring and expediting the development, marketing, and utilization of the intellectual property. At the same time, the rights, privileges, and incentives of the inventor(s) or creator(s) must be preserved so that their abilities and those of other University faculty, staff, or students may be further encouraged and stimulated.

The University recognizes and encourages the publication of scholarly works as an integral part of the processes of teaching, research, and service. Frequently through individual effort and initiative, faculty, staff, and students develop articles, pamphlets, books, and other scholarly works which may be subject
to copyright and which may generate royalty income for the author. Scholarly works may also result from work supported either partially or primarily by the University. Recent technological advances have increased the complexity of determining ownership interests in Intellectual Property. In some instances, Intellectual Property may become, in whole or in part, the property of the Board of Regents. When this Policy speaks to ownership of Intellectual Property by the University, the Board of Regents shall be the owner, unless the Board of Regents has transferred ownership to an affiliated nonprofit organization of the University.

The foregoing considered, the University does hereby establish the following policy with respect to the development, protection, and transfer of rights to Intellectual Property resulting from the work of its faculty, staff or students. This policy shall be applicable to all full or part-time faculty, staff or students of the University.

Definitions

“Intellectual Property” (IP) shall be deemed to refer to patentable materials, copyrighted materials, trademarks, software, and trade secrets, whether or not formal protection is sought.

“Faculty Member, Staff Member, and Student”: For purposes of this policy, students are individuals who are enrolled for any course at the University. A faculty or staff member is any person who is employed on a full-time or part-time basis by the University.

“Patentable Materials” shall be deemed to refer to items which reasonably appear to qualify for protection under the patent laws of the United States or other protective statutes, including Novel Plant Varieties and Patentable Plants, whether or not patentable thereunder.
“Copyrighted Materials” shall include the following: (1) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests and proposals; (2) lectures, musical or dramatic compositions, unpublished scripts; (3) films, filmstrips, charts, transparencies, and other visual aids; (4) video and audio tapes or cassettes; (5) live video and audio broadcasts; (6) programmed instructional materials; (7) mask works; and (8) other materials or works other than software which qualify for protection under the copyright laws of the United States (See 17 U.S.C. § 102 et seq.) or other protective statutes whether or not registered thereunder.

“Software” shall include one or more computer programs existing in any form, or any associated operational procedures, manuals or other documentation, whether or not protectable or protected by patent or copyright. The term “computer program” shall mean a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

“Trademarks” shall include all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes developed by or associated with the University. (See 15 U.S.C. § 1127.)

“Trade Secrets” means information including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which: (I) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (See O.C.G.A. § 10-1-761.)

“Patentable Plant” means an asexually reproduced distinct and new variety of plant. (See 35 U.S.C. § 161.)

“Mask Work” means a series of related images, however fixed or encoded: (I) having or
representing the predetermined, three-dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (ii) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product. (See 17 U.S.C. § 901.)

“Novel Plant Variety” means a novel variety of sexually reproduced plant. (See 7 U.S.C. § 2321 et seq.)

“Creator” and “Originator,” which are used interchangeably in this Intellectual Property Policy, shall mean the creator, author, inventor, or similar person and that person’s executor, heirs, successors, and assigns.

Determination of Rights and Equities in Intellectual Property

A. Individual Effort

Ownership rights to Intellectual Property developed by faculty, staff or students of the institution shall reside with the inventor or creator of such Intellectual Property provided that:

• there is no use, except in a purely incidental way, of institution resources in the creation of such Intellectual Property (unless such resources are available without charge to the public);
• the Intellectual Property is not prepared in accordance with the terms of an institution contract or grant;
• the Intellectual Property is not developed by faculty, staff or students as a specific institution assignment. The general obligation to produce scholarly and creative works does not constitute a specific assignment for this purpose. The nature and extent of the use of institution resources shall be subject to institution regulations and shall be determined by the institution.
B. Institution-Assigned Efforts

Ownership of Intellectual Property developed as a result of assigned institutional effort shall reside with the institution; however, sharing of royalty income with the inventor or creator is authorized as an incentive to encourage further development of Intellectual Property. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to institution regulations.

C. Institution-Assisted Individual Effort

Ownership of Intellectual Property developed by faculty, staff or students of the institution where the institution provides support of their efforts or use of institution resources in more than a purely incidental way (unless such resources are available without charge to the public) shall be shared by the inventor or creator and the institution. The nature and extent of inventor or creator participation in royalty income, however, shall be subject to institution regulations.

D. Sponsor-Supported Efforts

The grant or contract between the sponsor and the University, under which Intellectual Property is produced, may contain specific provisions with respect to disposition of rights or interests in the Intellectual Property. Where the creator(s) or the University retains any portion of these rights or interests, the classification of such portion of the rights or interests in the Intellectual Property may be deemed to be Individual-Effort, University-Assigned Effort, or University-Assisted Effort. This classification shall be determined in accordance with DEFINITIONS, Paragraphs 2 and 3 on or before the date on which the authorized University representative(s) execute the grant agreement or contract.
**TABLE 1.**

<table>
<thead>
<tr>
<th>REVENUE DISTRIBUTION</th>
<th>Originator</th>
<th>Originator’s Department</th>
<th>Office of Sponsored Programs</th>
<th>Faculty Development Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Effort</td>
<td>100%</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>University-Assigned</td>
<td>50%</td>
<td>30%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>University-Assigned</td>
<td>75%</td>
<td>10%</td>
<td>5%</td>
<td>10%</td>
</tr>
</tbody>
</table>

**Policy Implementation and Procedures**

A. Composition of the IPC

The IPC will consist of eight members. Six of these members shall be appointed by the President and two are members *ex officio*. The President shall appoint two (2) faculty members, one (1) staff member, one (1) student, one (1) academic department chair, and one (1) academic dean all based on recommendations from the appropriate constituent groups. IPC members appointed by the President shall serve two-year, staggered terms. The VP of finance or his or her designee shall be an *ex officio*, voting member. The Vice President for Research/Dean of Graduate Studies shall serve as an *ex officio*, nonvoting member. The President shall designate, from among the appointed members, one member as chair of the IPC.
B. Duties of the IPC

The duties of this group will include the following: oversee IPP implementation; recommend changes in the IPP; review IPs that are referred to it through the disclosure process described below in POLICY IMPLEMENTATION AND PROCEDURES, Section D of this IPP; and adjudicate IP-related disputes.

The IPC shall have exclusive jurisdiction of disputes brought by the creator regarding IP classifications made by deans or their equivalents, in accordance with POLICY IMPLEMENTATION AND PROCEDURES, Section D, paragraph 2, below. Such disputes will be heard by a panel of three IPC members appointed by the IPC Chair. Adjudication shall include an oral hearing, a decision rendered within 60 days of the request, and a written explanation of the decision and underlying rationale. Appeals, which may be made by either the creator or the University, shall be heard by the entire IPC plus two ad hoc members, one chosen by the creator and the other chosen by the relevant supervisor. Any further appeals go to the President.

C. The University has elected, through the IPC and with the approval of the President, to release the management of IP to which the University has title or an interest to the creator thereof for management and development as a private venture after the execution of an agreement providing for a suitable division of royalty income.

D. Disclosure Policy & Procedure

Property Requiring Disclosure. An IP that is a University-Supported effort that is the subject of an agreement between faculty, staff, or students on one hand, and an external entity on the other, shall be disclosed.
Disclosure Process & Content

A. If disclosure is required, the creator must disclose the IP before a contract or agreement is signed or consideration is accepted in exchange for any interest in the IP, before the IP is disclosed to the public, or before any application is made to patent a patentable IP.

B. Required disclosures shall be submitted on a standard KSU IP Disclosure Form (“Form”) (see Appendix) signed by the creator. The Form shall disclose (i) the existence of an intellectual property; (ii) the legal category (such as copyright, patent, trade mark, trade secret, mask work, plant) of the intellectual property created; (iii) a brief description, that need not include confidential or proprietary information the disclosure of which would jeopardize the commercial value of the IP; (iv) the creator’s classification of the IP; and (v) supervisory and IPC classifications of the IP, as applicable.

The Form shall be signed by reviewing supervisor(s) and the IPC chair, as applicable.

C. All Forms shall initially be delivered in hardcopy to the department chair or immediate supervisor (“Supervisor”). After initial review the supervisor shall forward the Form, within 10 business days of receipt there of, to the college dean or next immediate supervisor (“dean”) with copy to the creator, indicating the supervisor’s classification. If the creator disagrees with the supervisor’s classification, the creator may submit to the dean a memorandum in support of the creator’s classification. The dean, within 10 business days of receipt, shall review the Form and the creator’s memorandum, if any, and either ratify or alter the supervisor’s classification.

D. In the case of IP classified by the dean as “university assisted” or “university assigned,” the disclosure
and classification must then be reviewed and filed by the IPC.

E. If the creator disagrees with the supervisor’s or dean’s classification of an IP, then the creator may refer the dispute by a signed request copied to the chair, dean, and IPC chair, within 60 days of receipt of the supervisor’s classification thereof, to the IPC for adjudication following the dispute resolution procedures set forth at POLICY IMPLEMENTATION AND PROCEDURES, Section B, above.

Appeal Procedure
The University has adopted the following appeal procedure within the University in the event of a disagreement as to the classification, ownership and use of IP subject to this Policy.

Appeals of classification decisions of the IPC shall be made to the President of the University. Appeals shall be submitted in writing within 10 days of the committee’s decision.

Preemption by Board of Regents’ Policy
In the event of conflict between any provision of this policy and any policy of the Board of Regents, the latter shall prevail.

APPENDIX
Intellectual Property Disclosure Form