

Policy Title	Intellectual Property Policy
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Responsible Office	Office of Research
Contact Information	Office of Research Phone: (470) 578-6046 Email: sponprog@kennesaw.edu

## 1. Policy Purpose Statement

The purpose of the Intellectual Property Policy (IPP) is to establish guidelines for how intellectual property created by the faculty, staff, and students at Kennesaw State University is to be protected and developed while preserving the rights of the USG Board of Regents through Kennesaw State University (University) and the rights, privileges, and incentives of the inventor(s) and creator(s) (hereafter referred to as Originators). This policy is intended to support faculty, staff, and students in identifying and protecting intellectual property, defining the rights and responsibilities of all involved, administering intellectual property matters, and establishing a support committee to provide guidance and assistance. It also stipulates how income generated should be distributed to the originators and to the University. Kennesaw State University's Intellectual Property Policy is found in its entirety below and meets the University System of Georgia (USG) Board of Regents Policy directive: "Each USG institution is required to develop policies and procedures for the administration of this Intellectual Property Policy." Additional information regarding intellectual property policy as set by the USG Board of Regents is available in the *Board of Regents Policy Manual*, Official Policies of the University System of Georgia in the section Intellectual Properties.

## 2. Background.

In the Carnegie Classification of Institutions of Higher Learning 2015 update, Kennesaw State University was elevated from "M1" status (Master's Colleges and Universities) to "R3", which are doctoral research institutions with moderate research activity. Also in that year, Kennesaw State University and Southern Polytechnic State University began operating as a consolidated Kennesaw State University. Prior to achieving R3 status and prior to consolidation, there was an increase in faculty, staff, and students seeking more support from KSU to protect and develop intellectual property. Intellectual property (IP) refers to creative products including literary works, artistic works, designs, processes, software, inventions, materials, symbols, and images used in commerce. The requests to protect IP continue to grow, therefore a new IP policy is needed to provide University guidelines and information concerning IP developed by faculty, staff, and students at KSU.

Kennesaw State has rapidly increased the quality of its graduate instructional program and the level of faculty and student research, scholarly, and creative activities. Research, scholarship, and creative activities should be encouraged without regard to potential gain from licensing fees, royalties, or other such income; however, the University also recognizes that intellectual property with commercial potential may be produced as a result of these activities. Should such IP arise, one of the main functions of the KSU Research and Service Foundation, Inc. on behalf of KSU is to manage intellectual property and perform technology transfer functions for the University, taking assignment of inventions; obtaining patent, trademark, and copyright or other intellectual property protection; working with faculty and students to patent discoveries that have commercial and economic potential; and licensing inventions to the private sector in return for sharing royalty income with the faculty, staff and/or student inventors to further the research mission of the University and support expanded faculty and student scholarship opportunities. KSURSF may also secure venture capital to support

incubators and startups for relevant intellectual property development by KSU faculty and staff (<http://research.kennesaw.edu/ksursf/>). It is the University's intent to protect the rights of the individual, the University and the sponsoring entity (if involved), and to set reasonable and appropriate sharing of the profits of the enterprise in the event these creations have commercial value.

### **3. Scope (Who is Affected)**

This policy has the potential to affect all KSU employees and students, but is more likely to impact those employees and students actively developing novel intellectual property.

### **4. Exclusions or Exceptions**

There are no exclusions or exceptions.

### **5. Definitions and Acronyms**

See policy section below.

### **6. Policy**

#### **Kennesaw State University Intellectual Property Policy (IPP)**

##### **Introduction**

Kennesaw State University is a comprehensive university and as such is committed to becoming a world-class academic institution. To do so requires maintaining and expanding high-quality undergraduate and graduate program offerings, expanding research and grant activity, and elevating the University's global profile. In regards to grant activity, the University averages about \$10 million annually in external funding awards to support research and creative activities. These grants, coupled with internal funding programs, have led to new discoveries and production of creative works by Kennesaw State faculty and staff while providing students with opportunities to gain hands-on experience as inventors, producers and creators. The University's research, scholarship, creative activities, and public service initiatives expand and apply knowledge, contribute to economic development, and improve the quality of life in local communities, Georgia, and the nation.

A collateral benefit of the University faculty, staff, and student research, scholarship, and creative activities is the development of new and useful materials, devices, processes, computer software, and artistic and literary works; and the publication and creation of scholarly works. Such activities:

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

The University recognizes that research, scholarship, and creative activities of faculty, staff, and students should be encouraged without regard to potential gain from licensing fees, royalties, or other such income; however, the University also recognizes that intellectual property with commercial potential may be produced as a result of these activities. The policies governing the administration of

such works should provide adequate recognition and incentive to authors, inventors, and creators and at the same time ensure that the University will share in the rights pertaining to intellectual property in which it has an investment. Any income accruing to the University shall be used in the furtherance of the University's mission.

As a matter of policy, the University has determined that it is in its best interest to manage its licensing of intellectual property through the Kennesaw State University Research and Service Foundation, Incorporated (KSURSF), which will bear the costs of and expedite the development, marketing, and utilization of the intellectual property while at the same time, recognizing and rewarding the rights and incentives of the originator(s). This approach encourages and stimulates further creativity from University faculty, staff, and students. The University will transfer its ownership interest in intellectual property to KSURSF to facilitate this process.

With this in mind, the University establishes the following policy with respect to the development, protection, and transfer of rights to Intellectual Property resulting from the work of its faculty, staff, and students, whether full-time or part-time.

### Definitions

1. **"Copyright Materials"** includes but is not limited to books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, proposals, lectures, musical or dramatic compositions, works of art, unpublished scripts, films, filmstrips, charts, transparencies, and other visual aids, video and audio tapes or cassettes, live video and audio broadcasts, programmed instructional materials, software, and mask works.
2. **"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, as defined under applicable law.
3. **"Disclosure"** for this policy is defined as the process where the inventor discloses details about his/her invention/creative work. An Intellectual Property Disclosure provides information that the Intellectual Property Committee and Kennesaw State University Research and Service Foundation, Inc. need to evaluate an invention/creation before making an informed decision on how to proceed with the disclosure.
4. **"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. Collectively the faculty, staff, and students are referred to as the **"University Community"**.
5. **"Intellectual Property"** (IP) includes but is not limited to all patentable materials, copyrighted materials, including software, processes, and other creative or artistic works of value. IP includes that which is protectable by law, such as patents, copyrights, trademarks, trade secrets, service marks, mask works, and plant variety protection certificates. It also includes the tangible products of intellectual effort such as models, instrumentation, devices, designs, circuitry, software, and visualizations, modified and non-modified biological materials, chemicals, engineered materials, and records of research.
6. **"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.

7. **“Net income”** are the proceeds from royalties, licensing, sale or other disposition of IP less the costs incurred to develop and market the IP. Examples of costs include legal fees for patent application development, application fees, funds to develop prototypes, etc.
8. **“Novel Plant Variety”** means a novel variety of sexually reproduced plant.
9. **“Patentable Materials”** includes but is not limited to compounds, compositions, formulations, methods of use, methods of synthesis, devices, software, and business methods that 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 a patent is actually obtained.
10. **“Patentable Plant”** means an asexually reproduced distinct and new variety of plant.
11. **“Significant University Resources”** are defined as those not typically available to employees for the development or production of traditional works. Examples would include but are not limited to: reduction in normal teaching workload for the purpose of developing a patentable or copyrightable product, the assignment of additional teaching or graduate research assistants, use of specialized production facilities and personnel, use of multimedia labs and associated personnel, clerical support that exceeds what is typical, the purchase of additional supplies or equipment, the allocation of specific additional travel or other funds, internal grants, and funds awarded by the University’s Office of Research/KSURF (unless specified otherwise) and the assignment of additional space or facilities. Resources typically available and not considered significant use of additional University resources include use of an employee’s office, studio and/or laboratory, and the facilities therein, use of the library, normal use of the University computer network and other facilities, normal use of the University phone system (not to include unusual long distance charges).
12. **“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.
13. **“Technology transfer”**, in academic settings, refers to bringing technologies to the marketplace usually through licensing intellectual property (IP) to companies that have the resources and desire to develop and produce the technology for specific applications. In return, universities receive payments (in the form of cash fees and/or equity and/or royalties on earned revenues) for the products or services that were licensed.
14. **“Trade Secrets”** includes but is not limited to any information, that both (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. Trade Secrets may include any patentable or copyrightable material but also includes any non-patentable or non-copyrightable material meeting the two-part definition. Non-limiting examples are 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 students, customers, or suppliers.

15. **“Trademarks”** includes but is not limited to all trademarks, service marks, trade names, seals, symbols, designs, slogans, colors, sounds, or logotypes developed by or associated with the University.
16. **“Traditional Academic Copyrightable Works”** shall be defined as a subset of copyrightable works created independently and at the creator’s initiative for traditional academic purposes. Examples include class notes; books, theses, and dissertations; educational software (also known as courseware or lessonware); articles; non-fiction, fiction, and poems; musical works, dramatic works including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; or other works of artistic imagination that are not created as an institutional initiative.

## **Determination of Rights and Equities in Intellectual Property**

### **A. Individual Effort and Traditional Academic Works**

1. Intellectual Property developed as a result of individual effort occurs when the IP is generated through efforts unrelated to job responsibilities and where only incidental use of institution resources usually and customarily provided has occurred.
2. Traditional academic works are scholarly works not commissioned or sponsored by the University, which reflect research and/or creativity and within the University are considered as evidence of professional advancement or accomplishment. Examples of such works include scholarly and research publications, journal articles, books, monographs, textbooks, plays, poems, works of art, music compositions, and other traditional academic copyrightable works. Unless the development or production of these works involved the significant use of University resources (as defined in the section **Definitions**), they are considered the property of the author(s) (or the publisher) who would hold all copyright ownership and accrue all responsibility for compliance with copyright law and regulation. For some of these works, documentation of copyright compliance assurance may be requested by the academic or administrative unit of the authors(s). Additionally, if the copyrighted material is coursework that is being used by a faculty member for instructional purposes, the faculty member agrees to grant the University a perpetual and royalty-free License to use the course materials for instructional purposes should the copyright owner leave the University.
3. It is up to the faculty, staff, or student disputing Individual Effort or Traditional Works ownership to prove, at his or her own expense, each of the following:
  - a. there is no use of Significant University Resources (as defined in this document) in the creation of such Intellectual Property;
  - b. the Intellectual Property is not prepared in accordance with the terms of an institution contract or grant; and
  - c. 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 with input from the Intellectual Property Committee.

- Revenue distribution for individual effort and traditional academic works IP is outlined below in Table 1.

**B. University-Assigned or –Assisted Efforts**

- University-Assigned or –Assisted works are scholarly works commissioned or sponsored by the University or those produced with the use of Significant University Resources.
- Ownership of Intellectual Property developed as a result of assigned or assisted institutional effort resides with the University; however, net income will be shared with the originator(s) and/or certain units of the university (e.g., the Originator’s department and college), as provided for in this policy (see Table 1).

**C. 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 Originator(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 or Traditional Academic Works or University-Assigned or –Assisted Effort, per parts A and B above on or before the date on which the authorized University representative(s) execute the grant or contract.

**TABLE 1**

<b>NET INCOME DISTRIBUTION</b>	<b>Originator's Department/School &amp; College/Division</b>		
	<b>Originator</b>	<b>Department/School &amp; College/Division</b>	<b>KSURSF, Inc.</b>
Individual Effort or Traditional Academic Work	100%*	0%	0%
University-Assigned or Assisted Efforts	50%	25%	25%

\*Individual effort and Traditional Work IP is owned by the individual, who also bears the costs of development and protection. Where the individual creator wants KSURSF to manage or assist in the commercialization of the IP, revenue distribution will be a matter for negotiation.

**D. Net Income Distribution.**

Net income on intellectual property owned by the University shall be divided into an Originator’s Share, a share for the Originator’s Home Department, School or like Unit, a share for the Originator’s Home College, Division, Office or like Unit, and KSURSF’s Share.

- The percentage allocations of the various shares of intellectual property income shall be calculated as follows: Originator’s Share shall be 50%; College/Division Share shall be 10%, Inventor’s Home Department’s/School’s Share shall be 15%; and KSURSF share shall be 25%.
- The Originator’s Share is the portion of net income paid directly to the inventor(s)/creator(s) as a group for his/her/their personal income. The Originator’s Share will be shared equally among all inventors, unless he/she/they agree otherwise.

- a. Originator(s) may also arrange for his/her/their personal share(s) to be retained by the University, e.g., to support his/her/their research.
- b. The Originator's Share will continue even though he/she/they may have left the University.
- c. When an Originator leaves the University, the Department and College's Shares are added to the KSURSF share.
- d. When none of the Originators has a home Department (for example student inventors), the Originator's Home Department's and College's shares are added to the KSURSF share.
- e. Originator's shares shall pass to the Originator's heirs and assigns in the event of the originator's death.

## **Policy Implementation and Procedures**

### **A. Intellectual Property Committee (IPC) - Duties**

The Intellectual Property Committee shall function as an advisory committee in the University and shall have the following responsibilities:

1. Advise the President, the Vice President for Research, and University Community on institutional intellectual property policies, the implementation of policies, and the status and conduct of the institution's technology transfer efforts.
2. Assist KSU in the conduct of the technology transfer program by performing the following duties:
  - a. Evaluate Intellectual Property proposals from University personnel and students, and determine if the Intellectual Property has sufficient potential and sufficient value to warrant expenditure of protection costs, and proceed with commercialization, or otherwise derive compensation or consideration for the value of the patent.

In the event the IPC decides the IP does not have commercial value, the intellectual property rights (for University Assigned or Assisted Effort) will be relinquished to the originator(s);

- b. Determine if the University has intellectual property rights based on the use of University resources in the development of the IP (see section D Intellectual Property Committee (IPC)- Policy & Procedures for additional details).
- c. Recommend the equity of the University and of the originators(s) within the limits specified in this policy.
- d. Recommend how the intellectual property of KSU shall be assigned.
- e. Review intellectual property disputes and make a recommendation to the President related thereto; and provide the University Office of Legal Affairs with any requested assistance so that the Office can advise on IP-related disputes.

### **B. Intellectual Property Committee (IPC) – Composition**

The IPC will consist of seven (7) members. Three (3) are members ex officio and four (4) members shall be appointed by the University President. The chairperson of IPC shall be appointed by the President. The ex officio members, who will be voting members, are as follows: 1) The administrator from the Office of Research who oversees Technology Transfer operations on behalf of KSURSF, 2) The Graduate Dean, or his/her designee, and 3) One member of the Division of Fiscal Affairs, whose duties are to advise and consult on IP matters.

For the four (4) presidential-appointed members, it is recommended that academic field, level of scholarship activity and knowledge of intellectual property issues be considered in the selection process. The IPC membership should be able to address the variety of IP originating from different academic fields and units at KSU. IPC members appointed by the President shall serve three-year, staggered terms. Of the original appointed members of the Committee, one shall be appointed for a term of one (1) year, one shall be appointed for a term of two (2) years, and two shall be appointed for a term of three (3) years. Members of the Committee may be appointed to serve successive terms. In the event any seat on the Committee is vacated prior to expiration of the normal term, the Chair may appoint a successor to fill the unexpired term of the seat vacated.

### **C. Intellectual Property Committee (IPC) – Meetings.**

Five members of the committee shall constitute a quorum. The IPC shall meet at least once per academic term (Fall and Spring). Outside of regularly scheduled meetings, the Chair and available members will have the authority to make recommendations to expedite time critical actions such as meeting IP disclosure deadlines and other activities that cannot be delayed for handling at a regular or specially called meeting of the IPC.

The IPC will have an appointed secretary to perform clerical functions such as keeping minutes, scheduling meetings, and coordinate committee communication.

### **D. Intellectual Property Committee (IPC) - Disclosure Policy & Procedure**

1. Disclosures to the IPC and KSURSF are not required for works of authorship, such as abstract submissions, internal or external presentations, manuscript submissions for publication in scholarly or professional journals, poster presentations, platform presentations, or instructional or research material for internal use for Independent Effort and Traditional Academic Works, especially where there is no intent to commercially exploit the intellectual property. Faculty, staff, and students may voluntarily submit work to the IPC prior to presentation for review and recommendation in regards to protection and potential commercial value. The IPC can then advise the best course of action.

KSURSF is unlikely to pursue IP protection and subsequent commercialization opportunities on behalf of the Originator and the University for intellectual property that was not disclosed prior to presentation in a public setting or publication.

2. Disclosures to the IPC and KSURSF should be made for University-Assisted and University-Assigned efforts prior to internal or external dissemination (e.g. abstract submissions, presentations, manuscript submissions for publication in scholarly or professional journals, poster presentations, platform presentations, or pursuit of patent or copyright protection) where there is commercial potential in the IP. If uncertain as to the IP's commercial potential, submission of the work to the IPC is highly recommended for evaluation prior to presentation.
3. Faculty, students, and staff are encouraged to agree internally on their relative ownership or role in the creation of the IP, and collectively disclose the potential IP to both their department

chairs and the IPC using the University Invention Disclosure Form. If the Originators cannot agree, then the Intellectual Property Committee shall recommend a determination on these issues.

4. Any potential IP resulting from 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, must be disclosed within 5 business days after completing the Agreement and before dissemination to the external entity.
5. If possible, disclosures should be made on the Invention Disclosure form. If there are time constraints, other disclosures will be accepted.
6. The IPC will recommend to the President: (1) whether any disclosed Intellectual Property should be properly classified as an Individual or Assisted/Assigned Effort; and, (2) a determination of the relative contribution of the Originator(s) of Intellectual Property. The IPC's recommendations shall be shared with the Originator(s) at the same time they are provided to the President. Should any Originator dispute the IPC's recommendations, then they shall notify the President within five working days. The President shall appoint an ad hoc committee of three persons to advise the President on the appeal. The ad hoc committee should not include current members of the IPC and may include a faculty member from another institution or from the relevant industry (subject to the execution of an appropriate non-disclosure agreement). The ad hoc committee will consult with the IPC and the Creators and make their recommendation to the President, who shall make the final institutional decision.
7. The IPC will consult with at least one Originator submitting the Invention Disclosure form to determine whether or not to recommend pursuing formal protection and/or commercialization of the IP, consulting if necessary with the appropriate faculty and/or department chair. The VP of Research/COO KSURSF will make the final determination whether or not to pursue the IP within 90 days. If the decision is made to not pursue the IP, then all ownership rights in the IP will be returned to the Originators for disposition as they see fit and at their own expense.

#### **E. Management of University IP**

The University has elected, through the IPC and with the approval of the University President, to release the management of IP to which the University has title or an interest to the Kennesaw State University Research and Service Foundation, Inc., (KSURSF) subject to the provisions of this IPP.

#### **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.

#### **7. Associated Policy(ies)/Regulations**

*BOR Policy Manual: Intellectual Properties*

#### **8. Procedures associated with this policy**

See 6., above

## 9. Forms associated with this policy

Invention Disclosure Form <http://research.kennesaw.edu/intellectual-property.php>

## 10. Violations

Violations of this Policy, like all University policies, is subject to sanctions, including those set forth in the *KSU Faculty Handbook*, *KSU Employee Handbook*, and *KSU Codes of Conduct*. In such cases, the matter will be referred to the disciplinary process for faculty, staff, or students, as the case may be. In student cases, the appropriate process will depend upon whether the violation arose out of the student's work as a teaching assistant, research assistant or other compensated position. No such disciplinary action will preclude the University from pursuing the matter through legal action when warranted.

## 11. Review Schedule

The Intellectual Property Policy is reviewed annually by the Vice President for Research or his/her designee.

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### Action Log [for Policy Process Council action]

Date	Action	Name
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### Responsible Office - Required Review and Approval Actions:

<b>Vice President Sign off</b>	[name]	[date]
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KSU Governance Body	1 <sup>st</sup> Reading- Date	2 <sup>nd</sup> Reading - Date	Concurrence - Date
Administrators' Senate			
Chairs' and Directors' Assembly			
Deans' Council			
Faculty Senate			
Staff Senate			
Student Government Association†			
University Council			

President's Cabinet			
Presidential Approval	Date:		

† SGA review and comment if students are included in the policy scope statement.