

## INTELLECTUAL PROPERTY POLICY

### *Introduction to the Indiana University Policy on Intellectual Property*

*This policy implements the Indiana University “Statement of Principles on Intellectual Property.” The policy has five basic elements: definitions, categories of intellectual property, the distribution of revenues, dispute resolution within the university, and implementation. Under this policy, the primary division of intellectual property is between patentable and copyrighted works. Generally speaking, ownership of patentable work is vested in the University. Copyrighted works are subdivided into Traditional Works of Scholarship, ownership of which remains with the creator of the work, and University Works, as to which the University retains ownership. The revenues from intellectual property owned by the University are distributed according to the formula set out in this policy.*

### **Indiana University Policy on Intellectual Property**

#### **1. Definitions**

- A. “Creators” are any persons who create intellectual property using University resources.
- B. “Indiana University” and “University” refer to Indiana University or to its subdivisions, as appropriate.
- C. “President” means the President of Indiana University or his or her designee.
- D. The Indiana University Research and Technology Corporation (IURTC) is the organization assigned by Indiana University to hold and manage the University’s intellectual property. References to IURTC include its offices and subdivisions, and include any successor organization.
- E. “Externally Funded Works” are copyrighted works resulting from funds given to the University by external sources.
- F. “Patentable Intellectual Property” describes inventions, discoveries, and manufacturing designs that have been reduced to practice, and are novel, useful, and non-obvious, and therefore likely to be subject to protection under United States patent law.
- G. “Copyrighted Intellectual Property” describes original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, software, traditional or electronic correspondence, and on-line instructional materials, that are likely to be subject to protection under United States copyright law.

H. “Traditional Works of Scholarship” are copyrighted scholarly and creative works regardless of their form, other than patentable intellectual property, which are created by academic appointees or students, and which have not been the subject of Exceptional University Support or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software.

I. “University Works” are copyrighted works (including on-line instructional materials) that have been specifically commissioned by a University office, that have been developed with Exceptional University Support, or that constitute Externally Funded Works.

J. “Exceptional University Support”

i. Exceptional University Support is financial or other support for research and teaching activities that exceeds the norm for a faculty member or student’s research or for teaching in his or her field or department.

ii. No support shall be deemed Exceptional University Support in the absence of a written agreement between the University and the Creators that specifies ownership of copyright in all resulting works and the allocation of associated rights.

iii. Exceptional University Support does not include:

- (a) sabbatical funding;
- (b) the award of competitive internal research or teaching grants;
- (c) ordinary library services;
- (d) clerical or administrative support;
- (e) office or laboratory supplies and equipment;
- (f) funding for endowed chairs; or
- (g) merely assigning a faculty member to teach a course that uses instructional materials that are provided to students electronically, including through the internet.

iv. For on-line instruction, Exceptional University Support does not include:

- (a) ordinary use of University servers and software platforms;
- (b) basic instruction in web composing;
- (c) basic orientation to the operation of online instructional techniques and processes;
- (d) occasional technical troubleshooting assistance; and
- (e) consultation with relevant University offices with respect to the Creator’s rights under this Policy

v. For on-line instruction, Exceptional University Support includes:

- (a) provision of designated technical assistance, such as audio-visual department personnel or a qualified graduate assistant, to assist development of an online

course, or provision of specialized software purchased for a particular online project, which exceeds normal University support for traditional courses, or (b) commissioned by the University by the provision of release time or other compensation to a faculty member as an adjustment to normal assigned duties for the purpose of creating an online course, which exceeds normal University support for traditional courses.

K. “On-line instruction” means instruction that is distributed to students exclusively through the internet.

L. “On-line instructional materials” are works, including courseware, that are created and distributed in connection with on-line instruction.

M. “Net revenue” is that remaining after deducting all legal fees and expenses necessary for obtaining and maintaining protection for, and licensing, applicable intellectual property.

## **2. Categories of Covered Intellectual Property**

### **A. Patentable Intellectual Property**

i. The University shall have the sole right to determine the disposition of patentable intellectual property under this Policy, including decisions concerning patent licensing and sale. Determination of those dispositions shall take into account the interests of the University, the public, and the Creator, including the Creator’s professional or ethical convictions concerning the use of intellectual property.

ii. Creators shall disclose promptly to IURTC any potentially Patentable Intellectual Property on forms made available by IURTC. IURTC shall report all disclosures to the President, and shall provide to Department Chairs and School Deans quarterly lists of disclosures relevant to their units.

iii. IURTC shall assess all disclosures submitted to it in a timely fashion, normally within sixty days, to determine whether the University should seek patent protection for the intellectual property. IURTC shall promptly notify the Creator of the intellectual property of the results of its assessment.

iv. Distribution of revenues derived from patentable intellectual property shall be governed by the distribution schedule stipulated in Section 3 of this policy, unless legal requirements or contractual agreements require otherwise.

### **B. Traditional Works of Scholarship**

- i. Except as provided in section 2.C.v, the University shall assert no claims to copyright ownership in or to distribution of revenue from Traditional Works of Scholarship.
- ii. The University may use Traditional Works of Scholarship, including on-line instructional materials, created for ordinary classroom and program use, such as syllabi, assignments, and tests, for administrative purposes, which may include course equivalency assessments for transfer purposes, accreditation agency reviews, and other functions that allow the University to fulfill its responsibilities for accountability.

### **C. University Works**

- i. The University retains all rights to use and commercialize University Works. The University may choose to forego or modify its ownership of a University Work and associated rights, through a written agreement with the Creator(s) of the work.
- ii. In the absence of contractual or legal restrictions to the contrary, the University grants Creators non-exclusive rights to non-commercial use and distribution of University Works they have authored. Creators who leave the University may continue to use such works at another non-profit institution for teaching, research, and other non-commercial purposes.
- iii. Revisions of University Works
  - (a) The University will respect the rights of Creators of University Works in considering and undertaking revisions.
  - (b) The University shall either withdraw obsolete University Works from use or seek revisions.
  - (c) Creators may initiate a request for withdrawal or revision in order to protect academic integrity.
  - (d) The University shall offer Creators employed by the University the opportunity to make revisions before requests are made of others.
  - (e) The University shall in good faith consult Creators no longer employed by the University.
- iv. The University shall acknowledge all Creators who have made a substantial contribution to a University Work, unless those individuals request otherwise. Creators may request to have their names removed from works.
- v. The distribution of revenue arising from marketing, licensing, and protecting University Works, and from the sale of their copyright or associated rights, shall be distributed in accord with the schedule stipulated in Section 3, unless the University and Creators agree otherwise.

vi. Copyright of University Works is held by the University in the name of the Trustees of Indiana University.

vii. Protection of and Liability for Copyright

(a) IURTC and the Office of University Counsel, as appropriate, shall investigate allegations of unauthorized use or copyright infringement of University Works, and shall recommend appropriate action. If the University initiates legal action in response to an unauthorized use or infringement, all costs of such action shall be borne by the University, which shall control the action. If IURTC decides not to initiate legal action, the Creator(s) may appeal the decision to the President, whose decision shall be final.

(b) In the event third parties assert unauthorized use or copyright infringement claims relating to a work in which the University has asserted ownership against the University or the Creator(s), the University shall assume responsibility for the defense and control of any legal action arising from such claims, in accordance with the University's Indemnification Policy.

viii. In the case of all copyrightable University Works, the unit or units of the University that have commissioned the work or provided Exceptional University Support shall file a report with IURTC as to the existence of such University Work and the opinion of the unit(s) as to such University Work's commercial potential. IURTC will assess the commercial potential and determine whether it wishes to manage commercialization of the work and management of the copyright. If IURTC does not deem the work marketable, it shall transfer the management responsibilities back to the commissioning unit(s). In these cases, the unit(s) may undertake management of the copyright, in consultation with the Office of the University Counsel, including the granting of non-royalty bearing licenses and other agreements involving permission for use.

**D. Externally Funded Works**

Externally Funded Works shall be considered University Works for all purposes, except that the terms of their respective sponsorship agreements or applicable laws shall take priority over this policy.

**E. On-Line Instructional Materials**

i. On-line instructional materials are considered Traditional Works of Scholarship, unless they were –

(a) specifically commissioned by the University from a faculty member or any other person,

(b) created using Exceptional University Support, or

(c) created by non-faculty staff within the scope of their employment,

– in which case they are considered University Works. This policy only applies to the aspects of the materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials.

ii. Faculty creators of instructional materials that are provided to students electronically (including through the internet) and which qualify as Traditional Works of Scholarship may commercialize such works, so long as the University's name is not used other than to identify the faculty member's position at the University.

iii. The copyright in instructional materials created by students and submitted to meet course requirements, and which would otherwise qualify as Traditional Works of Scholarship under section 2.E.i above, is owned by the student creator. Neither the course instructor nor the University shall distribute student owned on-line instructional materials for purposes beyond those of the course in which they are submitted or for appropriate for administrative purposes (such as accreditation agency reviews, assuring academic integrity, and other functions that allow the University and instructors to fulfill their responsibilities for accountability), without obtaining the written permission of the student.

### **3. Revenue Distribution**

#### **A. Monetary Proceeds**

- i. All monetary proceeds from the transfer or commercialization of applicable intellectual property shall be distributed as follows, unless legal requirements or contractual agreements require otherwise:
  - (a) The Creator(s) (or heirs, successors, and assigns), shall receive 35% of net revenues arising from the applicable intellectual property. The Creator's share shall be divided equally among joint Creators, absent a written agreement among the Creators to the contrary.
  - (b) The laboratory, or other applicable ongoing research, teaching, or service project entity in which the intellectual property originated, shall receive 15% of net revenues for the period during which the entity continues to function and the Creator(s) remain associated with the University. If the intellectual property did not originate through such an entity, or if the Creator(s) cease to be associated with the University, this portion shall be assigned to the originating administrative unit (department, center, etc.). If the laboratory or other project entity ceases to exist while the Creator(s)

remains at the University, this portion shall be assigned to an account in support of research managed by the Creator(s) and supervised by the originating administrative unit. In the case of multiple Creators, this full share shall continue to be allocated undiminished so long as a single faculty Creator remains at the University; this includes Creators holding emeritus status who continue to maintain a University research, teaching, or service project, subject to annual approval by the relevant dean and the President.

- (c) Campus units that have been involved in the development of the intellectual property, such as departments in which the Creator holds FTE appointment, centers initiating or managing project contracts and grants, and the relevant school, shall share 15% of net revenues. Campus faculties shall develop policies governing the distributions of such revenues among campus units in a manner appropriate to the campus, and adhering to the principle that a unit's degree of direct engagement in intellectual property development shall be reflected in its share of revenues. These policies permit and encourage units that cooperate in support of projects that generate intellectual property to execute agreements in advance concerning distribution of the campus units' share of revenues.
- (d) The University and IURTC together shall receive 35% of net revenues, to support further intellectual property creation as determined by the President and to cover the expenses associated with management of intellectual property and to support further activities of the IURTC Office of Technology Transfer devoted to intellectual property creation and protection. The division of this amount between the University and IURTC shall be negotiated between the University and IURTC. A report shall be made annually to the Intellectual Property Policy Council on the division of revenues and the activities of the University and IURTC in support of intellectual property creation and protection.

	<i>Academic</i>			<i>Administration</i>	
<i>Net revenue (= gross LESS legal fees and expenses)</i>	Creators	Labs, etc.	Campus Units	University	IURTC
	35%	15%	15%	35%	

- ii. In the absence of a written agreement to the contrary, multiple Creators shall receive equal portions of the Creator's share of revenue, and cases involving multiple laboratories, units, schools, and the like shall follow the principle of equal portions.

**B. Equity Interests**

- i. IURTC may negotiate for equity interests in lieu of or in addition to monetary consideration as a part of an agreement between IURTC and an external entity relating to intellectual property. Such negotiations shall comply with federal and

state statutes, University policies on conflicts of interest and commitment, and other applicable University policies.

- ii. IURTC shall own the equity interests. If and when monetary proceeds are generated by the sale of equity interests, those proceeds shall be distributed according to the policies set forth above for revenue distribution. IURTC does not act as a fiduciary for any Creator concerning equity interests or other non-monetary consideration received under the terms of this policy and no Creator shall have any interest in, or legal right to, such equity interests or non-monetary consideration.
- iii. A Creator may propose to IURTC an equity interest in the intellectual property in exchange for his or her own distribution (all other distributions being proportionately increased). IURTC shall negotiate with the Creator in good faith; however, it is not required to reach agreement with the Creator for an arrangement other than the equity and distribution arrangements in the prior paragraphs.

#### **4. Dispute Resolution**

- A. All appeals of decisions of the University or IURTC under this policy will be referred to an Intellectual Property Policy Council.
- B. The Intellectual Property Policy Council shall consist of
  - (i) Six faculty members, selected as follows:
    - (a) two faculty members appointed annually—one by the IUPUI Faculty Council Executive Committee and one by the Bloomington Faculty Council Agenda Committee—from the membership of campus Research Affairs Committees or other relevant standing committees of the Councils;
    - (b) one faculty member from a regional campus shall be appointed annually by the UFC Agenda Committee from the membership of the UFC Research Affairs Committee.
    - (c) two at-large faculty members appointed by the University Faculty Council Agenda Committee, in consultation with the President
    - (d) a faculty chair designated by the University Faculty Council Agenda Committee, in consultation with the President; and
  - (ii) The associate deans for research or equivalent from:
    - (a) the School of Medicine;
    - (b) the College of Arts and Sciences, and
    - (c) two other schools—one each from the Indianapolis and Bloomington campuses—designated annually by the President.
- C. Creators may appeal actions or decisions of the University or IURTC within thirty (30) days after the action or decision, unless good cause is shown for delay. The Council shall make a determination within thirty (30) days of the appeal. The University, the IURTC, or the Creators may appeal the Council's determination to



the President, whose decision will be final. The President shall submit a report to the Council explaining the basis for his or her decision.

## **5. Implementation**

A. This policy is to be interpreted and implemented so as to avoid infringement on academic freedom or restrictions on the ability of researchers to publish and present the results of their research.

B. Intellectual Property Policy Council.

1. The University or IURTC (as appropriate) shall consult with the Intellectual Property Policy Council in developing implementation policies for this policy. The University or IURTC may request a recommendation from the Intellectual Property Policy Council regarding the disposition of the intellectual property.

2. All exceptions to the terms of this policy shall require the written consent of the President, after consultation with the heads of directly affected units and schools, the chair of the Intellectual Property Policy Council or his or her designee, and the Creators. Individual agreements among parties concerning the distribution and relinquishing of rights or revenues are not exceptions under this policy.

3. The Intellectual Property Policy Council shall submit a written summary of its activities annually to the University Faculty Council and shall specifically address the effectiveness of the University and IURTC in utilizing the revenues that it receives under this policy to serve the interests of Creators and the University.

C. Written agreements related to revenue distributions, licenses, and exemptions that were executed prior to the effective date of this policy shall not be affected by this policy.

D. The Office of the University Counsel is the only source of legal advice within the University and shall only provide legal advice to the University, not to individual authors with respect to works in which they own the copyright. IURTC directs all intellectual property litigation under this policy on behalf of the University.

E. The President and the Creators may by written agreement modify the terms of ownership and distribution of revenues.

F. This policy takes effect on July 1, 2008, and replaces the intellectual property policy adopted by the Board of Trustees on May 9, 1997. For copyrighted works, the effective date shall be determined as the date of the creation of the work in its final form. For potentially patentable works, the effective date shall be determined as the date that the work was or should have been disclosed as required by this policy.

G. The Intellectual Property Policy Council shall assess the effectiveness of this policy and the appropriateness of its revenue distribution at intervals of not more than five years. It shall report its findings to the University Faculty Council and the President.