

# **Southwestern Oklahoma State University Intellectual Property Policy**

## **Preamble**

Southwestern Oklahoma State University (SWOSU) hereby adopts the following intellectual property policy for Southwestern Oklahoma State University, to include its main campus in Weatherford as well as its branch campus in Sayre, hereinafter collectively referred to as the University. Intellectual property is the inherent value produced by human creativity and invention, protected by law from unauthorized exploitation by others, and includes patents, copyrights, trademarks, and other proprietary information. Southwestern Oklahoma State University is committed to providing an environment that supports the research, pedagogical, and service activities of its faculty, staff, and students. The University is committed to the creation and dissemination of knowledge not only to the students attending the University but also to the larger society. SWOSU's Intellectual Property Policy (hereinafter referred to as the IPP) is intended to encourage a healthy system of rewards and incentives for the creation of intellectual property while at the same time giving proper consideration to the responsibilities that the University has as a public university. The Intellectual Property Committee (hereinafter referred to as the IPC) hereby articulates three components of its IPP: (1) Patents, (2) Copyrights, and (3) On-Line or Web-Based Intellectual Property. SWOSU's IPP has been developed with the intent to promote and encourage excellence and innovation in scholarly research, teaching, and service by identifying and protecting the rights of the University, its faculty, staff, and students.

## **1.0 Policy Application**

This policy applies to all full- or part-time employees, including students, who create intellectual property related to the scope of their employment while under contract or an employee-at-will with the University. This policy also clarifies rights pertaining to student academic creations.

For the purposes of this policy, "Employee" shall be defined as any person receiving compensation for service, or any person volunteering services for the benefit of the University. Employees shall include, but shall not be limited to, faculty, administrative and professional personnel, classified staff, research fellows, staff assistants, and student employees. "Faculty" shall be defined as permanent and temporary teaching, emeriti, research, service, extension, library, or student affairs appointment faculty, graduate teaching and research assistants, visiting scholars, and faculty on sabbatical leave. The uncompensated activities of students in furtherance of their education shall not be considered service that benefits the University within the meaning of this policy unless an agreement exists to the contrary. However, students engaged in projects on a pro bono basis and/or not performing a function in furtherance of their education while working in conjunction with an employee and/or faculty member will be subject to the same terms and conditions as those viewed as employees and faculty for purposes of this policy.

All employees accept the terms of this policy as a condition of employment or gratis association. Employees shall agree to execute an assignment of their future patentable works and discoveries

to the University. This policy may be modified by the administration with approval from the President after consulting with the IPC.

This policy is applicable to not only all persons employed full-time or part-time by the University but also to any persons using University facilities under the supervision of University personnel unless special terms for management of the work of such individuals are negotiated by the University or the applicable University component.

## **2.0     IPC and University President's Role Re: Intellectual Property**

The President, in conjunction with the IPC, shall be responsible for the administration of this policy and applying the policy equitably across the campus. The President shall be responsible for registering and enforcing the University's intellectual property interests.

If the IPC advises the President that institutional sponsorship, external sponsorship, or substantial use of institutional resources were involved, the President will indicate in a reasonable time whether or not the institution intends to hold and pursue its rights. If the IPC recommends that the institution waive all claims, the President will indicate whether or not he/she concurs and whether or not the institution waives all claims.

Based upon the recommendation from the appropriate dean or supervisor, the IPC will review the technical merit and also the market and commercial potential of inventions, discoveries, and creations developed within the University community by employees and students. The recommendation of the IPC will be forwarded to the President. The President or his/her designee will promptly notify the creator(s) of the IPC decision. The President's decision on all matters related to patents and submitted from the IPC will constitute final administrative action.

The IPC serves as an advisory committee to the President on all matters regarding University intellectual property issues, especially with regard to University policy on these matters. All members of the IPC shall hold confidential all matters coming before the committee regarding specific intellectual property. IPC members will be appointed by a method determined by the University and the Provost will appoint the Committee Chair. Members will be chosen to assure expertise appropriate to the charge of the committee.

The IPC shall review and recommend to the President or his/her designee the procedures for the implementation of this policy; resolve questions of intellectual property ownership that may arise between the University and its faculty, staff, or students; recommend to the President the expenditure of the established University Research Account; and make such recommendations as are deemed appropriate to encourage disclosure and to assure prompt and expeditious handling, evaluation, and prosecution of intellectual property opportunities.

## **4.0 General Definitions**

### **3.01 Intellectual Property**

Intellectual properties are products of the human intellect that are unique, new and innovative, have some value in the market place, and the creation of a single person or a team. Intellectual property can be an idea, an invention, a patented work, an expression or literary creation, a copyrighted work, a trademark (unique name), an industrial process, a composition of matter, a medicinal formulation, a computer program, a presentation, or data of digital magnetic origin.

### **3.02 Substantial Use of University Resources**

Intellectual Property that is not produced as a “work(s) for hire,” but is a work that is developed with integral and substantial use of funds, space, hardware, or facilities administered by a University component, where use is substantial rather than incidental, shall be owned by the University unless otherwise directed by this policy. Substantial use of University resources has occurred where the University has provided support for the creation of the work with resources of a degree or nature not routinely made available to faculty or non-faculty employees. Substantial use of University resources may include but is not limited to:

- A. Waiver of fees normally required to use specialized facilities such as equipment, production facilities, services laboratories, specialized computing resources and studios;
- B. Institutional funding or gifts in support of the work’s creation; and
- C. Reduction in levels of teaching, service or other typical University activities (e.g.; course load, student advising responsibilities, division/department meetings, office hours, administrative responsibilities).

Ordinary or limited use of computers, laboratory space, libraries, office space or equipment, routine secretarial services at routine levels, telephones and other informational resources shall not be considered as substantial use of University resources.

The University does not claim rights in intellectual properties for which no equipment, supplies, facilities or proprietary information was used and which was developed entirely on the employee’s own time.

### **3.03 Work(s) for Hire**

The University shall retain ownership of intellectual property created as institutional rather than personal efforts, which is, created for institutional purposes in the course of the creators’ 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 or “work(s) for hire” as defined by law, as is software developed for University purposes by staff working collaboratively.

Institutional works are works commissioned by the university and include but are not limited to: brochures, training programs, CD-ROMs, videos, and manuals that staff members are hired to develop. Works created by staff on their own time are not “work(s) for hire.” If the University so chooses, it may release a “work(s) for hire” back to the staff member who created it. Works commissioned by external sources are not works for hire unless substantial university resources are used to produce the intellectual property.

## **5.0 Patents**

Employees of the University may create patentable discoveries. Faculty and staff members of the University are encouraged to undertake creative endeavors and to receive recognition therefore. It is desirable in the public interest in some cases to seek University intellectual property protection for these works and discoveries. Commercialization through licensing the use of the property provides an opportunity for both incomes to the inventor and support for further University research and scholarship.

The University is dedicated to instruction, research, and the extension of knowledge to the public. It is the policy of the University to carry out its scholarly work in an open and free atmosphere, and to publish such results. Research done primarily in anticipation of profit is incompatible with the aims of the University. However, the University recognizes that patentable inventions are conceived or created during the course of research conducted by faculty and students using University facilities. This policy has been established to ensure that those inventions and materials in which the University may have an interest will be utilized in a manner consistent with the public good, through patents or otherwise.

The individual or individuals who make the discoveries or inventions which become the property of the University under this policy will share in income derived by the University from the marketing of such inventions and patent rights based thereon according to such terms as set out below. (See Section 4.04.) Discoveries or inventions made or created by employees, faculty, students, and staff of the University and the funds derived from such discoveries or inventions will be used to further the research enterprise of the University. The University through its President, or an officer of the University designated by the President, may recognize a contract with patent service organizations, such as, for example, University Patents, Inc., or Research Corporation, in regard to obtaining, maintaining and marketing of patent rights (domestic and foreign) based on discoveries or inventions which are or shall become the property of the University pursuant to this Policy. (It is not contemplated that the Patent Policy shall extend to and includes questions of copyright ownership.)

### **4.01 Patentable Inventions**

#### **A. Patent**

An invention may be a design, process, code, biological material, an industrial process, a composition of matter, a medicinal formulation, a computer program, a presentation, data of digital magnetic origin or device that shows novelty, usefulness, and non-obviousness. As such, a patent is a property right granted by the United States, which gives the holder the exclusive right to exclude others from the manufacture, use and sale of the invention in the United States for a period of time. As property, it may be sold or assigned, pledged, mortgaged, licensed, willed, or donated, and be the subject of contracts and other agreements. When an inventor secures a patent, he or she has the opportunity to profit by the manufacture, sale or use of the invention in a protected market or by charging others for making or using it. Patents may also be obtained in other countries, and foreign patents are often important for commercial development.

Federal law governs the creation of intellectual property. The United States Constitution, Article III, Section 8, gives to Congress, in order “to promote the progress of science and the useful arts, the power to grant, for limited periods of time, to authors and inventors, the exclusive right to their respective writings and discoveries.” The Patent Act, in Title 35 of the United States Code, sets out the requirements by which inventors of new and useful processes, machines, manufacturers, or compositions of matter may obtain patent protection.

## **B. Marketable Software**

Some software embodies algorithms that can be the subject of a patent, which provides broader protection than copyright but at a greater expense. Any software that may fall into this category should be treated as an invention and handled by its inventor and the University as described in this policy.

### **4.02 Patent Ownership and Management**

Ownership of intellectual property implies responsibility and liability as well as the right to control its use. The owners of intellectual property as described in this document will take reasonable precautions to assure the proper use of materials for which they or others hold ownership.

The rights to patentable inventions resulting from University-sponsored research will be assigned to the University. The University may seek and hold patents and copyrights, assign its rights, and execute royalty-sharing agreements. The University may, at its discretion, waive its rights in favor of the inventor. If it retains the rights, the University will execute an agreement with the inventor(s) providing for royalty payments on income derived from the patent.

The University shall own the rights to all patentable property and other tangible research and scholarship developed as a result of University employment, or when the equipment, supplies, facilities, employee time or proprietary information of the University are used. After the employee terminates his or her employment at the University and is reemployed elsewhere, the University retains ownership of subsequent inventions where the invention

is the direct outgrowth of the University's business or University research and development.

Patents and discoveries in which the University has a property interest will be assigned to and managed by the University regardless of the allocation of ownership and royalty interests.

All inventions or discoveries made or conceived by University employees or students shall be disclosed in accordance with this policy. The individual responsible for such invention or discovery shall adequately demonstrate the relative extent to which the inventor's personal time and resources and the University's resources, facilities, and materials were utilized. In each instance in which it is adequately demonstrated that such invention or discovery was made exclusively on personal time, utilizing no University resources, facilities or materials, the University shall acknowledge in writing that the invention is the exclusive property of the inventor.

If an individual so desires, however, inventions or discoveries made exclusively on personal time, utilizing no University resources, facilities, or materials, may be assigned to the University for patent evaluation, registration, administration or protection.

After consultation with the inventor, the University may, in its sole discretion and upon such terms as it deems appropriate, cause any rights, which it may have to a discovery or invention to be released and transferred to the inventor. Such action may be expected if the University believes that a discovery or invention is one that is non-patentable or that it does not warrant further evaluation as to patentability, or if a discovery or invention is returned to the University after negative evaluation by its patent evaluation agent(s), if any. In the event of an assignment or release, the University shall retain a royalty-free perpetual non-exclusive license for the use of any such invention or discovery.

#### **A. Non-Government Sponsored Research**

The University must ensure that its facilities and the results of the research of its employees and students are applied in a manner which best serves the interests of the public. Likewise, the legitimate interests of a private sponsor who provides financial or other support to research carried out by or through the University must be considered. The University will normally reserve ownership of patents on inventions arising out of research supported in whole or in part by grants or contracts with nongovernmental organizations or firms. Contracts or agreements which are entered into between the University and nongovernmental organizations or agencies should contain clauses setting forth such a reservation, unless deviations are requested by the sponsor and approved by the University President. In the interest of fair treatment to the sponsor and in consideration for such sponsor's investment, special provisions regarding patent rights may be negotiated by the University, provided that the University retains the perpetual, non-exclusive right to use the invention for its own research, educational, and service purposes, without payment of royalty fees. In such cases, in the interest of discharging the

University's obligation to the public in the application of its facilities and its employees' and students' time and talent, the University will require the sponsor to use due diligence in the commercial use of the invention, and the University will retain the right to publish the results of the research involved after a period of time reasonably necessary to protect the rights of the parties and to allow for the filing of a patent application.

## **B. Sponsored Research**

The term "University-sponsored research" includes not only research covered under an official University research contract, but also any research-like activity or other creative endeavor carried out by employees in the course of their official duties or responsibilities, or any activity that makes "substantial use of institutional resources." Substantial use of institutional resources will mean that for the project that produced the intellectual property the creator received staff, salary or material support beyond that normally provided to the creator at the University. Should a question arise about whether support is beyond the norm, a written statement will be obtained from the appropriate dean or supervisor concerning level of use of University support and facilities.

Where the invention has been developed through research sponsored by a grant or contract with the federal or state governments (or their agencies), it must be reported to the agency and the agency joins the University to determine distribution of the rights in the invention, to determine if patent prosecution should be sought, and how the patent should be administered or disposed of in the public interest.

Under the federal patent and trademark legislation of 1980 (35 U.S.C. Section 200 et. Seq.), the University has the right of first refusal to title in inventions made in the performance of federal grants and contracts. The University will assert title to and attempt to license inventions made with federal government funds so that the Congressional purpose of fostering the development of industry in the United States will be furthered.

Patents on inventions arising from research financed by the United States Government are controlled by the terms of the supporting grants and contracts, and applicable Federal laws and regulations. Except as provided by Federal law or by government-supported grants or contracts, when no patent rights are claimed or when patent rights are waived by the United States Government, patents arising from government-sponsored research are controlled by patent policy set forth herein.

### **4.03 Allocation of Patent Costs and Licensing**

In the event that intellectual property matters referred to the IPC show University ownership interest and commercial potential, the IPC will recommend appropriate

allocations of ownership, revenues or royalties, and control of ancillary rights based on this policy.

For inventions to reach the marketplace for the benefit of society, the cooperation of industry is necessary. A patent license allowing a company to use an invention formally establishes this cooperation. The University will determine to whom the license will be granted and will likewise be responsible for enforcing all agreements under the license. The University may follow different procedures to determine with what entities to enter into licensing agreements. See Appendix B for one possible procedure the University may follow.

#### **4.04 Revenue Sharing: Distribution of Income**

All monetary proceeds from commercialization of University-owned inventions are the property of the University. The University will collect and distribute royalties, fees, equity interests, or dividends to inventors and the University in accordance with procedures established by the University.

When the University obtains any revenue from the assignment or licensing of any patent, revenue sharing will begin only after the University recoups its out-of-pocket costs uniquely associated with patenting the invention. The University underwrites all costs of obtaining a patent and of legal counsel retained for that purpose. The remainder of any shared revenue, less a portion (no greater than 50%) that may be retained by the University to fund its operations, will be used to sponsor further research and research-related activities in the University.

Net royalties, after the University is reimbursed for patent costs, are divided among the University and the inventor. The University will distribute net income according to the following schedule:

Cumulative Net Income	Inventor	University
\$1-\$10,000	100%	0%
\$10,001 - \$200,000	50%	50%
Above \$200,000	60%	40%

With consideration to other University priorities and policies, the University will distribute a portion of its share, no less than 50%, to a University Research Account, to be established for the advancement of research and for promoting other faculty and staff inventions.

The University's share of income accruing from patents (net of costs incurred for obtaining, licensing, or administering the patents and copyrights) is to be deposited in a restricted account as mentioned above. Funds in this account are to be used solely for the enhancement of research and research-related activities.

In the case of projects sponsored in part by an outside party or individual, a written contract will be made between the University and the cooperating agency or organization. In the case of a research project where all costs, including overhead, salary of the investigator, reasonable rent on the use of equipment, etc. are paid by an outside party, the outside party and the University may negotiate the allocation of all patent rights prior to the provision of a funding by the outside party. The University will reserve the right of the creator(s) to publish all data of fundamental value to science and technology.

In the event of multiple inventors, the inventors will agree among themselves as to the distribution of the income accruing to the inventors; distribution of the inventors' share shall be made only upon receipt of a signed agreement or legal determination among the inventors.

## **4.05 Personnel Obligations: Reporting Requirements**

### **A. Disclosure:**

Based on the provisions of this policy, the creator(s), along with the department head, director, or dean, will make an initial determination of the commercialization and marketability potential of an invention or discovery. Where such potential is deemed to exist, the creator(s) will present an Oklahoma State Regents For Higher Education "Technology Disclosure Form" to the IPC. The form is available on the University website. The form asks for such information as a description of the invention, names and contact data for everyone involved in making the invention, funding sources for the research that led to the invention, prior publications or public descriptions of the invention, and commercial contacts in the field of the invention. All individuals whose discoveries and inventions are covered by this policy have a duty to promptly disclose the same to the IPC. The duty of disclosure arises as soon as the individual has reason to believe, based on his or her own knowledge or upon information supplied by others, that the discovery or invention may be patentable. Certainty about patentability is not required before a disclosure is made.

Individuals shall execute such declarations, assignments, or other documents as may be necessary in the course of patent evaluation, registration, administration, or enforcement in order to ensure that title in such inventions shall be held by the University, or by such other parties as may be appropriate under the circumstances.

The IPC is charged with recommending to the President whether or not the University should pursue a patent application on the subject invention. The specific procedure that the IPC follows to arrive at this recommendation is plastic, and may change based on the expertise of the committee members, the resources available to the committee, and the urgency of the particular disclosure. One example of a procedure to arrive at this recommendation is outlined in Appendix A. Regardless of the specific procedure, IPC will forward a recommendation to the President in a timely manner. Upon consideration of the IPC recommendation, the University is free to pursue a patent application or to waive its rights to the invention subject to

the rights of any sponsor. Although not limiting, one procedure that the President may choose to follow for pursuing a patent application and subsequent licensing of the technology is outlined in Appendix B. The creator(s) will be notified of the University's decision to pursue patent application or waive its rights, within three months of submission of the disclosure to the IPC. If the University waives rights, or if a patent application is not initiated within six months of the disclosure, the creator(s) will be free to patent the invention or publish any of the data pertaining to the disclosure. In such case, however, the University does not relinquish its right to the data obtained in the research project.

A flowchart outlining the process for disclosure evaluation, patent protection, and pursuit of licensing agreements is contained in Appendix C.

**B. Avoidance of Conflicts:**

Conflicts involving patentable inventions and discoveries may arise when University employees or students enter into personal consulting agreements with outside firms and organizations. The agreements which business firms generally wish to have executed by those who are to serve in a consulting capacity frequently contain provisions requiring the licensing or assignment of the consultant's inventions and patents to that business firm. Such provisions may apply to areas in which the individual's University work lies, and thus may come into conflict with the terms and conditions of this policy.

Prior to signing any consulting agreement which deals with patent rights, trade secrets, or the like, if any University time, facilities, materials or other resources are to be involved in the carrying out of such consulting work, University employees or students must submit the proposed agreement to the IPC and obtain a waiver of University rights, or otherwise modify the agreement to conform with this policy.

It is the policy of the University that the investigator(s) must disclose any substantial interests that would reasonably appear to directly or indirectly and substantially affect the design, conduct, or reporting of sponsored activities funded or proposed for funding by an external sponsoring agency.

**C. Assistance:**

Inventor involvement is important to the entire patent and licensing process. Degree of involvement varies according to the nature of the invention and creator availability and interest. Creator(s) expertise is especially helpful during the evaluation for patentability, in the patent application process, in identifying licensing prospects, and in meeting with companies expressing interest. Inventors typically provide technical evaluation of previous patents and publications in their field, supply information to the patent attorney and review draft applications and responses to government actions, and discuss technical aspects with interested companies. Regardless of the amount of involvement, inventors are kept informed of the

evaluation process and any actions taken, and their input is considered in making decisions about the University's protection and licensing of the invention. However, final responsibility for such decisions rests with the University President. The disclosure evaluation process may take anywhere from a week to three months and possibly longer, depending on the complexity of the invention and the target industry. After filing a patent application, it can take from one to three years for the patent to be issued or denied by the U.S. Patent and Trademark Office. It may take five years or longer for commercial sales to begin, depending on how much work needs to be done to develop and market a product based on the invention. It may be as long as eight years after an invention is disclosed before significant royalties on sales are received.

#### **4.06 Confidentiality Requirements and Agreements**

A major function of the University is the advancement and dissemination of knowledge. Any practice that unnecessarily restricts the publication or results of scholarly scientific work is to be avoided. It is recognized, however, that the full development of useful inventions or discoveries may be dependent upon the securing of patent protection that will enable the commercial utilization of the discoveries or inventions. Accordingly, under certain circumstances it may be necessary to delay for a minimum period the publication of results of research.

Once an invention is identified as potentially patentable, premature publication, public use, or disclosure of an invention can jeopardize the rights of the employee, or the University or its assignee to secure patent protection--particularly patent protection in other countries. In close consultation with the employee inventor and for the benefit of employee inventor, University, and possible Licensee, there shall be no publicity or disclosures concerning the invention until patent applications have been filed. The IPC shall act in a timely fashion in such cases so as to not unreasonably delay employee publications. All publicity, public reports, interviews, news releases, speeches, public disclosures, or public demonstrations of the invention subsequent to the filing of the application shall have prior clearance in writing from the University or its assignee. This section shall not be applicable to sponsorship agreements that impose different obligations on disclosure.

In the course of patent discovery, faculty may desire to publish a scholarly article regarding the novelty, utility or nonobviousness of the invention under United States patent law. Seeking a patent for discovery does not prevent publication, and in most cases, does not delay publishing. However, to retain the potential for foreign patents, a U.S. patent application must be filed before any description of the invention is publicly disclosed in an article, abstract, poster, thesis or oral presentation, or other public format. To find out if a discovery is patented, contact the IPC. The Committee will work with outside patent attorneys to accommodate publishing dates. The best results are achieved, however, if a description of the invention is submitted at least three months in advance of the first public disclosure, to allow time to assess patentability and commercial potential and to draft a patent application.

Apart from publishing issues, it is important to keep thorough records in the form of bound lab notebooks that record ideas and experiments and note independent witnesses to successful results. A standard Confidentiality Agreement should be considered when sending unpublished confidential information to a company. Additionally, a Materials Transfer Agreement (MTA) should be considered when sending proprietary samples (e.g. biological materials) to a company. When obtaining sample material from companies or other universities, the employee may receive a MTA to be signed and returned. Forward these MTA agreements to the IPC for review and the authorized University signature.

#### **4.07 Appeal Process**

If there is a question of ownership, the IPC will determine whether the University, the employee, the University and the employee jointly, or an outside sponsor, owns the potentially patentable property. The IPC may determine that the employee or sponsor is a partial owner of the intellectual property with the University in cases where it would be unfair to determine that the property is wholly owned by the University, e.g., when an employee disclosed discoveries that occurred before employment with the University or when the sponsor's employees have contributed to the invention. In such cases the IPC shall notify the previous employer (if any) and negotiate percentages of respective ownership. If the IPC deems it to be in the best interests of the University to release its rights to the invention, the University may do so.

#### **4.08 Regional University System of Oklahoma (RUSO)**

##### **Patent Policy - General Statement (5.13.1)**

*"It is in the best interests of the Board and the State of Oklahoma to encourage faculty and staff members of the Universities to undertake creative endeavors, and to receive recognition therefor.*

*The individual or individuals who make the discoveries or inventions which become the property of the University under this Policy will share in income derived by the university from the marketing of such inventions and patent rights based thereon according to such terms as the president of the university shall direct. As provided for below, discoveries or inventions made or created by employees, faculty, students, and staff of the university will become the property of the university. Any and all benefits accruing to the university and derived from such discoveries or inventions will be used to further the research enterprise of the university. The university, through its president, or an officer of the university designated by the president, may recognize the contract with patent services organizations, such, for example, as University Patents, Inc., or Research Corporation, in regard to obtaining, maintaining and marketing of patent rights (domestic and foreign) based on discoveries or inventions which are or shall become the property of the university pursuant to this Policy. It is not contemplated that this Patent Policy shall extend to and include questions of copyright ownership.*

### **RUSO: Inventions and Patents**

*All discoveries or inventions, whether patentable or unpatentable, and including any and all patents (domestic and foreign) based thereon and applications for such patents, which are made or conceived by any member of the faculty, staff, or student body of the university, either in the course of employment by the university or substantially through the use of facilities or funds provided by or through the university shall be the property of the university; and all rights therein shall be assigned, licensed, or otherwise commercially exploited as directed by a duly authorized officer of the university, who shall be designated by the president of the university.”*

### **5.0 Copyright**

The creation and utilization of scholarly works is central to the mission of the University. The majority of these works is copyrightable. The systematic dissemination and use of copyrightable works by the University is fundamental to the advancement of Oklahoma's culture and the development of its economy. The IPP of the University affirms the broad general copyright policy of the Regional University System of Oklahoma.

*“The Board recognizes and encourages its faculty, staff, and student body to participate in creative and scholarly activities as an inherent part of the educational process. It is the broad policy of the Board to promote creativity and scholarly activities and to expand the frontiers of human attainment in those areas to which the pursuits of the six regional Universities are dedicated.”*

A copyrightable work is an original work of authorship that has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. These works include books, journals, software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, pictorial and graphical works, etc. A copyrightable work may be the product of a single author or a group of authors who have collaborated on a project.

Southwestern Oklahoma State University encourages the preparation, presentation, and publication of copyrightable works that result from teaching, research, and scholarly and artistic endeavors by members of the faculty, staff, and student body of the University. Authors shall be permitted maximum freedom with respect to their copyrightable works, consistent with the obligations of the University. Copyrightable works may be created under a variety of circumstances and conditions that affect the ownership and subsequent management of those works. Under the Copyright Revision Act of 1976 (as amended), copyrightable works are protected by copyright from the time they are fixed in a tangible medium of expression, now known, or later developed.

## **5.01 Ownership Issues Regarding Copyrightable Works**

### **A. Books, Articles and Similar Works**

In keeping with academic tradition, and except to the extent required by the terms of any funding agreement or for substantial use of University resources to create the work, faculty authors of works own the 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, referred literature, popular nonfiction, novels, poems, musical compositions or other works of artistic imagination that are not works for hire. If a faculty member retains title to copyright in teaching or course materials that are not works for hire, such as class notes, curriculum guides and laboratory notebooks, the University shall retain a royalty-free right to use the materials for educational purposes during the time of his/her employment.

### **B. Institutional Works or “Works for Hire”**

The University and the creator(s) of the work may share royalties from university-commissioned “work(s) for hire” projects, which were funded by the University. The terms of any grant or contract relative to royalties shall take precedence over this policy should there be a conflict between them.

### **C. Works Developed with Substantial University Resources**

The University 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, the University will not construe the provision of University facilities as constituting substantial use of University resources, except for those instances where the resources were furnished specifically to support the development of such copyrightable works.

Present and prospective employees of the University shall, upon request of the IPC to perfect intellectual property rights, execute an assignment agreement in a form prescribed by and available from the IPC to set forth effectively the ownership and rights to copyrightable works.

## **5.02 Disclosure, Assignment and Protection**

Authors of copyrightable works that are not owned by the University, or any of its components, own the copyright in their works and are free to publish them, register the copyright, and to receive any revenues that may result therefrom. Decisions relative to registering of these works with the Copyright Office are left to the individual creator.

Authors of copyrightable works that are not works for hire but are work that are owned by the University shall promptly disclose to their department chair and the IPC any work

of authorship covered by this policy (including those made under sponsored research or cooperative arrangements). Disclosure shall be made on a disclosure form prescribed by and available from the IPC, and a copy shall be filed with that office. Such persons shall cooperate with the University and the IPC to the best of their ability in protecting intellectual property rights in the work of authorship. Furthermore, upon request by the IPC to perfect 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 extensive quotation or reproduction beyond fair use and the use of third party works has been obtained.

#### **5.03 Negotiation and Execution of Agreements for Copyrightable Works**

Agreements permitting a party to use, develop, or otherwise commercialize copyrightable works owned by the University are encouraged. The IPC, with the cooperation of the author, has primary responsibility for negotiating with third parties having an interest in using, developing or otherwise commercializing copyrightable works.

#### **5.04 Student Ownership of Copyrightable Works**

Students own the copyrights of works created on their own (i.e., not within the scope of an employment relationship with the University or with one of its employees, and not making substantial use of University resources).

Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.

Students who are hired to perform specific “work(s) for hire” that contribute to a copyrightable work will ordinarily have no rights to ownership of that work, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright of the rest of the work will ordinarily retain copyright ownership of the portion contributed by the student.

Students working collaboratively with academic employees on projects that result in copyrightable work may be granted certain rights and obligations of copyright ownership by the principal investigator, as would faculty and/or staff working collaboratively on the project. Faculty and students should establish these rights at the outset of their collaboration.

If none of the above relationships applies, students performing work compensated by the University are subject to the provisions governing employees.

Students may also be subject to rules and restrictions of the departments or schools which are consistent with the University's IPC.

## **5.05 Other Considerations**

Some works created at the University may be both patentable and copyrightable (e.g., a copyrightable work that embodies a patentable invention). Many works encoded for computer utilization may be patentable. For works that are both copyrightable and patentable, the Patent Section of the University's IPC shall govern the intellectual property rights of the work.

Any copyrightable intellectual property, regardless of whether it is an “institutional work,” a “sponsored work,” a “commissioned work,” or a “personal work” is eligible for consideration in Promotion and Tenure proceedings.

University employees should not enter into intellectual property agreements without affirmative notice that the intellectual property rights of the University cannot be subordinated to a third party consulting or employment agreement. Such notice should be provided to the prospective employer as well as to the appropriate University component.

## **5.06 Regional University of Oklahoma (RUSO) Policy**

### **Copyright Policy (5.13.2)**

**POLICY.** RUSO recognizes and encourages faculty, staff, and students to participate in creative and scholarly activities as an inherent part of the educational process. It is the broad policy of RUSO to promote creativity and scholarly activities and to expand the frontiers of human attainment in those areas to which the pursuits of the senior regional universities are dedicated.”

**BASIC OBJECTIVES.** Copyrights are created by the Constitution and the laws of the United States to promote the progress of science and the useful arts by securing for limited times to authors the exclusive rights to their works and writings. The basic objectives of the Board policy concerning copyright include the following:

- A. to maintain the board academic policy of encouraging research and scholarship as such without regard to potential gain from royalties or other income;
- B. to make copyrightable materials created pursuant to university objectives available in the public interest under conditions that will promote their effective utilization;
- C. to provide adequate incentive and recognition to faculty and staff through proceeds derived from their works.”

### **COPYRIGHT OWNERSHIP AND ROYALTY DISTRIBUTION.**

- A. Under the Copyright Revision Act of 1976, 17 U.S.C. Sec. 101 et seq. (1976), works of original authorship are protected by copyright from the time they are fixed in a tangible medium of expression, now known, or later developed.

- B. All RUSO personnel, in accordance with the Board policy and basic objective of promoting creative and scholarly activities, are free to develop, create, and publish copyrightable works.*
- C. Copyrighted works produced by the RUSO faculty and staff are the property of the creator of that work. All rights afforded copyright owners under Sec. 106 of the Act reside with the creator unless he/she has assigned or licensed any of the enumerated rights. Decisions relative to registering of these works with the Copyright Office are left to the individual creator.*
- D. Copyright in works specifically commissioned by the university under Sec. 201 (b) of the Act shall belong to the university. As copyright owner, the university shall make decisions relative to registering commissioned works. Royalties for university-commissioned copyrighted works may be shared by the university and the creator(s) of the work. The terms of any grant or contract relative to royalties shall take precedence over this policy should there be a conflict between them. Disputes arising over royalty sharing for university-commissioned works shall be referred to the general counsel for the Board.*
- E. Works produced under a specific contract or grant agreement between the university and a governmental or other agency or organization are subject to the terms of the grant or contract for purposes of copyright. If copyright ownership is not specified, such rights shall reside in the creator.*
- F. Where university service units (such as a media production department) are involved with the production of a substantially completed copyrightable product, royalties shall be distributed between the copyright owner, i.e., faculty or staff creator, and the university as provided for in a written agreement concluded prior to work being done.*

*However, in those instances in which a written agreement has not been finalized prior to the completion of the copyrightable product, the standard distribution of royalties will be provided to creator with 50 percent of the net income when mass production and distribution are accomplished by the university; 50 percent of the gross income when mass production and distribution are accomplished by an outside entity. If this standard is unacceptable to either party, the matter shall be referred to the university president.”*

## **6.0 On-Line or Web-Based Intellectual Properties**

Southwestern Oklahoma State University encourages its faculty and administration to engage in scholarly activities during the academic year as a part of their university responsibilities. Such scholarly activity would include the creation of On-Line teaching materials and Web-Based teaching methods. This type of instruction is an emerging area that Southwestern Oklahoma State University embraces and supports as new technology creates an opportunity for distance education for current and future students of SWOSU. While faculty engage in this type of teaching activity and creation, the University will strive to protect the work-product of its faculty and other personnel, which are prepared for class use either on-site or via an electronic format.

Universities were alerted to the necessity to enact protection of the administration and faculty for scholarly work by the 1980 enactment of P.L. 96-517, The Patent and Trademark Law Amendments Act, more commonly known as the Bayh-Dole Act, and amendments included in P.L. 98-620, enacted into law in 1984.

## **6.01 Definitions**

### **A. Web-based (asynchronous)**

Web-based, also referred to as asynchronous or on-line courses occur independent of time or location and are often known as courses available anytime and anywhere. These courses are delivered over the web. Web-based courses may be locally produced, purchased or contracted.

### **B. ITV or Web Video (synchronous)**

ITV courses (Interactive Television) or Web Video are synchronous courses that originate in a real time classroom environment and are narrow cast to select receive site locations. These courses allow the student to interact with the instructor and other students in a real time environment from location to location.

### **C. Blended (synchronous and asynchronous)**

Blended courses usually have elements of both synchronous and asynchronous courses with ITV or face to face teaching and web-based segments. Depending on what best suits the subject and the audience, these courses typically use the best of both methods in delivering content.

## **6.02 Distance Education**

All Distance Education courses are considered “regular” courses and are transcribed without any reference to delivery mode. All students enrolled are considered as resident students to that course regardless of location.

## **6.03 Copyright Assignment**

The general rule for copyrighted materials is that the creator holds exclusive rights at the time of creation, unless it is assigned to another owner, either wholly or jointly. Registering the copyright with the Federal Government Copyright Office is another matter. (See Section 5.0.)

## **6.04 Determination of Specific Compensation**

Resource and time requirements for development of courses vary as a function of the specifics of the offering, availability of related materials and course format.

### **A. Synchronous Format**

Distance Education instructors teaching synchronous courses are not compensated for course development.

**B. Asynchronous and Blended Formats**

Distance Education instructors may be compensated for developing either asynchronous or blended courses. Compensation is based on the SWOSU *Policy for Distance Education*. Departments may also wish to contribute additional compensation from their own budgets.

**6.05 Ownership and Licensing of On-Line and Web-Based Course Materials**

The University IPC will determine Ownership (copyright holder) and/or Licensing, which, in turn, will depend upon the circumstances of the development. For example:

Course Development Level	Ownership	Licensing
A. Work(s) for hire	Creator	University
B. With substantial use of university resources	Creator	University
C. With minimal use of university resources	Creator	Creator

- A.** If the On-Line or Web-Based course is a work for hire where the University specifically directs its creation and provides materials, time, or monetary compensation to the creator to develop the materials, ownership will be retained by the creator. The University will retain a right to license the work product from the creator at no cost to the University. If the On-Line or Web-Based course is developed under the support of a state, federal or private grant, as a work(s) for hire, ownership of the materials developed will reside with the creator. Again, the University will retain the right to license the work product from the creator at no cost to the University.

With regards to the creation of an On-Line or Web-Based course by a faculty member, a “work for hire” is defined as work “above and beyond the scope of normal duties” which is compensated by the University through an agreement that is separate from the faculty member’s on-going contracted position as a University faculty member.

- B.** If the On-Line or Web-Based course creator uses substantial University resources (as defined in section 3 of the SWOSU Intellectual Property Policy), then the creator retains ownership; however, the University maintains a royalty-free license to use and distribute the material while the creator is employed by the University.
1. As the acceptance of substantial university resources results in the loss of licensing control of copyrighted material (the On-Line or Web-Based course), a faculty member may, without penalty, refuse the offer of substantial university resources (and thus maintain their licensing rights) while proceeding to develop the course.

2. Similarly, the University may choose to transfer the On-Line or Web-Based course development offer to another faculty member, or a qualified external course developer, if the University chooses to obtain licensing rights.
  3. The IPC will enter into negotiation with the creator to determine the percentage distribution of any royalties due from the University's licensing of the course to an external entity.
- C. If the On-Line or Web-Based course creator uses minimal university resources, then the creator maintains ownership and licensing of the course.
- D. When works are created while in the employ of the University, situations may arise where there is a conflict of interest between the creator and the University. In the event the creator considers the sale, lease, or other use of courseware or material by an outside party in a manner that competes with the offerings of the University, the creator first must enter into negotiations with the IPC before actuating any agreements. These negotiations will ensure the University is reimbursed expenses for courseware creation, and the IPC will determine if compensation for royalties derived from the courseware or materials is due the University.

Manuscripts created for web pages and On-Line courses, web sites, music posted on websites, voice (lectures, etc.), videos streamed on the web, electronic presentations, whether registered with the Copyright Office or not, are all property of the copyright holder as defined in this policy and are subject to the provisions of the Federal Copyright laws and the fair use doctrine.

**Adopted: February, 2004**

The *Southwestern Oklahoma State University Intellectual Property Policy* has been approved by the SWOSU Intellectual Property Faculty Committee and SWOSU Provost's Office.

**Revised: September, 2009**

The revised *Southwestern Oklahoma State University Intellectual Property Policy* has been approved by the SWOSU Intellectual Property Faculty Committee , SWOSU Provost, and SWOSU President.

**Revised: December, 2016**

The revised *Southwestern Oklahoma State University Intellectual Property Policy* has been approved by the SWOSU Intellectual Property Faculty Committee , SWOSU Provost, and SWOSU President.

**Revised: January, 2018**

The revised *Southwestern Oklahoma State University Intellectual Property Policy* has been approved by the SWOSU Intellectual Property Faculty Committee , SWOSU Provost, and SWOSU President.

## **Appendices**

### **Appendix A: Example Procedure for IPC Evaluation of Disclosed Technology**

The Oklahoma State Regents for Higher Education have established a program to facilitate the development of intellectual property at the state's regional universities. If utilized by IPC, this program provides, free of charge to the regional university, a professional evaluation of disclosed technologies by an established intellectual property development company "Innovation to Enterprise" also known as i2E. i2E will provide an assessment of disclosed technologies to a State Regents' Patent Advisory Committee. This committee will recommend to IPC whether or not to pursue filing a patent on the disclosed technology.

In order to take advantage of this program, IPC may choose to carry out the following procedure when a "Technology Disclosure Form" is submitted to the committee:

1. IPC will examine the initial disclosure. Errors, inconsistencies, or incomplete portions of the disclosure may be returned to the inventor for correction prior to IPC action. A majority vote of the committee will decide whether or not to forward the disclosure to the Oklahoma State Regents for Higher Education "Pilot Program for Patent Applications". Three possible outcomes of this vote are:
  - a. If the decision is negative, the disclosure may be forwarded to the President with the recommendation not to pursue the technology.
  - b. If the decision is negative, the disclosure may be further evaluated through an alternate procedure to be determined by IPC.
  - c. If the decision is positive, the disclosure will be forwarded to the appropriate contact person at the Oklahoma State Regents for Higher Education Pilot Program for Patent Applications.
2. Once forwarded to the Pilot Program, the following steps will be taken:
  - a. The company "i2E" (Innovation to Enterprise) will evaluate the disclosure, and forward an assessment of the commercial potential of the invention to the State Regents' Patent Advisory Committee.
  - b. The State Regents' Patent Advisory Committee will make a recommendation concerning the possible filing of a patent. This recommendation will be returned to the SWOSU IPC.
3. SWOSU's IPC will examine the assessment of commercial potential from i2E, and the State Regents' Advisory Committee recommendation. A majority vote of IPC will determine the committees' recommendation to the President whether or not the University should pursue a patent application on the subject invention. All of these assessments will be forwarded to the President along with the IPC's recommendation.

## **Appendix B: Example Procedure for Pursuing Patent Protection and Commercial Licensing**

The President may choose to pursue patent prosecution for an invention in a variety of ways. One such procedure is the Oklahoma State Regents for Higher Education Pilot Program for Patent Applications.

The Oklahoma State Regents for Higher Education have established a program to facilitate the development of intellectual property at the state's regional universities. If utilized by the President on behalf of the University, this program provides, free of charge to the regional university, a professional patent prosecution under an agreement with the firm Dunlap, Codding, and Rodgers. Regardless of the outcome of the patent application, ownership of the intellectual property resides with SWOSU. Royalty sharing agreements already in place in the SWOSU IPP will govern the disbursement of any income generated.

In order to take advantage of this program, the President may choose to carry out the following procedure when a decision to pursue patent protection for an invention has been reached:

1. The President will communicate to the State Regents' Patent Advisory Committee that the University wishes to pursue patent protection through the Pilot Program for Patent Applications.
2. The State Regents' Patent Advisory Committee will forward the Technology Disclosure Form, and any associated evaluations of the invention, to the firm Dunlap, Codding, and Rodgers for patent prosecution.
3. The company "Innovations to Enterprise" (aka i2E) will attempt to secure a license for the patent. The President maintains the final authority whether or not to enter into any such licensing agreements.

## **Appendix C: Flowchart of Disclosure Evaluation, Patent Protection, and Pursuit of Licensing Agreements**

