

## Professional Concerns Committee

### Minutes for March 16, 2023

#### Hybrid Meeting (SU 109 and Zoom Conferencing Software), 3:15 pm

**Members in Attendance:** S. Alexander, K. Ankem, R. Brice, J. Elliot, K. Fuegen, P. Hare, J. Herman, K. Katkin, Y. Kim, A. Miller, M. Nakamura, M. Providenti, H. Riffe, M. Scola, J. Washburn-Moses, M. Zacate, M. Washington

**Guests in Attendance:** J. Bloch, M. Cecil, G. Hiles, S. Kim, J. Vest

**Members Not in Attendance:** W. Darnell, R. Gall, B. Green, W. Herzog, L. Manchise, I. Saad, H. Schellhas

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1. Call to Order
  - The meeting was called to order at 3:22pm.
2. Approval of the agenda
  - Request to add a discussion item about the presidential search.
  - Request to add a discussion item (or future business discussion item) about forcing faculty to engage in DEI activities that contradict academic freedom.
    - The PCC Chair requested documentation that could be shared with the committee and agreed to add DEI to an upcoming agenda pending documentation.
  - The agenda was approved as amended to include a discussion item about the presidential search.
3. Approval of the minutes from the March 2.
  - The minutes from the March 2, 2023 meeting were approved as distributed.
4. Chair's Report and Announcements
  - The faculty senate executive committee met on Monday. President Bonita Brown delivered a report. She is watching several bills in the KY legislature. One bill would prohibit state funds from being used for DEI initiatives. Another bill would establish another university in southern KY. She is involved in debates regarding the performance funding model. The state will decide which portion of its appropriation will be based on university performance by the end of this year.
  - The executive committee talked at length about two issues: 1) job security for non-tenure-track faculty, and 2) workload.

- There are differing opinions about whether to offer multi-year contracts to renewable faculty. How many years? Should we have as our goal the conversion of temporary positions to permanent positions? Not all temporary faculty may be eligible to apply for tenure-line positions. Concern was expressed about replacing tenure-track positions with temporary or renewable positions. We also discussed when a temporary position should become a renewable position. It is unconscionable that someone should be in a “temporary” position for decades. We discussed how to advance this issue, e.g., Senate subcommittee, work group.
- We need to recognize the full breadth of what faculty do. Is this an issue for departments and schools, or is it a university-wide issue? Should a workload policy set forth university expectations about time allocation? What are reasonable expectations regarding scholarship? Does workload necessarily have a budget impact? Perhaps not if class sizes increase, but not all programs can increase class sizes (i.e., accreditation standards, fire codes). A time diary study may be warranted. We agreed that when faculty are burdened, students suffer. Consistent overwork is not in the long-term best interests of the university.
- The board of regents met on Wednesday. They approved a set of guidelines for the Academic Commons that had been brought before the Senate last month. They also approved a plan for the presidential search. The search is not closed but not entirely open, either. NKU community members will be invited to participate in the early stage of the process by creating a profile of the next university president. They will also be invited to participate at the end of the process by meeting with candidates who are invited to visit campus. There will be a search committee and an advisory board. The search committee includes five regents. Budget Chair Janel Bloch is on the search committee. The advisory board includes five faculty members. Select members of advisory board will interview candidates. The advisory board will meet next week. There will be open forums on March 28 and 29.
- We thank Faculty Senate president John Farrar for his advocacy on behalf of the faculty.

#### 5. Discussion item: Presidential Search

- Appreciation expressed for the advocacy work of the Senate President but he should be more upset. This search should be characterized as totally closed. PCC needs to consider a resolution opposing the BoR’s search plan. Reasons why:
  - There has never been a presidential search at NKU with fewer than 4 faculty members, plus one department chair, plus one dean. That’s 6 total people with faculty status.

- There has never been a presidential search without a Faculty Senate President – this will be the first. If the Senate President’s advocacy for an open search is why he’s not included, that’s problematic.
- The only faculty member included in the search is also in an administrative role.
- There is no strictly faculty perspective on this committee which is appalling.
- It is being called “partly open” because if there are 3 finalists they will be asked if they’d be willing to do an open presentation on campus but they can decline. That’s not an open search. If there is an internal candidate, that person would probably do the presentation, but external candidates likely not.
- While the advisory board might be able to review applications, it is more likely that the advisory board is a mollification committee to which faculty can address concerns, the concerns will never be considered, and the BoR can say they listened to the faculty.
- 2 options to move forward:
  - PCC can write a resolution saying this is a terrible presidential search process, or
  - PCC can begin the process of a no confidence vote against the BoR.
- Q: What would a no confidence vote do for the faculty?
  - A: It doesn’t accomplish anything except to embarrass them.
- Agreement with the characterization of the search committee (above). The search committee appears designed to hire a candidate who is not from academia.
- Almost everyone on the committee has a bias toward looking outside academia.
- This idea was telegraphed by Chairman Boehne. When asked about the calendar, he said the candidates wouldn’t be bound by an academic calendar. There is no one on the list of committee members who would think academia would be a good place to look for a president. A president from academia couldn’t start in October.
- The Dean on the committee is possibly the least liked by his faculty of all the Deans.
  - Or maybe a close second.
- List of the names and titles of committee members:
  - Marquita Barron, NKU Director of Training & Development;
  - Dr. Janel Bloch, NKU Professor, English, and has a role in the administration;
  - Dr. Hassan HassabElnaby, NKU Dean, Haile College of Business;
  - Ashley Himes\*, NKU Regent, Student Services Coordinator at Regional School Programs;
  - Candace McGraw, Chief Executive Officer, Cincinnati/Northern Kentucky International Airport;

Julia Pohl, Sports Business & Event Management Major, NKU Student;  
 JT Roberts\*, Owner of DDX Transport;  
 Nathan Smith\*, NKU Vice Chair BOR, Chief Investment Officer at Flagship Communities LC;  
 Elizabeth Thompson, NKU Search Vice Chair and Regent, Member at Stites & Harbison LLC;  
 Tom Wiedemann\*, NKU Foundation President, President and CEO of AAA Club Alliance;  
 Kara Williams\*, NKU Search Chair and Secretary of BOR, Owner of The Marketing Collective; and  
 Brad Zapp, NKU Regent, Managing Director of Connetic Ventures.  
 (Asterisk denotes NKU alumni.)

- In the chat: Members of the presidential search advisory board are
  - Rensha Allen\*, NKU Black Alumni Council President, Allstate Agency;
  - Brandon Billiter\*, NKU Director of Student Account Services;
  - Mike Borchers\*, Local Superintendents Advisory Council, Superintendent Ludlow City Schools;
  - Dr. David Childs, NKU Associate Professor, College of Education;
  - Brent Cooper, President, NKY Chamber of Commerce;
  - Dr. Charlisa Daniels, NKU Associate Professor, Chemistry & Biochemistry;
  - Dr. Jacqueline Emerine, NKU Associate Professor, Communication;
  - Dr. John Farrar, NKU Faculty Senate President, Associate Professor, Chemistry & Biochemistry;
  - Dr. Fernando Figueroa, President, Gateway Community & Technical College;
  - Lauren Goodwin\*, NKU Chase College of Law, Student;
  - Staci Green\*, NKU Director of IT Support Services, President of SAFE;
  - Karen Mefford\*, NKU Interim Comptroller;
  - Darryl Peal, NKU Chief Diversity Officer;
  - Steve Pendery, Campbell County Judge-Executive;
  - Dr. Sandra Spataro, NKU Professor of Management, College of Business;
  - Jennifer Sheffel\*, NKU Alumni Council President, President and CEO at Summit ActionCOACH; and
  - Steve Slone\*, NKU Staff Congress President, Manager of Mail and Copy Services.
- Q: How did the faculty regent vote on this issue?
  - A: Recollection is that faculty and staff regents voted to approve the search process.
- If PCC isn't ready to draft a statement or vote no confidence, there is another option. The BoR put up a "constituent survey" webpage so they can say they are listening to ideas – a common way to say you are taking input when you are not really taking input. Our "Statement on Collegial Governance" says we give input through *faculty bodies*, not individually. We could recommend that PCC or Senate as a whole respond to the survey.

([https://www.surveymonkey.com/r/NKU-President-Startup?fbclid=IwAR1FwGcVhVAbGaoaixilRp5NAnFXS\\_K7e2eWZF6jAwcFjiq6AYzb-pvSxFc](https://www.surveymonkey.com/r/NKU-President-Startup?fbclid=IwAR1FwGcVhVAbGaoaixilRp5NAnFXS_K7e2eWZF6jAwcFjiq6AYzb-pvSxFc))

- Q: Is there interest in PCC of formulating a statement on the presidential search process?
  - A: No objections. Suggestion made for who on PCC should draft the statement.
  - ACTION: PCC member agrees to draft a statement but more discussion is needed.
- Q: Should the statement be narrowly about the presidential search or more broad to include the financial situation?
  - A: This is also in connection with the financial situation. The financial situation is the fault of the BoR. They hired the last president after the faculty said he's an "incompetent huckster"; they didn't monitor him at all; then they made him the scapegoat. The BoR is probably more to blame than the last president.
  - General agreement.
  - In the chat: [https://www.nkytribune.com/2023/03/northern-kentucky-university-sets-up-search-for-new-president-amidst-gloomy-financial-pictures/?fbclid=IwAR1d73weBuQU8goo\\_ZG7gSMe-CH9X1PADfWMCnDJJoDNoh2y0tc1zHUU01-4](https://www.nkytribune.com/2023/03/northern-kentucky-university-sets-up-search-for-new-president-amidst-gloomy-financial-pictures/?fbclid=IwAR1d73weBuQU8goo_ZG7gSMe-CH9X1PADfWMCnDJJoDNoh2y0tc1zHUU01-4)
- Q: Is there any opposition to moving forward with a draft statement and bringing it back to PCC for discussion?
  - No opposition.
- Q: Should PCC/Senate answer the BoR's questions?
  - Q: Is it appropriate to participate in an illegitimate process?
- A problem is that the search committee is primarily composed of regents with an underrepresentation of other stakeholder groups.
- Q: But the BoR makes the decision anyway?
  - A: The search committee would select the finalists and the BoR would select among the committee's selected finalists.
- How do we move the draft statement along quickly?
  - The draft will be shared with the PCC Chair in one week for discussion in the next PCC meeting.
- Please include that the Senate President and faculty have been excluded from the committee.
- The BoR said the early stages of the search would be open. However, that's required by the Open Meetings Act, a legal obligation in KY. The BoR isn't allowed to close any of these meetings until they are reviewing individual applications. There is a specific KY Supreme Court case about university presidential searches that addresses which stages of the process need to be open to the public.

- We also need to organize people to attend the BoR meetings.

#### 6. Discussion item: intellectual property policy revisions (three attachments)

##### BACKGROUND:

The drafts divide the IP policy into 2 parts: 1) copyrights, 2) inventions and patents. Last year PCC had a concern with the copyright policy: the requirement that creators of traditional works would grant the university a perpetual, royalty-free right and license to use those works (e.g. manuscripts, poems, instructional materials, etc.). PCC found that unacceptable. In the new document, that provision has been removed. In the inventions and patents policy, there were 2 issues: student works and royalties. It was unclear if a student would retain rights if an invention was patentable. That section has been removed. However, if the student is an employee, the university retains the rights. Under the old policy, a creator would keep 100% of royalties if under \$5000. Under the old revision, the creator would only retain 60%. In the new revision, the policy grants 100% up to \$5000. Last year there was no willingness to address PCC concerns. Now, PCC has been asked if these newer revisions are acceptable. The next step is for the draft to be posted to the policy website.

##### DISCUSSION:

- The policy is fine. However, they shouldn't be amending The Handbook. This shouldn't go through the policy website whether PCC approves it or not. We need to say The Handbook doesn't get amended unless Senate amends it.
- If these are major changes, it would need to go out for comment. Also, this is in an appendix, it could be argued if this is a part of The Handbook.
- "No." "They could argue it but they'd be wrong." The policy on administrators returning to faculty status is also an appendix and it went through Senate.
- PROVOST: "For what it's worth, I'm fine with whatever process you want to follow. What is important is getting the policy right."
- Q: Is there a way to index this to inflation? How are 2 creators handled?
  - A: 2 creators is addressed in the policy: the university will distribute the creators share equally - \$2500 each.
- In the old policy, the revenues that university gets would go to the faculty member's department. Now, in the new policy, it goes to S. Langley or the Foundation – that's a negative change.
- The colleges should get their share as it is in the old policy.
- PCC Chair: We can vote this policy and send it to Senate.
- Things that could be addressed:
  - All of the issues in the new policy that PCC should reject have to do with S. Langley's office (Graduate Education, Research and Outreach).
  - The portion that doesn't go to the faculty member is shifted away from the faculty member's department to S. Langley's office and the Foundation.

- Top of pg. 7 of Copyright policy: “Nonetheless, the University reserves the right in special cases to designate some or all of a start-up package as Substantial University Resources and to require recipients to complete a Standard Copyright Agreement.” Unsure what this is about. New hires don’t have to hand over their copyrights unless they do? Faculty keep the rights to the works they create as part of their normal work. But new hires are often given support such as reduced course loads which could be considered substantial university resources under this policy.
- PROVOST: Agreed, this seems unclear. Maybe this language was pulled from another university’s policy where they provide the sort of support that we do not. There may need to be a conversation about that section.
- Lower on pg. 7: New section on the “The Office of Graduate Education, Research and Outreach.” In a time of downsizing, when 17 NTTRs were not renewed, this is where we need to be downsizing. These responsibilities should stay where they are now, in the Provost’s office. The Office of Graduate Education, Research and Outreach should not be enshrined in our policies.
- Pg. 8. The University Intellectual Property Committee has a different composition from the current Handbook. New policy puts control of this under The Office of Graduate Education, Research and Outreach.
- PROVOST: Is it a good idea to name a specific office in this policy?
  - PCC Member response: “Yeah, I think that office should be eliminated.”
- PROVOST: K. Fuegen and G. Garber should sit down to discuss these issues. We need to get the policy right.
- Concern about CITE money, \$2000 for designing a new course. Is that an incentive or a way for the university to take ownership of our work?
- Suggestion to add to the beginning of section III, “University Sponsored Works,” build in a possible exception, “... unless other exceptions are made before undertaking the work.” State upfront “No, I’m not giving up the copyright on this material” which has been allowable and should continue to be.
- There is ambiguity here. For copyright to transfer from a faculty member to the university, that needs to be done in writing. If you have to sign over your right, you’ll be on notice. The university could offer money for a copyright but faculty could decline the offer.
- The university is not obligated to take the copyright. A faculty member could say they want the \$2000 and to keep the copyright. There’s no reason for that to not be possible.
- The contract for CITE is not available on their web site – it’s necessary to see that so faculty know what they are getting into. The contract is sent to faculty.
- PROVOST: We want to eliminate ambiguity. We want a policy that is fair and makes sense. Let’s work together, there is not a rush. We need to get it right. Grant will meet to work on this.

- Q: Should this come back to PCC for review in the next meeting? PCC Chair will review the minutes of this meeting, meet with University legal counsel, and Senate President about concerns.
  - Motion (H. Riffe) to create subcommittee to discuss these issues with University legal counsel Grant Garber? Subcommittee to include K. Katkin, M. Zacate, H. Riffe, K. Fuegen.
  - Seconded (K. Katkin)
  - No objections, motion passes
  - AP Contract – ownership of contributed materials, AP and the university each retain ownership of IP. Needs to be included in the discussion with Grant. How do we deal with AP?

7. Future business

- No additional future business.

8. Adjournment (4:23pm)

Submitted,  
M. Providenti, Secretary



# COPYRIGHTS

**POLICY NUMBER:** HYB-COPYRIGHTS

**POLICY TYPE:** HYBRID

**RESPONSIBLE OFFICIAL TITLE:** PROVOST & EXEC. VICE PRESIDENT FOR ACADEMIC AFFAIRS

**RESPONSIBLE OFFICE:** GRADUATE EDUCATION, RESEARCH AND OUTREACH

**EFFECTIVE DATE:**

**NEXT REVIEW DATE:** BOARD APPROVAL PLUS FOUR (4) YEARS

**SUPERSEDES POLICY DATED:** 11/11/2009 (INTELLECTUAL PROPERTY)/THIS POLICY IS INCLUDED IN FACULTY HANDBOOK APPENDIX F & SEC. 16.16

**BOARD OF REGENTS REPORTING (CHECK ONE):**

☒ PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM)

☐ PRESIDENTIAL REPORT (INFORMATION ONLY)

## I. POLICY STATEMENT

### A. RIGHTS AND OBLIGATIONS OF THE PARTIES

#### 1. Traditional Works

In keeping with longstanding academic custom, Northern Kentucky University recognizes faculty ownership of copyrights in textbooks, monographs, papers, articles, musical compositions, replication packages, software, works of art and artistic imagination, unpublished manuscripts, dissertations, theses, popular nonfiction, novels, poems, and the like that are created by its faculty. Also included are course materials such as syllabi, workbooks, and laboratory manuals. The University has not and will not claim any ownership rights to such Traditional Works. Similarly, the University has not and will not claim ownership of Traditional Works created by its other employees or students.

As copyright owner, the Creator(s) have the rights to use, copy, reproduce, modify, display, perform, distribute, create derivative works, and to permit others to do the same, if their work is an original, tangible, written, visual, or musical work of authorship, and therefore protectable by U.S. and other countries' copyright laws.

As a copyright owner, the Creator(s) shall have the rights to hold and register copyrights in their own name; protect and enforce their copyright interest; and license, transfer or assign their copyright interest to others, such as publishers or distributors and to collect revenues from doing so.

In all cases other than the exception categories noted below, any and all revenues derived from copyrighted works belong wholly to their Creator(s) or the copyright holder(s) to whom the Creator(s) have assigned their copyright interest.

#### 2. Externally Sponsored Works

In cases where a copyrightable work has been produced with support to NKU from a government agency or other external source whose grant specifies that the copyright for any work created under the grant is the property of the University (as grantee), then, if permitted under the applicable grant terms, the University assigns the copyright ownership to the work to the Creator(s), subject to the following conditions: (a) the Creator will be bound by all conditions attached to the grant and imposed by the government granting agency or other external source; and (b) if the work is Non-Traditional, (i) the Creator(s) may decide to distribute such work freely and openly without consulting the University;

however, if they distribute the work freely, they must accompany distribution with the following statement:

*Permission is hereby granted for non-profit educational and research use of {name of work}. Any other use, for commercial purposes or otherwise, is expressly forbidden without prior written permission of {name of Creator}.*

and (ii) any Creator(s) desiring to license the work for commercial purposes will do so according to the terms set forth in an agreement with the University and any revenue derived from such work will be shared with the University according to the terms described in the agreement in force at the time the grant was received.

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### **3. University Sponsored Works**

The University claims ownership in Works for Hire that arise from works created as the result of specific assignments; works supported by a direct allocation of University funds for the pursuit of a specific project; and works that are specially commissioned by the University. For example, works produced in certain University units whose specific mission includes the production of works for instructional, public service, or administrative use and who employ staff and faculty for the purpose of producing such works are deemed to be Works for Hire and, therefore, the property of the University. The University has the rights to hold and register copyright to a Work for Hire in its own name; to protect and enforce its copyright interest; and to license, transfer, or assign its copyright interest to others, such as publishers or distributors, and to collect revenues from doing so.

A faculty member's general obligation to produce scholarly works does not constitute a specific university assignment, nor is the payment of regular salary, the use of office and library facilities, sabbatical, fellowship or internal grant awards, or the provision of incidental clerical support or reasonable data and word processing considered a direct allocation of University funds for the purposes of this paragraph.

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### **4. University Supported Works**

The University claims copyright to works produced with Substantial University Resources. The payment of regular salary, the use of office and library facilities, or the provision of incidental clerical support or reasonable data and word processing is not considered a use of Substantial University Resources for purposes of this paragraph. All proposals for use of Substantial University Resources must be approved in advance by the Office of Graduate Education, Research and Outreach by recommendation of the Intellectual Property Committee.

Proposals for the use of Substantial University Resources should specify how projected income from the work would compensate the University for its expenditures, including costs associated with obtaining the copyright and in its licensing, sale, enforcement, and use and how Net Royalties from any income would be distributed.

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### **5. Creator Rights and Obligations**

- a. The Creator shall report promptly all University Sponsored Works and University Supported Works to the Office of Graduate Education, Research and Outreach. The disclosure by Creators shall include a disclosure of the circumstances under which the work was created, a description of any University resources that were used, and any financial or other relationship with a third party that might affect the University's rights in the work (for

example, any consulting agreements or third-party funding agreements pursuant to which a work was created).

If the Creator is uncertain whether the University claims copyright ownership in a work pursuant to this policy, the work should be disclosed.

This policy shall not be construed to require Creators to disclose or report to the University the creation of Traditional Works.

- b. Upon request, the Creator shall acknowledge in writing the University's ownership of all rights, title, and interest in and to University Sponsored Works and University Supported Works.
- c. The Creator shall cooperate:
  - i. In executing any legal documents that pertain to licensing, sale, use, or other related activities;
  - ii. In any litigation arising out of the work; and
  - iii. In reasonable marketing and commercialization efforts related to the work.
- d. After disclosure to the University of a work, the Creator shall receive notice within a reasonable time of the University's intention to retain title to the work.
- e. The Creator shall receive a share of any royalties or licensing fees that may be due in accordance with an applicable agreement.
- f. The Creator shall receive title to any work for which the University chooses not to retain title.
- g. The Creator shall have the right of timely publication of the work, consistent with any applicable licensing agreement.

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## **6. University's Rights and Obligations**

- a. The University shall keep the faculty, staff, and students apprised of the University's policy on copyrightable works and of any university-wide agreements with external sources that may be in effect regarding the evaluation and/or marketing of such works.
- b. After a work is reported, the University shall act in a timely manner to determine whether the University chooses to retain title.
- c. The University shall give notice to a Creator(s) of the intention of the University to retain title to a work.
- d. The University shall assign to the Creator(s) title to any work subject to this rule and for which the University chooses not to retain title.

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## **7. Royalties for University Sponsored and University Supported Work**

"Net Royalties" shall be defined as gross royalties received by the University minus the sum of the following:

- a. any royalty shared with other entities (e.g., as required by an agreement with a funding source or as the result of an inter-institutional agreement with a co-owner of the university work or as a result of a third-party commercialization partnership) and

- b. any fees or costs directly attributable to the university work being licensed. Examples of such direct fees are fees for legal advice, fees arising out of litigation, copyright registration fees, trademark registration fees, fees from commercialization, and marketing costs. Indirect university overhead and other university costs normally associated with the operation of a university and not directly attributable to the university work shall not be deducted from gross royalties or otherwise allocated to costs or fees associated with the university work.

For all copyrightable works for which the University receives royalties, the royalties received by the University shall normally be distributed as follows:

- a. Zero dollars (\$0) to five thousand dollars (\$5,000) in total Net Royalties:
  - 100% to the Creator(s)
- b. Total Net Royalties in excess of five thousand dollars (\$5,000) through two hundred and fifty thousand dollars (\$250,000):
  - 60% to the Creator(s)
  - 40% to University or NKURF, at University's option
- c. On total Net Royalties in excess of two hundred fifty thousand dollars (\$250,000):
  - 50% to the Creator
  - 12.5% to the college to support faculty research and creative activity
  - 12.5% to the department, program, or school to support faculty research and creative activity
  - 10% to the University or NKURF, at University's option
  - 15 % to the Office of Graduate Education, Research and Outreach to provide commercialization support

Any Net Royalties received by the University, department, program, school, or college shall be administered by the Provost's Office and shall be used to support scientific research and education.

If there is more than one Creator, the University shall distribute the Creators' share of any Net Royalties equally by default, or in accordance with their mutually agreed apportionment. In the event the Creators are unable to reach a mutual agreement on apportionment, the Intellectual Property Committee will make a recommendation to the president regarding apportionment, and the president shall decide. College and department share of any Net Royalties will be apportioned in accordance with the percentage distributions allocated to the Creators who are associated with the participating colleges and departments.

Upon the Creator's death, royalties will continue to be paid to the deceased's estate for as long as they are generated.

There may be instances where there are agreements developed in the course of commercialization that change the royalty distribution percentages.

## **B. PATENT POLICY EXEMPTION**

If a copyrightable work is created by a member of the University Academic Community during the course of making a discovery or invention that falls within the scope of the NKU Inventions & Patents policy ([link](#)) and that work is integral to, or embodies a patentable invention, then the copyrightable

work shall be treated as part of the invention and shall be covered by the NKU Inventions & Patents policy.

This exemption does not apply to written articles, publications, or presentations describing patentable inventions covered by the NKU Inventions & Patents policy; provided the invention has been properly disclosed to NKU per the Inventions & Patents policy first, these copyrightable works are deemed to be Traditional Works and the copyright thereto is owned by the Creator. Nonetheless, the Creator must make such Traditional Works available to NKU on a royalty-free basis when such materials are needed in connection with the University's efforts to patent or license a discovery or invention.

### **C. TRANSFER OF INTELLECTUAL PROPERTY TO THE CREATOR(S)**

If the University has determined that a work subject to University copyright ownership under this policy has no likely commercial value, and subject to the terms of any applicable agreements with third parties or legal obligations under which the work was created, the University will consider a request by the Creator to transfer copyright ownership in the work to the Creator, subject to a no cost irrevocable royalty-free license to the University to use the work for its own non-commercial purposes. Such a request must be approved by the Provost, and will be conditioned upon reimbursement of the University by the Creator for out-of-pocket expenses the University has incurred in connection with the work, including legal and marketing expenses (if any). The University will act as expeditiously as reasonably possible in considering such requests by Creator(s).

### **D. OTHER AGREEMENTS INVOLVING COPYRIGHT**

In some cases, copyright ownership and/or disposition of licensing revenue from copyrighted works may be determined by the terms of another agreement, such as an externally funded grant or sponsored research or professional services contract, or in the case of a Creator signing over their copyright to the University by an explicit and mutual agreement, and which has been signed and dated by both the Creator and University.

In addition, it is not uncommon for investigators to conduct research in cooperation with colleagues at other universities. The university recognizes that to continue these relationships it must be willing to consider a variety of contractual terms and conditions. An agreement put in place between the institutions may supersede this policy.

### **E. TRADEMARKS**

Use of NKU's name, logo, or marks must be consistent with the guidelines established in the [NKU Brand and Visual Identity Guide](#), promulgated by Marketing and Communications. Marks affiliated with intellectual property owned by NKU are also owned by NKU, and all rights are retained by NKU and/or NKURF.

### **F. COPYRIGHT NOTICE**

The following notice on University-owned material shall be displayed on copyrighted material:

Copyright © (year), Northern Kentucky University.

## **II. ENTITIES AFFECTED/APPLICABILITY**

This policy shall be applicable to all units of Northern Kentucky University (NKU), including its colleges, schools, departments, centers, institutes, and libraries, and to all NKU faculty and staff, and to any other persons, including students, who are aided by the substantial use of university facilities, staff, or funds.

This policy applies to “original works of authorship” protectable under state and federal intellectual property laws irrespective of the format or medium of expression, including written materials; sound recordings; videotapes; films; computer programs; computer-assisted instruction materials; works of art including paintings, sculpture, and musical compositions; and all other material that may be eligible for copyright protection.

### **III. DEFINITIONS**

#### **University Academic Community**

The NKU University Academic Community consists of all members of the NKU faculty (including instructors, lecturers, tenured, tenure-track, visiting, adjunct, research, and clinical faculty), as well as all the University’s postdoctoral fellows, graduate students, and undergraduate students. It also includes administrative personnel/staff and/or volunteers (collectively, referred to herein as “non-faculty staff”).

#### **Creator**

A Creator is a member of the NKU University Academic Community, including non-faculty staff, who creates a unique work that may be eligible for copyright or trademark protection.

#### **Works for Hire**

For purposes of this Copyrights policy only, Works For Hire are (i) either those works created by members of the NKU University Academic Community or by non-faculty staff in the performance of an administrative duty for the University; or (ii) those works created by a member of the NKU Academic Community or non-faculty staff employed by the University on a Work For Hire basis, meaning that the creation was specifically directed by the University for its own use. These agreements must happen prior to the work being undertaken, and be explicit and mutual, as indicated by a signed and dated Work for Hire Agreement in which the parties express their agreement that the University owns the copyright to such works created.

#### **Traditional Works**

Traditional Works include published articles, books (fiction or non-fiction), artworks, music, replication packages, software, instructional materials, and other creative products, regardless of their method of distribution (e.g., whether they are distributed in traditional print form or in digital or electronic form). Instructional materials created by members of the University Academic Community—defined as those resources created specifically for the purposes of instruction, including, but not limited to, syllabi, lectures and lecture notes, and presentations—are considered Traditional Works, and the copyright is owned by their Creator.

#### **Substantial University Resources**

Substantial University Resources are the allocation of a significant amount of money or significant use of specialized equipment or other University resources that have been specifically directed to foster the development of a particular scholarly, artistic, or commercial project. In most cases, start-up funds allocated to new members of the faculty are ordinary resources, not Substantial University Resources.



Nonetheless, the University reserves the right in special cases to designate some or all of a start-up package as Substantial University Resources and to require recipients to complete a Standard Copyright Agreement.

By contrast, NKU supports the research and pedagogy of its faculty and students in a variety of manners, including salaries; academic leaves; fellowships; [non-contract support from the Center for Innovation & Technology in Education \(CITE\)](#); course development monies and classroom software; access to scholarly and artistic resources (libraries, media labs, theater infrastructure, and other facilities); various research grants; and ordinary assistance with computer hardware, software, and networking. None of these (or anything analogous) should be considered the allocation of Substantial University Resources for purposes of this Copyrights policy.

For purposes of this Copyrights policy only, government or private sponsored research monies shall not constitute Substantial University Resources. However, agreements related to these monies may result in the University retaining rights to creations developed.

### **Trademark**

A trademark is any word, name, symbol or device, or any combination thereof, whether or not registered as a trademark, that is used to identify goods or services and distinguish them from those manufactured or sold by others.

## **IV. RESPONSIBILITIES/ADMINISTRATION**

### **A. OFFICE OF GRADUATE EDUCATION, RESEARCH AND OUTREACH**

The Office of Graduate Education, Research and Outreach shall have overall responsibility for administration of Northern Kentucky University's (NKU) copyright program, including assuring that valuable property rights are retained by the University in a manner consistent with this policy. Specific responsibilities of this office shall be to do the following:

1. Provide information on copyrights and the University Copyrights policy to the University Academic Community.
2. In consultation with the Office of General Counsel and Vice President for Legal Affairs, determine the rights of the University in any copyrightable works created or to be created with Substantial University Resources.
3. Develop and approve agreements for the use of Substantial University Resources in the creation of copyrightable works.
4. Provide assistance in securing the copyright to any works in which the University has rights.
5. Exercise responsibility for marketing, licensing, or distributing copyrightable works in which the University retains title.
6. Arrange distribution of royalty income.
7. Subject to the supervision of the contracting officer, approve terms for licensing, sale, assignment, transfer, or other disposition of the University's property rights in copyrightable materials.

### **B. UNIVERSITY RESEARCH FOUNDATION BOARD**

The University may assign its interest in copyrightable works to the Northern Kentucky University Research Foundation (NKURF), in which case the NKURF board shall have the responsibilities for copyright program administration that are set forth in this policy and in addition shall advise the Vice Provost of Graduate Education, Research and Outreach on the administration of University copyright policy.

## **V. COMMITTEE**

There shall be established a university Intellectual Property Committee, which shall report to the Vice Provost of Graduate Education, Research and Outreach (VP GERO) or designee. The committee shall be composed of no more than five (5) members, three (3) appointed by the VP GERO or their designee, and two (2) appointed by the president of the Faculty Senate, and shall be chaired by one of the members. Specific functions of the Intellectual Property Committee shall be the following:

- A. Provide advice, as requested, to the VP GERO or their designee as to whether the University should:
  - 1. Prepare and prosecute an intellectual property application on a university work.
  - 2. Determine if a reported work falls outside the scope of this policy.
  - 3. Waive some or all University rights in a university work to the Creator(s).
- B. Act as a fact-finding body and make recommendations to the VP GERO or their designee on any disagreements arising out of the administration of the University's Inventions & Patents and Copyrights policies.
- C. Resolve disputes between the Creator and the University that cannot be resolved by NKURF.

## **VI. REFERENCES AND RELATED MATERIALS**

### **RELATED POLICIES**

Inventions & Patents

### **REVISION HISTORY**

<b>REVISION TYPE</b>	<b>MONTH/YEAR APPROVED</b>
Revision & Name Change	
Revision & Faculty Handbook Appendix F & Sec. 16.16 (Intellectual Property)	November 11, 2009
Formerly Administrative Regulation AR-II-2.0-4 & Faculty Handbook 16.16 (Intellectual Property)	November 9, 2005



# COPYRIGHTS

## PRESIDENTIAL APPROVAL

### INTERIM PRESIDENT

Signature

Date

Bonita J. Brown

## BOARD OF REGENTS APPROVAL

### BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- ☐ This policy was forwarded to the Board of Regents on the ***Presidential Report (information only)***.  
Date of Board of Regents meeting at which this policy was reported: \_\_\_\_/\_\_\_\_/\_\_\_\_.
- ☐ This policy was forwarded to the Board of Regents as a ***Presidential Recommendation (consent agenda/voting item)***.
- ☐ The Board of Regents approved this policy on \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)
- ☐ The Board of Regents rejected this policy on \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

### EXECUTIVE SECRETARY TO THE BOARD OF REGENTS

Signature

Date

Tammy Knochemann

## COPYRIGHTS

1. Section I(A)(5): Creator Rights and Obligations states in item (a), “In the case of Traditional Works, regardless of the original purpose, the Creator shall grant, or use best efforts to cause others to grant, to the University, at no cost, a perpetual, royalty-free right and license to use, perform, display, copy, or reproduce such works, for all traditional, customary or reasonable academic or research purposes of the University. In the case of Traditional Works that are instructional materials to the administration of an academic program (such as, but not limited to, laboratory manuals, placement tests, internship handbooks), the University shall also have a perpetual, royalty-free right and license to use, reproduce, modify, and create derivatives of such works, for all traditional, customary, or reasonable academic purposes of the University.” These statements are problematic for several reasons:
  - When a Creator publishes a Traditional Work, such as a journal article, the Creator transfers the copyright to the publisher. Thus, the publisher is granted the exclusive and perpetual right to reproduce, transmit, and make available the Creator’s Work. If the University also wants to have a license to reproduce the Work, then the Creator and University must negotiate with the publisher. This would create unnecessary complexity. It would burden the faculty.
  - The granting of license to the university may have unintended negative consequences where instructional materials are concerned. Specifically, it may discourage faculty from designing new curriculum. Under this provision, a course designed by one faculty member may be used by several other faculty. Faculty may not create course materials specific to their students’ needs if they believe such materials will be modified and shared widely.
    - The Creator may not wish to grant the University a perpetual, royalty-free right to use their work. What happens then?
  - Suggested changes:
    - The university shall be granted a royalty-free license only when the Work was University Sponsored or University Supported, as described in sections I(A)(3):University Sponsored Works and I(A)(4): University Supported Works.
    - In the case of instructional materials, the university shall have a right and license to use, modify, and create derivatives of such works only when such materials were produced with extraordinary university resources.
    - The granting of a royalty-free license should not be mandatory. The policy could include a statement about voluntary agreements (e.g. “a faculty member may agree in writing to give the university a non-exclusive license…”).

All provisions requiring a license of Traditional Works from faculty to NKU have been removed.

2. Another issue involves the following statement from I(A)(5)(b): “The Creator shall report promptly all copyrightable works to which the University claims ownership under this policy to the Office of Graduate Education, Research and Outreach. The disclosure by Creators shall include a disclosure of the circumstances under which the work was created, a description of any University resources that were used, and any financial or other relationship with a third party that might affect the University’s rights in the work (for example, any consulting agreements or third-party funding agreements pursuant to which a work was created).”
- This passage could be construed to indicate that a faculty member is required to report all publications, musical compositions, works of art, novels, poems, etc., to the Office of Graduate Education, Research and Outreach. This would be burdensome.

The provision requiring reporting of the creation of Traditional Works has been removed. Reporting by faculty is required only for University Sponsored Works and University Supported Works, as defined in the policy.

- To add clarity, consider adding a statement to item I(A)(5) to the effect that the University will not claim ownership to Traditional Works described in section I(A)(1) of the policy statement.
- Editing suggestion: Section I(A)(4): University Supported Works refers to works produced with “significant” use of University resources. However, in the Definitions section (section III on p. 7], “Extraordinary Resources” (but not “significant”) are defined. It would be preferable to use consistent terminology throughout.

The revised version uses consistent terminology.

## INVENTIONS AND PATENTS

1. The discussion of student innovators and net royalties in Section II: Entities Affected/Applicability (3<sup>rd</sup> para.) states: “Students play an important role in innovation at the University, and the University recognizes that inventions may result from student coursework. A student who was not performing work for the University and did not make significant use of University resources in developing the invention may request that the University release its rights in the invention and assign the rights to the student. Significant use of University resources does not include a student’s use of resources to fulfill course requirements (unless it is a research intensive course), nor does it include nominal or incidental use of resources, including the use of routinely available office equipment, assigned office space, desktop and laptop computers, telephones, library facilities, and copiers. Funding obligations may require that NKU take assignment of innovations arising from certain agreements. To the extent reasonable and possible, NKU will notify students of this before work has started.”

- The policy should clearly state that students own their work. The student should not have to request that the University release its rights in the invention. The University may carve out exceptions (e.g., if the student is an employee of the University and the Work results from their employment responsibilities, then the University owns the work).
- Rather than carving out an exception for “research intensive” courses, consider whether the student is assisting faculty with their research. If a student contributes to faculty-led research, then the faculty member is the Innovator. However, if the innovation occurs as part of student-led research, then the student is the Innovator.

The policy language has been revised to clarify that NKU does not own IP created by students in their role as students (as opposed to student-employees) and with no more than incidental use of NKU resources.

2. Section I (E): Royalties (2<sup>nd</sup> para.) states "For all university inventions for which the University receives royalties, the royalties received by the University shall normally be distributed as follows: (1) Zero dollars (\$0) to two hundred fifty thousand dollars (\$250,000) total net royalties: 60% to the Innovator, 40% to the NKURF; (2) On total Net Royalties in excess of two hundred fifty thousand dollars (\$250,000): 50% to the Innovator; 12.5% to the college to support faculty research and creative activity; 12.5% to the department, program, or school to support faculty research and creative activity; 10% to the NKURF to fund intellectual property protection; 15% to the Office of Graduate Education, Research and Outreach to provide commercialization support, such as market analysis and prototype development."
  - The proposed changes would reduce Innovator share of revenue. Under existing policy, the Innovator keeps 100% if the revenue generated is less than \$5,000. Under the proposed policy, the Innovator would keep only 60%. The remaining 40% would belong to the NKU Research Foundation. Such a split may be typical for research-intensive institutions that provide substantial support for faculty research endeavors, but it is not justified at NKU. Most revenue generated by NKU Innovators is likely to be in low amounts. The proposed policy would discourage faculty innovation. The Innovator should keep all of the net royalties when net revenue is small (e.g., less than \$5,000).

The requested change has been made.

3. Consider adding the following statement to section I(A)(2): University's Obligations: "The University shall annually provide a report to the College with which the Innovator is affiliated detailing marketing activities for the invention and any funds received in association with the invention." Such a statement would promote transparency and accountability.

New language has been added to require an annual report to the college describing the net royalties received. Details regarding marketing activities may be subject to confidentiality restrictions imposed by third party licensees of the technology. Although that information can be shared with the inventors themselves, it may not be appropriate to share that information with others within the college.

# INVENTIONS & PATENTS

**POLICY NUMBER:** HYB-INVENTSPATNTS

**POLICY TYPE:** HYBRID

**RESPONSIBLE OFFICIAL TITLE:** PROVOST & EXEC. VICE PRESIDENT FOR ACADEMIC AFFAIRS

**RESPONSIBLE OFFICE:** GRADUATE EDUCATION, RESEARCH AND OUTREACH

**EFFECTIVE DATE:**

**NEXT REVIEW DATE:** BOARD APPROVAL PLUS FOUR (4) YEARS

**SUPERSEDES POLICY DATED:** 11/11/2009 (INTELLECTUAL PROPERTY) – THIS POLICY IS INCLUDED IN FACULTY HANDBOOK APPENDIX F & SEC. 16.16

**BOARD OF REGENTS REPORTING (CHECK ONE):**

☒ PRESIDENTIAL RECOMMENDATION (CONSENT AGENDA/VOTING ITEM)

☐ PRESIDENTIAL REPORT (INFORMATION ONLY)

## I. POLICY STATEMENT

Northern Kentucky University (NKU or University) is a public institution devoted to teaching, research, service, and other scholarly activities. The Northern Kentucky University Research Foundation (NKURF) is organized to support NKU's efforts to promote the development, implementation, and coordination of extramurally-sponsored programs and other projects that further the mission of the University.

In the course of conducting their University responsibilities and research activities, NKU faculty, staff, other employees, and students create, add to, and disseminate knowledge. These activities typically are supported by NKU resources and/or by contracts or grants with outside sponsors. NKU will disseminate such knowledge, to the extent allowed and possible, for the public good. In this context, facilitating the process whereby NKU inventions may be put to public use and/or commercial application is an important aspect of the service mission of NKU.

This policy defines and establishes the respective rights, equities, and obligations of NKU and its faculty, staff, other employees, and students with respect to patents, inventions, and potentially patentable discoveries. The license and other revenues from Inventions owned by NKU are distributed according to the formula set out in this policy.

Copyrightable works are covered in a separate policy ([add link to Copyrights policy](#)).

## A. POLICY SCOPE & APPLICABILITY

This policy applies to all patents, inventions, and potentially patentable discoveries created by the members of the NKU faculty (including instructors, lecturers, tenured, tenure-track, visiting, adjunct, research, and clinical faculty), staff, and other employees (including student employees), where such Inventions were created either within the scope of such individual's University responsibilities or with resources provided by the University (including use of laboratory or other University spaces, use of University equipment or other infrastructure, or with University funding).

This policy also applies to all patents, inventions, and potentially patentable discoveries created by students, volunteers, visitors, and other individuals who are not University employees, where such Inventions were created with more than incidental use of resources provided by the University

(including use of laboratory or other University spaces, use of University equipment or other infrastructure, or with University funding).

To the extent possible, NKU will notify students of the ownership status of Inventions and other intellectual property resulting from institutional projects before work has started.

NKU does not own, and this policy does not govern, the intellectual property of students who create patents, inventions, and potentially patentable discoveries with no more than incidental use of University resources. Such incidental use may consist of, for example, ordinary use of space in residence halls, libraries, and other spaces generally accessible by students and ordinary use of University internet and other services generally available to students.

NKU faculty, staff, other employees, students, and other individuals who create patents, inventions, and potentially patentable discoveries within the scope of their University employment responsibilities or with resources provided by the University, as described in this section, are referred to herein as “Innovators.” All such patents, inventions, and potentially patentable discoveries are referred to herein as “Inventions.”

## **B. RIGHTS AND OBLIGATIONS OF THE PARTIES**

### **1. Ownership of Inventions**

NKU shall own all rights to and legal interests in Inventions, except as expressly stated in this policy. NKU may license, transfer, assign, sell, or otherwise dispose of its interests in Inventions in accordance with this policy and other applicable legal authorities. For example, NKU may license Inventions to NKURF for any purpose, including to market and commercialize the Invention.

Ownership of Inventions also may be determined according to the terms of agreements between NKU and other parties, including contracts with research sponsors. In addition, funding obligations may require that NKU take assignment of Inventions arising from certain agreements and projects.

### **2. Innovator Obligations and Rights**

#### **a. Innovator Obligations**

- i. The Innovator shall report promptly to the Office of Graduate Education, Research and Outreach all Inventions. The Innovator makes this report by completing and submitting the appropriate Intellectual Property Disclosure Form (<https://inside.nku.edu/content/dam/rgc/docs/RGC/GrantActivity/NKU%20IP%20Disclosure%202020.pdf>).
- ii. Up request, the Innovator shall acknowledge in writing the University’s ownership of all rights, title, and interest in and to the Invention.
- iii. The Innovator shall cooperate with University:
  - (a) In executing declarations, assignments, or other documents as may be necessary in the course of Invention evaluation, patent prosecution, or protection of patents or analogous property rights to assure that title in such Inventions shall be held by the University or by such other parties designated by the University as may be appropriate under the circumstances;
  - (b). In any litigation, dispute, or controversy that arises out of, or is related to, the Invention;

- (c) In reasonable marketing efforts related to the Invention;
  - (d) In providing any information, data, or knowledge related to the Invention necessary for the University to evaluate the commercial potential of the University's rights in the protectability of and the technical feasibility of the Invention;
  - (e) To execute all papers necessary to obtain appropriate legal protection for the Invention.
- iv. If, at its sole discretion, the Innovator wants to assign to NKU its rights to intellectual property developed that may not be otherwise assigned to NKU, the Innovator may do so, provided that NKU reviews and accepts it.

**b. Innovator Rights**

- i. Upon disclosure to NKU of an Invention, the Innovator shall receive notice within a reasonable time of the University's intention to file or not to file for intellectual property protection or to otherwise retain title to the Invention.
- ii. The Innovator shall receive a share of any royalties or licensing fees and any stock or other ownership interests ("Net Revenue") received for the Invention.
- iii. The Innovator shall receive title to any Invention for which the University chooses not to retain title, subject to the following conditions:
  - (a) The University retains a royalty-free, perpetual non-exclusive license to make, have made, and use the Invention and any improvement thereon for research and educational purposes;
  - (b) The transfer of title complies with any overriding obligations to outside sponsors of research and third parties, including federal agencies;
  - (c) In the case of multiple Innovators, all the Innovators have reached a written agreement as to the disposition of title; and
  - (d) The Innovator(s) shall have the right of timely publication of their findings consistent with any applicable licensing agreement. Delays over ninety (90) days in length shall require Innovator approval.



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### 3. University's Obligations

- a. The University shall keep faculty, staff, and students apprised of this policy through means that include a website containing links to relevant University rules and any associated commentary and forms.
- b. After an Invention is reported, the University shall act in a timely manner to determine whether the University chooses to retain title and/or to determine whether an intellectual property application should be filed and to inform the Innovator of its determination.
- c. For any Invention subject to the Bayh-Dole Act, the University shall inform the Innovator of the University's election to take title from the sponsoring agency and comply with federal obligations;
- d. The University shall distribute any royalties or licensing fees according to this policy.
- e. The University shall assign to the Innovator title to any Invention for which the University chooses not to retain title subject to the conditions set forth in this policy, subject to any then-existing legal limitations, requirements, and other terms, including the terms of a sponsored research contract.

### C. INTELLECTUAL PROPERTY RESEARCH DISCLOSURE FORM

Whenever an NKU faculty, staff, other employee, student, or other Innovator operating under the scope of this policy creates or obtains research results that may have commercial value or have been reduced to practice in accordance with federal laws, the Innovator shall notify the Office of Graduate Education, Research and Outreach in writing via an official Intellectual Property Research Disclosure Form (<https://inside.nku.edu/content/dam/rgc/docs/RGC/GrantActivity/NKU%20IP%20Disclosure%202020.pdf>) before a public disclosure takes place.

The form will be reviewed by the Office of Graduate Education, Research and Outreach and the NKURF Board, and a decision will be communicated to the Innovator.

The decision shall convey one of three alternatives:

1. **ELECTED.** If NKU and the NKURF Board find potential commercial value in the Intellectual Property Disclosure or are obligated by legal or contractual agreements, NKU will notify the Innovator(s) that it has "ELECTED to Retain Title" and will move forward with protecting and marketing of the disclosed Invention. The Office of Graduate Education, Research and Outreach will apprise the Innovator, in writing, every six months of all marketing and development activities NKU has undertaken with respect to their Intellectual Property Disclosure. It is important to have a close working relationship between the Innovator and the Office of Graduate Education, Research and Outreach. The Innovator's knowledge of their research and of companies active in related technologies are key elements of the technical and market assessment for an Invention and of the search for licensees. If the Innovator is unsatisfied, they may appeal to the Intellectual Property Committee for a release of the Invention as described in the Intellectual Property Disclosure. NKU and/or NKURF may retain assistance from third-parties in the course of this process; these person(s) will be subject to confidentiality requirements and will comply with all NKU policies.

2. **PENDING.** NKU encourages full disclosure as early as possible in the development process. If the Invention is not yet reduced to practice, the Office of Graduate Education, Research and Outreach or designee shall provide feedback and place the Intellectual Property Disclosure in a “PENDING” status until further developments are disclosed. When an Intellectual Property Disclosure is placed in “PENDING” status, the Office of Graduate Education, Research and Outreach shall work with the Innovator to define what steps need to be taken to ready the Invention for re-evaluation. Once such steps are undertaken and new information is provided, the Office of Graduate Education, Research and Outreach shall re-activate the file and treat it as a new Intellectual Property Disclosure. Innovators will be required to provide an amendment to the Intellectual Property Research Disclosure form with the new information.
3. **NON-ELECTED.** If NKU or the NKURF Board finds there is not enough potential commercial value in the Intellectual Property Disclosure to warrant further NKU investment, they will notify the Innovator that NKU has “Not Elected to Retain Title” and will either release title to the federal sponsor, third-party per contractual terms, or offer to release title to the Innovator upon receipt of their formal written request. Should an improvement to the Invention be developed such that there may be commercial value, and said improvement was made with University resources, the improvement should be reported with a new Intellectual Property Research Disclosure Form for review by NKU and NKURF.

The Office of Graduate Education, Research and Outreach shall also notify the chairperson of the Innovator’s department and the appropriate dean or vice president:

1. At the time of Intellectual Property Disclosure that the disclosure of an Invention has been made; and
2. At the time of the notice to the Innovator described in this section, made by providing a copy of such notice and the decision therein conveyed.

#### **D. RELEASE OF INTELLECTUAL PROPERTY**

If NKU or the NKURF Board elects to release ownership rights to the Innovator, the Innovator shall be free, subject to law and prior agreements, to proceed independently only with respect to the specific Invention disclosed.

#### **E. DEVELOPMENT OF TECHNOLOGY**

Upon NKU’s election to retain title to an Invention, the Office of Graduate Education, Research and Outreach shall make every reasonable effort to develop the intellectual property, including retaining third-party assistance as appropriate. Costs for such development may be covered by grant (when allowable), departmental or central administration funds, or other agreements.

Development options include, but are not limited to, the following:

1. evaluating and processing the Invention through a provisional patent application or other form of intellectual property protection filed by NKU or NKURF;
2. partnering with a patent management firm or a third-party commercialization partner, such as Kentucky Commercialization Ventures, for evaluation and processing;

3. licensing or selling to a commercial firm; and
4. negotiating and holding equity positions with company(s) willing to commercialize the intellectual property.

## **F. ROYALTIES**

“Net Royalties” shall be defined as gross royalties received by the University minus the sum of the following:

1. any royalty shared with other entities (e.g., as required by an agreement with a funding source or as the result of an inter-institutional agreement with a co-owner of the university invention or as a result of a third-party commercialization partnership) and
2. any fees or costs directly attributable to the Invention being licensed. Examples of such direct fees include, but are not limited to, patent filing fees, fees for patent searches and legal advice, fees arising out of litigation, trademark registration fees, fees from commercialization, and marketing costs. Indirect university overhead and other university costs normally associated with the operation of a university and not directly attributable to the Invention shall not be deducted from gross royalties or otherwise allocated to costs or fees associated with the Invention.

For all Inventions for which the University receives royalties, the royalties received by the University shall normally be distributed as follows:

1. Zero dollars (\$0) to five thousand dollars (\$5,000) in total Net Royalties:  
100% to the Innovator
2. Total Net Royalties in excess of five thousand dollars (\$5,000) through two hundred and fifty thousand dollars (\$250,000):  
60% to the Innovator  
40% to the NKURF
3. On total Net Royalties in excess of two hundred fifty thousand dollars (\$250,000):  
50% to the Innovator  
12.5% to the college to support faculty research and creative activity  
12.5% to the department, program, or school to support faculty research and creative activity  
10% to the NKURF to fund intellectual property protection  
15% to the Office of Graduate Education, Research and Outreach to provide commercialization support, such as market analysis and prototype development

The University shall annually provide a report to the College with which the Innovator is associated identifying the Net Royalties received by the University associated with the Invention.

Any Net Royalties received by the University, department, program, school, or college shall be administered by the Provost's Office and shall be used to support scientific research and education.

If there is more than one Innovator, the University shall distribute the Innovators' share of any Net Royalties equally by default, or in accordance with their mutually agreed apportionment. In the event the Innovators are unable to reach a mutual agreement on apportionment, the Intellectual Property

Committee will make a recommendation to the president regarding apportionment, and the president shall decide. College and department share of any Net Royalties will be apportioned in accordance with the percentage distributions allocated to the Innovators who are associated with the participating colleges and departments.

There may be instances where there are agreements developed in the course of commercialization that change the royalty distribution percentages.

Upon the Innovator's death, royalties will continue to be paid to the deceased's estate for as long as they are generated.

## **G. RESEARCH AGREEMENTS INVOLVING INTELLECTUAL PROPERTY RIGHTS**

It is not uncommon for university investigators to conduct research that is funded by private industry and/or foundations. It is also not uncommon for investigators to conduct research in cooperation with colleagues at other universities. The University recognizes that to continue these relationships it must be willing to consider a variety of contractual terms and conditions. In order to protect the academic freedom tradition within the University, to assist investigators in evaluating proposals, and to protect the University's interest in Inventions, to the extent possible, the following policies shall apply to these relationships:

1. For the purpose of assuring any rights the University may have and may choose to retain in Inventions are appropriately protected, all agreements with private industry, with foundations, or with other universities utilizing University resources to conduct research shall be reviewed and approved by the Office of Graduate Education, Research and Outreach.
2. Consulting: It is the responsibility of individual members of the NKU community to ensure that the terms of their consulting agreements with third parties do not conflict with this policy or any of their other commitments to NKU. Such individuals do not have the right to assign ownership of or to license Inventions that are owned by the University, unless otherwise agreed in writing in advance by the Office of Graduate Education, Research and Outreach. Each individual should (a) make clear the nature of their obligations to NKU to any third party for whom the individual expects to consult and (b) inform such third parties of NKU's Inventions & Patents and Copyrights policies, and further inform third parties that such policies are available online on the [NKU policy website](#). More specifically, the scope of any consulting services should be expressly distinguished from the scope of research commitments at NKU and should not utilize any NKU facilities or resources without first consulting with the Office of Research, Grants and Contracts to establish an appropriate Sponsored Research Agreement. Rights to inventions arising from a business or industry sponsored research project should be prescribed in the Sponsored Research Agreement.
3. The University shall protect the right to publish as provided in the NKU Copyrights policy ([add link](#)).
4. The University shall agree that proprietary information or materials received from a private entity remain the property of that entity, subject to the terms of a written agreement, which shall provide for clear designation of information that is considered to be proprietary in nature, the scope of the information or material, and the method of protection.

## **H. PUBLIC DOMAIN PREFERENCE**

NKU will not assert intellectual property rights when Innovators have placed their inventions in the public domain, provided the Innovator(s) disclosed the invention(s) first to NKU, along with the Innovator's request that they be allowed to disseminate the intellectual property by placing it in the public domain, and NKU has agreed to the request. After review by NKU, and with written permission, the Innovator, or Innovators acting collectively when there are more than one, is/are free to place an invention in the public domain for non-commercial, academic dissemination purposes if that would be in the best interest of the invention, and if doing so is not in violation of the terms of any agreements that supported or governed the work. NKU reserves the right to use inventions for student engagement and educational purposes.

## **II. RESPONSIBILITIES/ADMINISTRATION**

The Office of Graduate Education, Research and Outreach shall have overall responsibility for administration of the NKU patent program. Specific responsibilities of this office, which may be delegated to an intellectual property officer, shall be to do the following:

- A. Act upon recommendations of NKURF.
- B. Authorize commitment of resources necessary to carry out NKURF recommendations.
- C. Annually, or at such other intervals as the NKURF Board shall direct, provide the Board with a summary report of the University's intellectual property and licensing activity, including total revenues derived from all outstanding technology transfer contracts for the period covered by the report as well as current problems, issues, and trends.
- D. Function as a contact point and resource with regard to NKU's Patents & Inventions and Copyrights policies, and as the liaison to Kentucky Commercialization Ventures or any other third-party commercialization partner.
- E. Receive reports of all Inventions.
- F. Exercise responsibility for assessing the commercial potential of Inventions.
- G. Control the preparation and prosecution of intellectual property applications and maintenance of any issued intellectual property assets on Inventions governed by this policy, in collaboration with the Office of General Counsel and outside contracted vendors as appropriate.
- H. Exercise responsibility for marketing Inventions.
- I. Approve terms for licensing, sale, assignment, transfer, or other disposition of the University's intellectual property rights in Inventions.
- J. Comply with legal and sponsor obligations related to the intellectual property.

## **III. INTELLECTUAL PROPERTY COMMITTEE**

There shall be established a University Intellectual Property Committee, which shall report to the Vice Provost of Graduate Education, Research and Outreach (VP GERO) or designee. The committee shall be composed of no more than five (5) members, three (3) appointed by the VP GERO or their designee, and two (2) appointed by the president of the Faculty Senate, and shall be chaired by one of the members. Specific functions of the Intellectual Property Committee shall be the following:

- A. Provide advice, as requested, to the VP GERO or their designee as to whether the University should:
  1. Prepare and prosecute a provisional patent or other intellectual property application on an Invention.
  2. Determine if a reported invention or discovery falls outside the scope of this policy (i.e., is not an Invention).
  3. Waive some or all University rights in an Invention to the Innovator(s).
- B. Act as a fact-finding body and make recommendations to the VP GERO or their designee on any disagreements arising out of the administration of the University's Inventions & Patents and Copyrights policies.
- C. Resolve disputes between the Innovator and the University that cannot be resolved by NKURF.

#### IV. REFERENCES AND RELATED MATERIALS

##### REFERENCES & FORMS

Intellectual Property Research Disclosure Form

##### RELATED POLICIES

Copyrights

##### REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
<b>Revision &amp; Name Change</b> – Intellectual Property policy revised to be this policy & Copyrights policy	
<b>Revision</b> - Policy (Intellectual Property) also in Faculty Handbook Appendix F & Sec. 16.16	November 11, 2009
<b>Formerly Administrative Regulation AR-II-2.0-4 &amp; Faculty Handbook Section 16.16</b>	November 9, 2005

# INVENTIONS & PATENTS

## PRESIDENTIAL APPROVAL

### PRESIDENT

Signature

Date

Bonita J. Brown

## BOARD OF REGENTS APPROVAL

### BOARD OF REGENTS (IF FORWARDED BY PRESIDENT)

- ☐ This policy was forwarded to the Board of Regents on the ***Presidential Report (information only)***.  
Date of Board of Regents meeting at which this policy was reported: \_\_\_\_/\_\_\_\_/\_\_\_\_.
- ☐ This policy was forwarded to the Board of Regents as a ***Presidential Recommendation (consent agenda/voting item)***.
- ☐ The Board of Regents approved this policy on \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Attach a copy of Board of Regents meeting minutes showing approval of policy.)
- ☐ The Board of Regents rejected this policy on \_\_\_\_/\_\_\_\_/\_\_\_\_.  
(Attach a copy of Board of Regents meeting minutes showing rejection of policy.)

### EXECUTIVE SECRETARY TO THE BOARD OF REGENTS

Signature

Date

Tammy Knochemann