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6-908 Intellectual Property Policy

The Arizona Board of Regents, and the three universities which the Board governs, are all dedicated to teaching, research, and extension of knowledge to the public. The university community recognizes its responsibility to produce and disseminate knowledge. Inherent in this responsibility is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other intellectual property, some of which may have potential commercial value. These activities contribute to the professional development of the individuals involved, enhance the reputation of the university in which they work, provide additional educational opportunities for participating students, and promote the public welfare.

Intellectual property created by university employees or with the use of university resources should be appropriately managed in the best interest of the state and the university system. This policy addresses ownership rights and revenue sharing for intellectual property created by Board or university employees or created with the significant use of Board or university resources.

Compliance with this policy is required for all Board and university employees as part of the terms of their employment. This policy also applies to non-employee students of the university and to anyone else who creates intellectual property with significant use of Board or university resources.

Definitions of capitalized terms are included in the final section of this policy.

A. Ownership of Intellectual Property.

1. Ownership by the Board:

a. The Board claims ownership of intellectual property in each of the following categories:

- (1) Any intellectual property created by a university or Board employee in the course and scope of employment, and

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- (2) Any intellectual property created with the significant use of Board or university resources, unless otherwise provided in an authorized agreement for the use of those resources.
 - b. The Board's claim to ownership may be altered by:
 - (1) Exceptions described in this policy,
 - (2) Applicable law, or
 - (3) Written agreement signed by an authorized Board or university representative.
 - c. All employees and others creating intellectual property in the course and scope of employment are required to assign (and do assign) to the Board all rights in intellectual property in which the Board claims an ownership interest under this policy. In addition, all employees and others creating intellectual property (including students) with a significant use of Board or university resources are required to assign (and do assign) to the Board all rights in intellectual property in which the Board claims an ownership interest under this policy
- 2. The Board does not make any claim of copyright ownership of the following works of authorship:
 - a. Scholarly works;
 - b. Works of fine art (e.g., music, art, dance, film), unless specifically commissioned by the Board or university; and
 - c. Student-created works.

To the extent applicable law would result in Board ownership of these works, upon written request by the creator(s) to the

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university's IP official, the Board will assign the applicable rights to the creator(s) of such works, subject to the following:

- (1) Retention by the Board of a paid-up royalty-free, non-exclusive license, for the full term of the intellectual property rights, to use for non-commercial purposes these works of authorship for education, research, and the furtherance of the public service mission of the university. In very limited circumstances in which the IP official determines that retention of these rights is unnecessary to the university's goals in supporting education, research, and the furtherance of the public service of the university, the IP office may waive this requirement; and
 - (2) Agreement by the creator not to use the Board's or the university's name in any commercial context involving the works other than to identify the university employee's position with the Board or university.
3. Transfer of Board-owned intellectual property through licensing or assignment.
- a. Subject to applicable law (including the federal Bayh-Dole Act and implementing regulations), the Board may transfer rights in or title to its intellectual property through agreements signed by authorized university or Board representatives or signed on behalf of the Board by a contracted third party (including but not limited to an intellectual property management organization). Transfer of intellectual property to Board or university officers or employees is also subject to the disclosure requirements of Board policy 3-901B.
 - b. Any agreement to authorize a third party to manage all or substantially all Board-owned intellectual property is subject to prior review and approval by the Board and is subject to this policy. Universities may, without prior review or

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approval by the Board, engage outside service providers and third parties with respect to (i) docketing and monitoring of patent activities and (ii) payment of maintenance and other fees required by patent offices.

- c. Any agreement to assign, license or otherwise transfer any Board-owned intellectual property rights is subject to the following conditions:
- (1) The university's IP official must either review the agreement before it is signed or may approve the procedure pursuant to which the agreement is reviewed and signed.
 - (2) The IP official will use reasonable efforts under the circumstances to consult with the creator(s) who are then employed by the university during the negotiation process. The IP official will provide creator(s) of the intellectual property who are then employed by the university with a copy of the negotiated agreement prior to its final execution. If any creator then employed by the university does not agree with the negotiated terms, he or she may appeal the IP official's position before the agreement is executed, in accordance with this policy, following the process and time limits established by each university.
- d. All commercialization agreements, whether through assignment, license or otherwise, involving Board-owned intellectual property, should include the following:
- (1) Reasonable compensation to the Board or university in the form of license fees, royalties, patent cost reimbursement, or other appropriate consideration. Non-monetary consideration may be considered by the IP official as reasonable compensation in exchange for the intellectual property rights transferred and the contribution of any public

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resources in the development of the intellectual property;

- (2) The right of the university to direct, manage, and control patenting and litigation activities relating to intellectual property unless the research sponsorship grant, agreement or contract specifically provides otherwise, in which case the terms of that grant, agreement or contract will control;
 - (3) The right of the university to terminate the license or convert the license to a nonexclusive license or rescind the assignment if the exclusive licensee or assignee does not make a good-faith attempt to meet negotiated due-diligence milestones;
 - (4) The right of the university to retain a paid-up, royalty-free, nonexclusive license in the intellectual property for research, education, and the furtherance of the public service mission of the university, and a provision that the university has the right to use the intellectual property in sponsored research at the university; and
 - (5) The right of the university to make public through publication or presentation any intellectual property developed under the agreement. A research sponsor may be given a reasonable time to review the manuscript for purposes of ensuring appropriate intellectual property protection (or identifying and seeking to remove any sponsor trade secrets or sponsor proprietary information from the manuscripts) prior to publication or presentation.
- e. Subject to applicable law (including the federal Bayh-Dole Act and implementing regulations), research sponsorship agreements that provide for the assignment of title or the license of exclusive rights without any provision for

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reasonable and customary royalties or comparable consideration will include the following additional provisions:

- (1) For exclusive intellectual property licenses or assignments made in connection with sponsored research agreements, a provision requiring the licensee or assignee to pay all costs of research, including salaries, materials, other direct costs, and the university's fully-burdened overhead. If the agreement is with an Arizona state agency that sponsored the research that resulted in the intellectual property, the agency will be required to pay all direct costs of research, including salaries and materials, and indirect costs or overhead to the extent permitted by agency rules, regulations or applicable law.
 - (2) A windfall provision in which an appropriate payment or payment schedule is specified based on some mutually agreed upon threshold or event. The parameters of this provision, such as the windfall threshold and the amount of any payments, will be determined on a case-by-case basis.
- f. The IP official may make modifications or exceptions to these requirements for the transfer of Board-owned intellectual property if justified by the best interests of the Board or the university. Any modification or exception is subject to prior written approval of an authorized Board or university representative other than the IP official.
4. Options. A university may agree to give a third party an exclusive option for a limited period of time for the right of first negotiation for a license to Board-owned intellectual property. Options will be time limited and are not intended to be used to prevent the appropriate development of board-owned intellectual property for public use. Subject to applicable laws relating to federally sponsored research, the option period in sponsored research agreements will not exceed

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one year following the availability of the intellectual property for licensing, subject to exceptions made by the IP official in the best interests of the Board or the university.

B. Revenue Sharing

1. The IP official will manage intellectual property in the best interests of the state, the Board and the universities. This may include the generation of revenue, but nothing in this policy is to be interpreted as a requirement that revenue be maximized for individual creators.
2. If revenue is generated through intellectual property licensing, assignment or transfer, the net income derived by the university from intellectual property will be shared with the creator(s) of the intellectual property in accordance with this policy, and the remainder will be used in support of research, investigation, research fellowships, or other activities relevant to the generation of intellectual property at the institution.
3. The IP official will determine the percentage to be paid to the creator(s), ensuring that it is in accordance with the university's revenue sharing policy, subject, however, to the following minimum:
 - a. An employee or student who creates intellectual property as the result of work for which he/she is paid by the university or which resulted from or uses university facilities and resources will receive a minimum of 25% of the net income received by the university. If there is more than one university creator of intellectual property, the percentage will be divided equally among the university creators unless they agree in writing to a different sharing arrangement. The employee(s) or student(s) may agree in a writing sent to the IP official to receive or share in less than the minimum 25% of the net income received by the university or to participate in an alternative revenue-sharing arrangement with the university. Whether an employee or student is a creator within the meaning of this policy shall be determined under United States Intellectual Property Law.

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- b. This royalty-revenue sharing is not to be construed as wages or salary compensation to the employee from the university, but rather as separate income derived from commercialization activities involving intellectual property. In addition, an employee's rights that have accrued shall continue beyond the employee's employment with the university.
- c. If a company in which an employee holds a substantial interest is given more favorable royalty or other financial terms than is usually granted in comparable cases in its license with the university, then the IP official will determine whether that employee, who holds a substantial interest in the company licensing university technology developed by that employee, should receive a personal share of the licensing income or other consideration received by the university from that company in addition to that employee's equity or other financial interest in that company. Universities also may adopt policies prohibiting distribution of all or part of the personal share or may review on a case-by-case basis. If the IP official determines that the affected employee should not receive his/her personal share of university licensing income, then the share of licensing income that would otherwise be disbursed to the employee will be distributed among the other university accounts designated in the university's income distribution policy. For purposes of this section, the interest owned by or otherwise committed to the university employee at the time of board approval of the employee's relationship with the company will be the interest used in determining whether the employee has a substantial interest.

C. Outside Consulting

- 1. Consulting for outside organizations is encouraged and may be performed by university employees pursuant to applicable Board and university policies.

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2. If the employee's obligations under this policy conflict with the employee's obligations to the consulting entity, the obligations under this policy will take precedence.
3. An employee may not transfer, by assignment or otherwise, intellectual property owned by the board through a consulting or other agreement with a third party unless authorized in writing by the IP official or university president. Any purported transfer in violation of this paragraph shall be void and unenforceable.

D. Administrative Responsibilities

1. Responsibilities of the creator(s) of intellectual property:
 - a. Each employee (including visiting faculty, researchers, and scientists) must promptly and fully disclose in writing to the IP official any intellectual property made by that person, or resulting from work carried on under his/her direction, in which the board may have an interest. Each university will adopt a disclosure form and make the forms readily available to employees and others who may use university resources.
 - b. Intellectual property created as a result of outside consulting must be disclosed to the university if the intellectual property would fall within Article I of this policy, or as required by other university or Board policies or applicable laws.
 - c. The creator must cooperate fully with the university with respect to technology transfer and commercialization activities relating to intellectual property. In addition, the creator shall execute all documentation necessary for the Board to establish, confirm, or perfect its ownership interest in intellectual property, including documentation necessary to assign ownership to the Board for recordation or other purposes, and, if necessary, to secure protection of intellectual property owned by the Board in those countries designated by the university IP official.

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- d. The creator must comply with all applicable laws and university and Board policies relating to conflicts of interest, including Board policy 3-901.
2. Responsibilities of the IP official. The IP official will administer all intellectual property owned by the board in accordance with the requirements of this policy and applicable law, and may exercise discretion in deciding among the following options:
 - a. Intellectual property may be licensed, assigned, or sold to the creator if the IP official determines within a reasonable time that after reviewing the circumstance of an individual case the interests of the Board are better served by releasing ownership to the creator under conditions to be specified by the university to include, but not be limited to the following:
 - (1) The Board retains a paid-up, non-exclusive license to use this intellectual property for education, research, and in furtherance of the public service mission of the university;
 - (2) Provision for a minimal royalty or other consideration to university in the event of commercialization of the intellectual property; and
 - (3) The creator may not use university facilities to improve upon the intellectual property. If the creator wishes to continue work on the intellectual property using university managed funds and/or facilities, he/she will need to do so under an arm's length relationship or may reassign his/her rights to the university.
 - b. Intellectual property may be licensed or assigned to one or more intellectual property management organizations for commercial development;

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- c. Intellectual property may be licensed, assigned, sold or optioned to a third party;
 - d. Intellectual property may be patented, or otherwise protected, by the university, appropriately marketed, and either licensed or assigned to another organization for commercialization;
 - e. Intellectual property may be archived by the university; or
 - f. Intellectual property may be released or dedicated by the university to the public domain.
3. Responsibilities of the university. The senior university administrator with primary responsibility for research will require that:
- a. The IP official make responsible business decisions regarding protection of intellectual property and payment of associated costs;
 - b. The university establish and administer a fund or funds for the promotion of research and development of intellectual property. The fund will include monies received by the university from intellectual property. These funds will be administered according to policies established by the university;
 - c. Each university will appoint an Intellectual Property Committee of faculty and staff. This committee will review proposed changes to this policy and make its recommendations to the president through the IP official. Unless otherwise specified in university policy, the intellectual property committee will also operate as a review committee in accordance with this policy; and

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- d. Each university will establish procedures to inform non-employee students working on research projects sponsored or funded by third parties of any university or sponsor requirements relating to intellectual property, including ownership, licensing, options, and other rights.
4. Publication rights/responsibilities for the protection of intellectual property
- a. Peer-reviewed publication of results is a major objective of academic research. The board does not intend for this policy to impede a university employee's ability to publish.
 - b. Public disclosure of a patentable invention prior to filing for a patent application may preclude the availability of patent protection. "public disclosure" includes any non-confidential written or oral disclosure that describes the invention (e.g., at a scientific meeting, in a journal, or even in an informal discussion with outside colleagues). Creators shall appropriately delay publication as required by the terms of contracts and grants sponsoring or funding their work and consider delaying public disclosure of intellectual property to comply with their obligations to the Board under Section IV.A.I. above in other circumstances. In either case, such delay is intended to provide the university IP official with sufficient time to complete the internal evaluation process and the opportunity to protect the intellectual property prior to the disclosure. In reporting intellectual property, creators should provide the university IP official with sufficient detail, time, and notice to evaluate the intellectual property and determine whether to seek patent protection prior to public disclosure of the intellectual property. The universities will make every effort to expedite the evaluation process when necessary.
5. Interpretation, decisions, appeals (disputes)

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- a. If an employee does not agree with an interpretation or decision made by the IP official, the employee may ask the university's Intellectual Property Committee (or other committee designated in university policy) to review that decision as it relates to issues regarding processing of intellectual property. Such request for review shall be sent in writing or electronically to the IP official or to any member of the Intellectual Property Committee (with notice to the IP official), and made no later than 30 days following the disputed interpretation or decision made by the IP official. IP official decisions regarding patent or other protection of intellectual property and payment of associated costs with university or Board resources are not subject to review; provided that such decisions are made by the IP official consistent with normal evaluative processes or financial considerations.
- b. The Intellectual Property Committee (or other designated committee) will review all relevant information submitted to it and will make its recommendation concerning the disputed decision to the president of the university, or his/her designee, who will make the final decision.
- c. The final decision of the president or his/her designee is subject to judicial review only pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6. Failure to complete the above review procedures will constitute a failure to exhaust administrative remedies.

E. University Technology Transfer Report

1. The president of each university shall report annually to the Board concerning its technology transfer activities for the preceding year.
2. The report shall include an analysis of income and expenditures detailed by source, such as licensing, royalty or fees, as well as the university's prevailing standards for measuring performance of

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patent management arrangements and the performance evaluation results.

3. The report shall be in a format approved by the president of the Board.

F. Definitions

1. "Course and Scope of Employment" shall include any activity that is listed or described in the employee's job description or is within the employee's field of employment, including research, instruction, or any activities assigned to the employee that involve the creation of intellectual property. Except as set forth in Article I, Section B, copyrightable works created by an employee in the course and scope of employment are considered to be works made for hire under U.S. Copyright Law, with ownership vested in the Board. The employee must cooperate fully with the university and will execute all documentation necessary to assign ownership and, if necessary, to secure protection of intellectual property owned by the Board.
2. "Due-diligence Milestones" shall mean contractually specified goals that a contracting party will in good faith pursue to bring to the public the benefits of the intellectual property. Due-diligence milestones may include, by way of example and without limitation, commercialization of the intellectual property, use of the intellectual property to produce products, and authorized licensing or disclosure of the intellectual property to third parties.
3. "Employee" means faculty, staff, administrators, student employees, visiting faculty and researchers paid by the Board or by a university governed by the Board.
4. "Intellectual Property" includes all forms of legally recognized intellectual property, including copyrights, patents, trade secrets, trademarks, and plant variety protection together with any associated or supporting technology or know-how. For the purpose of this policy, "intellectual property" also includes tangible research property such as research tools, prototypes, and records used or

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produced in the course of university research projects. Examples include (1) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (2) plants protected by the Plant Variety Protection Act, (3) non-patented drugs protected by the Orphan Drug Act, (4) prototype instrumentation or devices and (5) research records and documentation.

5. "IP Official" is the individual or the intellectual property management entity designated by the university to manage university intellectual property. If an outside entity is contracted for intellectual property management, a university employee will be designated as a primary liaison to the IP official.
6. "Net Income" means gross revenues resulting from any given intellectual property, less: (i) a university administrative fee of not to exceed 15%; and (ii) less all unreimbursed costs incurred by the university or its nominee in protecting, licensing, maintaining, and litigating rights in the intellectual property.
7. "On-line Instructional Materials" are works, including on-line course content and courseware that are created and distributed in connection with on-line instruction.
8. "Scholarly Works" are works of authorship and creative works regardless of their form that are created by employees or students. Except as set forth below, scholarly works include on-line instructional materials, scholarly publications, textbooks, journal articles, course notes, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software . Notwithstanding the foregoing, scholarly works exclude each of the following:
 - a. Patentable intellectual property;
 - b. Works of authorship or creative works created with significant use of Board or university resources;

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- c. Works of authorship or created works created under external contracts or grants but only to the extent that such contracts or grants (i) require (or are intended to require) copyright ownership by the university, (ii) grant to the sponsor or other third party any rights in such works through option, license, assignment, sale, or other transfer, or (iii) otherwise include provisions inconsistent with an ownership interest in such works by the creator;
 - d. Works of authorship or creative works commissioned by the Board or university; and
 - e. Works of authorship or creative works created in the course and scope of employment.
9. “Significant Use of Board or University Resources” includes but is not limited to any of the following: use of research funding; use of funding allocated for asynchronous or distance learning programs; use of university-paid time within the employment period other than during sabbaticals or consulting as permitted under Board and university policies or except in the creation of scholarly works; assistance of support staff; use of telecommunication services beyond ordinary telephone services; use of university central computing resources; use of instructional design or media production services; access to and use of research equipment and facilities, or production facilities. The Board does not construe the use of office space, library resources, personal workstations, or personal computers as constituting significant use of university resources. Except as provided above, the Board does not construe the use of instructional materials, instructional labs, and instructional facilities by non-employee students as a condition of enrollment and fulfillment of degree requirements at the university as a significant use of university resources. In addition, use of an electronic blackboard provided by the university does not change the disclaimer by the board of copyright ownership under Article I, Section B.I. in the underlying content of any scholarly work as distinct from its online or electronic format developed through blackboard.

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10. “Student” means a person who is currently registered or enrolled in one or more classes at a university under the jurisdiction of the Board.
11. “Student-created Works” are works created by students. This definition excludes the following:
 - a. Works created by a student within the course and scope of employment as an employee;
 - b. Works created by a student with significant use of board or university resources subject to Article I, Section B.III., however, the Board will not claim copyright ownership in student dissertations intended to fulfill degree requirements at the university and
 - c. Works created by a student as part of a project sponsored or funded by a third party and the sponsorship or funding agreement provides for university or sponsor ownership, rights, or options in the intellectual property.
12. “Substantial Interest” shall have the meaning ascribed to it in Arizona Revised Statutes § 38-502.
13. “Works” or “Works of Authorship and Creative Works” shall have the meaning ascribed in U.S. Copyright Law.