

KUMC OFFICE OF THE EXECUTIVE VICE CHANCELLOR POLICY

KUMC Intellectual Property Policy

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POLICY STATEMENT:

The provisions of this Policy are subject to any applicable laws, regulations or specific provisions of the grants or contracts that govern the rights in Intellectual Property created in connection with Externally Sponsored Research. Under the terms of certain contracts and agreements between the University and various agencies of government, private and public corporations and private interests, the University is or may be required to assign or license all rights to Intellectual Property that arise in the course of work conducted under such agreements to the contracting party. The University retains the right to enter into such agreements whenever such action is considered to be in its best interest and in the public interest. All parties participating in Externally Sponsored Research must assign their rights to Intellectual Property arising out of such projects to the University to allow the University to meet its contractual obligations to federal agencies and other sponsors. The provisions of Bayh-Dole Act of 1980 (35 U.S.C. § 200 et seq.) apply to inventions funded by Federal agencies.

1. General Copyright Policy

The ownership of the various rights associated with copyright is dependent upon the specific type of Copyrightable Work that is created. The University shall assert limited ownership of Copyright Works as set forth below. Since the University has a fiduciary responsibility for the appropriate use of state funds, unless otherwise provided for under this policy, all rights associated with Copyrightable Works produced as "*Work Made for Hire*" or other works that make "Substantial Use" of University resources belong to the University.

For the Kansas Geological Survey and the Kansas Biological Survey, which have separate statutory authority for preparation of reports, maps, or other documents, ownership of Intellectual Property

developed in the course of work for the unit shall be determined pursuant to the authorizing statute. Ownership of other Works shall be determined pursuant to this policy.

A. Mediated Courseware

1. The University shall have limited ownership or control rights for Mediated Courseware as specified below:

a. **Self-initiated mediated courseware.** When employees develop Mediated Courseware without specific direction by the University, unless otherwise agreed, the ownership of the courseware shall remain with the employee. Normally, no royalty, rent or other consideration shall be paid to the employee when that mediated courseware is used for instruction at the University and such Mediated Courseware shall not be used or modified without the consent of the creator(s). The Mediated Courseware shall not be sold, leased, rented or otherwise used in a manner that competes in a substantial way with the for-credit offering of the University unless that transaction has received the approval of the Chancellor. Should approval be granted to offer the course outside of the University, the creator shall reimburse the University for Substantial Use of University Resources from revenues derived from the transaction offering the course.

b. **Institution-directed mediated courseware.** When the University specifically directs the creation of Mediated Courseware by assigning one or more employees to develop the Mediated Courseware and supplies them with materials and time to develop the Mediated Courseware, the resulting Mediated Courseware belongs to the University and the University shall have the right to revise it and decide who will utilize the Mediated Courseware in instruction. The University may specifically agree to share revenues and control rights with the employee.

2. Mediated Courseware when judged by the creator(s) to have actual or projected market value in excess of \$10,000 annually shall be reported to a designee of the Chancellor. The report shall contain a description of the mediated courseware. Mediated Courseware judged by the Creator(s) not to have commercial value shall be considered reported when used in a University of Kansas Medical Center course.

Procedure: When the University directs employees to develop Mediated Courseware, a contract should be agreed to between the University of Kansas and the faculty member(s) before the project begins. The contract should contain clear statements regarding the following:

- a. Definition of the project and participants
- b. Time commitment
- c. Compensation, such as release time, summer salary, etc.
- d. Ownership of derivative works
- e. Revenue sharing
- f. Conditions of revision

- g. Credits to creators
- h. Procedures for creating an agreement on instructional uses by other institutions or licensing should those conditions warrant.

B. Scholarly and Artistic Works

Notwithstanding the University's ownership of Copyrightable Works made with Substantial Use of University Resources and Work Made for Hire, the ownership of textbooks, curricula and learning modules, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, and like works, whether in physical, electronic, or any other media of expression, shall reside with the Creator(s) and any revenue derived from their work shall belong to the Creator(s). Except for textbooks, the University shall have royalty-free use of the Work within the University, unless otherwise agreed in writing.

C. Manuscripts for Academic Journals

1. Notwithstanding the University's ownership of Copyrightable Works made with Substantial Use of University Resources and Work Made for Hire, the ownership of manuscripts for publication in academic journals shall reside with the Creator(s) and any revenue derived from their works shall belong to the Creator(s).

2. If the manuscript is to be published, the Creator(s) shall request the right to provide the University with a royalty-free right to use the manuscript within the University in its teaching, research, and service programs, but not for external distribution, and, if successful, the Creator(s) shall grant such right to the University.

Procedure: Upon acceptance of the manuscript, the University will provide a royalty-free request form to be sent to the publisher by the Creator. The Creator's responsibility for this policy ends with the submission of the form.

3. Upon the establishment of national governmental or nonprofit entities whose purpose is to maintain in an electronically accessible manner a publicly available copy of academic manuscripts, the Kansas Board of Regents will review each entity and upon determination that providing the manuscripts will not jeopardize the publication of articles or infringe on academic freedom, require the Creator(s) to provide to the appropriate entity a limited license for the use of each manuscript.

D. Copyrightable Software

The rights to Copyrightable Software produced by Substantial Use of University resources or resulting from Institutionally Sponsored Research, with an actual or projected market value in excess of \$10,000 annually, except software included in computer-mediated courseware, shall be determined pursuant to the Board's [Patent and Copyrightable Software](#) Policy (II.A.8.b) and in accordance of Section 2 of this Policy

E. Student Academic Creations

The ownership of student works submitted in fulfillment of academic requirements shall be with the Creator(s) with the following exception: upon request of the Creators, the University shall determine ownership of Copyrightable Works created from research or development activities that are collaborative efforts involving Students, Faculty or Staff, or spanning several semesters. The student by enrolling in the University gives the University a

nonexclusive royalty-free license to mark on, modify, retain the Work as may be required by the process of instruction, or otherwise handle the Work as set out in the University's Intellectual Property Policy or in the course syllabus. The University shall not have the right to use the Work in any other manner without the written consent of the Creator(s). Where the creation is part of any ongoing research or development project, the involved faculty or staff shall have the right to use and to modify the creation for use within that project and related research projects without additional consent of the Creator(s).

Procedure: A statement on accessibility to the University policy on intellectual property will be inserted in documents accessible to students.

2. Ownership of Patentable Inventions and Copyrightable Software

The University shall own all Patentable Inventions and Copyrightable Software associated with Externally Sponsored Research. In addition, ownership of Patentable Inventions or the ownership of Copyrightable Software that a reasonable person would believe to have an actual or projected market value in excess of \$10,000 annually shall be retained by the University where such inventions or software result from Institutionally Sponsored Research or from the Substantial Use of University Resources. Any rights to Inventions or Copyrightable Software retained by the University shall be assigned to the University and administered by the KU Center for Technology Commercialization, Inc. (d.b.a. KU Innovation and Collaboration ("KUIC")) on behalf of the University for the purpose of obtaining patents on inventions, receiving gifts, administering or disposing of such patents, and promoting research and the development of Inventions and Copyrightable Software at the University of Kansas by every proper means.

The following regulations shall be followed with respect to Inventions or Copyrightable Software:

A. Disclosure to the University

Anyone who conceives an Invention or who creates Copyrightable Software that is not included in mediated courseware resulting from Externally Sponsored Research, Institutionally Sponsored Research, or from the Substantial Use of University Resources shall report the matter to KUIC, as the designee of the Chancellor, on an Invention Disclosure form, available at <http://www.kuic.ku.edu/faculty/forms>. Following receipt of the Invention Disclosure Form, KUIC will schedule a meeting with the Creators to discuss the disclosed Invention or Copyrightable Software.

B. Commercialization Decision

If the University or KUIC acting on behalf of the University notifies the Inventor/Creator that neither the University nor KUIC intends to pursue commercialization of the Invention or Copyrightable Software, then the Inventor/ Creator is free to patent or copyright it, subject to the rights of the U.S. Federal Government or other external sponsor, and any other joint inventor/creator. The Bayh-Dole Act (35 USC 200-212; 37 CFR Part 401) restricts the commercialization of all inventions conceived or first actually reduced to practice in the performance of a federal grant, contract, or cooperative agreement. If the University or KUIC decides to not pursue commercialization of inventions that are the result of research funded in whole or in part by a federal agency, the right to commercialization passes to the federal agency that sponsored the research. The Inventor/ Creator shall be notified within 180 days of the date of submission of the invention disclosure to KUIC that KUIC has begun to proceed with commercialization or that he or she is free to obtain and exploit a patent or other Intellectual Property in his or her own right. In such case, however, the University does

not relinquish its right to publish any of the data associated with the Invention or Copyrightable Software, providing that such Invention or Copyrightable Software resulted from Externally Sponsored Research, Institutionally Sponsored Research or from the Substantial Use of University Resources. If the University or KUIC decides not to further pursue protection or commercialization of an Invention or Copyrightable Software, it shall negotiate an Invention Release Agreement and assign all other rights therein to the Inventor/Creator, subject to the rights of the U.S. Federal Government or other external sponsor, and any other joint Inventor/Creator.

Procedure: Upon making a decision that the invention does not warrant commercialization, the KUIC shall notify the Inventor(s)/ Creator(s) in writing that they are assigned the rights therein upon execution of an Invention Release Agreement.

C. Revenue Distribution

When any revenue is obtained by or on behalf of the University by KUIC from the commercialization of any Invention, including royalties, license fees or other charges based on any patent or copyrightable software, one-third of revenues shall be paid directly to the inventor or creator(s), one third shall be paid to the department or center to which the inventor or creator(s) belongs, and one third to the University per the approved Technology Transfer Revenue Distribution Policy (<http://www.rcr.ku.edu/coi/revenuedist/revenuedist.shtml>). The University portion of the revenue shall be used to sponsor further research and research-related activities on behalf of the University or KUIC.

Revenue sharing shall begin only after the University or KUIC recoups costs paid in support of obtaining revenue from the Invention, including costs of patents. When revenues are to be shared, the Creator(s) shall obtain his/her share only after the University has recouped any direct costs borne by the University for equipment and materials and costs paid to third parties. If there is more than one creator, the applicable revenue percentage will be divided equitably among the Inventor(s)/Creator(s). Their departments and schools or centers will also divide the applicable percentage equitably. The appropriate campus Vice Chancellor for Research or his/her designee retains the right to review the distribution and mediate among the parties. When multiple disclosures are used to develop a single patent or license, then the income is split equally across the disclosures unless a different distribution is agreed upon by all those affected (Inventors, department chairs, etc.). If the Invention is the result of Externally Sponsored Research and the sponsor regulates the distribution of income, such specific regulations shall take precedence over University policy with respect to distribution of the license revenue. With respect to any patent matter in which another institution or an outside agency shall share in the income derived from the patent rights, distribution of income shall be made first to the other institution according to agreed-upon terms, and then to the Inventor(s)/Creator(s) according to the Technology Transfer Revenue Distribution Policy.

1. In case of cooperative research sponsored in part by an outside corporation or individual, a written contract shall be made between the University or its designee and the cooperating agency. This contract should include a statement of policy substantially equivalent to that outlined below:

It is agreed by the parties to this contract that all results of experimental work, including Inventions, carried on under the direction of the scientific staff of the

University of Kansas Medical Center, belong to the University of Kansas or, at the discretion of the Chancellor or her designee, to a designated public entity and to the public and shall be used and controlled so as to produce the greatest benefit to the public. It is understood and agreed that if Inventions or Copyrightable Software grow out of the investigation and such Inventions or Copyrightable Software have commercial value, the cooperating agency shall receive preferential consideration as a prospective licensee, with a view to compensating said cooperating agency in part for the assistance rendered in the investigation.

It is further agreed that the name of the University of Kansas or its designee shall not be used by the cooperating agency in any advertisement, whether with regard to the cooperative agreement or any other related matter.

2. In case of a research project where it is proposed that all costs including overhead, salary of investigator, reasonable rent on the use of equipment, etc., are paid by an outside party, the outside party and the University or its designee shall negotiate the appropriate assignment of all Inventions or Copyrightable Software rights prior to the provision of any funding by the outside party. The University shall reserve the right to publish all data of fundamental value to science and technology. The educational programs of students, including publication of theses, dissertations, and papers, will be given highest priority when students participate in externally funded research.

D. Policy Changes

Changes in the above policies may be made by the University to conform to the requirements of the United States Government when contracting with the United States Government or a Federal Government Agency. See policy statement on Externally Sponsored Research.

3. Trademark Policy

The University reserves the right to own, control, and protect the trademarks and service marks of the University. See Trademark Licensing Policy.

4. Institutional Procedures

The University shall establish procedures that require employment contracts and course catalogs or syllabi to state that all faculty and staff employees and students are subject to the Intellectual Property Policy of the University and to resolve questions concerning intellectual property rights and any disputes that develop under this policy. Final decisions on disputed matters will be made by the Chancellor or designee and shall constitute final University action.

Procedure: The following statement will be included in the graduate and undergraduate catalogs: "All enrolled students are subject to the Board of Regents and University Intellectual Property Policies."

¹ The University of Kansas Medical Center, will be guided specifically by that portion of the AAUP 1999 Statement on Copyright (*AAUP Policy Documents & Reports, Tenth Edition*, p.215, lines 15-21), that states, "Works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed works made for hire. Even absent such prior written specification,

ownership will vest in the college or university in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports prepared by a dean or by the chair or members of a faculty committee, or college promotional brochures prepared by a director of admissions.”

DEFINITIONS:

Certain terms used in this policy have specific meanings, as defined in this section. These definitions do not necessarily conform to customary usage.

Invention includes any new process, products, art, machine, method of manufacture, or composition of matter, Tangible Research Property, or any new hardware, firmware, or software technology or improvement thereof or know-how, trade secret, Copyrightable Work, or trademark, service mark, or trade name, and other rights in and to such invention as may be recognized by foreign jurisdictions where applicable.

University means the University of Kansas and all of its campuses.

Student means any full-time or part-time graduate or undergraduate student, regardless of whether the student receives financial aid from the university or from outside sources. It is the responsibility of students who are also employees of other outside entities to resolve any conflicts between this policy and provisions of agreements with their employers prior to beginning any undertaking at the university that will involve the development of intellectual property. If a student is also a part-time university employee, the student is considered as staff with regard to intellectual property developed as a result of employment by the university, and as a student with regard to other intellectual property.

Faculty and **Staff** means members of the university's Faculty and Staff as defined in the relevant campus's Faculty and Staff Handbook and/or policies, and includes instructors and special faculty appointments (even in the first year), part-time faculty, and part-time employees. A full-time non-faculty employee who is also taking one or more courses is considered to be staff.

Visitors. Ownership to intellectual property arising from substantial use of university resources by visitors to the university will be termed in accordance with agreements negotiated in advance of such use. In the absence of such agreements, such intellectual property shall be owned by the university.

Creator means any person or persons who create an Invention or Copyrightable work.

Inventor means anyone who has made significant intellectual contribution to the conception and/or reduction to practice of a Patentable Invention, and who satisfies the applicable statutory requirements of inventorship.

Patentable Inventions means Inventions that appear to satisfy the statutory requirements for the issuance of a patent by the patent authority of a country

Copyrightable Works or Work means "original works of authorship" that have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. These works include, but are not limited to the following:

- Literary works: books, pamphlets, computer programs, manuscripts, poems
- Musical works (including accompanying music)
- Dramatic works (including accompanying music)
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audio visual works
- Sound recordings
- Architectural works

Copyrightable Software means a subset of Copyrightable Works that include a computer program (including, without limitation, microcode, subroutines, and operating systems), regardless of form of expression or object in which it is embodied, together with any users' manuals and other accompanying explanatory materials and any computer database, that is developed

Mediated Courseware means course materials that (1) enable instructors to rely exclusively or substantially on non-classroom contact hours for instruction, (2) make extensive use of technology, including but not limited to video conferencing, streaming media, and similar technologies and (3) potentially could permit students from other institutions to access courses offered by the University of Kansas upon payment of a specified fee. The phrase "mediated courseware" does not include course material prepared by an instructor that makes use of the Internet for delivery or presentation, unless all of the above criteria are met.

Invention Assignment Agreement means an agreement between all faculty and staff employees and the University executed as a condition of employment that provides an assignment of inventions made during employment to the university, with an exception for certain faculty consulting.

Invention Disclosure Form is a confidential document written by the Inventor(s)/Creators(s) for use by KUIC in accessing an Invention's IP and commercialization potential. A complete disclosure form is signed, completely filled out, and contains a written description of the Invention that enables non-inventors to understand and practice the invention.

Invention Release Agreement means a contract between the University and inventor(s)/creator(s) concerning release of rights to a Patentable Invention or Copyrightable Software.

Substantial Use of University Resources or Substantial Use means that a Creator/Inventor receives time and/or resources specifically dedicated to the project.

Externally Sponsored Research means research or development at University of Kansas wherein the source of the funds is, in whole or in part, from the U.S. Federal Government or other third party.

Institutionally Sponsored Research means research or development at University of Kansas wherein the source of the funds is provided solely by the University of Kansas.

Bayh-Dole means U.S. legislation found at 35 U.S.C. §§ 200-212 pertaining to the reporting, ownership, patenting and licensing of Inventions made under U.S. Federal Government funding.

Tangible Research Property includes, but is not limited to, materials, computer software, computer databases, prototype devices or equipment, engineering designs or drawings, integrated computer chips, audiovisual works, antibodies, genetically modified animals, and cell lines.

Work Made for Hire shall mean works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed works made for hire. Even absent such prior written specification, ownership will vest in the university in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports prepared by a dean or by the chair or members of a faculty committee, photographs taken by employees of the university's public affairs office, or college promotional brochures prepared by a director of admissions.

Intellectual Property as used herein is broadly defined to include Inventions, Copyrightable Works, Trademarks and Service marks, and Tangible Research Property.