

**POLICY AND PROCEDURE 310**  
**AREA: General Administration**

Date adopted:

Certified by \_\_\_\_\_

Colette Pierce-Burnette  
Vice President for Administration  
and Chief Financial Officer

Revisions approved:

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**Subject: POLICY AND PROCEDURES FOR INTELLECTUAL  
PROPERTY**

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**1. Purpose and Scope**

a. Introduction

Central State University believes that respect for intellectual labor and creativity is vital to academic discourse and enterprise and that, where possible, it should make results from scholarly pursuits available to industry and the public on a reasonable and effective basis, while at the same time providing adequate recognition to scholars.

b. Who is Covered by this Policy

All University employees are covered by this policy. Also covered are non-employees (including students, visitors, volunteers, fellows, and scholars) who are aided by a significant use of University resources.

c. What is Covered by this Policy

This policy applies to all inventions, discoveries, trademarks, and copyrightable works made or authored by covered individuals, and to any royalties derived there from. It does not apply to University service marks, nor to property belonging to others or in the public domain.

**2. Definitions**

a. Inventions are, under federal patent law (U.S.C. Title 35), novel and useful ideas relating to processes, machines, manufactures, and compositions of matter. An invention can be made solely or jointly with others as co-inventors. To be recognized legally, a co-inventor must have conceived of an essential element of an invention or contributed substantially to the general concept.

b. Copyrightable works are, under federal copyright law (U.S.C. Title 17, as amended by the 1976 Copyright Act), 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:

- Literary works, such as books, journal articles, poems, manuals, memoranda, tests, instructional material, databases, bibliographies;
- Computer software, which in addition to being copyrightable, may also be patentable;
- Musical works including any accompanying words;
- Dramatic works, including any accompanying music;
- Pictorial, graphic, and sculptural works, including photographs, diagrams, sketches, and integrated circuit masks; and
- Motion pictures and other audiovisual works such as videotapes; and sound recordings.

c. A trademark includes any word, name, symbol, device, or any combination, used, or intended to be used, in commerce to identify and distinguish the goods of one manufacturer or seller from goods manufactured or sold by others, and to indicate the source of the goods.

d. Discoveries are defined for the purpose of this policy as new products or processes that are not patentable inventions or copyrightable works but that may contain or be based on proprietary information. Examples include tangible research property such as biological materials (including cell lines) and chemical substances; prototype devices and equipment; and research data. Discoveries sometimes may be protected as trade secrets.

e. An intellectual property record, according to §149.43 of the Ohio Revised Code, is a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher education in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue, regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern, and that has not been publicly released, published, or patented.

f. To make an invention or discovery means to first conceive it or reduce it to practice.

g. A royalty is a payment made to an owner of intellectual property for the privilege of practicing a right under a patent, copyright, or discovery. The term 'royalty' does not apply to funds awarded to the University under sponsored agreements nor to gifts made to the CSU Foundation.

h. **Net Revenue** is defined as gross royalty income less actual expenses incurred by the University in administration of the intellectual property, including but not restricted to legal fees and patent maintenance fees.

i. An employee's scope of employment is determined by the employee's job description (or functionally equivalent document). It does not include the general obligation of faculty to produce scholarly/aesthetic works and course materials.

j. Significant use of University resources is the use of University facilities, staff or funds beyond those normally available to members of the University community. Some examples are:

- Extended use of time and energy by the developer(s) in the creation or promotion of the intellectual property enabled by a reduction in the levels of teaching, scholarship, or citizenship activities, so that anticipated performance in these areas is at a level significantly less than normal;
- Use of products or services obtained by a substantial expenditure of University funds in support of the intellectual property's creation;
- Direct assignment or commission from the University to undertake a creative project as a part of the developer's regular appointment;
- Substantial use of funding from gifts to the University to support creation of the intellectual property involved; and
- Production of the intellectual property under specific terms of a sponsored research grant or contract.

Use of assigned office space, normal clerical support, and routine use of library resources, desktop computers and office supplies are not significant use of University resources.

k. A work for hire, according to the 1976 Copyright Act, is:

- A work prepared by an employee within the scope of his or her employment [see above definition]; or
- A work specially ordered or commissioned for use if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

l. A disclosure shall include any revelation of the design or workings of the invention or any public use, sale, or publication of the invention anywhere in the world.

m. A patent is granted by the United States government for inventions and gives the patentee the right to prevent others from making, using or selling the patented invention. A patent may be issued to any person who invents or discovers any new and useful process, machine, manufacture or composition of matter.

n. A copyright is created under a federal statute when a work is fixed in tangible form. The copyright gives the owner the right to prevent others from copying all or a significant portion of a work. Copyrights may be obtained for a wide variety of works including books, works of art, musical compositions, motion pictures and recordings, etc.

o. The Chief Intellectual Property officer is an individual appointed by the Provost who is an administrator with special knowledge and experience in matters of intellectual property.

p. The Intellectual Property Advisory committee is a committee made up of six individuals having special knowledge and experience in matters of intellectual property. The committee will be selected based on the field of expertise required to properly review each application. Three members shall be faculty members appointed by the Senate, and three members shall be administrators appointed by the Provost.

### **3. Policy**

#### **a. Discoveries and Inventions**

(i) All rights to and interests in discoveries or inventions, including patents thereon, which result from research or investigation conducted in any experiment station, bureau, laboratory, or research facility of the University or by employees of the University acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through the University, shall be the sole property of the University. All rights and interests in software, although it is copyrightable, shall be the property of the University when it is required for an invention or is part of an invention. Covered individuals who make or participate in the making of such discoveries or inventions in the course of fulfilling their University responsibilities or with use of University resources shall promptly disclose their discovery or invention to the Chief Intellectual Property Officer, using the disclosure form prescribed by that official. Use of this form has the effect of initiating the process of review for patentability and commercialize-ability.

(ii) Rights to inventions arising in the course of government or other externally sponsored research are controlled by the terms of the agreement between the University and the sponsor and/or applicable federal regulations.

(iii) Inventors shall be entitled to share in any royalty income received by the University for their discoveries or inventions, in accordance with the University's royalty distribution schedule (see 6.b. below). The University shall maintain distributions of an inventor's respective share of such royalties after the inventor terminates his or her University employment.

(iv) Covered individuals agree to assist and cooperate with the University in obtaining and enforcing patents, including, without limitation, executing and delivering all assignments, documents and instruments reasonably requested by the University in conjunction with obtaining and enforcing patents within the United States or any foreign jurisdiction.

(v) The University has no obligation to pursue or maintain patent protection for disclosed inventions. If, following consultation with the Intellectual Property Advisory Committee, the Chief Intellectual Property Officer recommends that the University not pursue a patent application, maintain a patent, or otherwise market that invention, then the University may assign ownership to the inventor(s) while retaining a royalty-free license to use the invention for non-commercial purposes. The University shall duly consider a covered individual's request for assignment of an invention, in which that individual has had input, when the University chooses not to pursue a patent application, maintain a patent for that invention, or otherwise market that invention.

(vi) The University will consult with the inventor(s) who discloses a discovery or invention before marketing such discovery or invention.

b. Copyrightable Works

(i) Covered individuals retain ownership of their own copyrightable works unless the work is a work for hire or is subject to a separate written agreement that requires assignment to the University or to a third party. In the case of assignment to the University, the author will retain the right to use the material for his or her own non-commercial purposes.

It is emphasized that the legal copyright owner is the author of the work—the person(s) who gives tangible expression to the idea regardless of who might have been the original creator of that idea. For example, if a student writes a paper based on a professor's idea, and the professor is not a co-author of the work, the student is, by law, the sole copyright owner.

(ii) Covered individuals shall cooperate with and sign all documents reasonably requested by the University to enable it to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to the University. The University shall cooperate with and sign all documents reasonably requested by a covered individual to enable him or her to secure, register and enforce in the U.S. and any foreign countries, copyrights in all works owned by or assigned to that individual.

(iii) Traditional faculty products of scholarly activity that have customarily been considered to be the restricted property of the author will be owned by the author regardless of the medium in which the work is embodied. Such traditional products include, but are not limited to, journal articles; textbooks; monographs; works of art, including paintings and sculptures; and musical compositions. The University does not claim any ownership rights to such works.

The University also does not claim ownership of traditional academic works produced by professional employees who, though not appointed as faculty, play a role in supporting the academic mission of the University. In addition, the author of such traditional works is responsible for compliance with applicable copyright laws. If such works embody a patentable invention, the inventor will disclose and assign ownership of the invention to the University in accordance with the above policy on "Discoveries and Inventions."

(iv) Royalties earned from the commercialization of traditional faculty products will accrue entirely to the author(s) as personal income, unless copyright was previously assigned to the University or significant University resources were used in the production of the work. For traditional faculty products requiring significant use of University resources, author(s) will repay the University for identifiable resources from any personal income earned. Before making significant use of University resources in the creation of such works, covered individuals shall consult with their Chair or supervisor, who shall have the opportunity to consult with the Chief Intellectual Property Officer prior to approval.

(v) As a public institution subject to State and Federal laws and regulations pertaining to access by certain public officials to research data, the University, in order to be able to investigate allegations of scientific misconduct, will have unlimited access to records, notebooks and other repositories of information arising out of sponsored research. The research project Principal Investigator is responsible for the maintenance and retention of research data. Information on required retention periods may be obtained from the Chief Research Officer.

(vi) Development of distance learning courseware, instructional software, and other multimedia works involving significant University resources requires a written agreement between the University and the creator(s) outlining the rights and responsibilities of the parties. The agreement will cover, at a minimum, ownership, the right of the creator(s) to erase videotape or delete from a Web server any or all of the course content at the conclusion of a course, the need for written permission from the creator for the modification, reuse, or sale of courseware, the responsibility for obtaining copyright permission for items used in the creation of courseware, and the distribution of royalties.

(vii) University faculty may request the Chief Intellectual Property Officer to assist them in registering their copyrights with the U.S. Copyright Office. Copyright owners may assign their copyrights to the University, which may, at its option, endeavor to commercialize the

copyrighted work. Any royalties generated would be shared in accordance with the royalty distribution schedule in section 6.b. of this policy.

(viii) Students own project reports or theses, including any computer software developed as part of the student project. However, students, as a condition of enrollment, grant royalty-free permission to the University to reproduce and publicly distribute, on a noncommercial basis, copies of these documents. In certain situations the Chief Intellectual Property Officer, in consultation with the thesis director or faculty advisor, may conclude that joint ownership by the University and student is appropriate for computer software developed as part of a student project, thesis or dissertation. In such cases the Chief Intellectual Property Officer shall prepare an agreement between the University and the student as soon as practicable during the process of carrying out the research project but prior to the final submission of the student project report or thesis. Notwithstanding the preceding, if the student authors copyrightable material that is either subject to requirements of a sponsored agreement or is research data, such material will be owned by the University or the supervising faculty member pursuant to any such sponsored agreement and this policy.

c. Trademarks

(i) Any trademarks created by a covered individual at the request of the University shall be owned by the University.

(ii) Trademarks created by a covered individual in association with an invention, discovery, or copyrighted material shall be owned by the same party that owns the invention, discovery or copyrighted material.

d. Intellectual Property Records

(i) Pursuant to §149.43 of the Ohio Revised Code, intellectual property records are not considered "public records" and so are not subject to public inspection. Requests for access to intellectual property records should be referred to the Office of General Counsel.

#### **4. Responsibilities**

a. Inventors are responsible for promptly disclosing the inventions they make to the Chief Intellectual Property Officer when required by this policy. The Chief Intellectual Property Officer may call upon inventors for advice and cooperation in order to assist the University's efforts to patent and/or market the invention.

b. Copyright holders are responsible for assigning copyright ownership to the University when required by this policy. Copyright assignments should be processed through the Chief Intellectual Property Officer.

c. Custodians of University-owned discoveries and proprietary information owned by third parties are responsible for taking reasonable steps to prevent unauthorized use or inadvertent public disclosure of such discoveries and information. These steps may include requiring those who have access to the discovery or information to sign a non-disclosure agreement.

d. The Chief Intellectual Property Officer, in consultation with the Intellectual Property Advisory Committee, and with the advice of the Office of General Counsel, the Chief Research Officer, the inventor or author, and outside organizations as appropriate, is responsible for:

- administering, in a confidential and expeditious manner, all intellectual property disclosed to him or her;
- seeking the advice of the Intellectual Property Advisory Committee;
- conducting patent searches, marketability assessments, and license negotiations;
- licensing, marketing, and distributing (either directly, through members of the University community, or through outside organizations) intellectual property in which the University has rights;
- providing information on intellectual property issues to the University community;
- interpreting requirements of sponsored agreements regarding intellectual property;
- providing assistance in registering the copyright to any works in which the University has rights and, upon request, in registering the copyright to faculty-owned work;
- arranging the distribution of royalty income earned by the University under license agreements or other arrangements in accordance with the royalty distribution schedule in section 6.b. below;
- making recommendations to the Office of General Counsel concerning patent applications and maintenance of patents;
- defraying the costs (either directly or through licensees) of patent applications, maintenance fees, registration fees, and other costs incurred in administering intellectual property;
- preparing or assisting in preparing reports on intellectual property matters, including royalty income, for members of the University community, external sponsors, and other requesting organizations; and
- determining the rights of the University in any invention, discovery, or copyrightable work covered by this policy. Inventors and authors may appeal this determination to the Chief Academic Officer.

e. The Office of General Counsel is responsible for providing advice to the Chief Intellectual Property Officer and for liaison with the University's patent attorneys.

f. The University Purchasing Director is responsible for ensuring that professional consulting agreements awarded by the University contain appropriate provisions for protection of University intellectual property rights.

## **5. Intellectual Property Rights Resolution Board**

a. An Intellectual Property Rights Resolution Board shall be established and empowered to provide internal resolution procedures in the case of a dispute of the ownership of intellectual property, or other interpretations of this policy.

(i) If no prior agreement has been reached on ownership rights to the intellectual property in question and the University or any Faculty collaborator wishes to assert rights of ownership, the University or the Faculty member may request such determination by the Intellectual Property Rights Resolution Board.

(ii) The Board shall resolve disputes arising from the failure of one or more of the parties to fulfill the terms of an agreement. In the case that the Board finds that one or more of the parties failed to meet its obligations, the Board may recommend a new distribution of ownership rights and subsequent use.

(iii) The Board shall be empowered to request any and all parties to submit evidence related to each case and to seek testimony from witnesses. The Board may adopt such rules and regulations for hearing and deciding cases that are consistent with this policy. These rules and regulations shall be made available by the Board, to the University, and to the parties to a specific case.

(iv) By engaging in these procedures, neither a Faculty member nor the University waives other rights as provided by the collective bargaining agreement between the University and the American Association of University Professors (AAUP) and applicable state and federal law.

b. The Board shall consist of three members of the University administration appointed by the Provost and three Faculty members appointed by the AAUP.

(i) The Chair of the Board shall be determined annually by the Board members.

(ii) The term of Faculty members shall be three years, except that the initial appointments shall be for staggered terms. The terms of all Board members shall begin with the fall semester of the academic year except that if a case is being heard, the Board, as constituted at the start of the case, shall hear the case to its conclusion.

(iii) The Board shall report to the Provost.

c. In considering a dispute as to ownership rights, the Board shall hear all evidence relating to a case. Accordingly, the procedures at the hearing shall be informal and non-adversarial in nature. All persons and parties necessary to a full and complete hearing should be present. However, none of the parties to the case may be represented by legal counsel. A party may be represented by other members of the academic administration or by members of the Faculty who may act in an advisory role to the party.

d. After hearing the case, the Board shall render a determination of the ownership rights of each party to the intellectual property in question. Each party shall receive in writing notice of this determination. Should the Board fail to reach a majority determination or should either party disagree with any such determination, an appeal shall be directed, in writing, to the Provost for final determination within the University.

## 6. Royalty Distribution Schedule

a. At the time that the invention disclosure form is filed with the Chief Intellectual Property Officer, the inventor shall assign all rights to the invention or discovery to the University.

b. Any net revenue deriving from an invention owned by the University, whether patented or not, shall be shared between the inventor(s) and the University according to the following schedule.

Net Revenue	Income Distribution	
	Inventor	University
	40%	60%

c. Determination of net financial returns as used in this policy shall be made by the Chief Intellectual Property Officer in accordance with generally accepted accounting principles.