

University Handbook, Appendix R: Intellectual Property Policy and Institutional Procedures

Kansas State University

(Approved by Faculty Senate on May 15, 2002)

This document describes Kansas State University's policies and associated institutional procedures for intellectual property.

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Purposes

One purpose of this intellectual property policy is to foster both the development and the dissemination of useful creations, products or processes. The creation of products and materials is encouraged by providing a mechanism for rewarding their creators.

Dissemination of products and materials is encouraged by providing for their protection, thus making their commercial development and public application attractive with the intent of providing the most benefit for society.

A second purpose of this policy is to clarify individual rights and institutional rights associated with ownership and with the distribution of benefits that may derive from the creation of various types of intellectual property.

Applicability

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

This policy applies only to intellectual property created or disclosed after the effective date of the policy which is May 15, 2002.

Rights, Responsibilities and Liabilities

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

I. Copyrights

Ownership of the various rights associated with copyright is dependent upon the specific type of intellectual property. Creators retain all rights to copyrightable works, unless subject to the conditions discussed in this section.

Kansas State University asserts a limited ownership interest in some of the various rights 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, Kansas State University owns rights associated with works produced as "works made for hire" or other works that make "substantial use of institutional resources" (see Appendix C: Definitions).

A. Artistic and Scholarly Works

Regardless of any use of institutional resources or the "work made for hire" principle, the ownership of textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, syllabi, lecture notes, and like works will reside with the creator(s) and any revenue derived from their work will belong to the creator(s). Except for textbooks, Kansas State University will have royalty free use of the work within the institution unless otherwise agreed in writing.

In its interpretation of scholarly works, Kansas State University includes those presented at professional meetings and/or electronically distributed. World Wide Web pages, transparencies for projection, electronic presentations, etc., of scholarly activity remain the property of the creator as stated in this section. See section I.C.4 for policies governing underlying data upon which these presentations are based.

B. Mediated Courseware (see Appendix C: Definitions)

1. Self initiated Mediated Courseware

a. Individual Effort

When a creator of courseware develops an idea for a new course or changes an existing course without "substantial use of institutional resources" and without being "institution-

directed" (see Appendix C: Definitions), the ownership of both the intellectual content and the presentation will remain with the employee.

Normally, no royalty, rent or other consideration will be paid to the employee when that mediated courseware is used for instruction at Kansas State University and such mediated courseware will not be used or modified by other Kansas State University staff without the consent of the creator. Until the creator either resigns or retires from Kansas State University, the creator will not sell, lease, rent or otherwise use the courseware in a manner that competes with for credit or revenue producing offerings of Kansas State University unless that use has received the approval of the department/unit head and dean/director.

Approval to offer the courseware outside of the institution can be requested through the department/unit head and dean/director. Approvals will be forwarded to the provost. If approval is granted and the creator uses substantial institutional resources to offer the courseware, then the creator will reimburse Kansas State University. As owner of the materials, the creator is responsible for securing and maintaining any and all copyright permission related to the content or presentation of the courseware and for responding to any other legal actions resulting from the use of the material.

b. Use of Kansas State University Resources

When a creator of courseware develops an idea for a new course or changes an existing course without being "institution-directed" but with "substantial use of institutional resources" (see Appendix C), the university makes no claim to the intellectual content of the courseware. However, the ownership of the specific presentation or materials created will remain with Kansas State University. A written agreement that specifies the respective contributions of the employee and of the support unit(s) should be prepared.

Normally no royalty, rent or other consideration will be paid to the employee when that mediated courseware is used for instruction at Kansas State University. Such mediated courseware will not be used or modified without the consent of the creator(s). If the creators wish to use the presentation or materials in a manner that competes with for credit or revenue producing offerings of Kansas State University, they must request and obtain the approval of their department/unit head and dean/director and also of the director of any and all support units that aided in the creation of the presentation.

Approvals will be forwarded to the Provost. If approval is granted, Kansas State University, as owner of the copyright, will provide the creator with a limited license to use the material and will share revenues derived from offering the course in a manner similar to the sharing of royalties from patents.

The creator is responsible for securing and maintaining any and all copyright permission related to the intellectual content. The university will secure and maintain any and all copyright permission related to presentation of the courseware and to responding to any other legal actions resulting from the use of the presentation.

2. Institution Directed Mediated Courseware

Mediated courseware belongs to Kansas State University when Kansas State 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. Kansas State University will have the right to revise it and decide how mediated courseware may be utilized in instruction. The university will provide the resources to secure any and all copyright permissions related to the intellectual content or presentation. The university will retain and manage said copyright permissions. The university will be responsible for responding to any other legal actions resulting from the use of the material.

The institution may specifically agree to share revenues and control rights with the creator(s). At the time of the assignment, the Kansas State University administrator who has directed creation of courseware will inform the employee assigned to this task of the university's right of ownership. The employee may request an agreement on the sharing of revenue and control. If the employee and administrator cannot reach agreement, the matter may be reviewed by the Intellectual Property Advisory Committee.

C. Manuscripts for Academic Journals

1. Regardless of any use of institutional resources or the "work made for hire" principle, the ownership of manuscripts for publication in academic journals will reside with the creator(s) and any revenue derived from the works will belong to the creator(s).
2. If the manuscript is to be published, the creator(s) will request the right to provide the institution with a royalty free license to use the manuscript within the institution in its teaching, research, and service programs, but not for external distribution and, if successful, the creator(s) will grant such right to the institution.
3. Upon the establishment of national governmental or nonprofit entities whose purpose is to maintain, in an electronically accessible manner, publicly available copies 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 nor infringe on academic freedom, will require the creator(s) to provide to the appropriate entity a limited license for the use of each manuscript.
4. Ownership, as described in sections I.A and I.C, is limited to the scholarly work and does not extend to data or other scholarly information which the creator may have collected or obtained during the course of the project or to other creations which may be based on the same scholarly information. If the creator's project is supported by funds or other resources from agencies external to Kansas State University, the ownership and location of the scholarly information will be determined by the agreement between Kansas State University and the agency, or by the published requirements of the agency. In the absence of such requirements or agreements and for projects that receive no external support, the data and other scholarly information collected as a result of the scholarly activity of a Kansas State University employee will remain the property of Kansas State University and will reside physically at the university.

D. Copyrightable Software

The rights to software included in mediated courseware will be determined pursuant to Section I.B of this document. However, the rights to all other copyrightable software will be determined pursuant to Kansas State University's marketable software policy. (See Section III of this document.)

E. Student Academic Creations

The ownership of student works submitted in fulfillment of academic requirements will be with the student, except when the student collaborates with faculty or staff to create works as part of research or development activities. By enrolling in the institution, the student gives the institution a nonexclusive royalty free license to mark on, modify, and retain the work as may be required by the process of instruction. The institution will not have the right to use the work in any other manner without the written consent of the creator(s). Students are responsible for obtaining and maintaining copyright permissions related to their creations.

This ownership is limited to the creation of the student and does not extend to data or other scholarly information the student may have collected or obtained during the course of a project or to other creations which may be based on the same scholarly information. If the student's project is supported by funds or other resources from agencies external to Kansas State University, the ownership and location of the scholarly information will be determined by the agreement between Kansas State University and the agency or by the published requirements of the agency. In the absence of such requirements or agreements and for projects that receive no external support, the data and other scholarly information collected as a result of the student academic creation will remain the property of Kansas State University and will reside physically at the university.

II. Patents

A. General Provisions

The rights to patentable inventions resulting from university sponsored research will be assigned to the Kansas State University Research Foundation. The foundation is a nonprofit corporation, chartered under the laws of the state of Kansas, for the purpose of promoting research and developing and managing intellectual property at Kansas State University. The foundation may, at its discretion, waive its rights in favor of the inventor. If it retains the rights, the foundation will execute an agreement with the inventor(s) providing for royalty payments on income derived from the patent.

The term "university sponsored research" includes not only research covered under an official university research contract, but also any research like activity or other creative endeavor carried out by employees in the course of their official duties or responsibilities, or any activity that makes "substantial use of institutional resources" (see Appendix C). Modification of provisions of Section II 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.

B. Patentable Inventions

1. Disclosure

Based on the provisions of this policy the creator(s), along with the department head, director, or dean, will make an initial determination of the commercialization and marketability potential of an invention or discovery. Where such potential is deemed to exist, the creator(s) will present a Disclosure of Intellectual Property to the Intellectual Property Advisory Committee (IPAC), which will recommend whether or not the Kansas State University Research Foundation should pursue a patent application on the subject invention. Upon consideration of the IPAC's recommendation, the foundation is free to pursue a patent application or to waive its rights to the invention subject to the rights of any sponsor. The creator(s) will be notified of the foundation's decision to pursue patent application or waive its rights, within three months of submission of the disclosure to IPAC . If rights are waived by the foundation, or if a patent application is not initiated within six months of the disclosure, the creator(s) will be free to patent the invention or publish any of the data pertaining to the disclosure. In such case, however, the university does not relinquish its rights to the data obtained in the research project.

2. Assignment/Sharing of Revenues

When any revenue is obtained by the foundation from the assignment or licensing of any patent, not less than twenty five (25) percent of revenues will be paid to the inventor(s). This revenue sharing will begin only after the foundation recoups its out-of-pocket costs uniquely associated with patenting the invention. The remainder of any shared revenue, less a portion that may be retained by the foundation to fund its operation, will be used to sponsor further research and research related activities in the university. The foundation underwrites all costs of obtaining a patent and of legal counsel retained for that purpose. In the case of projects sponsored in part by an outside party or individual, a written contract will be made between Kansas State University and the cooperating agency and will include a statement of policy regarding patents substantially equivalent to that outlined in Kansas State University's Standard Memorandum of Agreement in Chapter 7010 of the Kansas State University Policies and Procedures Manual.

In the case of a research project where all costs including overhead, salary of the investigator, reasonable rent on the use of equipment, etc. are paid by an outside party, the outside party and the university may negotiate the allocation of all patent rights prior to the provision of any funding by the outside party. The university will reserve the rights of the creator(s) to publish all data of fundamental value to science and technology.

C. Patentable Software

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

D. Other Intellectual Property

Intellectual property may exist in the form of material that is not patentable, but which by its nature can be protected. An example of this would be anything produced from a biological material harvested from a unique, continually-growing culture. This type of intellectual property may be protectable, and revenue may be generated by licensing agreements with parties interested in commercial production. This type of intellectual

property is to be treated by its creator, the university and the foundation in the same fashion as described above for patentable inventions.

III. Marketable Software

Software is another form of intellectual property covered by this policy.

(1) When software embodies algorithms that can be the subject of a patent, it should be treated as an invention, and handled by its inventor, the university, and the foundation as described in the paragraphs that apply to patentable inventions in Section II.B above.

(2) Software that falls into the mediated courseware category will be covered by the Mediated Courseware section (I.B) above.

(3) Software that is to be distributed with textbooks as supporting material will be covered by the Scholarly and Artistic Works section (I.A) above.

Software that may be marketed or commercialized and is not covered by any of the above three circumstances will be covered as follows.

1. Assignment of Rights

The rights to software resulting from university sponsored research will be assigned to the Kansas State University Research Foundation. The foundation may, at its discretion, waive its rights in favor of the creator. If it retains the rights, the foundation will execute an agreement with the creator(s) providing for royalty payments on income derived from the software.

2. Disclosure of Software

Based on the provisions of this policy the creator(s), along with the department head, director, or dean, will make an initial determination of the commercialization and marketability potential of software resulting from university-sponsored research. Where such potential is deemed to exist, the creator(s) will present a Disclosure of Software to the Intellectual Property Advisory Committee. The committee will establish a projected market value of the software. If that projected market value is in excess of \$10,000 annually, it will recommend to the foundation that it register a copyright for the software, and manage the commercial interests of the software. The foundation is free to follow the recommendation of the Advisory Committee, or to waive its rights to the software. If rights are waived by the foundation, the creator is free to pursue the commercialization of the software. In such case, however, the university does not relinquish its right to the data obtained in the research project.

3. Allocation of Costs and Revenues

When any revenue is obtained by the foundation from the assignment or licensing of any software, not less than twenty five (25) percent of revenues will be paid to the creator(s). This revenue sharing will begin only after the foundation recoups its out-of-pocket costs uniquely associated with protecting the software. The remainder of any shared revenue, less a portion that may be retained by the foundation to fund its operation, will be used to sponsor further research and research related activities in the university.

In the case of cooperative research sponsored in part by an outside corporation or individual, a written contract will be made between the institution and the cooperating agency and will include a statement of policy regarding software generated in the research project substantially equivalent to that outlined in Kansas State University's Standard

Memorandum of Agreement in Chapter 7010 of the Kansas State University Policies and Procedures Manual.

In case of a research project where all costs including overhead, salary of the investigator, reasonable rent on the use of equipment, etc. are paid by an outside party, the outside party and the university will negotiate the allocation of the rights to all software generated in the research project prior to the provision of any funding by the outside party. The university will reserve the rights of the creator(s) to publish all data of fundamental value to science and technology.

IV. Trademarks and Service Marks

To protect its name and the institution, the university has registered its own name and associated trademarks and service marks. The rights given to these trademark and service mark registrations are maintained and managed by the Kansas State University Office of University Relations and Licensing. Outside of trademarks identifying the institution, the university may seek legal protection for trademarks that identify products and/or services that are offered by units of the university system. In the event that a trademark is designed for university use only, the university will maintain its rights to the trademark and manage the legal protection of the trademark.

If a trademark or service mark presents foreseeable commercial applications (i.e., licensing to a third party) and the mark relates to a product or service that is not clearly a part of the university's operations, the mark will be referred to the Intellectual Property Advisory Committee, which will review the mark's commercialization or marketability potential. If no such potential appears to exist and there has been no substantial use of institutional resources, the creator of the mark will retain the rights, subject to the rights of any sponsor.

V. Institutional Procedures

A. Process

Based on the provisions of this policy the creator, along with the department head, director, or dean, will make an initial determination of the potential of intellectual property for commercialization and marketability. Where such potential is deemed to exist, the matter will be disclosed to the Intellectual Property Advisory Committee.

1. Employee Intellectual Property Agreement

Employment contracts and agreements will include a formal notice of and acceptance of the Kansas Board of Regents and Kansas State University intellectual property policies (see Appendix A. Intellectual Property Agreement). In the case of unclassified employees, the next annual contract following adoption of this policy will include the Intellectual Property Agreement. For university support staff, the Intellectual Property Agreement will be distributed for a signature and included in the employee's personnel records. Student employees will be given the Intellectual Property Agreement to sign at or before the time they enter into employee status.

2. Catalog Statements

The Kansas State University Undergraduate Catalog and Graduate Catalog will include prominently positioned statements on intellectual property policy (see Appendix B).

3. Dispute Resolution

The Vice President for Research acts as designee of the President. The Vice President's decision on matters submitted from the Intellectual Property Advisory Committee (IPAC) will constitute final administrative action for purposes of the General Grievance Board Procedure. In the event a grievance is filed, procedures in Appendix G, of the University Handbook will govern. If no grievance is filed, the decision of the Vice President for Research will constitute final agency action. Resolution of disputes with the K-State Research Foundation (KSURF) can be sought by contacting the Intellectual Property Advisory Committee, the Chair of the Board of Directors of KSURF, the faculty members or other University members who serve on KSURF's Board of Directors, and officers of KSURF.

B. Intellectual Property Advisory Committee

The Intellectual Property Advisory Committee (IPAC) will be deemed advisory to the Vice President for Research. IPAC will review the technical merit and also the market and commercial potential of inventions, discoveries, and creations developed within the Kansas State University community by employees and students. IPAC will be appointed by the president and will consist of at least eight members plus the Vice President for Research or his/her designee, who will serve as chair. Members will be chosen to assure expertise appropriate to the charge of the committee.

1. General Procedures

When existing or proposed material subject to copyright or trademark protection appears to have commercial potential, the creator will submit an inquiry to the Intellectual Property Advisory Committee to obtain a determination on marketability and to begin the process of assignment of rights. In the case of materials that may be protected under copyright or trademark law, the committee's review is discretionary rather than mandatory. In the case of patents and discoveries, all inventions are to be disclosed to and submitted to the committee.

In the event that intellectual property matters referred to the Intellectual Property Advisory Committee show a university ownership interest and commercial potential, the committee will recommend appropriate allocations of ownership, revenues or royalties, and control of ancillary rights based on this policy.

Recommendations of the Intellectual Property Advisory Committee will be forwarded to the Vice President for Research. The Vice President's decision on matters submitted from the committee will constitute final administrative action. The Vice President or his/her designee will promptly notify the creator(s) of the IPAC decision. Recommendations to pursue intellectual property protection and licensing will be forwarded to the Kansas State University Research Foundation.

2. Discretionary Procedures

When students and employees create intellectual property outside the scope of this policy, they may still disclose it to the Intellectual Property Advisory Committee. The Advisory Committee can recommend confirmation of independent ownership, and the creator may then negotiate with the Kansas State University Research Foundation or the university to act on their behalf to protect the intellectual property. The Intellectual Property Advisory

Committee provides a no cost avenue for a first evaluation of such property. The KSURF provides a no upfront cost avenue for securing protection of the property if the foundation is interested in it. It is strongly encouraged that any situation involving intellectual property that is not clearly outside the scope of this policy should be reported to the Intellectual Property Advisory Committee. It can recommend a determination concerning policy applicability that can unquestionably release the creator of such property from any further obligation to the university in regards to that property.

C. Ownership and Management

1. Copyrights

Copyrights in which the university has a property interest will be deemed "university property" regardless of the allocation of ownership and royalty interests, and will be managed by the university.

2. Patents

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

3. Trademarks and Service Marks

Ownership of "university" trademarks or service marks resides with the university and is managed by the Office of University Relations and Licensing.

Ownership of marks that are clearly separate product or service marks but in which the university has a property interest will be assigned to either the Kansas State University Research Foundation or the Office of University Relations and Licensing for management, regardless of the allocation of ownership and royalty interests.

4. Base Royalties

Those who create or discover intellectual property in which the university claims an ownership interest will be entitled to no less than a 25 percent share of allocated royalties.

Appendix A

Intellectual Property Agreement

Kansas State University

Preamble

The Intellectual Property Policy adopted in November 1998 by the Kansas Board of Regents requires that employment contracts or agreements of all Kansas State University employees, including part-time and student employees, will include a formal notice of and acceptance of the KBOR and KSU policies on intellectual property. This form serves as that notice and acceptance. It is completed at the time of initial employment. The original copy will be retained in the employee's personnel records.

One purpose of these intellectual property policies is to foster both the development and the dissemination of useful creations, products or processes. The creation of products and materials is encouraged by providing a mechanism for rewarding their creators.

Dissemination of products and materials is encouraged by providing for their protection, thus making their commercial development and public application attractive with the intent of providing the most benefit for society. A second purpose of these policies is to

clarify individual rights and institutional rights associated with ownership and with the distribution of benefits that may derive from the creation of various types of intellectual property.

The KSU Intellectual Property Policy may be found online in the University Handbook at <http://www.k-state.edu/academicservices/fhbook/fhxr.html>. The Kansas Board of Regents policy may be found at http://www.kansasregents.org/policies_procedures.

Statement of Agreement:

1. I agree to abide by the stipulations and procedures set forth in the intellectual property policies of Kansas State University and the Kansas Board of Regents, and I agree to assign and do hereby assign to the University my right, title, and interest in inventions resulting from my employment as required by those policies.
2. I will not enter into any agreement creating patent, copyright, or trademark interests or obligations that is in conflict with KBOR and KSU policies.

Signature Department/Unit

Name (Please Print) Date

INTELLECTUAL PROPERTY AGREEMENT 06-08-2011

Appendix B

Intellectual Property Statements for Undergraduate and Graduate Catalogs

a. Student Academic Creations

Under Kansas State University and Kansas Board of Regents policies, copyrightable materials created by students in fulfillment of academic or course requirements are considered the property of the student, except when the student collaborates with faculty or staff to create works as part of research or development activities. The university retains a license (permission) to mark, modify, handle, and retain the work as required for instructional or record-keeping purposes. The university cannot use the work in other ways without the consent of the student.

b. Student Employees

Kansas State University retains an ownership interest in creations, inventions, and discoveries developed by students within the scope of their duties as employees of the university. Full details may be found in the Intellectual Property Policy of the Kansas Board of Regents and the Intellectual Property Policy of Kansas State University. The Kansas State Intellectual Property Policy may be found online in the University Handbook at www.k-state.edu/provost/universityhb. The KBOR policy may be found at http://www.kansasregents.org/policies_procedures.

Appendix C

Definitions

Institution-Directed

Work is institution-directed when the assignment is made to an employee in the normal course of his/her employment.

Mediated Courseware

Mediated courseware is defined as teaching aids, instructional modules, and full courses dependent on electronic media for application, presentation, delivery, and/or distribution. Mediated courseware may incorporate text, graphics, video, and audio elements. Examples of such materials include, but are not limited to, hypertext modules, interactive lessons, simulation software, web sites, web pages, listservs and databases containing numbers, images, or text.

Substantial Use of Institutional Resources

Substantial use of institutional resources will mean that for the project that produced the intellectual property the creator received staff, salary or material support beyond that normally provided to the creator at Kansas State University. Should a question arise about whether support is beyond the norm, a written statement will be obtained from the unit leader (department or division head, dean, director, etc.) concerning the level of use of Kansas State University support and facilities.

University-sponsored Research (Applies only to Section II. Patents)

The term "university sponsored research" includes research covered under a official University research contract and any research like activity or other creative endeavor carried out by employees in the course of their official duties or responsibilities, or any activity that makes Asubstantial use of institutional resources.

Work for Hire/Work Made for Hire (Applies only to Section I. Copyrights)

The meaning of the phrase "work for hire" is an important part of the Board of Regents' policy. As used in the Kansas State University implementation, work for hire/work made for hire is defined by the 1976 Copyright Law and by the court cases in which this term has been clarified. The 1976 Law states:

"A work made for hire" is

(1) a work prepared by an employee within the scope of his or her employment;

While the definition is not precise, the term has been defined as well as it can be for general situations in legislation and court cases since 1909. Thus, in implementing the Board of Regents policy, Kansas State University will use a definition of work for hire/work made for hire that is consistent with court cases and legislation related to the 1909 and 1976 copyright laws.