

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

## Kansas Executive Summary of the Ad Hoc Committee to Revise Appendix R

In December 2021, Faculty Senate leadership supported a proposal to revise Appendix R of the University Handbook, Intellectual Property Policy and Institutional Procedures. The appendix was initially approved in 2002 with few changes since then, so a significant update was necessary.

After seeking a group of campus experts throughout 2022, the ad hoc committee to revise Appendix R formed and began work in December 2022. The representatives included:

- Chris Brandt, Chief Tech Innovation Officer, K-State Research Foundation.
- Elizabeth Dodd, University-  
† Distinguished Professor, Department of English.
- Kristen Epps, Associate Professor, Department of History, and editor of *Kansas History*.
- Jami Higdon, Instructor, Department of Aviation, and representative of Faculty Senate University Handbook and Policy Committee.
- Cliff Hight, Associate Professor and Head of Special Collections, University Libraries, chair of Faculty Senate University Handbook and Policy Committee.
- Paul Lowe, Associate Vice President for Research and Director of Sponsored Programs, Office of Research.
- Gwen Sibley, Assistant Professor and Copyright and Scholarly Communication Librarian, University Libraries.
- John Tomich, Professor Emeritus, Department of Biochemistry and Molecular Biophysics.

The group met monthly through 2023 and then weekly until March 2024. Work included reviewing Kansas Board of Regents policy, examining intellectual property policies at peer institutions, consulting with professional networks, analyzing current K-State practices, and drafting revisions. Major changes include:

- Reorganizing the content to align with other K-State policy formatting.
- Updating the copyright and patent sections to reflect best practices.
- Expanding the copyright section to address open educational resources and other developments relevant to higher education.

Upon approval of this policy, Human Resources will need to be notified about updated language in the intellectual property agreement (see I.C.3.), as will the University Registrar regarding the catalogs statement (see I.C.4.). Finally, this work revealed additional recommendations for the appropriate stakeholders to consider. They include:

- Develop a research data policy with appropriate stakeholders and incorporate any elements related to intellectual property in this policy (see III.D. for reserved space).

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- After approval of the currently developing generative artificial intelligence policy, review it and update this one as needed (see III.F. for reserved space).
- Update the Administrative Appeal and Grievance Policy and Hearing Procedures (Appendix G of the handbook) to include intellectual property dispute resolution.
- Update the Student Grievance Procedures (Appendix V of the handbook) to include intellectual property violations.
- Establish a student creations statement that can go in syllabi and elsewhere.
- Portions of this policy that include the Intellectual Property Advisory Committee (IPAC) may need updated after K-State Research Foundation completes its reorganization.

**Appendix R: Intellectual Property Policy and Institutional Procedures**

I. Introduction

A. Revision Date

Approved by Faculty Senate on May 15, 2002, Revised [month] [day], 202X,

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B. Purpose

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 designed 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

This policy is to clarify also clarifies 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.

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C. Legal/Policy Framework

## 1. Statutes

See the K-State copyright webpage for information on federal copyright guidance.

## 2. Policies

Kansas Board of Regents Intellectual Property Policy, Board Policy Manual Chapter II.A.8.

K-State Policy on the Use of Copyrighted Works in Education and Research, PPM 3020

K-State Intellectual Property Policy, PPM 7095

## 3. Kansas State University Intellectual Property Agreement

The following agreement is provided to K-State personnel when they begin their employment.

### a. Preamble

The Kansas Board of Regents Intellectual Property Policy (Board Policy Manual Chapter II.A.8.) 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 scholarly works, products, and materials is encouraged by providing a mechanism for rewarding their creators. As a land-grant institution, we consider it imperative to protect creators and encourage the distribution of their research, including possible commercial development, to provide the greatest benefit for both Kansans and our global community. 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.

See the KSU Intellectual Property Policy in Appendix R of the University Handbook and Chapter II.A.8. of the Kansas Board of Regents Policy Manual.

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b. Statement of Agreement

i. 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.

ii. I will not enter into any agreement creating patent, copyright, or trademark interests or obligations that is in conflict with KBOR and KSU policies.

[Space for formal consent and agreement]

4. Intellectual Property Statements for Undergraduate and Graduate Course Catalogs

a. Student Academic Creations

Under Kansas State University and Kansas Board of Regents policies, intellectual property created by students in fulfillment of academic or course requirements are considered the property of the student(s), except when the student(s) 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(s).

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 (Chapter II.A.8.) and the Intellectual Property Policy of Kansas State University (University Handbook, Appendix R).

D. Applicability

This policy ~~applies to~~ governs 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.~~

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E. 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~~ensure the proper use of ~~materials and respect~~ for which others hold ownership intellectual property rights.

II. Definitions

A. Copyright (see III.A. for policy)

Copyright is legal protection provided for “an original work of authorship fixed in any tangible medium of expression, now known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.” (17 USC § 102) A work of authorship includes the following categories: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculpture works, motion pictures and other audiovisual works (including mask works, which are the graphic representations of the physical arrangement of circuits and instructions on semiconductor computer chips); sound recordings; software code; and architectural works.

B. Course materials

Course materials are used for teaching purposes and instructors may create and maintain them in hard copy or electronically. Examples may include, but are not limited to, lesson plans, lecture materials, assignments, activities, and tests.

C. External support

Cash, in-kind, or other modes of non-university support from external individuals or organizations, such as federal, state, or private (for-profit or non-profit) entities.

D. Institution-directed

Institution-directed refers to situations when Kansas State University specifically instructs an employee in writing to create or modify materials for teaching, learning, or engagement that may be made available for use by other employees.

E. Intellectual property

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Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names, and images used in commerce. IP is protected in law by, for example, patents, copyright, and trademarks and usually gives the inventor(s)/creator(s) an exclusive right over the use of their creation for a certain period of time.

#### F. Joint work

Joint works are interdependent and inseparable works by more than one creator.

#### G. Open access

Open access is a practice in which creator(s) make their copyrightable works available online free of charge while stipulating restrictions on reuse of the work. This is typically represented by an irrevocable license selected by the creator(s). In academic settings, one facet of this concept is the development of open educational resources (OER).

#### H. Royalty free

Royalty free means the ability to use patented, copyrighted, or other scholarly works, products, and materials without paying license fees to the inventor(s)/creator(s). This term is limited to a specific length of time unless "perpetual" is added to it.

#### I. Self-initiated

Self-initiated refers to situations when a creator who is an employee of K-State independently develops or changes materials for teaching, learning, or engagement, in contrast to institution-directed situations.

#### J. Substantial use of institutional resources

Substantial use of institutional resources I. Copyrights means the use of University resources that goes above and beyond those that are customarily and currently provided to University employees. Customary University resources may include such things as facilities, equipment, faculty time, and staff support for University activities. Further, de minimis use of office, library resources, work computer and/or software, and similar, is not regarded as Substantial Use of Institutional Resources. Substantial use of institutional resources may include supplemental/overload pay or offloading from regular duties. For students enrolled in a course of study, use of course laboratory, computing and library facilities, software, supplies and materials at a level ordinarily provided to students in the course are not considered to be substantial use of institutional resources.

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K. University sponsored research/project

University Sponsored research/project includes not only research covered under an official university research contract, but also any other sponsored 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."

L. Work made for hire

Works made for hire usually meet two criteria. First, it is a work specifically ordered or commissioned for use that falls into one of nine categories specified in Section 101 of the Copyright Act. Second, the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. All works prepared by a University employee within the scope of their employment will be considered a work made for hire unless a specific exception is noted in this policy.

III. Types of Intellectual Property

A. Copyright

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 II.L. and II.J., respectively).

Copyright exceptions for instruction are outlined in Title 17 of the U.S. Code, Section 110(1) and 110(2), known as the TEACH Act. It dictates laws associated with using copyrightable works for teaching without copyright infringement.

Additionally, fair use is another exception to copyright available to instructors. Title 17 of the U.S. Code, Section 107, promotes freedom of expression by providing provisions for use of unlicensed works for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research.

For further information, see the Kansas State University Copyright webpage.

1. Library and Archives Copyright Guidelines

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K-State Libraries, which includes the University Archives, follow Title 17 of the United States Code, Section 108. This section stipulates copyright exceptions for libraries and archives to reproduce works and make resources available to faculty, staff, students, and other stakeholders. K-State Libraries make information resources available for lending through Section 109 of Title 17 and via license negotiations with publishers. The community of K-State, including faculty, staff, and students, may borrow and request materials through the Libraries. When accessing these resources faculty, staff, and students will follow the Information Technology Usage Policy, specifically Responsible Use of Library-provided Electronic Content, PPM 3420.050.

## 2. Open Educational Resources (OER)

Creators are strongly encouraged to create and use educational resources licensed as open access, often called open educational resources (OER). OER align closely with K-State's land-grant mission by removing barriers to accessing research and making it possible for more scholars, policy makers, practitioners, clinicians, and the general public to view, cite, and share scholarly work. This broadens the opportunity for K-State research to have greater societal and scholarly impact. When the creator(s) consents that the work is open access, copyright of the work still resides with the creator(s) unless copyright has been transferred in writing. The choice of open access license type will remain with the creator(s), who can refer to guidance from K-State Libraries about open access.

In cases where a work is produced with public or state funds, open access licensing may be required. Creators will determine the type of open access licensing prior to the work's dissemination. K-State may deem works that conflict with current governmental policies and legislation to be ineligible for open access licenses. Examples of such occurrences may include compliance with FERPA or HIPAA and respecting the rights of proprietary data that may not be shared publicly. If a work falls under these jurisdictions, state and federal legal policies will apply.

## A.3. 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, creative monographs (including poetry, short stories, novels, and nonfiction works, supporting materials), artistic works, (including pictorial, graphic or sculptural works, audiovisual works, sound recordings, dramatic works, pantomime or choreographic works), syllabi, lecture notes, supporting materials, and like works will reside with the creator(s) and any revenue derived from their work will belong to the creator(s). Except for

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textbooks, Kansas State University will have royalty-free use (see II.H.) 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~~ Webpages, transparencies for projection, electronic presentations, etc., of scholarly activity remain the property of the creator as stated in this section. See section ~~I.C.4III.A.5~~, for policies governing underlying data upon which these presentations are based.

#### ~~B. Mediated Courseware (see Appendix C: Definitions)~~

#### 4. Course Materials

Categories of course materials include the following (see II.B., II.D., II.I., and II.J. for 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 "with substantial use of institutional resources" and
- Self-initiated without being "institutional substantial use of institutional resources.
- Institution-directed" (see Appendix C: Definitions), with substantial use of institutional resources.
- Institution-directed without substantial use of institutional resources.

Copyright defaults to the ownership of both creator unless otherwise specified. For administrative purposes and record keeping, copies of syllabi may be maintained and disseminated without the creator's approval. Course materials will not be used or modified without the consent of the creator(s). Further, creator(s) will use materials in alignment with Appendix S: Kansas State University Policy on Conflict of Interest, Conflict of Time Commitment, Consulting and other Employment. Normally the University will pay no royalty, rent, or other consideration to an employee who uses their own self-initiated course materials for instruction at Kansas State University.

In the event that an instructor vacates a course they are assigned in the line schedule (e.g., resignation, retirement, medical or other leave) at any time during that academic year, either while the class is in progress or during the semester before its start, the University will have the right to use all of the creator's self-initiated materials for one full semester after the creator's departure, after which the right of such use will expire. In such cases, the creator may use their self-initiated materials elsewhere. A

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creator may negotiate compensation for continued use of their materials, up to and including licensing fees, after the allowable length of use.

Each creator is responsible for securing and maintaining all records related to copyright permission pertaining to the intellectual content and the. In cases where legal actions result from the use of the presentation, the University will have the first right to defend such legal actions.

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a. Self-initiated with substantial use of institutional resources.

This category of course materials includes substantial use of institutional resources (see II.J.). It does not fall under the work-made-for-hire principle (see II.L.). The copyright 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.

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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 creator(s), while the University will maintain a royalty-free (see II.H.) license to a copy only for non-instructional, administrative purposes. The University makes no claim of ownership to the intellectual content of these course materials. The University and creator(s) shall prepare a written agreement that specifies the respective contributions of the employee and of the support unit(s) should be prepared.)

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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.

b. Self-initiated without substantial use of institutional resources.

This category of course materials does not include substantial use of institutional resources (see II.J.). It does not fall under the work-made-for-hire principle (see II.L.). The copyright will remain with the creator(s), while the University will maintain a royalty-free (see II.H.) license to a copy only for non-instructional, administrative purposes. The University makes no claim to the intellectual content of these course materials. No use may occur without the written consent of the creator(s) except as outlined above for administrative purposes and record keeping.

2.c. Institution Directed Mediated Courseware directed with substantial use of institutional resources.

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

This category of course materials includes substantial use of institutional resources (see II.J.). It falls under the work-made-for-hire principle (see II.L.). The copyright will remain with the University.

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

The institution may specifically agree with the creator(s) 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/course materials will inform the employee assigned to this task of the university's/University's right of

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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- (see II.B.1.a. and IV.F. for more information).

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d. Institution-directed without substantial use of institutional resources.

This category of course materials does not include substantial use of institutional resources (see II.J.). It does not fall under the work-made-for-hire principle (see II.L.). The copyright will remain with the creator(s) unless a written agreement between University and creator(s) directs copyright ownership differently. The University will maintain a royalty-free (see II.H.) license to a copy; however, use of the material is confined to administrative purposes and record-keeping without either the written consent of the Creators(s) or as outlined above regarding an instructor who vacates a course assigned in the line schedule. The University makes no claim of ownership to the intellectual content of these course materials. No use may occur without the written consent of the creator(s) except as outlined above for administrative purposes and record keeping.

In some instances, the institution may request to share revenues and control rights with the creator(s). If the creator(s) consents, a written agreement will be filed with the respective dean or academic unit leader.

5. Manuscripts for Academic Journals

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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). If the manuscript is to be published, the creator(s) have the authority to transfer or license copyright of their work to the publisher. The creator(s) are encouraged to negotiate with publishers for the right to share that work with the university's institutional repository and to the extent necessary to comply with the terms and conditions of externally supported Sponsored Research/Projects.
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

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~~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 III.A.4. and I.C.III.A.6., is limited to the scholarly work and ~~does may~~ 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. In keeping with discipline-specific best practices, the primary data and other scholarly information collected in the production of manuscripts for academic journals will remain the property of the University and will reside with it until meeting retention requirements. 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.~~~~

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#### ~~D-6. Copyrightable Software~~

~~The rights to software included in mediated courseware/course materials will be determined pursuant to Section I.B.III.A.4. 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) details in section III.C., "Marketable Software."~~

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#### ~~E.a. Student Academic Creations~~

#### ~~7. Joint Works~~

~~Standards for Joint works (see II.F.) created at K-State depend on the nature of contribution by corresponding creator(s). Joint authors will share intellectual property of created works, and will decide their percentage contribution amongst themselves. Joint authors may include any University employee or student, or those outside the University. It is best practice to establish any agreements related to contributions before fixing any copyrightable works. Different scenarios that need more elaboration are listed below but are not all inclusive to every Joint work situation.~~

~~In the case where joint authorship is cross-institutional, consideration of the use of Kansas State University resources (see II.J.) should be evaluated based on percentage contribution. For equally-shared joint authorships, the participants shall create a written agreement determining allocations of royalties or any other relevant aspects. In the case where percentage contribution is majority or leadership is attributed to another~~

institution, the intellectual property policies of that institution will be followed.

See III.A.8. for Joint works that include students collaborating with faculty or staff.

In the case where a researcher has jointly authored with persons of a tribal nation, uses resources owned by tribal nations, or conducts research on tribal lands, then tribal law, traditions, and intellectual property policies should be followed. It is recommended that scholars consult tribal authority for guidance on navigating tribal laws.

In the case where a researcher has jointly authored with persons employed by governmental entities (international, federal, state, etc.), they shall abide by all applicable governmental statute, regulation, or policy.

## 8. Student Creations

This policy applies to works created for academic or experiential learning purposes while students are enrolled at the University. Current and former students are responsible for obtaining and maintaining copyright permissions related to their creations.

In the case of a student collaborating with faculty, staff, or other students to create works as part of research or technical activities, joint authorship may apply. If students believe they have a claim to a Joint work, they should discuss it with their supervisor or faculty mentor. If there is an unresolved claim or concern, students may refer to Appendix V: Student Grievance Procedures.

### a. Academic

The ~~ownership~~copyright of student works submitted in fulfillment of academic requirements will be with the student-(s), except ~~when the student collaborates with faculty or staff to create works as part of research or development activities~~in conditions listed in III.A.8.d. below. 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

### b. Employment

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See Policies and Procedures Manual, Chapter 4720: Hourly Student Employees, and this policy's section IV.B., "Employee Intellectual Property Agreement," for guidelines for employees. Additionally, attribution of creative output will abide by the respective discipline's best practices. Exceptions are listed in III.A.8.d.

c. Volunteer Experiential Learning

Students may create works as a volunteer and they have the same rights as in other circumstances, except in conditions listed in III.A.8.d. The University will abide by all statutory and policy obligations related to labor and employment as pertaining to volunteer circumstances.

d. Exceptions

i. Laboratory Agreements

Students participating in lab research may collaborate with faculty and third-party researchers to generate intellectual property. In these positions, student ownership of intellectual property will be determined by a Laboratory Agreement that outlines how intellectual property rights are distributed among inventor(s)/creator(s), University, and any other party to a sponsored agreement.

ii. Application of Copyright

Copyright is limited to the creation of the student(s) 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.

iii. External Funding

If the ~~student's~~ 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~~

iv. Research Data or Materials

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In keeping with discipline-specific best practices, the primary 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 with it until meeting retention requirements.

## II.

### B. Patents

#### A. General Provisions

The rights to patentable inventions resulting from university sponsored research/projects will be assigned to the Kansas State University Research Foundation. The foundation ("KSURF"). KSURF is a nonprofit corporation, chartered under the laws of the state of Kansas, for the purpose of promoting encouraging, and supporting scientific investigation, research, education, scholarly and creative activities, professional service, and developing and managing intellectual property at Kansas State University. The foundation KSURF may, at its discretion, waive its rights in favor of the inventor(s)/creator(s). If KSURF retains the rights, the foundation inventors/creators will execute an agreement with the inventor(s) KSURF, providing for split of royalty payments between inventors/creators based on income derived from the patent contribution.

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 III.B. 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.1. Patentable Inventions

##### 1-a. Disclosure

Based on the provisions of this policy the creator/inventor(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 make a Disclosure of Intellectual Property disclosure of an invention, creation, or discovery in an Invention Disclosure Form. The Invention Disclosure Form shall be submitted to KSURF as promptly as possible, considering such factors as possible publication, public use, or sale and the need for protecting the inventor's/creator's and the University's rights in the Invention. The Invention Disclosure Form must be submitted if (a) the inventor(s)/creator(s) has any reason to believe that KSURF may have cause to assert ownership of such Invention/Creation or (b)

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KSURF has requested disclosure of the Invention/Creation so that the University may decide ownership.

An Invention Disclosure Form shall not be required in situations in which the inventor(s)/creator(s) has a reasonable belief that the Invention was made clearly and demonstrably outside the general scope of the inventor's/creator's official university duties. Even if an inventor/creator does not believe that reporting is required, the inventor/creator shall nonetheless (i) promptly notify KSURF whenever any patent application or similar application for intellectual property protection is filed on such invention naming the inventor/creator as an inventor and (ii) if requested by KSURF, promptly provide KSURF with a complete copy of such patent application and any patent office correspondence regarding the patent application. If requested by the inventor/creator, the University may agree to treat an unpublished patent application confidential if such circumstances are warranted.

The Intellectual Property Advisory Committee (IPAC), ~~which will make an initial determination of the potential for protectability, commercialization, and marketability of an invention, discovery, or creation (see Section IV.F.). Based on this determination, IPAC will recommend whether or not the Kansas State University Research Foundation~~ KSURF should pursue a patent application or other types of intellectual property protection on the subject invention. Upon consideration of ~~the IPAC's~~ IPAC's recommendation, ~~the foundation~~ KSURF is free to pursue a patent application or to waive its rights to the invention subject to the rights of any sponsor. The inventor(s)/creator(s) will be notified of the foundation's KSURF's decision to pursue patent application or waive its rights, within three months of submission of the disclosure a completed Invention Disclosure Form to IPAC-KSURF. An incomplete Invention Disclosure Form does not include sufficient information to determine of protectability, commercialization, or marketability potential of an invention, discovery, or creation. For incomplete Invention Disclosure Forms, KSURF will promptly notify the inventor(s)/creator(s) and KSURF's three-month decision deadline will be suspended until sufficient information is supplied to KSURF to make such determinations. If rights are waived by the foundation, or if a patent application is not initiated within six months of the disclosure, the KSURF, the inventor(s)/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.

b. Assignment of Revenues

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In the case of projects sponsored in whole or in part by an outside party, a written contract will be made between University, KSURF, and the cooperating agency that includes the Appropriate Disposition of any resulting intellectual property rights prior to the provision of any funding by the outside party. "Appropriate Disposition" shall typically include the retention of ownership rights by University and an option granted to a sponsor to negotiate a license to any resulting intellectual property.

University and KSURF will reserve the rights of the inventor(s)/creator(s) to publish all data of fundamental value to science and technology. University and KSURF also reserve the right to use all such intellectual property for research and educational purposes within the University's mission. For embargoes of dissertations, theses, and reports relative to patentable or otherwise proprietary or sensitive materials, see the Graduate School handbook, Appendix B.

#### 2.c. Sharing of Revenues

When any revenue is obtained by ~~the foundation~~KSURF from the assignment or licensing of any patent ~~commercialization of any University-owned Invention or copyrighted materials~~, not less than twenty-five (25) percent of revenues will be paid to the inventor(s)/creator(s). This revenue sharing will begin only after ~~the foundation~~KSURF recoups its out-of-pocket costs uniquely associated with ~~patenting~~protecting the invention. If more than one inventor/creator is to share in the inventor/creator share, the inventors/creators entitled to receive payments should decide among themselves their respective shares and inform KSURF of their decision. KSURF will provide the inventor/creator with a written agreement to be signed by all inventors/creators. This written agreement may be provided as part of the Invention Disclosure Form or may be a separate written agreement. Such written agreement among the inventors should be provided promptly to KSURF after receiving a written request from KSURF for such an agreement, at a minimum, and the written agreement must be provided prior to distribution of any revenue. Any such written agreement will be irrevocable unless it is modified in writing by all inventors. In the absence of a written agreement, KSURF may (1) hold the inventors'/creators' share for a reasonable period to permit the inventors/creators to come to an agreement; or (2) after a reasonable period, divide the inventors'/creators' share equally among the inventors/creators. If a written agreement cannot be reached after good faith efforts by the inventors/creators, an inventor/creator may request that the matter be referred to IPAC for

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an equitable recommendation to the Vice President for Research. The inventors/creators shall be provided a copy of IPAC's recommendation and shall have an opportunity to respond by filing a timely written rebuttal to the Vice President for Research. The Vice President for Research shall make the final non-appealable determination with respect to the distribution of the inventors'/creators' share. KSURF and the University are not liable for any distribution of inventors'/creators' share made in good faith but that was later found to be in error. The remainder of any shared revenue, less a portion that may be retained by the foundationKSURF to fund its operation, will be used to sponsor further research and research related activities in the university. The foundationUniversity, KSURF underwrites all costs of obtaining a patent, other intellectual property protection, 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. This distribution of the Inventor Share to an applicable inventor/creator shall be contingent upon the inventor's/creator's compliance with these policies. For example, in order to qualify for the Inventor Share, an Employee must have executed any confirmatory assignments requested by KSURF and must reasonably assist KSURF with its efforts to commercialize the Invention (including but not limited to reasonable input on the filing, prosecution, and maintenance of any Patents related thereto).

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In the event that an inventor does not comply with these regulations (for example, the inventor/creator refuses to sign such a confirmatory assignment and/or does not provide such reasonable assistance to KSURF), no Inventor Share will be allocated to that inventor/creator and the Inventor Share shall be allocated to the other inventors/creators as if the non-cooperating inventor/creator did not exist.

#### 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.

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#### C.2. 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.

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## 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~~

~~Marketable Software resulting from university/University-sponsored research. Where such potential is deemed to exist, the creator(s) will present a that is not covered by either II.B. or III.A.4. shall be submitted to KSURF via an Invention Disclosure of Software Form. IPAC shall have the sole discretion 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 decide whether to recommend to the foundation that it register a KSURF to proceed with the copyright for the software, registration and manage the commercial interests/or commercialization of the software. The foundation work. KSURF is free to follow the recommendation of the Advisory Committee/IPAC, or to waive its rights to the software. If rights are waived by KSURF, the foundation, the inventor(s)/creator(s) is free to pursue the commercialization of the software. In such case, however, the university/University does not relinquish its right to the data obtained in the research project.~~

~~Notwithstanding anything herein to the contrary, to the extent any University employee whose primary appointment is non-academic creates or contributes to any copyrightable software, including any source or object code, documentation, or other copyrightable work that is part of or associated with such software, and such employee's work is within the scope of his or her employment with the University or otherwise constitutes "work made for hire" (see II.L.) of the University. In accordance with applicable law, all ownership and other rights of such employee associated with such copyrightable software shall belong to the University, without restriction, and such employee shall not be deemed the author of or have any further ownership or rights in or with respect to such copyrightable software pursuant to any other provision in this policy or otherwise.~~

## 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.~~

~~Revenue sharing and coverage of costs for Marketable Software will be treated the same as with Patentable Inventions (see III.B.1.b.).~~

## D. Research Data

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*[Reserved space for future development of intellectual property policies related to research data. It may result in becoming its own section.]*

~~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.~~

#### E. ~~IV.~~ Trademarks and Service Marks

~~To protect its name and the institution, the university 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-K-State Trademark Licensing Office. Outside of trademarks identifying the institution, the university University may seek legal protection for trademarks that identify products and/or services that are offered by units of the university system-University. In the event that a trademark is designed for university University use only, the university 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 University's operations, the mark will be referred to the Intellectual Property Advisory CommitteeKSURF, which will review the mark's mark's commercialization or marketability potential. If no such potential appears to exist and there has been no substantial use of institutional resources- (see II.J.), the creator(s) of the mark will retain the rights, subject to the rights of any sponsor.~~

#### V.

#### F. Generative Artificial Intelligence

*[Reserved space for future development of intellectual property policies related to generative AI. It may result in becoming its own section.]*

#### IV. Institutional Intellectual Property Procedures

##### A. Disclosure Process

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~~Based on the provisions of this policy the inventor(s)/creator, along with the department head, director, or dean, (s) will disclose intellectual property to KSURF (see III.B.1.a.). IPAC will make an initial determination of the potential of intellectual property for commercialization and marketability. Where such potential is deemed to exist, IPAC will refer the matter will be disclosed to the Intellectual Property Advisory Committee KSURF to pursue appropriate protection at KSURF's discretion.~~

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#### 1-B. 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)-I.C.3.). 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~~ 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.

#### C. Non-employee Intellectual Property Agreement

~~Students, visiting scholars, and other non-employees may be involved in special situations in which the ownership of any resulting intellectual property must be assigned either to the University or to a sponsoring entity (such as a company) as a condition of the student's, visiting scholar's, or other non-employee's participation. Should intellectual property be created/invented by a non-employee and assigned to KSURF, KSURF will share resulting royalties with the non-employee in accordance with University policy as it applies to intellectual property created by University employees.~~

~~Students shall never be obligated to participate in projects or activities that require the assignment of the student's intellectual property to the University or to another entity. In course-related situations, students will always be presented with two options: 1) to participate in projects or activities that do not require the student to assign their intellectual property, or 2) to participate in projects or activities that require the student to assign their intellectual property. In research lab related opportunities, the students may be required to assign their intellectual property as a condition to work in a particular lab.~~

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#### 2-D. Catalog Statements

The Kansas State University Undergraduate Catalog and Graduate Catalog will include prominently positioned statements on intellectual property policy (see Appendix B)-I.C.4.).

#### 3-E. Dispute Resolution



## 1. Patents

The Vice President for Research acts as designee of the President: when addressing patent disputes. The Vice ~~President's~~ 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~~ Vice President for Research, the faculty members or other University members who serve on ~~KSURF's~~ KSURF's Board of Directors, and officers of KSURF.

## 2. Other Intellectual Property

For disputes involving intellectual property other than patents and copyrightable software, creators or other affected parties may pursue legal action or a grievance as outlined in Appendix G: Administrative Appeal and Grievance Policy and Hearing Procedures.

## B.F. Intellectual Property Advisory Committee

The ~~Intellectual Property Advisory~~ structure and make-up of the IPAC shall be established by the President or their designee, the Vice President for Research, as may be more fully described in the Kansas State University Committee (Handbook. IPAC) will be deemed advisory to the Vice President for Research. IPAC will review the technical merit ~~and also the market, marketability,~~ 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~~ PAC will report to Faculty Senate annually in the September or October meeting.

### 1. General Procedures

When existing or proposed material subject to copyright or trademark protection appears to have commercial potential, the inventor(s)/creator(s) will submit an ~~inquiry~~ Invention Disclosure Form to the ~~Intellectual Property Advisory Committee~~ KSURF, to obtain a determination on marketability and to begin the process of assignment of rights. ~~In the case of~~ In the case of patents, marketable software, and discoveries, all inventions/creations are to be disclosed to and submitted

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to KSURF. In the case of materials that may be protected under copyright or trademark law, the committee's that do not include marketable software, KSURF'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 such cases, rights will remain with the inventors/creators. In the event that if intellectual property matters referred to the Intellectual Property Advisory Committee KSURF show a university/University ownership interest and commercial potential, KSURF will refer the intellectual property matters to IPAC and 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 IPAC will be forwarded to KSURF and may be forwarded to the Vice President for Research. The Vice President's decision. In cases which are disputed, the Vice President for Research, as the President's designee, will make final decisions on disputed matters submitted from the committee will and shall constitute final administrative agency action. The Vice President or his/her designee KSURF will promptly notify the inventor(s)/creator(s) of the IPAC decision. Recommendations to pursue intellectual property protection and licensing will be that are forwarded to the Kansas State University Research Foundation KSURF will be acted upon promptly.

## 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 KSURF. KSURF can recommend confirmation of independent ownership, and the inventor(s)/creator(s) may then negotiate with the Kansas State University Research Foundation or the university KSURF to act on their behalf to protect the intellectual property. The Intellectual Property Advisory Committee KSURF 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 KSURF is interested in collaborating with the student/employee inventor(s)/creator(s) on the intellectual property. 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 KSURF. It can recommend a determination concerning policy applicability that can unquestionably release the creator of such property from any further obligation to the university/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.

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## ~~2.1. 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

#### ~~a.— 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/hbbook/hbxr.html>. The Kansas Board of Regents policy may be found at [http://www.kansasregents.org/policies\\_procedures](http://www.kansasregents.org/policies_procedures).~~

#### ~~Statement of Agreement:~~

~~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~~

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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.~~

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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.~~

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#### ~~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](http://www.k-state.edu/provost/universityhb). The KBOR policy may be found at <http://www.kansasregents.org/policies-procedures>.~~

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## 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.~~

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#### 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.

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#### ~~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~~

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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 A substantial 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.

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