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## 6-908 Intellectual Property Policy

The Arizona Board of Regents and the three universities that the board governs, are all dedicated to teaching, research, and the extension of knowledge to the public. The university community recognizes its responsibility to produce and disseminate knowledge. Inherent in this responsibility is the need to encourage the production of Scholarly Works and the development of Intellectual Property (IP), some of which may have potential commercial value. These activities contribute to the professional development of the individuals involved, enhance the reputation of the university in which they work, provide additional educational opportunities for participating students, and promote the public welfare.

Board-Owned IP should be appropriately managed in the best interest of the state and the university system. This policy addresses ownership rights and revenue sharing for Board-Owned IP.

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

University-wide trademarks, logos, and other board or university indicia or identifiers are not subject to or covered by this policy.

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

### A. Ownership of Intellectual Property.

#### 1. Board-Owned IP:

- a. The board owns all intellectual property in each of the following categories:
  - (1) Any intellectual property created by an employee in the course and scope of employment; and
  - (2) Any intellectual property created with the significant use of board or university resources.

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- b. The board's claim to ownership may be altered by:
  - (1) Exceptions described in this policy;
  - (2) Applicable law; or
  - (3) Written agreement signed by the IP official or an authorized university or board representative.
- c. For all Board-Owned IP, all employees (including student employees), and others creating Board-Owned IP are required to assign (and hereby do assign) to the board all right, title, and interest in and to the Board-Owned IP.

2. Scholarly Works.

- a. As an exception to ownership by the board of all Board-Owned IP as set forth in section A.1 above, the board does not claim copyright ownership of Scholarly Works.
- b. Scholarly Works include all works created by faculty members (as defined in ABOR Policy 6-201) at their own direction and without significant use of board or university resources. For example, the following are considered scholarly works: scholarly publications, research publications, textbooks, journal articles, lecture and instructional notes, books, play scripts, theatrical productions, poems, and works of music and art.
- c. Scholarly Works do not include the following:
  - (1) The designs, developments, discoveries, improvements, inventions, methods, processes, machines, articles of manufacture, compositions of matter, or other ideas that are potentially patentable subject matter under past, present, or future versions of the U.S. Patent Act or the patent laws of any foreign jurisdiction worldwide, even if incorporated into a Scholarly Work;

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- (2) Works of Authorship and Creative Works created as deliverables under a sponsorship or funding agreement;
  - (3) Computer software created by employees in connection with administrative, research, or other educational activities supported by funds administered by the board or university;
  - (4) Works of Authorship and Creative Works commissioned by the board or university or created as part of an administrative assignment to, for, or on behalf of university; and
  - (5) Course and instructional materials, in any form, such as video lectures, power point presentations, and course materials provided to students, unless otherwise set forth in a university policy or separate written agreement.
- d. To the extent applicable law results in board ownership of a Scholarly Work, the board or its designee may assign those rights to the creator(s) of the Scholarly Work, subject to the terms of this policy and a separate written assignment. To obtain this assignment, the creator(s) must make a written request for assignment to the university.
- e. For all Scholarly Works assigned to the creator(s), the board and university retains a paid-up royalty-free, worldwide, non-exclusive license, for the full term of the intellectual property rights, to use, reproduce, publish, modify, distribute, publicly perform, and publicly display the work for education, research, in furtherance of the public service mission of the university, and any other non-commercial purpose, including the right to sublicense to third parties consistent with this purpose.
- f. If requested by the board or university, or as required by applicable law, policy, or written grant or agreement, the creator(s) of the Scholarly Work will provide a copy of the

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Scholarly Work to the board or university, at no cost to the board or university, so that the board or university may exercise its rights as set forth in this policy and so that it may comply with its obligations to sponsors or other third parties. This expressly includes the right for the board or university to deposit the Scholarly Work in any board, university, or third party repositories.

3. Student-Created Works.

The board does not claim ownership of intellectual property created by students, except the following, which are considered Board-Owned IP:

- a. Works created by a student within the course and scope of employment as an employee;
- b. Works created by a student with significant use of board or university resources, however, the board will not claim copyright ownership in student dissertations or capstone projects intended to fulfill degree requirements at the university; and
- c. Works created by a student as part of a project sponsored or funded by a third party, where the sponsorship or funding agreement provides for university or sponsor ownership, rights, or options in the intellectual property.

4. Transfer of Board-Owned IP through licensing or assignment.

- a. Subject to applicable law (including the federal Bayh-Dole Act and implementing regulations), the Board may transfer rights in or title to Board-Owned IP through written agreements. Transfer of Board-Owned IP to board or university officers or employees is also subject to the requirements of board policy 3-901B.
- b. Any agreement to authorize a third party to manage all or substantially all Board-Owned IP is subject to prior approval by the board and is subject to this policy, including any

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board-approved changes to this policy during the term of the agreement. Universities may, without prior review or approval by the board, engage outside service providers and third parties with respect to: (i) docketing and monitoring of Intellectual Property activities; (ii) payment of maintenance and other fees required by intellectual property offices; (iii) patenting and other protection of intellectual property; and (iv) any other service incident to the protection and commercialization of Board-Owned IP.

- c. Any agreement to assign, license, or otherwise transfer any rights in Board-Owned IP will include the following:
  - (1) In an exclusive license, an obligation to make good faith attempts to commercialize the Board-Owned IP;
  - (2) The right of the university to use the Board-Owned IP for research, education, and in furtherance of the public service mission of the university; and
  - (3) The right of the university to make public through publication or presentation the Board-Owned IP (subject to reasonable limitations to protect trade secrets and other proprietary information of a sponsor, and to preserve patentability and other similar protection).
  - (4) The IP official may make modifications or exceptions to these requirements for the transfer of Board-Owned IP if justified by the best interests of the board or the university.
  
- 5. Any disputes regarding whether intellectual property should be classified as Board-Owned IP, Scholarly Work, Student-Created Intellectual Property, or otherwise will be brought to the IP official, following the process and time limits established by this policy and any additional university policies and procedures.

B. Revenue Sharing

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1. The IP official will manage Board-Owned IP in the best interests of the state, the board, and the universities. This may include the generation of revenue, but nothing in this policy is to be interpreted as a requirement that revenue be maximized for individual creators.
2. If revenue is generated through licensing, assignment, or transfer of Board-Owned IP, the net income derived by the university from intellectual property will be shared with the creator(s) of the intellectual property in accordance with this policy, and the remainder will be used in support of research, investigation, research fellowships, or other activities relevant to research or the generation of intellectual property at the institution.
3. The IP official will determine the percentage to be paid to the creator(s), ensuring that it is in accordance with the university's revenue sharing policy, subject, however, to the following minimum:
  - a. An employee or student who creates Board-Owned IP will receive a minimum of 25% of the net income received by the university for the Board-Owned IP, unless otherwise agreed in writing. If there is more than one university creator of intellectual property, the percentage will be divided equally among the university creators unless they agree in writing to a different sharing arrangement.
  - b. This royalty-revenue sharing is not to be construed as wages or salary compensation to the employee from the university, but rather as separate income derived from commercialization activities involving Board-Owned IP. In addition, a creator's rights that have accrued will continue beyond their employment at or enrollment in the university.
  - c. If a company in which an employee holds a substantial interest is given more favorable royalty or other financial terms than is usually granted in comparable cases in its license with the university, then the university will determine whether that employee, who holds a substantial interest in the company licensing university technology developed by that employee, should receive a personal share of the

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licensing income or other consideration received by the university from that company in addition to that employee's equity or other financial interest in that company. Universities also may adopt policies prohibiting distribution of all or part of the personal share or may review on a case-by-case basis. If the university determines that the affected employee should not receive his/her personal share of university licensing income, then the share of licensing income that would otherwise be disbursed to the employee will be distributed among the other university accounts designated in the university's income distribution policy. For purposes of this section, the interest owned by or otherwise committed to the employee at the time of the disclosure of the employee's relationship with the company will be the interest used in determining whether the employee has a substantial interest.

C. Outside Consulting

1. Consulting for outside organizations may be performed by employees pursuant to applicable board and university policies, including conflict of interest and conflict of commitment policies.
2. Employees may not consult for outside organizations if doing so would require assignment or transfer of any rights or ownership of any Board-Owned IP to any third party.
3. An employee may not transfer or use, by assignment, license or otherwise, Board-Owned IP through a consulting or other agreement with a third party unless authorized in writing by the IP Official or university president. Any purported transfer in violation of this paragraph will be void and unenforceable.

D. Administrative Responsibilities

1. Responsibilities of the Creators of intellectual property:
  - a. Each employee must promptly and fully disclose in writing to the university any intellectual property made by that person,

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or resulting from work carried on under his/her direction, in which the board may have an interest. Each university will adopt a disclosure form and make the forms readily available to employees and others who may use university resources.

- b. Intellectual property created as a result of outside consulting must be disclosed to the university if there is any potential that the intellectual property may fall within Article A of this policy.
  - c. The creator must cooperate fully with the university with respect to technology transfer and commercialization activities relating to Board-Owned IP. In addition, the creator shall execute all documentation necessary for the board to establish, confirm, or perfect its ownership interest in Board-Owned IP, including documentation necessary to assign ownership to the board for recordation or other purposes, and, if necessary, to secure protection of Board-Owned IP in those countries designated by the IP Official.
  - d. The creator must comply with all applicable laws and university and board policies relating to conflicts of interest, including board policy 3-901.
  - e. The creator may not use the board's or the university's name, logos, trademarks, or other university identifiers in any commercial context involving Board-Owned IP without prior written permission.
2. Responsibilities of the IP Official.
- a. The IP Official will administer all Board-Owned IP in accordance with the requirements of this policy and applicable law.
  - b. The university's IP Official must either review agreements to assign, license, or otherwise transfer rights in Board-Owned IP before such agreements are signed, or may approve the procedure pursuant to which the agreement is reviewed and



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signed. All agreements to assign, license, or otherwise transfer any rights in Board-Owned IP must be signed by an authorized representative of the university.

- c. For copyrighted Board-Owned IP, requests for reproduction or other use of materials may be approved by the president or other person designated by the president (which may be, but is not required to be, separate from the IP Official).
- d. The IP Official will use reasonable efforts under the circumstances to consult with the creators who are then employed by the university during the negotiation process.
- e. The IP Official may exercise discretion in deciding among the following options with respect to Board-Owned IP:
  - (1) Board-Owned IP may be licensed, assigned, or sold to the creators subject to the following: (i) the board retains a paid-up, non-exclusive license to use this Board-Owned IP for education, research, in furtherance of the public service mission of the university, and for other non-commercial purposes; (ii) provision for a minimal royalty or other consideration to university in the event of commercialization of the intellectual property; and (iii) the creator may not use university facilities to improve upon the intellectual property without a separate written agreement. If the creator wishes to continue work on the intellectual property using university managed funds and/or facilities, he/she will need to do so pursuant to a written agreement that provides adequate consideration for that use.
  - (2) Intellectual property may be licensed or assigned to one or more intellectual property management organizations for commercial development;
  - (3) Intellectual property may be licensed, assigned, sold or optioned to a third party;

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- (4) Intellectual property may be patented, or otherwise protected, by the university, appropriately marketed, and either licensed or assigned to another organization for commercialization;
  - (5) Intellectual property may be archived by the university; or
  - (6) Intellectual property may be released or dedicated by the university to the public domain.
3. Responsibilities of the university. The university president will require that:
- a. The IP Official make responsible business decisions regarding protection of Board-Owned IP and payment of associated costs;
  - b. The university establish and administer a fund or funds for the promotion of research and development of intellectual property. The fund will include monies received by the university from Board-Owned IP. These funds will be administered according to policies established by the university;
  - c. Each university appoint an Intellectual Property Committee of faculty and staff. This committee will review proposed changes to this policy and make its recommendations to the president through the IP Official. Unless otherwise specified in university policy, the Intellectual Property Committee will also operate as a review committee in accordance with this policy; and
  - d. Each university establish procedures to inform non-employee students working on research projects sponsored or funded by third parties of any university or sponsor requirements relating to Intellectual Property, including ownership, licensing, options, and other rights.

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4. Publication rights/responsibilities for the protection of Intellectual Property
  - a. Peer-reviewed publication of results is a major objective of academic research. The board does not intend for this policy to impede a university employee's ability to publish.
  - b. Public disclosure of a patentable invention prior to filing for a patent application may preclude the availability of patent protection. "Public disclosure" may include any non-confidential written or oral disclosure that describes the invention (e.g., at a scientific meeting, in a journal, or even in an informal discussion with outside colleagues). Creators shall appropriately delay publication as required by the terms of contracts and grants sponsoring or funding their work and consider delaying public disclosure to prevent losing the ability to obtain patent protection. In either case, such delay is intended to provide the university IP Official with sufficient time to complete the internal evaluation process and the opportunity to protect any Board-Owned IP prior to the disclosure. In reporting the Board-Owned IP, creators should provide the university IP Official with sufficient detail, time, and notice to evaluate and determine whether to seek patent protection prior to public disclosure of the Board-Owned IP. The universities will make every effort to expedite the evaluation process when necessary.
  
5. Interpretation, decisions, challenge (disputes)
  - a. If an employee does not agree with an interpretation or decision made by the IP Official, the employee may ask the university's Intellectual Property Committee (or other committee designated in university policy) to review that decision. The request for review shall be sent in writing or electronically to the IP Official or to any member of the Intellectual Property Committee (with notice to the IP Official), and made no later than 10 days following the disputed interpretation or decision made by the IP Official. IP Official decisions regarding the following are not subject

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to review or challenge: (1) who is considered the “Creator” of Intellectual Property, and (2) whether and to what extent to patent or otherwise protect Board-Owned IP and payment of associated costs with university or board resources; provided that these decisions are made by the IP Official consistent with normal evaluative processes or financial considerations.

- b. The Intellectual Property Committee (or other designated committee) will review all relevant information submitted to it and will make its recommendation concerning the disputed decision to the president of the university, or his/her designee, who will make the final decision.
- c. The final decision of the president or his/her designee is subject to judicial review only pursuant to Arizona Revised Statutes §§ 12-901 et seq. Failure to complete the above review procedures will constitute a failure to exhaust administrative remedies.

E. University Technology Transfer Report

- 1. The president of each university shall report annually to the board concerning its technology transfer activities for the preceding year.
- 2. The report shall include an analysis of income and expenditures detailed by source, such as licensing, royalty or fees, as well as the university's prevailing standards for measuring performance of patent management arrangements and the performance evaluation results.
- 3. The report shall be in a format approved by the president of the board.

F. Definitions

- 1. “Board-Owned IP” means all Intellectual Property for which the board claims ownership under Section A.1 of this policy.

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2. "Course and Scope of Employment" shall include any activity that is listed or described in the employee's job description or is within the employee's field of employment, including research, instruction, or any activities assigned to the employee that involve the creation of Intellectual Property. Except as set forth in Article A, Section 2, copyrightable works created by an employee in the course and scope of employment are considered to be works made for hire under U.S. Copyright Law, with ownership vested in the board. The employee must cooperate fully with the university and will execute all documentation necessary to assign ownership and, if necessary, to secure protection of Board-Owned IP.
3. "Creator" means an inventor as defined under the United States patent laws, an author as defined under the United States copyright laws, or other creator in accordance with United States intellectual property laws.
4. "Employee" means faculty, staff, administrators, student employees, visiting faculty and researchers paid by the board or by a university governed by the board.
5. "Intellectual Property" includes all works, work product, designs, developments, discoveries, improvements, inventions, composition of matter, machines, manufacture, materials, methods, processes, diagrams, documentation, reports, evaluations, creations, expressions, algorithms, computer programs, applications, specifications, upgrades, revisions, modifications, and related written or otherwise reproducible materials, whether patentable, copyrightable or not, and all forms of legally recognized intellectual property rights, including copyrights, patents, trade secrets, trademarks, service marks, logos, other identifiers, mask works, plant variety protection, and tangible research property, together with any associated goodwill, supporting technology, or know-how.
6. "IP Official" is the individual or individuals designated by the university president to manage Board-Owned IP. If an outside entity is contracted for Intellectual Property management, a university employee will be designated as a primary liaison to the IP Official.

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7. "Net Income" means gross revenues resulting from any given Board-Owned IP, less: (i) a university administrative fee of not to exceed 15%, unless agreed otherwise by the creator(s) of the Board-Owned IP; and (ii) less all unreimbursed costs incurred by the university or its nominee in protecting, licensing, maintaining, and litigating rights in the Board-Owned IP.
8. "Scholarly Works" are works for which the board does not claim ownership under Section A.2 of this policy.
9. "Significant Use of Board or University Resources" includes but is not limited to: use of research funding; use of funding allocated for asynchronous or distance learning programs; use of telecommunication and data services beyond ordinary use; use of university computing resources; use of instructional design or media production services; access to and use of research equipment and facilities or production facilities. The board does not construe the use of office space, library resources, personal workstations, or personal computers as constituting Significant Use of Board or University Resources. Except as provided above, the board does not construe the use of instructional materials, instructional labs, and instructional facilities by non-employee students as a condition of enrollment and fulfillment of degree requirements at the university as a Significant Use of Board or University Resources.
10. "Student" means a person who is currently registered or enrolled in one or more classes at a university under the jurisdiction of the board.
11. "Student-Created Intellectual Property" is works created by a student in the individual's capacity as a Student and not in the individual's capacity as an employee, as described under Section A.3 of this policy.
12. "Substantial Interest" shall have the meaning ascribed to it in Arizona Revised Statutes § 38-502.

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13. “Tangible Research Property” means all tangible research property such as research tools, prototypes, and records used or produced in the course of university research projects, and all Intellectual Property rights therein. Examples include (1) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (2) plants protected by the Plant Variety Protection Act, (3) non-patented drugs protected by the Orphan Drug Act, (4) prototype instrumentation or devices and (5) research records and documentation.
14. “Works,” “Works of Authorship” and “Creative Works” shall have the meanings ascribed in U.S. Copyright Law.