

THE UNIVERSITY OF ARIZONA
DRAFT INTELLECTUAL PROPERTY POLICY
(Revised March 2004)

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A. PURPOSE

This Policy supplements the Intellectual Property Policy of the Arizona Board of Regents (Board) as applied to the University of Arizona (University), and guides the management of Intellectual Property at the University. In the event of any inconsistency between this Policy and the Board Intellectual Property Policy (Board IP Policy) or applicable State or federal laws, the provisions of the Board Policy and of the applicable laws prevail.

B. GENERAL STATEMENT

The Arizona Board of Regents encourages University faculty and staff members to undertake creative and scholarly works and to develop new and useful materials, devices, processes, and other intellectual property, some of which may have potential commercial value. The University is dedicated to teaching, research, and extension of knowledge to the public. The University community recognizes its responsibility to produce and disseminate knowledge. These activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide additional educational opportunities for participating students, and promote public welfare. Scholarship may be manifest through teaching and publications, and in disclosures of Intellectual Property to the Office of Technology Transfer for formal protection.

Although Intellectual Property developed by Employees in the course and scope of their employment is presumed to belong to the Board, this Policy provides for the close participation by the Employee in protecting and enhancing the value of the intellectual property, and in sharing in its dissemination and rewards. The IP Official and the Office of Technology Transfer will have the necessary discretion in implementing this Policy, consistent with the terms and provisions of the Board Intellectual Property Policy (Board IP Policy), for the greatest benefit of the public, the University and its creative Employees.

C. DEFINITIONS

1. **IP Official:** The IP Official is the Vice President for Research who is appointed by the University President to be in charge of Intellectual Property matters. Certain Intellectual Property management responsibilities may be delegated, including to the Director of the Office of Technology Transfer (OTT) by the IP Official or by this Policy. The Office of Trademark & Licensing handles trademark Licensing for the University regarding University identifiers for retail products and services associated with its athletic or other similar programs.
2. **Employee:** For purposes of this Policy, the term Employee includes all University faculty; classified staff; academic, administrative, and service professionals (both part-time and full-time); student employees; graduate assistants and associates. Persons with adjunct, emeritus or "no salary" appointments; visiting faculty, scholars, artists, and engineers; and other individuals not normally considered employees, academic or otherwise, will be considered Employees for the purposes of this Policy if, as a condition of access to University resources, they are obligated to contractually agree to this Policy and the Board IP Policy.

3. **Fund for Promotion of Research:** The Fund for Promotion of Research is a University account administered by the Vice President for Research to promote research, develop intellectual property, and directly enable its technology transfer. It is funded by a portion of the University share of Net Income received from the licensing or sale of Board-owned intellectual properties, except trademarks or identifiers licensed by The Office of Trademark and Licensing. A separate account for the general and administrative support of technology transfer activities, including patenting, (Operations Fund) will be established and will be funded by the 15% University administrative fee specified in Paragraph C.7 below.
4. **Intellectual Property:** Intellectual Property for the purposes of this Policy includes data, technical and other information, identifiers, works of authorship, inventions and discoveries subject to protection by any or all forms of patents, copyrights, trademarks, and trade secrets whether or not they were, are or will be so protected under state or federal statutory and common law, or corresponding international law. For purposes of this Policy, Tangible Research Property (defined below) is included in the definition of Intellectual Property. As defined here, Intellectual Property also includes any new forms of Intellectual Property receiving legal protection that maybe added to the above categories during the time this Policy is in effect.
5. **Intellectual Property Committee (IP Committee):** The IP Committee is a University committee of not fewer than five persons and composed of faculty and staff. The IP Official appoints the members, with at least half of the appointments based on recommendations made by the Chair of the Faculty, and will include one member of the Research Policy Committee. The Committee hears appeals by Employees as outlined in ABOR IP Policy. The Committee also considers changes in Intellectual Property Policy proposed by the Faculty Senate and makes recommendations to the President through the IP Official. The Committee may recommend changes in the Intellectual Property Policy to the Senate through the Research Policy Committee.
6. **Discovery and Invention:** A discovery is the result of conceiving and reducing to practice some that can be described, defined, and reproduced. Not all discoveries are patentable; some may be obvious, some may be unintentional copies of others' inventions or discoveries, and some may be intentionally withheld from the patent system to prevent the required publication of the innovation discovery that constitutes an invention that necessarily accompanies the prosecution or the issuance of a patent. An Invention is a discovery meeting the requirements of the United States Patent and Trademark Office derived from Title 35 U.S. Code or the corresponding requirements of a foreign patent office.
7. **Net Income:** Net Income means the net income remaining from gross revenues, including fees and royalties, received from the commercialization of given Intellectual Property other than Works and Printed Works less a 15% University administrative fee for the Operations Fund and then less all unreimbursed costs incurred by the University in engaging in the technology transfer leading to commercialization including obtaining, licensing, protecting or maintaining Intellectual Property protection, domestic or foreign.
8. **Works and Printed Works:** Works means all works of authorship as defined by the U.S. Copyright Act of 1978 Title 17 U.S.Code. Printed Works includes all Works, in all media of expression, other than Software and Electronic/ Digital Works and Commissioned Works defined below.
9. **Software and Electronic/Digital Works:** Are Works that include software and other technologies used to support the capture, storage, retrieval, transformation, and presentation of

electronic or digital data and information or to interface between electronic or digital forms and other communications and information media. Examples include, but are not limited to, software; course lecture video or audiotapes; electronic publications; electronic textbooks and interactive textbook supplements; Internet-based and on-line courses; web pages; multimedia works; and distance learning materials. As used herein, software means a set of statements or instructions -- lines of code -- used directly or indirectly in a computer to bring about a certain result.

10. **Tangible Research Property:** Tangible Research Property (TRP) means tangible materials including but not limited to research tools, prototypes, and records used or produced in the course of University research projects, examples of which 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, regardless of form or media used to capture or create such records. Certain types of TRP may be licensed by the University in a fashion similar to Intellectual Property or as part of an Intellectual Property licensing transaction. For purposes of this Policy, TRP is included in the definition of Intellectual Property and is subject to the provisions of this Policy. Whether TRP is to be treated under this Policy similar to a Commissioned Work or an Employee-created discovery will be determined by the IP Official, or their designee, taking into account the nature and purpose of the licensing and in consultation the unit head and the Dean. The same TRP may be treated differently if the nature and purpose of the licensing differs in different cases.
11. **Trademarks and other Identifiers:** An Identifier is a word, phrase, logo or other marking used to uniquely identify the origin of any Intellectual Property, artifacts or services, programs or other activities. Trademarks are specific types of Identifiers perfected and/or used in accordance with the requirements of state or federal statutory and common law or corresponding international law.
12. **Commissioned Works:** Commissioned Works are Works made by University Employees or independent contractors within the scope of their employment or work responsibilities and whose creation was specifically directed or authorized by a University administrator and where University funds or University administered funds were provided for their development. Commissioned Works, and any other Intellectual Property associated or arising from their creation, are owned by the Board and managed by the University. For the purpose of this Policy, the creator of the work is the University unit that authorized or directed the Commissioned Works.
13. **Examples:** Examples throughout this Policy are to be read as examples only and not to be construed as limiting or amending the operative content of this policy.

D. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

1. **Board-Owned Intellectual Property:** In accordance with the Board IP Policy, the University of Arizona manages all Board-owned Intellectual Property developed at the University or by its Employees (as defined herein). Board-owned Intellectual Property includes the following categories:
 - a. Intellectual Property resulting from research carried on by or under direction of any Employee and having all or part of the attendant costs paid from University funds or from funds under

- the control of or administered by the University or the Board, including Sponsor-Supported Projects (see Board IP Policy, Paragraph C.1); or
- b. Intellectual Property made by any Employee as a direct result of his or her duties with the University or in the course and scope of employment (see Board IP Policy, Paragraph C.2); or
 - c. Intellectual Property developed in whole or in part by an Employee through an effort that makes significant use of University resources or facilities unless such resources or facilities are available without charge to the public or the applicable use fee (not including tuition) has been paid. The University does not consider the ordinary use of University resources such as the libraries, one's office, or desktop computer, to be significant use of University resources for purposes of vesting the Board with ownership in Intellectual Property (see Board IP Policy, Paragraph C.3). Significant use of university resources includes but is not limited to: use of research funding; use of funding allocated for asynchronous or distance learning programs; use of university-paid time within the employment period; assistance of support staff; use of telecommunication services; use of university central computing resources; use of instructional design or media production services; access to and use of research equipment and facilities, or production facilities.

Discussion: Determining initial ownership of Intellectual Property does not depend on the person's physical location rather it depends upon the scope of one's employment and contractual relations.

Example: an Employee in the School of Music and Dance who develops software to track little league players and document their capability/performance would own the copyrights to those materials. In contrast, if the Employee had been instructed to create software to recruit music students the property belongs to the Board.

Example: if a chemist is working on a new chemical structure and a related idea comes to him/her while showering at home, the Intellectual Property is owned by the Board. But a chemist working in a home workshop, creating a new wooden toy, is the owner of that Intellectual Property, although such Intellectual Property should be disclosed to the IP Official for the purpose of establishing that the Board is not the owner of the rights.

Simply stated, if the Employee's discovery or Work was made outside the scope of employment or contract at the University, without significant use of, or special access to, its resources, then ownership is the Employee's; otherwise, it is owned by the Board.

2. **Individual-Owned Intellectual Property:** The University acknowledges that the Board releases to the Employee ownership of Intellectual Property that is not within the scope of Paragraph D.1 above. Individual-Owned Intellectual Property in general may not be used in activities involving the University and when allowed must conform to the University Policy on Conflict-of-Interest and Commitment, Board Policy and may require prior written agreement with the University signed by the IP Official or OTT.
3. **Sponsor-Supported Projects:** Intellectual property produced by Employees as a result of work supported partially or fully by an external agency and for which a contract is on file with the Vice President for Research is owned by the Board in accordance to Paragraph D.1a. and the further disposition of those rights in Intellectual Property will be determined by the terms of the specific contract. If no contract is on file, rights to Intellectual Property created as a result of sponsored research will reside in the Board.

4. **Student-Owned Intellectual Property:** Students own the Intellectual Property they develop as a result of class work provided such work is not otherwise within the scope of Paragraph D.1 above. Students own the copyrights for their theses and dissertations, but ownership of other Intellectual Property described in these publications, including software and patentable Discoveries, will be determined according to this Policy and the Board IP Policy. Students may be requested to grant rights in Student-Owned Intellectual Property to the Board or others, as a condition of access to certain class projects, independent research projects or other programs in the University in accordance to Paragraph D.1.
5. **Visiting Faculty, Researchers and Scientists:** As a condition of access to the resources of the University and on-going projects within it, the Board owns Intellectual Property created by visiting faculty, researchers, and scientists, including scholars, artists and engineers, and requires written agreement with them or their employers to abide by this Policy and the Board IP Policy prior to access to the University. The IP Official may, however, make exceptions on a case-by-case basis consistent with this Policy (see Paragraph E.2 below) and the Board IP Policy (Board IP Policy, Paragraph C.7). The IP Official shall act expeditiously in deciding these cases.
6. **Employee-Excluded Works:** Subject to the Board retaining an unrestricted irrevocable, paid-up, non-exclusive license to a Work for education, research, and public service, including the right to make and distribute derivative Works or incorporate such works into other University Works, the IP Official may release all claims of Board ownership to the following:
 - a. **Printed Works:** The IP Official will release to the creator of Printed Works all claims of Board ownership where the Printed Works consistent with Section C.4 of the Board IP Policy. With regard to Printed Works that are scholarly in nature, the Board releases to the Employee ownership of traditional print publications in academia, including course notes, textbooks and scholarly works, or other publications authored by Employees. The Board releases to the Employee copyright ownership of creative and/or artistic works created by Employees.
 - b. **Software and Electronic/Digital Works.** Contingent upon the Board retaining a limited right of reversion as set forth here, the IP Official may release to the creator of Software and Electronic/Digital Work all claims of Board ownership where:
 - (1) The Software and Electronic/Digital Works would qualify for release under Paragraphs C.4.a-c of the Board IP Policy but for its electronic/digital format;
 - (2) None of the other factors for Board ownership under Section C of the Board IP Policy applies; and
 - (3) The IP Official may release Software and Electronic/Digital Works where the IP Official determines that the Software or Electronic/Digital Work has no or little commercial application, the creator having the right to an expeditious determination by the IP Official as to its commercial potential.

For purposes of this section, the term “not for commercial application” in Paragraph C.4.c of the Board IP Policy means the Employee does not intend to commercialize the Software and Electronic/Digital Works or to use its release for personal economic gain as a result of their unique knowledge of the Software and Electronic/Digital Works or other preferential position with respect to it and its availability. If an Employee takes steps to commercialize any Software and Electronic/Digital Work released to him or her under Paragraph C.4 of the Board IP Policy without prior approval of the University, the Intellectual Property in the commercialized works immediately and automatically will revert to Board ownership and will be managed by the University in accordance with the terms of this Policy and the Board

IP Policy.

7. Employee Use of Software and Electronic/Digital Works Excluding Commissioned Works:

Employees may make limited use of Software and Electronic/Digital Works excluding Commissioned Works, independent of copyright ownership determination, as follows:

- a. Use at the University - An Employee may use Software and Electronic/Digital Works he or she develops or creates in the normal course of employment at the University, including the right to make changes to the Software and Electronic/Digital Works and to distribute the Software and Electronic/Digital Works to students, faculty, and other personnel at the University for teaching, research and other noncommercial University purposes.
- b. Academic use outside the University - Subject to receiving any necessary approval, an Employee may use Software and Electronic/Digital Works at other academic or not-for-profit research institutions for noncommercial purposes as part of ordinary scholarly exchanges, including visiting professorships and guest lectures, as long as the activities comply with University and Board policies on conflict of interest and conflict of commitment (including provisions requiring approval by the appropriate dean or department head), and as long as the activities do not include or allow commercializing the Software and Electronic/Digital Work.

The appropriate department head or dean must approve in advance the use of any Board-owned Software and Electronic/Digital Works by an Employee teaching or creating any course or courseware outside the University. For Software and Electronic/Digital Works released to the Employee by the University, the University's name may not be used in connection with such Software and Electronic/Digital Works other than to identify the Employee as an Employee at the University.

- c. Commercial use outside the University - For Board-owned Software and Electronic/Digital Works not released to the Employee, the Employee must obtain prior approval from the appropriate department head or dean before teaching or creating any course or courseware using the Software and Electronic/Digital Works for any commercial enterprise, and must obtain prior approval from OTT or the IP Official before commercializing Software and Electronic/Digital Works created or used at the University. Any such use must be consistent with University and Board policies on conflict of interest, conflict of commitment, and use of the University's name. For Software and Electronic/Digital Works released to an Employee, that Employee may commercialize the works outside the University without permission of the University as long as the University's name is not used in connection with the works other than to identify the Employee as an Employee at the University and the release included permission from the University for such commercial use. The University will not commercialize Software and Electronic/Digital Works without the knowledge and input of the Employee(s) who created the Software and Electronic/Digital Works in question so long as they remain at the University.
- d. Use after departing the University - An Employee who leaves the University may use any Software and Electronic/Digital Works that he or she created while at the University as long as the use is at another academic or not-for-profit research institution, and limited to teaching, research, and other noncommercial purposes. With respect to Software and Electronic/Digital Works released to a former Employee, that Employee may make commercial use of and create new works based the Software and Electronic/Digital Works as long as the Employee does not use the University's name in connection with the works other than to identify himself or herself as a former Employee.

- 8. Employee Consulting:** The Board will not claim ownership to Intellectual Property that is the product of Employee consulting where the consulting was performed:
- a. In accordance with college and University consulting policies that have been pre-approved by the IP Official and in accordance with this Policy and the Conflict of Interest and Commitment Policy;
 - b. Within the scope of the consulting activity documented to the University for which the Employee sought, and was granted, permission by the University to engage in; and
 - c. Does not overlap or conflict with other contractual obligations of the University including but not limited to Sponsor-supported Projects in which the Employee is involved or has access to.

If the Employee's obligations with respect to Intellectual Property under this Policy or the Board IP Policy conflict with an Employee's obligations to the consulting entity, the obligations under University and Board Policies shall take Precedence. (See Board IP Policy, Paragraph C.5, University of Arizona Conflict of Interest and Commitment Policy 6.D and University Handbook for Appointed Personnel 2.06.06.)

E. PROCEDURES

1. Disclosure of Intellectual Property and Duties of Disclosers:

- a. Employees who create Intellectual Property falling within Section D above shall promptly disclose any Invention or Copyrightable Work except Employee Excluded Works (see D.6 above) Disclosure must occur:
 - i. Upon request by the IP Official or their designee;
 - ii. Prior to any discussions or actions involving commercialization activity; or
 - iii. Prior to any non confidential presentation or other public release of Intellectual Property resulting from sponsor-supported projects.

The creator(s) will file an Invention or Copyrightable Work Disclosure form (available from OTT) with the head of his or her department. The department head will transmit the disclosure to OTT within 10 days and send an information copy to the dean of the college or other appropriate unit head. The department head will append to the disclosure a statement setting forth his or her opinion concerning the scientific, technical and economic merit of such intellectual property; the desirability of obtaining patent, copyright or trade secret protection; an estimate of the commercial potential; and a general description of the University facilities or resources used in the development of the Intellectual Property.

- b. The principal investigator is responsible for notifying all persons who may be involved in creating and developing Intellectual Property in advance of their participation in a project when the terms of a contract grants a sponsor the rights to technology resulting from the sponsored-supported effort. When an individual is not a paid employee of the University, such as a Visiting Faculty member, a written agreement between the University and the individual is required prior to participation in the Sponsor-Supported Project.
- c. The Employee who submits a disclosure is responsible for including all persons involved in creating and developing the Intellectual Property in a disclosure and of notifying them of the disclosure and ensuing events, especially those events related to further development (i.e., the protection and subsequent licensing or sale of the property).
- d. Each Employee involved in creating and developing Intellectual Property subject to disclosure under this Policy, Board IP Policy or law will cooperate with the University and execute any

and all documents necessary to assign ownership and/or secure protection of Intellectual Property owned by the Board, in all countries designated by the IP Official or their designee.

2. Ownership Determination: The IP Official, in consultation with OTT, will determine the ownership of Intellectual Property within 10 days of OTT receiving a complete disclosure. If the Board is deemed to own the property, OTT, or its designated agent, will have 120 days to decide whether to attempt to commercialize the disclosed Intellectual Property and an additional 10 days thereafter to inform the creator of the property of this decision.
 - a. At the request of the Employee, if the Board is not deemed to own the Intellectual Property, OTT will acknowledge in writing that the Board holds no interest in Intellectual Property determined to be Individual-Owned Intellectual Property. On mutually agreed upon terms, the Employee may assign Individual-Owned Intellectual Property to the University for commercialization.
 - b. At the request of the Employee and the concurrence of the unit head and dean, OTT may release to the Employee Intellectual Property determined not to merit or warrant exploitation by the University at that time, with certain rights retained by the University and certain restrictions on further development imposed on the Employee (see e.g., Board IP Policy, Paragraph D.2.a and f).
 - c. Intellectual property obligated to a sponsor pursuant to the terms of the research contract will be made available to the sponsor in accordance with that contract.
 - d. Intellectual Property owned by the Board may be patented, copyrighted or otherwise legally protected by the University in all countries designated by the IP Official or their designee. The University may commercialize Intellectual Property rights using its own resources or it may make an agreement with one or more outside entities or Intellectual Property management organizations to undertake such activities. If the University has not taken steps to commercialize the Intellectual Property within two years of the determination of ownership, an Employee who created the intellectual property, with the concurrence of the unit head and dean, as well as other Employees involved in the disclosure, may thereafter request a release or license agreement for such Intellectual Property from OTT with certain rights retained by the University and certain restrictions on further development imposed on the Employee (Board IP Policy, Paragraph 2.D.a).
 - e. OTT will inform the creators on a regular basis of the progress of protection efforts and commercialization of Intellectual Property disclosed by them.
3. Dispute Resolution: If an Employee disagrees with any interpretation or decision made by the IP Official, the Employee may ask the IP Committee to review the matter. If requested, the IP Committee will review the interpretation or decision of the IP Official as required by the Board Policy (Board IP Policy, Paragraph I.)
4. Intellectual Property Net Income Distribution:

Net Income earned from the licensing of Commissioned Works and associated Intellectual Property, or University Trademarks or Identifiers that are not licensed by OTT, are not subject to Net Income Distribution under this Policy.

Employees who create Intellectual Property that is disclosed pursuant to this Policy and that is determined to be owned by the Board are entitled to share in the Net Income earned from the commercialization of that Intellectual Property according to the Income Distribution Policy, attached hereto as Exhibit A, unless provided otherwise by contract with that Employee.

If multiple Employees are entitled to share in the distribution, the IP Official will not release any Employee distribution income until all entitled Employees have provided the IP Official with a written agreement signed by all such Employees, indicating the distribution shares for each Employee. Such agreements may include Employees contributing to the research or the technology transfer surrounding the Intellectual Property, but must contain the signature of all Employees who would be rights holders in the licensed or assigned Intellectual Property but for their employment status or their duty to assign to the Board.

Where the University assigns its Intellectual Property to a research sponsor or outside organization (see Paragraph E6), the assignee will pay the University the fully burdened overhead expenses related to the assigned intellectual property. The Office of Vice President for Research receives 46.8% of any overhead money paid by the assignee, with the remaining 53.2% to be distributed pursuant to the Invention Income Distribution Policy attached hereto as Exhibit A. If the University assigns its Intellectual Property to an Arizona state agency, the assignee will pay the University 50% of their Net Income after overhead expenses related to the assigned intellectual property, with the payment to the University to be distributed pursuant Exhibit A.

5. Patent, Trademark, Copyright Application: The Employee who creates Intellectual Property owned by the Board is required to cooperate fully with the University in the application for legal protection of Intellectual Property when requested to do so by OTT or the IP Official. All direct costs involved in obtaining and maintaining legal protection, domestic and foreign, will be borne by the University, a sponsor or licensee, or a contracted management agent.
6. Assignment of Title to Research Sponsor in Sponsor-Supported Projects: The University may accept a grant or contract from an organization with title to resulting Intellectual Property assigned to the sponsor or that gives the sponsor an exclusive option for a limited period of time in to negotiate a license. The terms and conditions of such a license must be consistent with the Board IP Policy. OTT will negotiate the license on behalf of the University and must approve any such agreement in advance. The IP Official will use his or her best efforts to consult with the creator and principal investigator in the negotiation process, including, among other things, providing a copy of the negotiated agreement before its final execution. The principal investigators are responsible for notifying everyone involved in work supported by the grant or contract of the terms of any such agreement prior to their involvement.
7. Employee Conflict of Interest and Employee Financial Interest in Private Organization: Employees are subject to and will abide by the University Conflict of Interest and Commitment Policy. Notwithstanding any other provisions of this section, a grant, contract or any other form of agreement between the University and any organization containing a provision assigning title is subject to final approvals as required by the University's Conflict of Interest Policy if the Employee has any substantial proprietary or financial interest in the contracting organization or any entity engaged in a business relationship with the contracting organization as set forth in the University's Conflict of Interest and Commitment Policy . In addition to complying with the Conflict of Interest and Commitment Policy, any time an Employee establishes or maintains a proprietary or financial interest in a private entity that contracts with the University for research or that desires to obtain a license from the University for University technology, that Employee must prior to that entity entering into a contract or license with the University (i) submit a Conflict of Interest and Commitment disclosure form to the Institutional Review Committee for approval and (ii) submit an Enabling Disclosure form (<http://www.ott.arizona.edu/enabling.htm>) to OTT for review, approval, and submission to the Board for Board approval. Approval by the

Board for the creation of any organization or any substantial interest in an organization under applicable Arizona law does not exempt any agreement between the University and that organization from the provisions of this paragraph, nor from other applicable conflict of interest or commitment rules or policies. In the event of any inconsistency with the provisions of this Policy, the University's Conflict of Interest and Commitment Policy and the Board's Conflict of Interest Policy shall control with respect to rules and procedures applicable to conflicts of interest and commitment.

In those cases where the Employee holds a financial interest in a company that licenses from the University technology developed by that Employee, that Employee will not receive a creator's share of the licensing income received by the University from that company for that technology, but that Employee's share will instead be distributed among the other University accounts designated in the Income Distribution Policy.

Policies Cited:

Arizona Board of Regents' Policy Manual, Chapter VI, 6-908 Intellectual Property Policy, revised 9/99

University of Arizona Conflict of Interest and Commitment Policy, 1998.

University Handbook for Appointed Personnel, 2000

**EXHIBIT A TO THE UNIVERSITY OF ARIZONA INTELLECTUAL PROPERTY POLICY
IP NET INCOME DISTRIBUTION POLICY**

Under the Arizona Board of Regents (Board) Intellectual Property Policy, Employees and students or others who conceive and/or develop Intellectual Property subject to the Board IP Policy must disclose that intellectual property. If the Board retains title to the Intellectual Property and income is created by license or assignment of the Intellectual Property, the Board IP Policy provides that the creator(s) entitled to receive income under Paragraph E.4. of this Policy will receive a minimum of 50 percent (50%) of the first \$10,000 of Net Income to the University and a minimum of 25 percent (25%) of Net Income to the University beyond the first \$10,000.

The University of Arizona Intellectual Property income distribution schedule outlined below exceeds the Board's minimums. Income listed below is "Net Income" as defined in this Policy.

For the purposes of this Policy, an Investigator is a current paid or emeritus employee of the University who is normally authorized by the University to conduct independent research and expend University funds and who is entitled to receive a income distribution under the Intellectual Property Policy Paragraph E.4. Investigator Discretionary Accounts are an apportionment of the University's income. When an Investigator leaves University employment, income that would normally go to their Investigator Discretionary Account will be divided among the remaining Investigator Discretionary Accounts. In the event no discretionary accounts remain, the income will be divided among the remaining University accounts.

Distribution of Net Income

Step	Income \$	Distributed to	Percent
1	First 10,000	Creator	100
2	Next 40,000	Creator	50
	Total 50,000	Investigator Discretionary Account	30
		Fund for Promotion of Research	20
3	Next 450,000	Creator	40
	Total 500,000	Investigator Discretionary Account	25
		Fund for Promotion of Research	25
		Department Account	5
		Dean's Account	5
4	Next 500,000	Creator	35
	Total 1,000,000	Investigator Discretionary Account	20
		Fund for Promotion of Research	30
		Department Account	10
		Dean's Account	5
5	1,000,000 and Beyond	Creator	25
		Investigator Discretionary Account	20
		Fund for Promotion of Research	40
		Department Account	10
		Dean's Account	5

EXHIBIT B TO THE UNIVERSITY OF ARIZONA INTELLECTUAL PROPERTY POLICY SUPPLEMENTAL DEFINITIONS

This supplement provides additional definitions to aid in the understanding and use of the University's Intellectual Property Policy. The information below is a generalized summary for information purposes only and does not create new legal rights or responsibilities nor does it supercede any provisions of this Policy or that of the Board of Regents.

1. **Copyright:** See 17 USC § 101, et seq. For general information on US and international copyright laws and treaties, see the Copyright Office Information Page, <www.loc.gov/copyright> Consistent with 17 U.S. Code, copyright protects an original work of authorship fixed in any tangible medium of expression from reproduction, distribution, , display, performance or the creation of derivative works without the permission of the owner. Copyrighted material may include, but is not limited to, website content and format, lecture and class notes, exams, computer software, mask works, artwork, music, technical articles, books and other literary works. Copyright protects the expression of an idea, but not the idea itself. For example, a copyrighted set of plans for building a solar device provides exclusionary rights regarding the reproduction and sale of the plans, but the purchaser of the plans may build and sell the solar device, assuming that the device is not protected by a patent and is not subject to contract restrictions. In addition, copyright does not protect raw data or facts, though it may protect the creative presentation of data and facts.
2. **Data:** Data includes, but is not limited to, lab notes, results of analyses, research notes, research data reports, and research notebooks.
3. **Mask Work:** A type of Intellectual Property protected under federal law that consists of a series of related images representing the three-dimensional pattern of metallic, insulating, and semiconductor materials in a semiconductor chip product. Mask works are protected under the Semi-Conductor Chip Protection Act of 1984, which is incorporated into the U.S. copyright law, 17 U.S.C. § 901 *et seq.*
4. **Patent:** Consistent with 35 U.S. Code, a U.S. patent is an instructional document obtained through application to the U.S. Patent and Trademark Office, and provides negative exclusionary rights in the United States. The owner of a patent can prevent others, for a period of years, from making, using or selling the Invention. An issued patent must teach one who is familiar with the field the best means for producing, constructing or using the patented product or process. Requirements for obtaining patents in other countries vary with each country, see www.uspto.gov for further information.
5. **Trade Secret:** Consistent with the Uniform Trade Secrets Act, codified in Arizona at A.R.S. §. 44-401, certain technology, information, formulas, patterns, methods, techniques, etc., may be protected as trade secrets, provided that reasonable efforts are undertaken to maintain secrecy. The University's records are considered to be public records, and open to inspection by any person at all times: A.R.S. § 39-121. The University is authorized to maintain trade secret protection only to the extent permitted under Arizona law (A.R.S. § 15-1640) for example, if the trade secret belongs to and is disclosed by an outside sponsor (see Board IP Policy, Paragraph B.4). When public disclosure would inhibit a company's willingness to invest the necessary funds for product development and commercialization, OTT, in consultation with the Employee and the IP Official, may license Intellectual Property as a trade secret, to the extent permitted under State law. Knowledge formalized as a trade secret cannot be disclosed in any open forum as long as it is intended to be maintained as a trade secret. For purposes of this Policy, trade secrets will be treated as patented and copyrighted technologies with respect to licensing and royalty distribution.
6. **Trademark:** Consistent with federal and state statutory and common law, trademarks and service marks identify an organization as the source of a product or service. The University name, symbols and logos of the University are trademarks and service marks belonging to the Board, for example, and may not be used by third parties without a proper license and specific approval of the IP Official or the University's Office of Trademarks & Licensing, and in a manner consistent with applicable University and Board of Regents policies.

THE UNIVERSITY OF ARIZONA
INTERIM INTELLECTUAL PROPERTY POLICY
Effective August 15, 2002

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EXHIBIT A: Invention Income Distribution Policy

EXHIBIT B: Supplemental Guidance

This Policy supplements the Intellectual Property Policy of the Arizona Board of Regents (Board) as applied to the University of Arizona (University), and guides the management of intellectual property at the University.

A. GENERAL STATEMENT

The Arizona Board of Regents encourages University faculty and staff members to undertake creative research endeavors and to add new scholarship to the well of beneficial information available to the public for its instruction and use. Scholarship may be manifest through teaching and publications, and in disclosures of intellectual property to the Office of Technology Transfer for formal protection. Employees should disclose any public dissemination of newly created potentially commercializable intellectual property prior to publication with the Office of Technology Transfer to ensure formal protection is not more appropriate or necessary before other public dissemination is effected.

Although intellectual property developed by Employees in the course and scope of their employment is presumed to belong to the Board, this Policy provides for the close participation by the employee in protecting and enhancing the value of the intellectual property, and in sharing in its dissemination and rewards. The IP Official and the Office of Technology Transfer will have the necessary discretion in implementing this Policy, consistent with the terms and provisions of the Board Intellectual Property Policy (Board IP Policy), for the greatest benefit of the public, the University and its creative employees.

B. DEFINITIONS

1. IP Official: The IP Official is the Vice President for Research who is appointed by the University President to be in charge of intellectual property matters. Certain intellectual property management responsibilities may be delegated to the Director of the Office of Technology Transfer (OTT) by the IP Official or by this Policy. Trademark Licensing for the University is handled by the Office of Trademark & Licensing.
2. Employee: For purposes of this Policy, the term employee includes all University faculty, staff, professional and administrative personnel (both part-time and full-time), student employees, graduate assistants and associates. Persons with adjunct, emeritus or "no salary" appointments; visiting faculty, scholars, artists, and engineers; and other individuals not normally considered employees, academic or otherwise, will be considered employees for the purposes of this policy.
3. Fund for Promotion of Research: The Fund for Promotion of Research is a University account administered by the Vice President for Research to promote research, develop intellectual property, and manage technology transfer. It is funded by the University share of net fees and royalties received from the licensing or sale of Board-owned intellectual properties, except trademarks. A separate account for patent filings (Patent Fund) will be established within the Fund for Promotion of Research, and will be funded by the 15% administrative fee specified in Paragraph B.7 below.

4. Intellectual Property: Intellectual property includes works of authorship, inventions and discoveries whether or not subject to protection by patents, copyrights, trademarks, and trade secrets. For purposes of this Policy, Tangible Research Property (defined below) is included in the definition of Intellectual Property. As defined here, Intellectual Property also includes any new forms of Intellectual Property receiving legal protection that may be added to the above categories during the time this Policy is in effect.
5. Intellectual Property Committee (IP Committee): The IP Committee is a University committee of not fewer than five persons and composed of faculty and staff. The IP Official appoints the members, with at least half of the appointments based on recommendations made by the Faculty Senate Chairman. The Committee considers proposed changes in intellectual property policy and makes recommendations to the President through the IP Official. The Committee also hears appeals by employees as outlined in ABOR IP Policy.
6. Invention: An invention is the result of conceiving and reducing to practice some innovation that can be described, defined, and reproduced. Not all inventions are patentable; some may be obvious, some may be unintentional copies of others' inventions, and some may be intentionally withheld from the patent system to prevent the required publication of the invention that necessarily accompanies the prosecution or the issuance of a patent.
7. Net Income: Net income means gross revenues, including fees and royalties, received from the commercialization of a given intellectual property less a 15% fee for the University Patent Fund and then less all unreimbursed costs incurred by the University in obtaining or maintaining intellectual property protection, domestic or foreign.
8. Print Intellectual Property: This includes all intellectual property other than software or other electronic or digital works.
9. Software and other Electronic/Digital Works. This includes software and other technologies used to support the capture, storage, retrieval, transformation, and presentation of electronic or digital data and information or to interface between electronic or digital forms and other communications and information media. Examples include, but are not limited to, software; course lecture video or audiotapes; electronic publications; electronic textbooks and interactive textbook supplements; Internet-based and on-line courses; web pages; multimedia works; and distance learning materials. As used herein, software means a set of statements or instructions -- lines of code -- used directly or indirectly in a computer to bring about a certain result.
10. Tangible Research Property. Tangible Research Property (TRP) means tangible materials used or produced in the course of University research projects, examples of which include (1) hybridoma or clonal cell lines that produce monoclonal antibodies or recombinant proteins, (2)

plants protected by the Plant Variety Protection Act, and (3) non-patented drugs protected by the Orphan Drug Act. Certain types of TRP can be licensed in a fashion similar to intellectual property. For purposes of this Policy, TRP is included in the definition of intellectual property and is subject to the provisions of this Policy.

C. OWNERSHIP AND USE OF INTELLECTUAL PROPERTY

1. Board-Owned Intellectual Property: In accordance with the Board IP Policy, the University of Arizona manages all Board-owned intellectual property developed at the University or by its employees (as defined herein), including the following categories:
 - a. Results from research carried on by or under direction of any employee and having all or part of the attendant costs paid from University funds or from funds under the control of or administered by the University or the Board, including Sponsor-Supported Projects (see Board IP Policy, Paragraph C.1); or
 - b. Is made by any employee as a direct result of his or her duties with the University or in the course and scope of employment (see Board IP Policy, Paragraph C.2); or
 - c. Has been developed in whole or in part by an employee or other person through an effort that makes significant use of University resources or facilities unless such resources or facilities are available without charge to the public or the applicable use fee (not including tuition) has been paid. The University does not consider the ordinary use of University resources such as the libraries, one's office, desktop computer and University computer infrastructure, or secretarial staff and supplies, to be significant use of University resources for purposes of vesting the Board with ownership in intellectual property (see Board IP Policy, Paragraph C.3).

Discussion: Determining ownership of intellectual property does not depend on the person's physical location. For example, if a chemist is working on a new chemical structure and a related idea comes to him/her while showering at home, the intellectual property is owned by the Board. But a chemist working in a home workshop, creating a new wooden toy, is the owner of that intellectual property, although such intellectual property should be disclosed to the IP Official. In general, decisions concerning intellectual property ownership are based on common sense. That is, if it is reasonable and logical to assume the employee's discovery was made without any influence of the University or its resources, then ownership is the employee's; otherwise, it is owned by the Board.

2. Individual-Owned Intellectual Property: The University acknowledges that the Board makes no claim of ownership to intellectual property that is not within the scope of Paragraph C.1 above. For example, an employee in the music department who develops software to track little league players and document their capability/performance would own the copyrights to those materials. In contrast, if the employee had been instructed to create software to recruit music students the property would

belong to the Board.

3. Sponsor-Supported Efforts: The rights to intellectual property produced as a result of work supported partially or fully by an external agency and for which a contract is on file with the Vice President for Research will be determined by the terms of the specific contract. If no contract is on file, rights to intellectual property created as a result of sponsored research will reside in the Board.
4. Student-Owned Intellectual Property: Students own the intellectual property they develop as a result of class work and not otherwise within the scope of Paragraph C.1 above. Students own the copyrights for their theses and dissertations, but ownership of other intellectual property described in these publications, including software and patentable inventions, will be determined according to this Policy and the Board IP Policy.
5. Visiting Faculty, Scholars, Artists and Engineers: The Board owns Intellectual Property created by visiting faculty, researchers, and scientists. The IP Official may, however, make exceptions on a case-by-case basis and consistent with this Policy (see Paragraph D.2 below) and the Board IP Policy (Board IP Policy, Paragraph C.7).
6. Employee-Excluded Works: Subject to the Board retaining an irrevocable, paid-up, non-exclusive license to use the intellectual property for education, research, and public service, including the right to incorporate such works into University works, the IP Official may release all claims of Board ownership to the following intellectual property:
 - a. Print Intellectual Property: The IP Official will release to the creator of print intellectual property all claims of Board ownership where the print intellectual property falls within the scope of Section C.4 of the Board IP Policy. With regard to Scholarly Works, the Board does not presently claim copyright ownership of traditional print publications in academia, including course notes, textbooks and scholarly works, or publications authored by employees. An exception to this is "works made for hire" where the preparation of such materials was specifically directed by a University administrator and University funds were provided expressly for their development. The Board does not claim copyright ownership of creative artistic works created by employees.
 - b. Software and Electronic/Digital Works. Contingent upon the Board retaining a limited right of reversion, the IP Official may release to the creator of software or electronic/digital works all claims of Board ownership where (1) the works would qualify for release under Paragraphs C.4.a-c of the Board IP Policy but for its electronic/digital format; (2) one of the other factors for Board ownership under Section C of the Board IP Policy does not apply; and (3) the employee does not intend, at the time of release, to commercialize the works (i.e., no intent to earn a profit from the work beyond recovering reasonable costs and expenses, including reasonable consulting fees). For purposes of this section, the term "not for commercial application" in Paragraph C.4.c of the Board IP Policy means the employee does not intend to commercialize

the work.

If an employee plans to commercialize any software and electronic/digital works released to him or her under Paragraph C.4 of the Board IP Policy, the intellectual property in the commercialized works immediately will revert to Board ownership and will be managed by the University in accordance with the terms of this Policy and the Board IP Policy.

7. Employee Use of Software and Electronic/Digital Works: Subject to the rights retained by the Board and the University in Paragraph C.5 above, employees may make limited use of software and electronic/digital works, independent of copyright ownership determination, as follows:

- a. Use at the University - An employee may use software and electronic/digital works he or she develops or creates in the normal course of employment at the University, including the right to make changes to the works and to distribute the works to students, faculty, and other personnel at the University for teaching, research and other noncommercial University purposes.
- b. Academic use outside the University - Subject to receiving any necessary approval, an employee may use software and electronic/digital works at other academic or not-for-profit research institutions for noncommercial purposes as part of ordinary scholarly exchanges, including visiting professorships and guest lectures, as long as the activities comply with University policies on conflict of interest and conflict of commitment (including provisions requiring approval by the appropriate dean or department head), and as long as the activities do not include or allow commercializing the software and electronic/digital works.

The appropriate department head or dean must approve in advance the use of any Board-owned software and electronic/digital work by an employee teaching or creating any course or courseware outside the University. For software and electronic/digital works released to the employee by the University, the employee may make the work freely available for academic and scholarly use outside the University without authority or permission from the University as long as the University's name is not used in connection with such works other than to identify the employee as an employee at the University.

- c. Commercial use outside the University - For Board-owned software and electronic/digital works not released to the employee, the employee must obtain prior approval from the appropriate department head or dean before teaching or creating any course or courseware using the software and electronic/digital works for any commercial enterprise, and must obtain prior approval from OTT or the IP Official before commercializing software and electronic/digital works created or used at the University. Any such use must be consistent with University policies on conflict of interest, conflict of commitment, and use of the University's name.

For software and electronic/digital works released to an employee, that employee may

commercialize the works outside the University without permission of the University as long as the University's name is not used in connection with the works other than to identify the employee as an employee at the University.

The University will not commercialize software and electronic/digital works without the knowledge and input of the employee(s) who created the works in question.

- d. Use after departing the University - An employee who leaves the University may use any software and electronic/ digital works that he or she created while at the University as long as the use is at another academic or not-for-profit research institution, and limited to teaching, research, and other noncommercial purposes. With respect to software and electronic/digital works released to a former employee, that employee may make commercial use of and create new works based the software and electronic/digital works as long as the employee does not use the University's name in connection with the works other than to identify himself or herself as a former employee.

D. PROCEDURES

1. Disclosure of Intellectual Property:

- a. Within 30 days of creating any intellectual property falling within Section C above (except Paragraph C.2), the creator will file an Invention or Copyrightable Work Disclosure form (available at <http://www.ott.arizona.edu/invdisform.htm>) with the head of his or her department. The department head will transmit the disclosure to OTT within 10 days and send an information copy to the dean of the college or other appropriate unit head. The department head will append to the disclosure a statement setting forth his or her opinion concerning the scientific, technical and economic merit of such intellectual property; the desirability of obtaining patent, copyright or trade secret protection; an estimate of the commercial potential; and a general description of the University facilities or resources used in the development of the intellectual property.
- b. The employee who makes a disclosure is responsible for notifying all persons involved in creating and developing the intellectual property of the disclosure and ensuing events, especially those events related to further development (i.e., the protection and subsequent licensing or sale of the property).
- c. The principal investigator is responsible for notifying all persons involved in creating and developing the intellectual property when the terms of a contract grants a sponsor the rights to technology resulting from the sponsored research.

2. Ownership Determination: The IP Official, in consultation with OTT, will determine the ownership of intellectual property within 10 days of OTT receiving a disclosure. If the Board is deemed to own

the property, OTT, or its designated agent, will have 120 days to decide whether to attempt to commercialize the disclosed intellectual property and an additional 10 days thereafter to inform the creator of the property of this decision.

- a. At the request of the employee, OTT will acknowledge in writing that the Board holds no interest in intellectual property determined to be owned by the employee. On mutually agreed upon terms, the employee may assign employee-owned intellectual property to the University for commercialization.
 - b. At the request of the employee, OTT will release to the employee intellectual property determined not to merit or warrant exploitation by the University, with certain rights retained by the University and certain restrictions on further development imposed on the employee (Board IP Policy, Paragraph D.2.a).
 - c. Intellectual property owned by a sponsor pursuant to the terms of the research contract will be assigned to the sponsor.
 - d. Intellectual property owned by the Board may be patented, copyrighted or otherwise legally protected by the University. The University may commercialize intellectual property rights using its own resources or it may make an agreement with one or more outside entities or intellectual property management organizations to undertake such activities. If the University has not taken steps to commercialize the intellectual property within two years of the determination of ownership, the employee who created the intellectual property may thereafter request a release or license agreement for such intellectual property from OTT with certain rights retained by the University and certain restrictions on further development imposed on the employee (Board IP Policy, Paragraph 2.D.a).
 - e. OTT will inform the employee/creator on a regular basis of the progress of protection efforts and commercialization of intellectual property disclosed by that employee.
3. Dispute Resolution: If an employee disagrees with any interpretation or decision made by the IP Official, the employee may ask the IP Committee to review the matter. If requested, the IP Committee will review the interpretation or decision of the IP Official as required by the Board Policy (Board IP Policy, Paragraph I.)
 4. Intellectual Property Income Distribution: Employees who create intellectual property that is disclosed pursuant to this Policy and that is determined to be owned by the Board are entitled to share in the net income earned from the commercialization of that intellectual property according to the Invention Income Distribution Policy, attached hereto as Exhibit A, unless provided otherwise by contract with that employee. The University share of the net income earned will be deposited in the Fund for the Promotion of Research. Income earned from the licensing of University trademarks is

not subject to this Policy. If multiple employees are entitled to share in the distribution, the IP Official will not release any employee distribution income until all entitled employees have provided the IP Official with a written agreement signed by all such employees, indicating the distribution shares for each employee. Such agreements may include employees not involved in the creation of the intellectual property, but must contain the signature of all named inventors.

Where the University assigns its intellectual property to a research sponsor or outside organization (see Paragraph D6), the assignee will pay the University the fully burdened overhead expenses (110% as of January 1, 2002) related to the assigned intellectual property. The Office of Vice President for Research receives 46.8% of any overhead money paid by the assignee, with the remaining 53.2% to be distributed pursuant to the Invention Income Distribution Policy attached hereto as Exhibit A. If the University assigns its intellectual property to an Arizona state agency, the assignee will pay the University 50% after overhead expenses related to the assigned intellectual property, with the payment to be distributed pursuant Exhibit A.

5. Patent, Trademark, Copyright Application: The employee who creates intellectual property owned by the Board is required to cooperate fully with the University in the application for legal protection of intellectual property when requested to do so by OTT or the IP Official. All costs involved in obtaining and maintaining legal protection, domestic and foreign, will be borne by the University, a sponsor or licensee, or a contracted management agent.
6. Assignment of Title to Research Sponsor: The University may accept a grant or contract from an organization with title to resulting intellectual property assigned to the sponsor or that gives the sponsor an exclusive option for a limited period of time in to negotiate a license. The terms and conditions of such a license must be consistent with the Board IP Policy. OTT will negotiate the license on behalf of the University and must approve any such agreement in advance. The IP Official will use his or her best efforts to consult with the creator and principal investigator in the negotiation process, including, among other things, providing a copy of the negotiated agreement before its final execution. The principal investigators are responsible for notifying everyone involved in work supported by the grant or contract of the terms of any such agreement.
7. Employee Financial Interest in Private Organization: Notwithstanding any other provisions of this section, a grant, contract or any other form of agreement between the University and any organization containing a provision assigning title is subject to final approval of the University's Conflict of Interest Committee (Institutional Review Committee) if the employee has any financial interest in the contracting organization or any entity engaged in a business relationship with the contracting organization. An employee has a financial interest in an organization if he or she serves as an owner, officer, director, agent, associate, partner, trustee, consultant, holds any position of management, or is otherwise employed by the organization; or is a stockholder owning 3% or more of the total stock outstanding in any class.

Any time an employee establishes or maintains a financial interest in a private entity that contracts

with the University for research or that desires to obtain a license from the University for University technology, that employee must (i) submit a Conflict of Interest and Commitment disclosure form to the Institutional Review Committee for approval and (ii) submit an Enabling Disclosure form (<http://www.ott.arizona.edu/enabling.htm>) to OTT for review, approval, and submission to the Board for Board approval. Approval by the Board for the creation of any organization or any substantial interest in an organization under applicable Arizona law does not exempt any agreement between the University and that organization from the provisions of this paragraph, nor from other applicable conflict of interest or commitment rules or policies.

In those cases where the employee holds a financial interest in a company that licenses from the University technology developed by that employee, that employee will not receive a personal share of the licensing income received by the University from that company for that technology, but that employee's share will instead be distributed among the other University accounts designated in the Income Distribution Policy.

8. Employee Conflict of Interest: Employees are subject to and will abide by the University Conflict of Interest and Commitment Policy.
9. Employee Consulting: A University policy on consulting, other than one encouraging consulting, does not take into account the distinct differences between and among disciplines and the colleges that encompass those disciplines. Therefore, individual colleges will adopt a consulting policy that encourages consulting activity but balances that activity with commitments to the University, college and the individual units in the college. It is the policy of the University of Arizona:
 - a. To encourage consulting where and when appropriate to the discipline, the unit, and the college; and
 - b. To encourage colleges to discuss and to adopt policies that are consistent with disciplinary standards and consistent with the mission of teaching, research, and service in the college and the University.

The Board will not claim ownership to intellectual property that is the product of employee consulting where the consulting agreement was written in accordance with college and University consulting policies that have been pre-approved by the IP Official.

EXHIBIT A
INVENTION INCOME DISTRIBUTION POLICY

Under the Arizona Board of Regents (Board) Intellectual Property Policy, employees and students or others who conceive and/or develop intellectual property subject to the Board Policy must disclose that intellectual property. If Board retains title to the intellectual property and income is created, the creator(s) will receive a minimum of 50 percent (50%) of the first \$10,000, net of any direct costs, such as literature searches, legal fees or patent protection, incurred by the University. A minimum of 25 percent (25%) of income beyond the first \$10,000 net to the University will be paid to the inventor(s).

The University of Arizona invention income distribution schedule outlined below exceeds the Board's minimums. The fifteen percent (15%) for the Patent Fund and University unreimbursed expenses incurred in creating the income are reimbursed before any distribution calculations are made. Income listed below is net income as defined in this Policy.

Step	Income \$	Distributed to	Percent
1	First 10,000	Creator	100
2	Next 40,000 Total 50,000	Creator Creator Discretionary Account Fund for Promotion of Research	50 30 20
3	Next 450,000 Total 500,000	Creator Creator Discretionary Account Fund for Promotion of Research Department Account Dean's Account	40 25 25 5 5
4	Next 500,000 Total 1,000,000	Creator Creator Discretionary Account Fund for Promotion of Research Department Account Dean's Account	35 20 30 10 5
5	1,000,000 and Beyond	Creator Creator Discretionary Account Fund for Promotion of Research Department Account Dean's Account	25 20 40 10 5

EXHIBIT B
SUPPLEMENTAL GUIDANCE

This supplemental guidance provides additional definitions to aide in the understanding and use of the University's Intellectual Property Policy. The information below is for instructional purposes only and does not create new legal rights or responsibilities nor does it supercede any provisions of this Policy or that of the Board of Regents.

1. Copyright: Consistent with 17 U.S. Code, copyright protects an original work of authorship fixed in any tangible medium of expression from reproduction, distribution, use, display or performance without the permission of the owner. Copyrighted material may include, but is not limited to, website content and format, lecture and class notes, exams, computer software, mask works, artwork, music, technical articles, books and other literary works. Copyright protects the expression of an idea, but not the idea itself. For example, a copyrighted set of plans for building a solar device provides exclusionary rights regarding the reproduction and sale of the plans, but the purchaser of the plans may build and sell the solar device, assuming that the device is not protected by a patent. In addition, copyright does not protect raw data or facts, though it does protect the creative presentation of data and facts.
2. Data: Data includes, but is not limited to, lab notes, results of analyses, research notes, research data reports, and research notebooks.
3. Mask Work: A type of intellectual property protected under federal law that consists of a series of related images representing the three-dimensional pattern of metallic, insulating, and semiconductor materials in a semiconductor chip product.
4. Patent: Consistent with 35 U.S. Code, a U.S. patent is an instructional document obtained through application to the U.S. Patent and Trademark Office, and provides negative exclusionary rights in the United States. The owner of a patent can prevent others, for a period of years, from making, using or selling the invention. An issued patent must teach one who is familiar with the field the best means for producing, constructing or using the patented product or process.
5. Trade Secret: Consistent with the Uniform Trade Secrets Act, certain technology may be licensed to industry as trade secrets. The University is authorized to maintain trade secret protection only if the trade secret belongs to and is disclosed by an outside sponsor (see Board IP Policy, Paragraph B.4). When public disclosure would inhibit a company's willingness to invest the necessary funds for product development and commercialization, OTT, in consultation with the employee and the IP Official, may license intellectual property as a trade secret. Knowledge formalized as a trade secret cannot be disclosed in any open forum as long as it is intended to be maintained as a trade secret. For purposes of this Policy, trade secrets will be treated as patented and copyrighted technologies with respect to licensing and royalty distribution.

6. Trademark: Consistent with federal and state law, trademarks and service marks identify an organization as the source of a product or service. Symbols and logos of the University are trademarks and service marks belonging to the Board, for example, and may not be used by third parties without a proper license and specific approval of the IP Official or the University's Office of Trademarks & Licensing.

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6-908 Intellectual Property Policy

Preamble

The Arizona Board of Regents, and the three universities which the Board governs, are all dedicated to teaching, research, and 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 creative and scholarly works and the development of new and useful materials, devices, processes, and other intellectual property, 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.

Intellectual property that has commercial potential may be protected under a variety of mechanisms including copyrights, patents, trade secrets, trademarks, and plant variety protection. The rights and privileges, as well as the incentive, of the creators of intellectual property must be preserved so that their abilities and the abilities of others are encouraged and stimulated. The Board and the three universities must promote the appropriate development and marketing of the Board's intellectual property for the public good.

A. Purpose statement

The Board encourages employees, including faculty, staff, administrators, student employees, visiting faculty and researchers paid by a university governed by the Board (collectively "employees") to undertake and receive recognition for, and share in the revenue resulting from their creative endeavors. Federal and state law provide for Board ownership of intellectual property created by university employees. The Board will use benefits derived from this intellectual property to further the teaching or academic research program of the respective universities in areas of intellectual property.

Each university may patent, register, market, and license intellectual property using its own resources or through one or more intellectual property management organizations. The net income derived by the university will be shared with the creator of the intellectual property in accordance with this policy, and the remainder will be used in support of

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research, investigation, research fellowships, or other activities relevant to the generation of intellectual property at the institution.

The Board encourages university-industry cooperation to enable universities to comply with state policy or legislation encouraging technology transfer, and to support university-industry collaborative agreements which bring additional resources to the universities. This policy provides universities the discretion to retain ownership in intellectual property, or to enter into agreements with industry sponsors to grant exclusive or non-exclusive licenses, or, when appropriate, to assign title to intellectual property.

B. Categories of Intellectual Property

This policy covers all forms of legally recognized "Intellectual Property" which is created at the universities, including, but not limited to the following:

1. Patents (as defined in 35 US Code) which includes but is not limited to: inventions and discoveries (e.g., devices, processes, improvements, and patentable software)
2. Copyrights (as defined in 17 US Code) which includes but is not limited to:
 - a. scholarly works (e.g., textbooks, class notes, research monographs and articles, publications, instructional materials, and research materials);
 - b. creative/artistic works (e.g., music, art, dance, architecture, sculpture, poetry, fiction, and film);
 - c. copyrightable software (commercial as well as academic or research);
 - d. other developing areas, including but not limited to multi-media works, and various other forms of electronic communications, including media used for distance learning; and
 - e. mask works.

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3. Trademarks. (As recognized by federal and state laws)
4. Trade secrets. (As defined by the Uniform Trade Secrets Act; Note, however, that the universities do not maintain trade secrets, unless belonging to and disclosed by, an outside sponsor.)
5. Data. All data are considered to be subject to this policy, as intellectual property is often present in data that are generated during research at the university. Data shall include, but not be limited to:
 - a. lab notes, results of analyses, etc.;
 - b. research notes, research data reports, and research notebooks, etc.

This policy will cover any new forms of Intellectual Property that may be added to the above categories during the time this policy is in effect. By way of illustration, in the event databases are given protection under the copyright laws in the future, databases will be covered under this policy.

C. Intellectual Property Creation and Ownership

Ownership in intellectual property will be determined in accordance with the following categories of creation:

1. Sponsor-Supported Projects

A "Sponsored Project" is research that has a defined scope of work and is funded by one or more non-university entities ("Sponsor(s)") pursuant to a "Sponsored Project Agreement". Initially, federal and state law defining authorship and inventorship will determine ownership (and all associated rights) relevant to intellectual property developed during the course of work on projects funded by Sponsored Project agreements. A university may agree to give the Sponsor an exclusive option for a limited period of time for the right of first negotiation for a license to intellectual property owned by the university arising from a Sponsored Project (hereinafter "University Contract IP"). The option period will not exceed one year from formal disclosure to the Sponsor of the University Contract IP, or

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six months from the date of expiration of the Sponsored Project, whichever is earlier in time. A university may also agree to assign title to the Sponsor in any University Contract IP. The agreement or license will be negotiated on behalf of the university by, or under the authority of, the individual designated by the university to be responsible for the administration of intellectual property (the "IP Official"), or by the intellectual property management organization, if any, representing the university. The IP Official shall use his or her best efforts to consult with the creator(s) and principal investigator(s) during the negotiation process. The IP Official shall provide the creator(s) (including inventor(s)) and principal investigator(s) currently employed by the university with a copy of the negotiated agreement prior to its final execution. In the event the creator(s) or principal investigator(s) do not agree with the negotiated terms, he or she shall have the right to appeal the IP Official's position before the agreement is executed, in accordance with Section I of this policy, following the process and time limits established by each university. The agreement will be executed by the designated university officials subject to review by university counsel.

While the value of intellectual property cannot be predetermined, the Board requires the university to determine a minimum amount of financial support (which will be based on the total cost to the university of development of the applicable intellectual property), on a case-by-case basis, below which an assignment of title to University Contract IP will not be considered. In some cases it may not be possible to calculate the total costs of development until after the intellectual property has been developed and disclosed. If the university wishes to assign the title or to license the University Contract IP, the Sponsored Project Agreement will include the following provisions:

- a. In cases of assignment of title:
 - (1) A provision for monetary support, which must take the form of one of the following three options:
 - (a) The Sponsor will pay an assignment fee of at least fifty percent of the university's total cost of research and development, including all

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contract modifications or extensions. The Sponsor will pay the assignment fee after the University Contract IP has been created, reported to the Sponsor, and at the time the assignment of title is made; or

- (b) The Sponsor will pay all costs of research, including salaries, materials, other direct costs, and the university's fully-burdened overhead.
- (c) The Sponsor is an Arizona State agency and the sponsor will pay all direct costs of research, including salaries and materials, and indirect costs or overhead to the extent permitted by agency rules. In exchange for this reduced overhead reimbursement, the university must (i) receive from the sponsor a significant percentage of any income received by the sponsor from the sale, transfer or licensing of the University Contract IP; and (ii) address with the sponsor during negotiations the opportunity for the university to participate in the management of the University Contract IP.

If possible, the university will calculate such amounts and include them in the Sponsored Project Agreement.

- (2) Due-diligence Milestones negotiated on a case-by-base basis to include a "Reassignment Right" exercisable by the university if the Sponsor has not made a good-faith attempt to meet the negotiated Due-diligence Milestones. "Due-diligence Milestones" shall mean objectively measurable goals which a Sponsor will in good faith pursue in order to bring to the public the benefits of the University Contract IP. Due-diligence Milestones may include, by way of example and without limitation, commercialization of University Contract IP, use of University Contract IP to produce products, and licensing or disclosure of University Contract IP to third parties.

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- (3) "Reassignment Right" will include, but not be limited to, one or more of the following, as negotiated by the parties at the time of negotiating the Due-diligence Milestones:
 - (a) Right of the university to license other parties, either exclusively or non-exclusively;
 - (b) Right of the university to collect a periodic "maintenance fee" from Sponsor until such time as Due-diligence Milestones are met, or Sponsor determines it will not commercialize the intellectual property and voluntarily grants its rights to the University Contract IP back to the university.

- (4) A windfall provision, in which an appropriate payment or payment schedule is specified based on some mutually agreed upon threshold or event. The parameters of this provision, such as the windfall threshold and the amount of any payments, will be determined on a case-by-case basis.

b. In cases of licensing:

- (1) Due-diligence Milestones negotiated on a case-by-case basis, to include, in the case of an exclusive license, "March-in-Rights" if the Sponsor has not made a good-faith attempt to meet the negotiated Due-diligence Milestones. "March-in-Rights" will include, but not be limited to, one or more of the following, as negotiated by the parties at the time of negotiating the Due-diligence Milestones:
 - (a) Right of the university to license other parties, either exclusively or non-exclusively;
 - (b) Right of the university to collect a periodic "maintenance fee" from Sponsor until such time as Due-diligence Milestones are met, or Sponsor determines it will not commercialize

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the intellectual property and voluntarily terminates its license rights to the University Contract IP.

- (2) A provision for reasonable and customary, but unspecified, royalties, since the value of prospective intellectual property cannot be pre-determined.

c In cases of either licensing or assignment of title:

- (1) The right of the university to retain a royalty-free license for its own internal use of the University Contract IP for research and educational purposes, and a provision that the university has the right to use the University Contract IP in any and all subsequent sponsored research at the university. This provision does not require the university to retain a right to sublicense such University Contract IP to third parties.
- (2) The right of the university to make public through publication or presentation any University Contract IP developed under the agreement. The Sponsor may be given up to ninety days to review the manuscript and secure appropriate intellectual property protection (to include the right to remove any Sponsor trade secrets or proprietary information from such manuscripts) prior to actual publication or presentation.
- (3) The obligation of the Sponsor to pay patent costs. If the university is filing the patents, such costs to the Sponsor may be capped at reasonable and customary fee amounts.

2. University-Assigned Projects

The Board owns Intellectual Property developed as a result of employee work performed in the course and scope of employment. "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

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other activities assigned to the employee that involve the creation of Intellectual Property. 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 intellectual property owned by the Board.

3. University-Assisted Projects

The Board owns Intellectual Property developed by university employees through an effort which makes significant use of university resources. The employee must cooperate fully with the university and will execute all documentation necessary to assign ownership and, if necessary, to secure protection of this intellectual property. The Board does not construe the use of office space, library resources, personal workstations, or personal computers as constituting significant use of university resources. Significant use of university resources includes but is not limited to: Use of research funding; use of funding allocated for asynchronous or distance learning programs; use of university-paid time within the employment period; assistance of support staff; use of telecommunication services; use of university central computing resources; use of instructional design or media production services; access to and use of research equipment and facilities, or production facilities.

4. Employee-Excluded Works

The Board releases to the creator all ownership of Intellectual Property in the following categories of work, subject to contractual rights of Sponsors. However, the Board retains a paid-up, non-exclusive license to use this intellectual property for education, research, and public service.

- a. Traditional publications in academia, including scholarly works, textbooks, and course notes
- b. Artistic works (music, art, dance, film, etc.)

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- c. Academic software (not for commercial application)
- d. Student works (the student owns his/her own works, unless the student is a university employee and the work is part of his/her employment, or the student makes significant use of university resources, or the student's work is part of a Sponsor-supported project. Student works are not subject to revenue sharing described above.)
- e. Electronic publications, including on-line courses will be reviewed on a case-by-case basis.

5. Outside Consulting

Consulting for outside organizations is encouraged and may be performed by university employees pursuant to applicable Board and university policies, including policies on consulting, conflict of interest, and this Intellectual Property Policy. If the employee's obligations under this Intellectual Property Policy conflict with the employee's obligations to the consulting entity, the obligations under this Intellectual Property Policy will take precedence.

6. Individual Projects

The Board owns Intellectual Property developed by university employees, unless the creator of the intellectual property can demonstrate that it was not developed as a "Sponsor-Supported Project," a "University-Assigned Project," or a "University-Assisted Project," as defined above.

7. Visiting Faculty, Researchers, and Scientists

The Board owns Intellectual Property created by visiting faculty, researchers, and scientists. However, the IP Official may make exceptions on a case-by-case basis, consistent with this policy.

D. Administrative Responsibilities

1. Responsibilities of the Creator(s) of Intellectual Property

Each employee (including visiting faculty, researchers, and scientists) must disclose any Intellectual Property made by that

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person, or resulting from work carried on under his/her direction, in which the Board or a Sponsor may have an interest.

Intellectual Property created as a result of outside consulting must be disclosed to the university only to the extent that the creation of the intellectual property would fall within the above categories under which the Board claims ownership, or as required by other university or Board policies or state laws.

The creator must disclose Intellectual Property promptly to the head of the department on those forms used by the university, with an information copy to the dean of the college or administrative officer, or as otherwise designated by the IP Official. The department head will, as appropriate, indicate his/her opinion concerning the scientific, technical, and economic merit of the discovery, the likelihood and desirability of obtaining intellectual property protection, and an estimate of the commercial possibilities of this intellectual property, and transmit that statement to the IP Official.

The creator must cooperate fully with the university and will execute all documentation necessary to assign ownership, and, if necessary, to secure protection of intellectual property owned by the Board in those countries designated by the university IP Official.

2. Responsibilities of the IP Official

The IP Official, or his/her designee, will administer all intellectual property disclosed in accordance with the requirements of this policy as follows (not necessarily listed in order of preference):

- a. Released to the creator if the IP Official determines within a reasonable time that the interests of the Board are better served by releasing ownership to the creator under conditions to be specified by the university to include, but not be limited to the following:
 - (1) the Board retains a paid-up, non-exclusive license to use this intellectual property for education, research, and public service;

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- (2) provision for a minimal royalty to university in the event a profit is made from commercialization of the intellectual property; and
 - (3) the faculty creator may not use university facilities to improve upon the invention. If the inventor wishes to continue work on the invention using university managed funds and/or facilities, they will need to do so under an arm's length relationship (i.e., full Board disclosure and license).
- b. Licensed to the creator, at the university's discretion, subject to compliance with other applicable policies and approvals;
 - c. Assigned to one or more intellectual property management organizations for commercial development in accordance with Board policy on technology transfer consistent with all applicable requirements of this policy;
 - d. Licensed or assigned to the research sponsor under which the intellectual property was created if license or assignment is required by the contract with the sponsor and is permitted or is required by law;
 - e. Patented, or otherwise protected, by the university, appropriately marketed, and either licensed or assigned to another organization for commercialization consistent with the Section regarding Sponsor-Supported Projects of this Policy;
 - f. Archived by the university with notification to the creator.
3. Responsibilities of the University

The university vice-president or vice-provost for research, or his/her designee, will require that:

- a. The university or its nominee or licensee will pay all costs involved in obtaining and maintaining domestic and/or foreign protection for intellectual property for which the Board holds an interest.

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- b. The university will establish and administer a fund for the promotion of research and development of intellectual property. The fund will include monies received by the university from intellectual property created by its employees. The IP Official, or a designee, will administer this fund according to policies and procedures established by the university.
- c. An intellectual property committee of faculty and staff will be appointed by the president, or his/her designee, of each university in accordance with that university's policies and procedures. The intellectual property committee will review proposed changes in the Intellectual Property Policy and make its recommendations to the president through the IP Official. The intellectual property committee will also operate as a review committee in accordance with this Policy.

E. Publication Rights/Responsibilities for the Protection of Intellectual Property

Early 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. Public disclosure of a patentable invention prior to filing for a patent application will, however, preclude the availability of patent protection in most countries. "Public disclosure" includes 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). However, limited disclosure of intellectual property internally within the university will not interfere with the ability to protect the intellectual property. University employees should consider delaying public disclosure of intellectual property until the internal evaluation process is completed by the university IP Official. The universities will make every effort to expedite the evaluation process when an employee indicates a compelling need for rapid publication.

The foregoing provision does not apply to a Sponsor's proprietary information disclosed to the university pursuant to a non-disclosure agreement. In the case of Sponsor-supported projects, the Sponsored Project agreement may provide for delay of publication to allow the Sponsor to adequately protect its own intellectual property.

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F. Revenue Sharing

The university will pay the creator a share of the net income received by the university from any intellectual property licensed or assigned in accordance with this policy. "Net income" is defined as gross revenues resulting from any given intellectual property, less a university administrative fee of not to exceed 15%, then less all unreimbursed costs incurred by the university or its nominee in protecting, licensing, and maintaining the intellectual property. The IP Official will determine the percentage to be paid to the creator, ensuring that it is in accordance with the university's revenue sharing policy, subject, however, to the following minimum:

The employee who creates intellectual property as the result of work for which he/she is paid by the university and where he/she uses university facilities and resources will receive a minimum of 50% of the first net \$10,000 received by the university and a minimum of 25% of the net amount received by the university in excess of the first net \$10,000. 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 of intellectual property. In addition, an employee's rights which have accrued to this royalty revenue sharing shall continue beyond such employee's employment with the university.

G. Faculty Owned or Affiliated Companies Based on the Board's Intellectual Property

With respect to university employees holding interest in private organizations which are based on intellectual property owned by the Board, the creator of the intellectual property which is of interest to that private organization must comply with administrative responsibilities detailed above.

The IP Official will use his/her best efforts to negotiate an appropriate agreement with the private organization whenever one or more university employees(s):

1. Holds a substantial interest in that organization;

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2. Is a creator of university intellectual property related to the business of the organization; and
3. Continues his or her university employment in an area related to the business of the organization.

A license or assignment or option agreement between the university and any organization in which an employee owns a substantial interest will be individually evaluated and negotiated for each technology or improvement for which the organization wishes to acquire rights from the university. Such agreements shall be subject to customary terms and conditions consistent with the section on Sponsor-Supported Projects of this policy.

If the company in which a university employee holds a substantial interest is given more favorable royalty terms than is usually granted in comparable cases in its license with the university, then the IP Official will determine whether that university employee, who holds a substantial interest in the company licensing university technology developed by that university employee, should receive a personal share of the licensing income received by the university from that company in addition to that employee's equity or other financial interest in that company. If the IP Official 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 personally 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 the university employee at the time of Board approval of the employee's relationship with the company will be the interest used in determining whether the employee has a "substantial interest."

H. Conflict of Interest

A grant, contract, or any other form of agreement between a university and any organization containing a provision assigning title or granting an exclusive license is subject to final approval by the Board if a university employee has a substantial or material interest in the contracting organization or any entity engaged in a business relationship with the contracting organization. All agreements are subject to federal and state law and Board policy regarding conflict of interest and technology transfer.

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Approval by the Board for either the creation of any organization or any substantial interest in an organization under applicable Arizona law does not exempt any agreement between that university and the organization from the provisions of this Section.

I. Interpretation, Decisions, Appeals (Disputes)

If the employee does not agree with any interpretation or decision made by the IP Official, the employee may ask the Intellectual Property Committee to review that decision.

The Intellectual Property Committee will review all relevant information submitted to it and will make its recommendation concerning the disputed decision to the president of the university involved, or his/her designee, who will make the final decision.

The final decision of the president or his/her designee is subject to judicial review only pursuant to Arizona Revised Statutes Title 12, Chapter 7, Article 6. Failure to complete the above review procedures will constitute a failure to exhaust administrative remedies.

Issues Related to Intellectual Property Policy
Research Policy Committee

RPC identified the following issues while revising the UA Interim Intellectual Property Policy that we would like to share with the Faculty Senate. The Senate may wish to discuss these issues further and decide if additional action is needed.

Context: University of Arizona policies must be in alignment with Arizona Board of Regents' policies. ABOR policies take precedence over local university policies.

Issue 1: The ABOR Intellectual Property Policy 6-908 states that the Board owns Intellectual Property developed as a result of employee work performed in the course and scope of employment and states that "course and scope of employment" includes any activity listed in an employee's job description including research, instruction, or other activities involving the creation of Intellectual Property. The policy does not acknowledge the "faculty exception" to work for hire rules recognized in cases such as *Weinstein v. University of Illinois*, 811 F2d 1091 (7th Cir., 1987).

Issue 2: The ABOR policy states that the Board releases to the creator all ownership of Intellectual Property in the categories of traditional publications in academia including scholarly works, textbooks, and course notes, artistic works (music, art, dance, film, etc.), and academic software. It appears that this clause is intended to transfer ownership (claimed by ABOR above) to the employee for certain categories of Intellectual Property. In a recent case, *Foraste v. Brown University*, 2003 WL 22462137, Oct. 30, 2003, a district court held that a similar clause was insufficient to transfer copyright from Brown to the employee. The court held that the only way to transfer copyright ownership in a work made for hire is through a written instrument signed by both the employer and employee.

There are examples from other Intellectual Property policies, such as the following from Texas A&M System, that might provide alternatives for ABOR to consider.

"In keeping with academic tradition, and except to the extent required by the terms of any funding agreement, the System does not claim ownership to pedagogical, scholarly or artistic works, regardless of their form of expression. Such works include but are not limited to faculty-prepared works such as textbooks, course materials and refereed literature. Such works include those of students created in the course of their education, such as dissertations, papers and journal articles. Furthermore, the System claims no ownership in popular nonfiction, novels, poems, musical compositions or other works of artistic imagination that are not works for hire."

Policy #

Established: 11/03

Revised:

Section: Employment

Subject : Pre-Employment Screening Policy

Reference:

POLICY

Introduction

In order to create a safe and secure workplace and to ensure that University of Arizona employees are qualified to perform the jobs for which the University hires them, the University will conduct pre-employment screening for all positions.

Standard Pre-employment Screening

The hiring authority or a designee shall check references and verify the educational credentials, employment histories and past performance of a finalist before it extends an offer of employment.

Professional License Checks

When an occupation or position requires an employee to have a professional license or certification in order to perform the job, the hiring authority or a designee will verify such license or certification.

Driving Records

When an occupation or position requires that an employee regularly operates a motor vehicle, the hiring authority or a designee shall work with Human Resources to verify the appropriate license and review the motor vehicle record.

Criminal History and Identity

When a position is designated as "security sensitive," the hiring authority or a designee shall work with Human Resources to obtain information on a finalist's criminal history¹ and verification of that individual's identity. This information shall be obtained for individuals not currently employed by the University of Arizona, as well as those currently employed by the University of Arizona who are seeking "security sensitive" positions. If an individual moves from one "security sensitive position" to another, the hiring authority or a designee shall work with Human Resources to obtain an updated criminal history.

Security Sensitive Position Designation

"Security sensitive" positions shall be designated by the University of Arizona and shall include, but not be limited to, the following:

1. All senior level administrator positions (president, provost, vice provosts, deans, vice presidents, department heads and department directors).
2. Positions that have unsupervised contact with children under age 16.
3. Positions that have direct access to select agents as defined by the USA Patriot Act.
4. Positions with access to residence hall rooms.
5. Other positions designated by a dean or vice-president as "security sensitive."²

Additional Requirements

Additional pre-employment background checks required by statute, rule, contract or policy are not discretionary and shall be coordinated by Human Resources.

Information Collection

A signed authorization from the applicant or finalist is required before criminal background information or pre-employment identity verification may be requested. This information will be collected in coordination with Human Resources. If a prospective employee refuses to provide such authorization for a position in which a criminal background check or pre-employment identity verification is required, then the individual will be ineligible for consideration for such position.

Information Evaluation

Human Resources shall coordinate all background checks and the reports they produce. Should a background check produce information that might prompt an adverse employment action for a current employee, Human Resources will work

with the hiring department to evaluate the value of the information against the total past employment record and future employment potential. When considering whether to employ an individual with a criminal history, the hiring authority, in partnership with Human Resources, will assess the relevance of a criminal conviction to job duties, the date of the most recent offense, the nature of the offense, and the accuracy of the information the individual provided on the employment application.

Compliance with the Fair Credit Reporting Act

In some cases, an outside vendor may uncover information that may disqualify an applicant from employment consideration. In such a case, the University will notify the applicant of the information and provide a minimum of five days for the applicant to refute, explain or correct the information.

Record Retention

Human Resources will manage and retain pre-employment screening information. Information collected on successful applicants will be stored separately from the official employee files. Background check information collected on unsuccessful applicants will be filed maintained in HR and destroyed after three years. When criminal background information, license or motor vehicle checks, or identity verification information disqualifies an applicant from employment consideration, such information will be entered into Human Resources' background check database and maintained for a period of seven years.

Information Release

Criminal history record information shall be regarded as confidential and will not be released to any party without authorization from the University's General Counsel.

NOTES

¹Criminal background checks will include convictions within all the states in which the prospective employee has lived and worked and will include a review of the National Crime Information Center, which records outstanding felony wants and warrants.

² A dean or vice-president may designate a position "security sensitive" by notifying and justifying to the Assistant Vice President for Human Resources that the position's responsibilities may expose the University to significant liability.

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5.09 GUIDELINES FOR FIVE-YEAR REVIEWS OF DEANS AND DEPARTMENT HEADS

5.09.01 General

Five-year reviews of deans and department heads provide a broader basis for personnel evaluations regarding past performance and an opportunity to assess long-range goals and objectives. Such reviews shall appropriately take into consideration the progress of the college or department over the period reviewed, and the role of the dean or department head in this development. These reviews are to focus on the performance of the individual administrator and are distinct from ~~decennial~~ ACADEMIC program reviews.

The policy and procedures described here may not be modified by colleges or departments. **FOR PURPOSES OF CLARIFICATION, "GENERAL FACULTY" HEREIN REFERS TO MEMBERS OF THE GENERAL FACULTY AS DEFINED IN THE "CONSTITUTION OF THE GENERAL FACULTY OF THE UNIVERSITY OF ARIZONA," ARTICLE 2.**

5.09.02 Initiation of Reviews

Deans shall initiate a comprehensive review of each department head in their colleges, and the Provost shall initiate a comprehensive review of the dean of each college at intervals of no greater than five years. These reviews should be scheduled so as not unduly to burden or disrupt ongoing activities by having an excessive number of reviews at the same time.

The administrator to be reviewed shall be notified in writing no later than the beginning of the appointment period in which the review is to take place. Each administrator shall prepare a written summary of personal goals, accomplishments, and other activities in office for the period to be reviewed. This summary shall be delivered to the initiating administrator within 45 days of the notice of review. The initiating administrator shall provide a copy of the written summary to the review committee at the inception of the review process.

5.09.03 Extraordinary Reviews

Under unusual circumstances, the faculty of a college or department may wish to initiate a review of a dean or department head prior to the next scheduled periodic review. In such a situation, the following will apply:

1. Rev. 1/2000

If a petition calling for an extraordinary review of a dean or department head, signed by one-half or more of the **GENERAL FACULTY** ~~tenured and tenure-eligible faculty members, continuing or continuing-eligible academic professionals, and multi-year lecturers and senior lecturers~~ of the college or department is presented to the Provost or dean, the Provost or dean shall initiate a review. The anonymity of the petitioners shall be protected.

2. The extraordinary review will not replace the next periodic review unless that periodic review would have occurred within 18 months. Generally, no more than one extraordinary review may occur within a single five-year cycle. An

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extraordinary review generally will not occur sooner than two years following a periodic review.

5.09.04 Review Committee
Rev. 1/2000

The initiating administrator shall appoint a review committee in accordance with the following procedures outlined below. ~~Only tenured and tenure-eligible faculty, continuing and continuing-eligible professionals, and multi-year lecturers and senior lecturers may serve on these review committees or participate in the selection of committee members.~~

1. Where a dean is to be reviewed, the **GENERAL** faculty ~~and academic professionals~~ of the college shall nominate eight of their members to serve on the review committee. The Provost shall appoint four of those nominated. In addition, the Provost has the discretion to appoint up to three additional **FACULTY** members drawn from the college involved or from elsewhere **AND TO APPOINT OTHERS FROM THE FOLLOWING GROUPS: STUDENTS, CLASSIFIED STAFF, PROFESSIONALS OR COMMUNITY REPRESENTATIVES**. If the college has departments, at least one member of the committee shall be a department head in the college.
2. Where a department head is to be reviewed, the **GENERAL** faculty ~~and academic professionals~~ of the department shall elect three of their members to serve on the review committee. The dean has the discretion to appoint up to two additional **FACULTY** members drawn from the department involved or from elsewhere **AND TO APPOINT OTHERS FROM THE FOLLOWING GROUPS: STUDENTS, CLASSIFIED STAFF, PROFESSIONALS OR COMMUNITY REPRESENTATIVES**.
3. The initiating administrator shall select the chairperson of the review committee from the committee membership.
4. The initiating administrator shall direct the committee in writing, with a copy to the dean or department head to be reviewed, to conduct a review of the achievements of the dean or department head and the effectiveness of the means used to produce those achievements. The review shall be based on a description of the position, its responsibilities and all the established objectives, together with the unit's planning effort and the annual reviews of the dean or department head.

The review shall also include, but not be limited to, an assessment of the effectiveness of the performance of the dean or department head in the following areas:

- a. Leadership;
- b. Commitment to scholarly and academic affairs;
- c. Recruiting;

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- d. Management of fiscal affairs;
 - e. Affirmative action;
 - f. Developing and maintaining open communication;
 - g. Facilitating goal-setting by individuals and by the unit as a whole;
 - h. Identifying issues and resolving conflicts affecting the unit;
 - i. Developing internal and external resources;
 - j. Implementing performance evaluations and salary adjustments;
 - k. Nourishing morale and establishing a working environment conducive to achieving individual and unit goals;
 - l. Building relations with constituencies.
5. The committee shall establish its own methods of obtaining information on the areas to be reviewed, but the process must include the following:
- a. An early meeting with the administrator being reviewed to discuss his/her role and to gather any information and perspectives that the administrator would like to provide.
 - b. Solicitation of information through a standard questionnaire distributed to all faculty members assigned to the unit. Results of the survey shall be tabulated and attached to the committee report.
 - c. Systematic gathering of input from academic professionals, staff, and students through questionnaires or other means, the results of which shall be tabulated and attached to the committee report.
 - d. An announcement that the committee is available to individual faculty, academic professionals, staff, and students for written input.

The committee may solicit information from alumni and other interested groups if it deems it appropriate.

from: Constitution of the General Faculty of the University of Arizona

ARTICLE II

Members

Section 1. For purposes of University government, the General Faculty of the University of Arizona is composed of:

- a. Individuals holding more than half-time appointments in teaching, research, and/or service including faculty members who hold tenured and tenure-eligible appointments, academic professionals holding continuing and continuing-eligible appointments, and lecturers and senior lecturers holding multi-year appointments, and who are recommended by the faculty of the appropriate academic unit, approved by the President of the University and/or ratified by the Board of Regents, as well as
- b. Those individuals who, based on the recommendation of the Committee on Faculty Membership, have been approved by the Faculty Senate for membership in the General Faculty, or
- c. Such persons in categories (a) and (b) who are on Emeritus status, or
- d. Certain ex-officio members: namely, the President of the University, the Vice Presidents and Associate Vice Presidents of the University, the Deans, the Associate Deans, the Registrar, the Associate Registrar, and the University Librarian.

Section 2. No candidate for a degree at the University of Arizona shall be a member of the General Faculty.

Section 3. This membership provision shall become effective July 1, 1987. It shall not be construed to remove from membership in the General Faculty anyone properly holding such membership on June 30, 1975. Individuals who inadvertently were given faculty status between July 1, 1975 and June 30, 1987 will be reviewed by the Committee on Faculty Membership as to their status as members of the General Faculty.

Section 4. Members of the General Faculty are eligible to vote in matters of faculty government and to hold offices and to serve on committees established in accordance with this Constitution.