

Autumn 2015 - Spring 2016 Report

The Intellectual Property, Patents, Copyright Committee

Membership

The voting members of IPPC for FY2016 were

- Kristi Williams, Sociology
- Guy Rub, Law
- Chandan Sen, General Surgery
- Galal Walker, East Asian Languages and Literature
- Carolina Gill, Design
- Gerry Frankel, Materials Science Engineering
- Zhong-Lin Lu, Psychology
- James Fowler, Mathematics, Chair
- Christopher Pierce, Physics
- Matt McNair, Vice President, Economic and Corporate Engagement
- Carol Whitacre, Vice President, Research

IPPC meetings are public, so in addition to the above members, IPPC meetings included other non-voting participants. Michael Steffensmeier (Office of Legal Affairs, Senior IP Counsel and Director of IP Strategy) frequently provided input. The Tech Commercialization Office also sent David Mess (TCO, Senior Technology Licensing Manager) and Shruti Jha (TCO, Contracts Manager) to provide input.

Meeting schedule

The complexity of the patent and copyright policy process necessitated frequent meetings.

- August 25, 2015
- September 10, 2015
- September 22, 2015
- September 24, 2015
- September 29, 2015
- October 22, 2015
- October 29, 2015
- November 05, 2015
- November 12, 2015
- December 16, 2015
- February 02, 2016
- February 09, 2016
- February 16, 2016

- March 8, 2016
- March 22, 2016
- March 29, 2016
- April 5, 2016
- April 12, 2016
- April 19, 2016
- May 12, 2016
- May 24, 2016

Major Resolutions and Clarifications

There is some danger that the IPPC in 2016 - 2017 may spend significant time revisiting issues that have been addressed in 2015 - 2016. To mitigate this, we record the significant resolutions and successes of the IPPC.

Autumn 2016: The patent and copyright policy should be split

After considering feedback received from the University community on the prior year's draft policy and reviewing a wide range of IP policies at peer institutions, IPPC decided that the patent and copyright policies should be divided into two separate policy documents. Each require different procedures and involve a different range of units and stakeholders, and so a monolithic policy is less appropriate than two separate policy documents.

Autumn 2016: Clarification of drafting process

It is a challenge for IPPC to function without understanding the broader procedure for approval. In Autumn 2015, IPPC addressed the lack of clarity in several procedural issues including which committee precisely is tasked with drafting these policies. Generally, policies are handled by the Office of University of Compliance and Integrity, but the IPPC policy is one exception for two reasons.

1. Rule [3335-13-06](#) provides that: "The provisions of the policy shall be subject to review by the faculty committee on patents and copyrights and recommended to the board of trustees by the university senate."
2. The current [University Policy on Patents and Copyrights](#) provides that: "This Policy shall be reviewed from time to time by the Faculty Committee on Patents and Copyrights and a report made to the Vice President for Research. The report shall form the basis for any revision in the Policy that may be appropriate."

For the above reasons, the separate policy process that operates through the Office of University Compliance and Integrity does not govern the Patents and Copyright policy revision process. In recognition of this, the following motion was unanimously approved by Senate Steering in October 2015

IPPC proposes the initial draft. The Editing Committee proposes grammar, syntax, and formatting edits and returns the document to IPPC. IPPC sends the final draft to the Senate Steering Committee for disposition and distribution.

The [Bylaws of the University Senate 3335-19-03](#) provide further clarity about how the proposed revised policy will be processed after it is submitted by IPPC to the Senate Steering Committee:

The steering committee

- 1) Shall receive through the university senate office proposals for senate action or other presentations to the senate from any committee of the senate, or university committee or council, or member of the senate, or any member of the university community.

- 2) Shall refer all substantive proposals for senate action to appropriate committees for review prior to entering them in an agenda, unless the proposal has been generated in such committee and has been so treated.
- 3) Shall, as soon as practicable, include in the agenda of a regular meeting all items submitted by any committee of the senate, or university committee or council, or member of the senate.

Based on the above, IPPC concludes IPPC drafts policies and presents them to Steering, who places them on the Senate agenda. Expanding on this, IPPC understands that the following will define the procedures for the IP policy process.

1. IPPC proposes the initial drafts and, after a majority vote, submits it to the University Policy Review Committee (UPRC) and returns it to IPPC for review;
2. IPPC reviews the UPRC's revisions and, after majority vote, forwards it to the Senate Steering Committee;
3. Senate Steering routes the proposed draft to be reviewed by other relevant Senate committees and then includes IPPC's proposed draft in the agenda of a regular meeting of University Senate.

IPPC requests that Senate leadership clarify and communicate any proposed or planned deviations from the above procedures to the incoming (2016-2017) chair of IPPC by September 1, 2016.

March 29, 2016: Patent Policy

Attached is the policy that was endorsed by the IPPC committee. IPPC made substantial progress in 2015 - 2016 with the patent policy. The drafted document is clearer than the current policy, includes language around OSIF, updates the disbursement formulas, and ensures timelines for licensing decisions so faculty/staff inventions are processed quickly enough to ensure patent protection. IPPC desires to see the patent policy approved by the Board of Trustees as soon as possible.

As of May 2016, the patent policy resides with OUCI to be addressed by the University Policy Review Committee. The IPPC committee is expecting to receive UPRC's edits in Autumn 2016 for approval and endorsement before the revised version goes to Steering for routing to the Senate.

The incoming 2016-2017 IPPC Committee may wish to consider one proposal that was discussed and received support among some but not all members of the 2015 - 2016 IPPC Committee: That the entire text of the proposed Patent Policy and Copyright Policy should be submitted to University Senate as proposed new or revised Rules of the University Faculty. Under Rule 3335-5-41 Powers,

The university senate, subject to the authority of the board of trustees, shall have the power: (A) Under delegation by the university faculty as defined in rule 3335-5-19.1 of the Administrative Code: (1) to establish the educational and academic policies of the university...

Given the importance of copyright and intellectual property to the educational and academic mission of the university, with relevance to academic freedom and responsibility and free inquiry, it may be appropriate that the Rules of the University Faculty (the locus of shared governance) should be the exclusive home of our Intellectual Property Policies. An additional argument in favor of placing these policies in Rules is that there is substantial ambiguity and inconsistency between the procedures through which policies are approved by the Senate versus by the University Policy Process. Placing the Intellectual Property Policies in Rules would immediately resolve this ambiguity.

Spring 2016: Copyright Policy

IPPC has not endorsed or even voted to approve a copyright draft. Because it was viewed as important to solicit broader feedback, IPPC voted by e-mail to send the copyright draft to Faculty Council for discussion April 7, 2016.

Based on feedback received from Faculty Council and other stakeholders, IPPC continued to revise the copyright policy during Spring 2016. Attached is the final version that IPPC continued during Spring 2016.

IPPC expects Fall 2016 will continue the process of both soliciting broad input on the copyright policy, and continuing to edit the copyright policy. Unlike the patent policy (which now appears to have broad support), the copyright policy is likely to be contentious. Some of the remaining issues with the copyright policy include the license-back language, the definition of instructional works, definition of significant use, work made for hire, and the role of software. There is no perfect policy, so there must be a mechanism for approving a “good enough” or “better than current” policy. In terms of a timeframe, IPPC expects to endorse a copyright draft for public review before the end of November 2016.

There are many specific issues in copyright that still need to be addressed, and yet the membership of the IPPC has already come to some consensus about many of these issues. It will be important for progress in 2016-2017 that the committee does not revisit these issues without soliciting broader feedback from the University community. Attendance at IPPC meetings by the voting members of IPPC is key to the process. IPPC may consider inviting other stakeholders to IPPC meetings, like representatives from the Office of Distance Education and e-Learning to understand the issues surrounding online courses and copyright.

Rule revisions to -06 and -07

The University Senate Rules committee proposed changes to two rules governing the IPPC committee, policy, and process. IPPC weighed in on the proposed changes.

1. **3335-13-06 Rights to and interests in patentable discoveries and inventions, copyrights, and related materials.**

IPPC reviewed the Rules committee's proposed change to the -06 rule on March 8, 2016, and voted unanimously to propose the following amendment, which was emailed to the Chair of the Senate Steering Committee: "The intellectual property, patents, and copyrights committee shall review **or initiate** all changes to the policy."

Note that the proposed revision would not give IPPC the sole authority to initiate changes to the policy. In the situation in which another body proposes changes to the policy, IPPC would be given the opportunity to review those changes before making a recommendation to Senate Steering. The addition of "or initiate" simply clarifies that IPPC may be one of the bodies allowed to initiate changes to the policy, a power currently provided to IPPC in the current University Policy on Patents and Copyrights.

IPPC is concerned that, under the [March 2016 University Policy Process](#), Senior Management Council is approves policies. Until such time as greater clarity is established regarding the relationship between the University Senate's Rules of the University Faculty and the Office of University Compliance and Integrity's University Policy Process is resolved, failing to include "or initiate" could remove IPPC's power to initiate proposed changes to the policy through the Senate proposal process. This power is an important right and responsibility that senate committees have long exercised under our current policies and rules.

IPPC's proposed amendment was not included in the -06 Rule when it was placed on the Senate agenda of the April 21, 2016 meeting. Due to the introduction of a [different substantive floor amendment during discussion](#), no vote on the proposed change to the -06 Rule occurred nor was IPPC's previously submitted amendment discussed.

Given the confusion regarding the prior exclusion of our amendment, IPPC requests the opportunity to review any proposed changes to the -06 Rule that will placed on the agenda of the University Senate in the 2016-2017 to ensure that the amendment described above is properly included for consideration by the full body of the University Senate.

2. **3335-13-07 Rules governing faculty and staff participation in companies commercializing university research.**

A [revision to the -07 Rule](#) was presented by the Rules Committee and approved by University Senate at the April 21, 2016 meeting.

Bylaws

The bylaws of the IPPC were approved by a majority of the IPPC members at the conclusion of the academic year. The substantive issue addressed in the bylaws is a procedure for voting by e-mail.

Chair

Kristi Williams will be serving as chair of IPPC for Autumn 2016 - Spring 2017.

POLICY

I. Mission and Philosophy

- A. The purpose of Ohio State is to advance the well-being of the people of Ohio and the global community through the creation and dissemination of knowledge.
- B. The university encourages faculty, staff, and student to engage in activities that can result in discoveries, inventions, patents, and tangible property that can serve the public through open academic exchange and commercial development. The Ohio State University is committed to creating a culture and infrastructure that nurtures these activities and highlights the capacity of its faculty, staff, and students to contribute to society. The university recognizes the importance of intellectual freedom and autonomy of faculty, staff, and students.

Purpose of the Policy

- II. This policy establishes rules regarding the ownership, distribution, and commercialization of Intellectual Property created by faculty, staff, and students of The Ohio State University. In doing so it also:
 - A. guides decision-making on the university's protections and incentives to encourage the discovery and development of new knowledge, its transfer for the public benefit, and its use for economic growth;
 - B. enhances recognition and reputational benefits for the Creator(s) of Intellectual Property; and
 - C. preserves both the university's and its employees' and students' freedom to conduct research and to use the IP created by such research.
- III. This policy is subject to all effective laws including federal law and Ohio law, and in particular Ohio Revised Code §3345.14.
- IV. Nothing in the policy will be constructed to limit the university from entering into specific written agreements:
 - A. with any faculty, staff, or students that will specify different terms regarding the ownership, distribution, and commercialization of Intellectual Property; or
 - B. with third parties in connection to Sponsored Research, which may specify different terms regarding the ownership, distribution, and commercialization of Intellectual Property that resulted from such Sponsored Research.

If any term in any such agreement conflicts with any term of this policy, the term of the agreement will govern.
- V. The rights and obligations of the university, its employees, students, and affiliates with respect to copyright will continue to be governed by the university's current Policy on Patents and Copyrights, as amended from time to time. This policy replaces the university's current Policy on Patents and Copyrights with respect to any other subject matter covered by that policy. [If a copyright policy is enacted together with this Patent Policy, this provision might need to be amended to reflect it]
- VI. With the exception of specific written agreements to the contrary (see Section IV), nothing in this policy shall be interpreted to prevent any faculty, staff, or student from sharing the results of his or her research and other academic activities with others, including by publishing those results.



Definitions

Term	Definition
Direct Expenses	Costs, expenses, taxes, and losses paid or incurred by the university or on its behalf that are directly attributable to the IP being transferred, commercialized, or exploited, or relating to the creation, preservation, marketing, licensing, and legal protection of such IP, and the costs, including taxes, to acquire, manage, transfer, or liquidate equity to be used for the transference, commercialization, or exploitation of such IP.
Intellectual Property or IP	For purpose of this policy, Intellectual Property or IP includes all discoveries, inventions, and patents covered by Ohio Revised Code §3345.14(B), as well as Tangible Research Property.
Creator	With respect to patentable IP, as well as know-how and any other IP related to such patentable IP, Creator means any inventor, as the term is defined under U.S. patent law. With respect to Tangible Research Property, Creator means any individual who has taken part (a) in the conception of the idea of the specific Tangible Research Property that is to be made and/or (b) substantially in making the Tangible Research Property but only where making the Tangible Research Property was not a routine or known practice. A person will not be considered a Creator of a new Tangible Research Property solely because of providing materials to be used to produce the new Tangible Research Property. With respect to any other IP, Creator means any individual who provided substantive and substantial intellectual contribution to the creation of an IP. Creator may be faculty, staff, or students.
Intellectual Property, Patents and Copyrights Committee (IPPC)	A standing senate committee as defined by The Ohio State University's Faculty Rules.
Net Proceeds	Gross Proceeds less Direct Expenses.
TCO	The university Technology Commercialization Office (and any successive university office thereof).
University IP	All IP owned by the university, pursuant to this policy.
Gross Proceeds	All cash received from the transfer, commercialization, or other exploitation of IP including, but not limited to, royalties; option fees; license fees; technology access fees; reimbursement of expenses; and/or cash from dividends or distributions on, or the sale or liquidation of, equity.
Sponsored Research	Research projects that are supported by funding typically provided in response to a request or proposal to a government or industrial sponsor, or by specific deliverables in a grant from a funding entity. A research or other activity undertaken by the university or one of its units that is subject to specific obligations to another party.
OSU Proceeds	The amount of Net Proceeds received by the University directly or as a distribution from OSIF.
Tangible Research Property	Research results that are in a tangible form as distinct from intangible property. Examples of tangible property include, but are not limited to, cell lines; data; human, animal, and plant tissue; transgenic animals; antibodies; biological organisms; and circuit chips. Tangible mediums of expression in which copyrighted works are fixed, including, but not limited to, books, copies or articles, and music sheets, are explicitly excluded and will not be considered Tangible Research Property.
OSIF	Ohio State Innovation Foundation, a 501(c)(3) organization, formed in 2013 by the university for the purpose of managing intellectual property developed at or created by The Ohio State University and to facilitate the commercialization of such intellectual property. At that time, certain Intellectual Property, as well as the rights to certain future University Intellectual Property was transferred to OSIF. "OSIF" shall include any successive entity to Ohio State Innovation Foundation.



Policy Details

VII. Ownership

- A. All rights, title, and interests in IP are the sole property of the university. The university hereby assigns to the Creator(s) every IP (i) developed by faculty or staff acting outside of the scope of their employment provided that such IP was developed with no more than insignificant use of university resources, or (ii) developed by a student, provided that such IP is not owned by the university pursuant to Section VII.B and was not developed by a student who is an employee within the scope of such student employment or with more than insignificant use of university resources. Faculty, staff, and students acknowledge that they are bound by this policy by accepting or continuing university employment or by using university resources or facilities and hereby irrevocably assign all rights, title, and interests in such IP to the university. Insignificant use of university resources includes de minimis use of the following: university network and email system, office space, libraries and their resources, traditional desktop and laptop personal computers and software that is traditionally installed thereon. Insignificant use of university resources shall not include the use of (i) other university employees or students in developing, testing or distributing the IP, or (ii) university laboratories or equipment besides the computers referred to above.
- B. Intellectual Property developed by non-employee students is owned by the university when the student created the IP as part of a Sponsored Research project, special program or a course (e.g., a capstone project or a design laboratory or project), provided that the university notified the student in writing of its intent to own such IP prior to its development. Such written notification can be published in any reasonable way including as part of the policies or rules of the unit with which the student is affiliated or in the syllabus or other written notifications published in connection with the special program or course in which the IP is to be developed. Except for the foregoing, but subject to Section VII.A above, all other Intellectual Property created by a student is the property of the student. Every student hereby grants the university a perpetual, nonexclusive, royalty-free license to use any Intellectual Property created as part of the requirements for a university degree program for administrative purposes, such as assessment of a work, accreditation purpose, and to prevent fabrication, falsification, and plagiarism.

VIII. Proceeds Distribution

- A. For University IP transferred to OSIF, Net Proceeds will be distributed as follows:
1. For Net Proceeds up to \$100,000, OSIF will retain 50% of the Net Proceeds and will distribute the remaining 50% of the Net Proceeds to the university as OSU Proceeds for distribution to Creators pursuant to Section VIII.B.1, below. The retention of 50% of the Net Proceeds by OSIF under this Section VIII.A.1. will be specifically used to cover unreimbursed patent expenses.
 2. When Net Proceeds exceed \$100,000, the first \$100,000 will be distributed in accordance with Section VIII.A.1, and any portion of the Net Proceeds beyond the first \$100,000 will be distributed as follows: 15% of these Net Proceeds will be retained by OSIF and 85% of these Net Proceeds will be distributed to the university as OSU Proceeds pursuant to Section VIII.B.2, below.
- B. OSU Proceeds will be distributed as follows:
1. For OSU Proceeds up to \$50,000, the Creator(s) will receive 100% of these OSU Proceeds.
 2. When OSU Proceeds received as a distribution from OSIF exceed \$50,000, the first \$50,000 will be distributed in accordance with Section VIII.B.1. and any portion of the OSU Proceeds beyond the initial \$50,000 will be distributed as follows:
 - 40% to the Creator(s),
 - 20% to the university, and
 - 40% to the Creators' colleges, departments, and centers, according to instructions and policies established by the provost.



- C. In case of more than one Creator, the Creators will equally share the Creators' share under Section VIII.B, unless all the Creators agree in writing to a different distribution of the Creators' share.
- D. When multiple IP assets are licensed or otherwise commercialized under a single agreement, TCO, after consulting with the Creator(s), shall reasonably determine and designate the share of OSU Proceeds to each IP asset.
- E. When there are no identifiable Creator(s) of Tangible Research Property, the portion of the OSU Proceeds distributable under Section VII.B. to Creator(s) will be distributed instead to the colleges, departments, and centers that obtained the Tangible Research Property, according to instructions and policies established by the provost. When multiple colleges, departments, and/or centers are involved in obtaining the Tangible Research Property, the OSU Proceeds will be divided equally among these units, unless otherwise specified by instructions and policies established by the provost.
- F. Notwithstanding the other provisions in this policy, for licensed plant varieties, proceeds will be distributed pursuant to Special Circular 178-01 entitled "OSU-OARDC Plant Germplasm Release Guidelines and Practices – Policy for Royalty Distribution Associated with Plant Varieties."
- G. Creator(s) will be entitled to receive a share of the OSU Proceeds as provided by this policy even if their status vis-à-vis the university changes, including, for example, after their employment or program of study was terminated or completed. Following a change in the university IP policy, the Creator(s) will be entitled to receive, with respect to any distribution made after such a change, the greatest of (i) the share of the Net Proceeds as provided by the university policy at the time the IP was disclosed and (ii) the share of the Net Proceeds as provided by the university policy at the time the distribution is made. For the avoidance of doubt, the Creator(s) will not be entitled to receive any additional distribution or any other compensation with respect to distributions that were made prior to such a change in the IP policy.
- H. Nothing in this policy is intended to limit the transferability of rights of Creators to their heirs and assigns. Without limiting the foregoing, the distribution of proceeds to Creators under this Section VIII shall be made to Creators, their heirs and assigns, as applicable.

PROCEDURE

IX. IP Evaluation, Protection, and Dissemination

- A. The senior vice president for business and finance and the provost will be in charge of the implementation of this policy on behalf of the university. All or a portion of the administration of activities with respect to this policy, except with respect to the responsibilities to administer disputes as set forth in Section X, may be delegated to other university officials. In consultation with the senior vice president for business and finance, the provost, IPPC, and the vice president of research, the vice president responsible for the operations of TCO will establish operational guidelines and procedures, subject to the terms of this policy, for the administration of University IP, including but not limited to determination of ownership, assignment, protection, licensing, marketing, maintenance of records, and oversight of revenues collection.
- B. In all its decisions pursuant to this policy TCO will strive to reasonably (i) advance the well-being of the people of Ohio and the global community by supporting the creation and dissemination of knowledge, and (ii) maximize the commercial value of University IP. Without limiting the foregoing, TCO will:
 - 1. facilitate evaluation of University IP, and such evaluation shall include consideration of the market for such University IP and the competitive market landscape;



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2. identify potential commercial partners for University IP. This may include using multiple networks of contacts, including those made available from the Creator(s), alumni, and other sources;
 3. negotiate agreements, licensing or otherwise, in connection to the commercialization of University IP; and
 4. take any other actions reasonably necessary to facilitate the commercialization of University IP.
- C. The university trusts faculty, staff, and students to participate throughout the Intellectual Property creation and preservation process. All University IP with commercial value (or otherwise required to be disclosed pursuant to an obligation to a third party) must be promptly disclosed in writing by the Creator(s) to TCO, using a disclosure form.
1. The disclosure must:
 - a. consist of a full and complete description of the University IP;
 - b. describe the funding sources used in development of such University IP; and
 - c. identify all persons participating in the creation and development of the University IP.
 2. Upon reasonable request from TCO, the Creator(s) will furnish any additional reasonable information, including the know-how related to the invention or discovery, and will execute documents in connection with the University IP (such as assignments and declarations).
- D. Upon receipt by TCO of a disclosure form as described above, the disclosed University IP will be assigned to a TCO representative. The assigned representative will facilitate evaluation of the IP with respect to patentability, commercial potential, and obligations to sponsors or other third parties. This process will include:
1. a discussion with the Creator(s) led by the TCO representative;
 2. a search of prior art, if necessary. The TCO representative may reasonably request that the Creator(s) participate in such search; and
 3. determination of whether IP protection, and in particular patent protection, should be pursued, taking into consideration, among other things, commercial potential. Although patent protection is sometimes sought for various noncommercial reasons, such as professional status, the university will not seek protection for University IP, including patent protection, that is not deemed to have commercial potential (even if the University IP is intellectually meritorious), unless such protection (i) is requested by the sponsor of Sponsored Research and such sponsor pays for such protection, or (ii) is authorized by the senior vice president for business and finance or the provost, at their sole discretion. The evaluation of the commercial potential will be based upon, among other things, patentability, scope of potential patent coverage, size of market, competition, and potential market share.
- E. TCO will regularly update the Creator(s) on the status of the University IP disclosed by such Creator(s):
1. TCO will provide the first status update within three months of receiving the disclosure form and a second status update within six months of the date of receipt of a disclosure form. Such status updates will include any filing decisions regarding IP protection or transfer of the University IP.
 2. TCO will provide a detailed summary of substantive decisions regarding protection, commercialization, and/or transfer of IP promptly after those decisions are made.
- F. In some cases University IP will be assigned to its Creator(s):
1. Under the following circumstances, Creator(s) will be allowed to require (subject to any third party approvals required, e.g., approval of a federal funding agency) assignment, free of charge, of University IP to them, and TCO will promptly effect such assignment:
 - a. If the Creators(s) provide TCO with evidence of a concrete potential commercialization partner for the University IP, such as a potential licensee thereof, and TCO does not complete, in good faith, its review and determination of the University's interest in such opportunity within six months.
 - b. If the University IP may reasonably be protected by a patent, and TCO does not complete, in good faith, its review and determination of the University's interest in such University IP, within six months of



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TCO becoming aware of a public disclosure of such University IP. Public disclosure under this section includes any disclosure that will make the University IP ineligible for patent protection in the United States, unless patent application is filed within one year of such disclosure.

- c. If TCO does not complete, in good faith, its review and determination of the University's interest in such University IP, within twelve month of receipt of a disclosure form.
2. TCO is encouraged to cause assignment to Creator(s) any University IP which, in TCO discretion, is not currently commercialized by the university or on its behalf and that is not expected to be commercialized by the university or on its behalf in the foreseeable future, unless such assignment would have an adverse impact on the ability to commercialize other University IP or such assignment cannot be legally made for any reason (e.g., a required third party approval was not secured). The university and OSIF may place terms on such assignment including requiring, at TCO's discretion, payment in consideration for such assignment.
3. In case of multiple Creators, the university or OSIF will assign the IP to all Creators according to this Section IX.F as joint owners, unless all Creators agree in writing to a different arrangement. Except for assignment to the Creator(s) according to Section IX.F.1 (or an assignment from OSU to OSIF), TCO will not assign the IP for no consideration.

- C. University employees engaged in external consulting work or business, and those charged with approving such activities, are responsible for ensuring that agreements with external entities are not in conflict with this policy; any other university policy, including the Policy of Faculty Paid External Consulting; or the university's contractual commitments.

X. Policy Interpretation and Dispute Resolution

- A. This policy and its implementation may require interpretation and review. University constituents (such as Creator(s), employees, and TCO) should make every attempt to resolve disputes informally among themselves and, if needed, with the assistance of the Office of Academic Affairs and/or the Office of Legal Affairs.
- B. If informal procedures and consultation do not provide resolution of a dispute regarding this policy, the following actions may be taken:
 1. Any person or entity directly affected by decisions or actions of any other person or entity in connection with this policy, may appeal such decisions or actions to the IPPC if such person or entity (hereby, the claimant) believes such decisions or actions are inconsistent with this policy.
 2. The claimant will submit the complaint in writing to the chair of the IPPC, who will determine whether the claimant has made a reasonable effort to resolve the dispute informally and whether the substance of the dispute appears to be within the scope of the IPPC's review authority under this policy.
 3. Proceedings will be informal, but all parties will have adequate notice and an opportunity to be heard. The IPPC may establish additional procedures for resolving such disputes, and may designate a sub-committee of its members for such procedures.
 4. After considering all relevant information and within 30 days of receipt of the complaint, the IPPC will prepare and send to the senior vice president for business and finance and the provost a report of its findings on the issues raised by the complaint and any corrective actions it recommends, within the scope of this policy.
 5. Within 30 days of receipt of the IPPC report, the senior vice president for business and finance and the provost will review the IPPC report and make a final decision on behalf of the university and provide this decision to all the parties involved and the IPPC.

XI. Policy Review and Revisions



**THE OHIO STATE
UNIVERSITY**

Patent Policy

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Unless provided otherwise by the University Rules, this Policy shall be reviewed from time to time by the IPPC which will issue written reports to the senior vice president for business and finance, the vice president of research, and the provost. Such reports shall form the basis for any revision to the policy.

Copyright Policy

Office of Business and Finance

POLICY

- I. Mission and Philosophy
 - A. The purpose of The Ohio State University is to advance the well-being of the people of Ohio and the global community through the creation and dissemination of knowledge.
 - B. The university encourages faculty, staff, and students to engage in the free and creative expression and exchange of ideas. The Ohio State University is committed to creating a culture and infrastructure that nurtures these activities and highlights the capacity of its faculty, staff, and students to contribute to society. The university recognizes the importance of intellectual freedom and autonomy of faculty, staff, and students.

PURPOSE OF THE POLICY

- II. This policy establishes rules regarding ownership, distribution, and commercialization of copyrightable works created by faculty, staff, and students. In doing so it also:
 - A. guides decision-making on the university's protections and incentives to encourage the dissemination of new knowledge, its transfer for the public benefit, and its use for economic growth;
 - B. enhances recognition and reputational benefits for the creators of copyrightable works; and
 - C. preserves both the university's and its employees' and students' freedom to conduct research and to disseminate copyrightable works arising from such research.
- III. Nothing in this policy will be constructed to limit the university from entering into specific written agreements:
 - A. with any faculty, staff, or students that will specify different terms regarding the ownership, distribution, and commercialization of copyrightable works; or
 - B. with third parties in connection to sponsored research or other work, which may specify different terms regarding the ownership, distribution, and commercialization of copyrightable works that resulted from such sponsored research or other work.If any term in any such agreement conflicts with any term of this policy, the term of the agreement will govern.
- IV. This policy replaces the university's current Policy on Patents and Copyrights with respect to copyrightable works.
- V. Policy governing patentable software is contained in The Ohio State University Patent Policy.

DEFINITIONS

Term	Definition
Commissioned work	A copyrightable work prepared under a written agreement between the university and the creator when the creator is not a university employee, or the creator is a university employee but the work to be performed falls outside the normal scope of the creator’s university employment.
Copyrightable works	Original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, software, traditional or electronic correspondence, and on-line instructional materials, that are likely to be subject to protection under United States copyright law. Copyright protects works of creatorship that have been expressed in a tangible form that are subject to copyright law.
Institutional Work	Institutional work is a copyrightable work agreed on between the university and creator in writing, the creation of which is supported by a specific allocation of university funds.
Work made for hire	A work prepared by a university employee within the scope of his or her employment. Consistent with United States copyright law, the university is considered the author of works made for hire. For more information, see http://www.copyright.gov/eco/help-author.html

POLICY DETAILS

VI. Ownership

- A. The university supports longstanding academic tradition that faculty own the copyright to instructional, scholarly and artistic works resulting from their research, teaching, and writing. It is the policy of the university that all copyrights in instructional, scholarly and artistic works shall remain with the creator except for copyrightable works that are: a work made for hire that are not instructional, scholarly or artistic works; an institutional work; commissioned by the university; created through significant use of university resources; created in connection with the administration of the university; or otherwise subject to contractual obligations. Instructional, scholarly, and artistic works include those of students created in the course of their education, such as dissertations, papers and articles, as well as nonfiction, novels, textbooks, poems, musical compositions, or other works of artistic imagination.
- B. Creators of instructional works hereby grant the university the right to use the instructional works and to make and use derivative works thereof in university’s internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis.
- C. All faculty, staff, student employees, graduate students and postdoctoral fellows, as well as non-employees who participate or intend to participate in teaching and/or research or scholarship projects at the university are bound by this policy. Except as described in VI.A. above, this policy hereby assigns rights to such copyrightable works resulting from university projects to the university and those subject to this policy are deemed to assign their rights to such copyrightable works.
- D. Under the Copyright Act, copyrightable works of non-employees such as consultants, independent contractors, etc. generally are owned by the creator and not by the university, unless there is a written agreement to the contrary. As it is the university’s policy that the

university shall retain ownership of such copyrightable works (created as institutional rather than personal efforts), the university will generally require a written agreement from non-employees that ownership of such works will be assigned to the university. Examples of works which the university may retain non-employees to prepare are:

- reports by consultants or subcontractors,
 - computer software,
 - architectural or engineering drawings,
 - illustrations or designs,
 - artistic works.
- E. Unless provided otherwise by a written agreement, copyright in copyrightable works prepared by students as part of the requirements for a university degree program are recognized to be the property of the student, subject to the following provisions:
- i. The university has a perpetual, nonexclusive, royalty-free license to use the copyrightable works in any way (including but not limited to duplicate, perform, reproduce, modify, distribute, and create derivatives of the work) for administrative purposes, such as assessment of the work, accreditation purpose, and to prevent fabrication, falsification, and plagiarism.
 - ii. The university has a perpetual, nonexclusive, royalty-free right to retain copies of a student's thesis or dissertation for archival use.
 - iii. The University may require the student to provide a copy of the thesis or dissertation for non-commercial library use.
- F. Online instructional materials are considered copyrightable works not owned by the university, unless these were:
- i. specifically commissioned by the university from a faculty member or any other person,
 - ii. created with significant use of university resources, or
 - iii. created by non-faculty staff within the scope of their employment.

For clarity, this policy only applies to the aspects of the online instructional materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials. Faculty creators of instructional materials that are provided to students electronically (including through the internet) may commercialize such works, so long as the university's name is not used other than to identify the faculty member's position at the university.

- G. If the creator of a copyrightable work makes such work through significant use of university resources, he or she shall disclose the work to the Technology Commercialization Office and assign title to the university.
- H. When copyright is assigned to the university because of the provisions to this policy, the creator of the copyrightable work may make a request to the Vice President of the university office responsible for administration of this policy that such ownership be reconveyed back to the creator. Such a request can at the discretion of the Vice President, granted it does not: (i) violate any legal obligations of or to the university, (ii) limit appropriate university uses of the materials, (iii) create a real or potential conflict of interest for the creator, or (iv) otherwise conflict with university goals or principles.

VII. Proceed Distributions

- A. Royalty income received by the university for copyrightable works will normally be distributed in accordance Section VII of the university's Patent Policy except that a creator of the applicable copyrightable work (including employee-creators of works for hire) shall be treated as a creator under the Patent Policy for the purposes of proceeds

distributions made thereunder. For clarity, income derived from student tuition shall not be considered royalty income received by the university.

VIII. Policy Interpretation and Dispute Resolution

- A. This policy and its implementation may require interpretation and review. University constituents (such as Creator(s), employees, and TCO) should make every attempt to resolve disputes informally among themselves and, if needed, with the assistance of the Office of Academic Affairs and/or the Office of Legal Affairs.
- B. If informal procedures and consultation do not provide resolution of a dispute regarding this policy, the following actions may be taken:
 - i. Any person or entity directly affected by decisions or actions of any other person or entity in connection with this policy, may appeal such decisions or actions to the IPPC if such person or entity (hereby, the claimant) believes such decisions or actions are inconsistent with this policy.
 - ii. Any person or entity directly affected by decisions or actions of any other person or entity in connection with this policy, may appeal such decisions or actions to the IPPC if such person or entity (hereby, the claimant) believes such decisions or actions are inconsistent with this policy.
 - iii. Proceedings will be informal, but all parties will have adequate notice and an opportunity to be heard. The IPPC may establish additional procedures for resolving such disputes, and may designate a sub-committee of its members for such procedures.
 - iv. After considering all relevant information and within 30 days of receipt of the complaint, the IPPC will prepare and send to the senior vice president for business and finance and the provost a report of its findings on the issues raised by the complaint and any corrective actions it recommends, within the scope of this policy.
 - v. Within 30 days of receipt of the IPPC report, the senior vice president for business and finance and the provost will review the IPPC report and make a final decision on behalf of the university and provide this decision to all the parties involved and the IPPC.

IX. Policy Review and Revisions

- A. Unless provided otherwise by the University Rules, this policy shall be reviewed from time to time by the IPPC which will issue written reports to the senior vice president for business and finance, the vice president of research, and the provost. Such reports shall form the basis for any revision to the policy.

Bylaws

The Intellectual Property, Patents, and Copyright Committee

May 2016

Article I. Authorization.

Section 1. University Rule.

The Intellectual Property, Patents, and Copyright Committee (hereafter IPPC) is a standing committee of the University Senate and operates pursuant to Rule 3335-5-48.19 of the Administrative Code.

Section 2. Subordination.

All activities of IPPC are subject to the University Rules. These Bylaws are likewise subject to, and must be consistent with, the University Rules and the University's policies regarding Intellectual Property. Where these Bylaws may differ from the University Rules or such policies, the Rules or policies will govern.

In questions of procedure and organization which are not specifically covered by these Bylaws or by the Rules, then the current edition of Robert's Rules of Order, will govern.

Article II. Charge.

The Intellectual Property, Patents, and Copyright Committee will

- review, recommend, and advise the university senate on matters relating to the university policy on intellectual property, patents, and copyright and faculty rules 3335-13-06 and 3335-13-07 of the Administrative Code;
- review the procedures used in implementing and administering the university policy on intellectual property, patents and copyrights, and where deemed necessary, develop and recommend changes in standards and procedures to the vice president for technology commercialization, the vice president for research, the executive vice president and provost, and other appropriate officers of the university;
- consult with the vice president for technology commercialization and the vice president for research when requested;
- review from time to time the current University's policies regarding intellectual policies, issue written reports to the senior vice president for business and finance, the vice president of research, and the provost thereof, propose changes to such policies, and review changes to such policies proposed by others; and
- serve as a board to hear and decide on appeals related to the administration of the University's policies regarding intellectual policies, as provided by such policies.

Article III. Membership.

Section 1. Membership.

According to University Rule 3335-5-48.19, the IPPC consists of eleven members.

1. Eight faculty members: four tenured faculty, two probationary tenure-track faculty, and two non-tenure track faculty from any of the categories. Each member is to serve three years with one-third of the members rotating off each year. Five faculty members are appointed by the executive committee of faculty council and three faculty members are appointed by the university president in consultation with faculty leadership.
2. One graduate student.
3. The vice president for technology commercialization.
4. The vice president for research.

A vacancy does not prevent the IPPC from conducting its business.

Section 2. Term of Appointment.

With respect to the faculty members of the committee, service on the committee shall be for terms not to exceed three years. A faculty member may become eligible for committee service again after an absence from the committee of at least one year.

Section 3. Calendar year.

Each term begins on August 15 of the appointment year.

Section 4. Responsibilities.

Members are expected to attend meetings, to contribute collegially to discussions, to send and receive e-mails from the membership and officers, and to study relevant issues or cases which are placed before the IPPC.

Article IV. Officers.

Section 1. Election.

The election of new officers proceeds by a written and recorded vote.

Section 2. Officers.

The officers of IPPC consist of a Chair and a Secretary.

Section 3. Eligibility.

Only members of the IPPC are eligible to be officers, and the Chair must be a member of the University faculty in the second or third year of a three-year term.

Section 4. Election.

Each officer of IPPC is elected by a recorded and written majority vote of the membership.

Section 5. Term and Schedule.

Officers of the IPPC are elected in the Spring Semester at the last regular meeting of the academic year or via Electronic Voting. Officers hold office for 1 year, with their term beginning on the

August 15 following their election and ending one year later.

Section 6. Temporary absence.

When the Chair is temporarily absent, the Chair must appoint another faculty member of IPPC to serve as Chair. When the Secretary is absent, the Chair may appoint another member to record minutes, or may record the minutes him/herself.

Section 7. Duties of Officers.

1. Chair.

The Chair calls and presides over all meetings of the IPPC and is responsible for the general direction of the IPPC and for setting the agenda of each meeting. The Chair will distribute an agenda prior to each scheduled meeting via e-mail.

The Chair is responsible for complying with FOIA and any other reporting requirements, including the initial drafting of the annual report. At the conclusion of each Academic Year, the Chair ensures that the annual report and an accurate copy of these Bylaws are submitted to the Secretary of the University Senate.

2. Secretary.

The Secretary will supervise meetings, will take accurate minutes and attendance records of each meeting of the IPPC, and will file a draft of the minutes with the Chair promptly after the conclusion of each meeting of the IPPC.

Article V. Meetings.

Section 1. Scheduling.

Notice of a meeting must be made via e-mail to all IPPC members as early as possible but at least a week in advance of any regular meeting. All meeting announcements must contain a time and place. All reasonable attempts will be made to schedule meetings of the IPPC at a time convenient for the membership.

The Chair will circulate an agenda for each regular meeting as early as possible and at least 72 hours before such meeting. The agenda will include, among others, the topics to be discussed and the issues to be voted on in the meeting. IPPC will not vote in a meeting on issues that were not included in such agenda.

Section 2. Public.

At regular meetings of the IPPC, all members of the University are welcome to attend. The Chair may request non-members to be present at a regular meeting of the IPPC.

Section 3. Quorum.

A majority of the voting membership constitutes a quorum. When a quorum is present, the action of the majority of those present shall constitute the action of the entire IPPC, except as provided in these Bylaws.

Section 4. Private hearings.

Under certain University policies, the IPPC may be called upon to adjudicate certain appeals. Unless such policies state otherwise, such hearings are not open to the public.

Such hearings do not constitute a regular meeting of the IPPC for the purpose of doing business.

Section 5. Electronic voting.

Business of the IPPC may be conducted electronically. Any member may make a proposal by sending e-mail to all other members of the IPPC containing the text of the proposal and a deadline (at least a week in the future) when votes will be counted. The proposal, if approved by a majority of the members, will take effect immediately at the scheduled deadline, as if a special meeting had been called.

All votes must be made in public by e-mailing the membership of IPPC. A record of all such proposals and the results of such votes will be recorded in the meetings of the next regular meeting of the IPPC.

Section 6. Subcommittees.

The Chair may establish subcommittees as he/she may deem appropriate to accomplish specific short-term projects. Such subcommittees will act in an advisory role to IPPC and may not take action on behalf of IPPC. Subcommittees will provide timely reports to the full committee.

Article VI. Super Majority Votes.

The following decisions will require a super majority vote of at least six members of IPPC:

- (a) Any amendment to these Bylaws.
- (b) And proposed revision to any of the University's policies regarding intellectual property.