

2016-2017 ANNUAL REPORT

Committee on Intellectual Property, Patents, and Copyright (IPPC) May 2, 2017

Prepared by Kristi Williams, IPPC Chair 2016-2017, and approved by IPPC

Composition of IPPC Committee 2016-2017

<u>Name</u>	<u>Source</u>	<u>Term Expires</u>
Anna Gawboy	Faculty Council	2019
Carmen DiGivone	Faculty Council	2019
Matthew Stolfus	Faculty Council	2019
Kristi Williams (Chair)	Faculty Council	2018
Guy Rub	Faculty Council	2018
Ben McCorkle	Faculty Council	2017
Jim Fowler	President Appointed	2019
Zhong-Lin Lu	President Appointed	2017
Christopher Pierce	Council of Graduate Students	2017
Matt McNair	VP/Economic and Corporate Engagement	
Carol Whitacre	VP/Research	

Regular Non-Voting Attendees:

Mike Steffensmeier Sr. Associate General Counsel (Legal Affairs) at TCO

DJ Nag: Associate Vice President, Technology Commercialization at TCO

David Mess, Assistant Director of Licensing at TCO

Shruti Ja, Senior Manager Operations and Compliance at TCO

Summary of 2016-2017 Activities and Approvals

- Past: At the end of the 2015-2016 academic year, we submitted a proposed draft Patent policy approved by IPPC with our annual report. No action was taken on this proposed draft while the committee continued work on the copyright portion of the policy this year.
- During 2016-2017, we met approximately twice per month. The primary focus has been on revising the copyright policy. This was by far the most contentious issue, both when this had been attempted in the past and currently within the various stakeholders represented at our committee meetings.
- It took some time to reach consensus over several key issues including: (1) copyright of instructional works and licensing to the university, (2) copyright of software (3) staff

copyright for works beyond the scope of their employment or in positions in which they set their own scholarly or artistic agendas.

- After reaching agreement on these issues, IPPC began discussions with TCO to update the draft patent policy, given some new legal changes as well as the arrival of DJ Nag who had not been involved in last year's drafting. After resolving remaining issues, we decided to integrate the two policies into a single "Intellectual Property" policy.
- See "Minutes of May 2, 2017 Meeting" below for summary of IPPC end of year resolutions that provide a guide for the incoming 2017-2018 IPPC Committee and ongoing Senate action on the policy.

Meeting Minutes May 2, 2017

IPPC Members Present: Kristi Williams, Guy Rub, Christopher Pierce, Carmen DiGiovione, Zhong-Lin Lu, Matt McNair, Ben McCorkle (quorum present)

- IPPC voted unanimously to approve the new IP policy document (presented in Appendix B) conditional on the following set of procedures being carried out 2017-2018 (reached in agreement with incoming Senate Secretary Ben Givens and IPPC Chair Kristi Williams):
 - a. The Senate office will forward our IPPC approved IP policy to OUCI, with the hope that they can begin their policy review process this summer.
 - b. A continuing member elected by IPPC (Kristi Williams, see below) will sit the OUCI Policy Review group that continues work on the IP policy.
 - c. After the IP policy has gone through the OUCI Policy Review process, it will be returned to IPPC to review and consider any suggested changes. At that point, IPPC will solicit and consider feedback from faculty on the policy and consider any needed changes. Note that IPPC plans to solicit feedback from faculty *in addition* to any feedback solicited by OUCI in their policy review process. The Senate Steering office has offered to assist IPPC in soliciting feedback from faculty via email. Assuming this process results in no major substantive changes, IPPC hopes that the policy would not then be required to go through a second full OUCI Policy Review Process. However, IPPC will be in touch with OUCI at that point via Senate Steering with a redlined version of the document to determine if additional OUCI review is required. Regardless, the expectation is that any subsequent review required by OUCI would proceed more quickly than the initial review. If OUCI recommends changes following such a second review, these changes must be approved by IPPC via committee vote.
 - d. After the process described above, IPPC will vote on a final IP policy to submit to Senate Steering for placement on the Senate agenda (after review by Faculty Council as Senate Steering deems appropriate).
 - e. Assuming the OUCI policy process begins in Summer 2017, it seems feasible that we would be able to bring the IP Policy to Senate in Fall 2017.
- IPPC unanimously elected Guy Rub as Chair of IPCC for 2017-2018

- IPPC unanimously elected Kristi Williams to sit on the OUCI Policy Working Group which will review the attached IPPC-approved IP policy before returning it to IPPC for final review.
- IPPC reviewed and agreed to continue our existing bylaws (presented in Appendix A).
- By subsequent email vote (on May 10, 2017), IPPC unanimously voted to approve and submit to the University Senate office this 2016-2017 Annual Report Document.

Plans for IPPC in 2017-2018

- Achieving Senate and Board of Trustees approval of the new policy in the 2017-2018 academic year will require that the incoming 2017-2018 IPPC Committee continue the process described above and that they not independently revisit the policy and/or make substantial substantive changes upon convening in Fall 2017. Several factors should ensure continuity of our work across academic years: (a) Little transition in the membership of the IPPC committee is expected from 2016-2017 to 2017-2018, (b) Guy Rub, was elected as 2017-2018 Chair of IPPC on May 2, 2017. Given his experience on IPPC and with the legal issues involved, Guy's leadership will also be helpful in moving the policy through the Senate approval process in 2017-2018. (c) **To the extent that moving the IPPC approved policy through the OUCI policy working group committee as soon as possible will help maintain continuity in our work across academic years, IPPC requests the assistance of Steering in facilitating that process.**

<see Appendices beginning on next page>

Appendix A: IPPC Bylaws

Bylaws

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 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) Any proposed revision to any of the University's policies regarding intellectual property.

Appendix B: IPPC-Approved IP Policy



Applies to: Faculty, staff, students

Responsible Office

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. This policy establishes rules regarding the ownership, distribution, and commercialization of Intellectual Property created by University faculty, staff, and students
- b. The University encourages faculty, staff, and students to engage in the creation and dissemination of knowledge, including works of authorship, discoveries, inventions, patents, and tangible property that can serve the public through open academic exchange and commercial development. The 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.
- c. The University recognizes the importance of intellectual freedom and autonomy of faculty, staff, and students.

Definitions

Term	Definition
Artistic work	Works created primarily for their artistic value. Such works may include, but are not limited to, plays, poems, novels, paintings, illustrations, sculptures, and musical compositions.
Copyrighted Materials	Works protected by copyright, authored by the University, its faculty, staff, and students, provided, that for purpose of this policy Copyrighted Materials will not include Inventions.
Creator	<p>(a) With respect to Copyrighted Materials, Creator means the author, as the term is defined under U.S. copyright law, provided that if the author is the University as the employer of an individual creator(s), then, for the purpose of this policy, the Creator(s) will be that individual(s) who would have been considered the author(s) if he or she was not performing the work within the scope of employment.</p> <p>(b) With respect to Inventions that are eligible for patent protection, as well as know-how and any other Inventions related to such Inventions that are eligible for patent protection, Creator means any inventor, as the term is construed under U.S. patent law.</p> <p>(c) 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 when 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.</p> <p>(d) With respect to any other Intellectual Property, Creator means any individual who provided substantive and substantial intellectual contribution to the creation of an Intellectual Property. Creator may be faculty, staff, or students.</p>
Direct Expenses	Costs, expenses, taxes, and losses paid or incurred by the University or on its behalf that are directly attributable to the Intellectual Property 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 Intellectual Property.
Gross Proceeds	All cash received from the transfer, commercialization, or other exploitation of Intellectual Property 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.



Applies to: Faculty, staff, students

	In case of Sponsored Research, the cash or other consideration received by the University from the sponsor of such research will not be considered part of the Gross Proceeds. Unless an agreement pursuant to Section III provided otherwise, the proceeds received from the commercialization of the Intellectual Property created in a Sponsored Research will be part of the Gross Proceeds.
Instructional Works	Works created primarily for the instruction of students to which the Creator is assigned to teach. Such works may include, but are not limited to, slides to be used in class, class notes, exercises and class assignments, syllabi, and examinations.
Intellectual Property	Intellectual Property means all Inventions and Copyrighted Materials.
IPPC	A standing senate committee dealing with Intellectual Property, Patents and Copyright, as defined by Rules of the University Faculty.
Inventions	Inventions include all discoveries, inventions, and patents covered by Ohio Revised Code §3345.14(B), as well as Tangible Research Property.
Net Proceeds	Gross Proceeds less Direct Expenses.
OSIF	Ohio State Innovation Foundation, a 501(c)(3) organization, formed in 2013 by the University to manage intellectual property developed at or created by the University and to facilitate the commercialization of such intellectual property. "OSIF" shall include any successive entity to Ohio State Innovation Foundation.
OSU Proceeds	The amount of Net Proceeds received by the University directly or as a distribution from the OSIF.
Scholarly works	Works created primarily to express and preserve scholarship as evidence of academic advancement or academic accomplishment. Such works may include, but are not limited to, scholarly publications, journal articles, research bulletins, monographs, books including textbooks, and electronic-books.
Software	Software, for the purposes of this policy, is defined as the source code and/or object code of computer applications and subroutine libraries. Software, for the purposes of this policy, does not include other works in the form of computer software including computer-generated works of art or music or the content of other forms of works, such as traditional scholarship, that is recorded in a software medium.
Sponsored Research	Research projects that are supported by funding 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, including a research or other activity undertaken by the University or one of its units that is subject to specific written obligations to another party.
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 integrated circuits. Tangible mediums of expression in which Copyrighted Materials are fixed, including, but not limited to, books, copies of articles, and music sheets are explicitly excluded and will not be considered Tangible Research Property.
TCO	The University's Technology Commercialization Office and any successive University office thereof.
University	The Ohio State University
University IP	All Intellectual Property owned by the University, pursuant to this policy.

Policy Details

- II. This policy is subject to all effective laws including federal and Ohio law, and in particular Ohio Revised Code §3345.14.
- III. Conflicting agreements:
 - A. Notwithstanding any other provision in this policy to the contrary, nothing in the policy will be construed to limit the University from entering into specific written agreements with any faculty, staff, or student or with any third party (including in connection with Sponsored Research) that will specify different terms regarding the ownership, distribution, and commercialization of Intellectual Property. Provided that the Creator knew, or



Applies to: Faculty, staff, students

should have known, of the existence of such an agreement prior to creating the Intellectual Property, or that the Creator is a party to such an agreement, then if any term in such an agreement conflicts with any term of this policy, the term of the agreement will govern.

- B. Nothing in the policy will be construed to limit the University from entering into agreements with respect to the commercialization of the University IP. Subject to Section III.A, those agreements would not undermine the University's obligations under this policy, and in particular, the arrangements set forth in Section VIII.
- IV. With the exception of specific written agreements to the contrary (see Section III), and without limiting the general disclosure obligations (see Section IX.C) nothing in this policy shall be interpreted to prevent any faculty, staff, or student from sharing the results of her or his or her research and other academic activities with others, including by publishing those results. Faculty, staff, and student should however be aware that under certain circumstances disclosure can jeopardize the ability to secure a patent for an Invention and they are therefore advised to consult with the TCO prior to such public disclosure.
- V. Ownership of Inventions. Subject to the terms of Section III.A:
 - A. All rights, title, and interests in Inventions are the sole property of the University. The University hereby assigns to the Creator(s) every Invention:
 - 1. developed by faculty or staff acting outside of the scope of their employment provided that such Intellectual Property was developed with no more than insignificant use of University resources, or
 - 2. developed by a student, provided that such Intellectual Property is not owned by the University pursuant to Section V.C and was not developed by a student who is an employee within the scope of such student's employment or with more than insignificant use of University resources.
 - B. Insignificant use of University resources includes, but not limited to, 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:
 - 1. other University employees or students in developing, testing, or distributing the Inventions, or
 - 2. University laboratories or equipment besides the computers referred to above.
 - C. Inventions developed by non-employee students is owned by the University when the student created the Inventions 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 Inventions 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 Inventions is to be developed. Except for the foregoing, but subject to Section V.A above, all other Inventions created by a student is the property of the student. Every student hereby grants the University a perpetual, worldwide, nonexclusive, royalty-free license to use any Inventions 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.
- VI. Ownership of Copyrighted Materials. Subject to the terms of Section III.A:
 - A. It is the intent of this policy that all copyrights in Instructional Works, Scholarly Works, and Artistic Works whose Creator is a faculty member, except for Software, shall remain with their Creators. The University hereby assigns any of its copyrights in such works, insofar as it exists, to their Creators. Such works will not be deemed University IP under this policy. The copyright in all other Copyrighted Materials whose Creators are faculty members that were created within the scope of the Creators' employment belong to the University.
 - B. The University hereby grants every Creator of Software that is not eligible for patent protection who is a faculty member a perpetual, exclusive, worldwide, sublicensable, royalty-free license to use the Software for any scholarly, instructional, and artistic purpose, and a perpetual, nonexclusive, worldwide, royalty-free license to allow others, for no consideration, to use the Software, subject to terms and conditions determined by the Creator. Without limiting the foregoing, the University may require faculty members to agree to limits on their rights under those licenses as a condition for commercialization of the Software.



Applies to: Faculty, staff, students

- C. Each Creator who is a faculty member hereby grants the University a nonexclusive, worldwide, royalty-free license to use every Instructional Work created while a University employee. Such a license is limited to use within the University's programs of teaching on the University's campus as well for administrative purposes such as accreditation. The license with respect to each Instructional Work expires at the earliest of (i) that work becoming reasonably and in good faith available on the market and (ii) one year after the Creator ceases to be an employee of the University.
- D. Copyright of works whose Creators are staff created within the scope of their employment is owned by the University. However, the University acknowledges that a limited number of staff members have certain prerogatives to set their own research, scholarly, instructional, artistic, or creative tasks and in certain circumstances personal ownership of copyright arising from these professional endeavors would be appropriate. The TCO will establish procedures to allow unit heads and deans to submit an application to the TCO to request that the University assign copyright of specific works or classes of works to their staff-Creator. TCO, in consultation with the relevant head of unit or dean may grant, deny, or modify such requests. Post-doctoral researchers will have the same rights in Copyrighted Materials they create in their capacity as post- doctoral researchers that faculty have.
- E. Copyright in Copyrighted Materials whose Creator is a non-employee student or whose Creator is an employee-student that are not within the scope of the student's employment, remains with the Creator. The University hereby assigns any of its copyrights in such works, insofar as it exists, to their Creators. Such works will not be deemed University IP under this policy. Every student hereby grants the University a perpetual, worldwide, nonexclusive, royalty-free license to use such Copyrighted Materials in any way for administrative purposes, such as assessment of the work, accreditation purpose, and to prevent fabrication, falsification, and plagiarism. In addition, the University may require a student to provide a single copy of their thesis or dissertation for non-commercial library use.
- F. If a Copyrighted Material has multiple Creators, the right of each Creator will be determined separately according to the provision on this Section VI, and those Creators will hold the work as joint owners. For example, if a manuscript is created jointly by a faculty member, a staff member, and a non-employee student then Section VI.A will dictate whether the faculty member or the University will own, as a joint owner, a third of the work, Section VI.D will dictate whether the staff member or the University will own, as a joint owner, another third of the work, and Section VI.E will dictate whether the non-employee student or the University will own, as a joint owner, another third of the work.
- VII. Faculty, staff, and students 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 the University IP to the University.
- 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 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



Applies to: Faculty, staff, students

- 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 of the University IP, 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. For the avoidance of doubt, a subset of the Creators can agree in writing among themselves to have a different distribution of their own share.
 - D. When multiple Intellectual Property 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 Intellectual Property asset.
 - E. When there are no identifiable Creator(s) of Tangible Research Property, the portion of the OSU Proceeds distributable under Section VIII.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 Intellectual Property 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 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. Intellectual Property 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 TCO operations 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 revenue 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;
 - 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



Applies to: Faculty, staff, students

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 (such as obligations in connection with Sponsored Research arrangements), must be promptly disclosed in writing by the Creator(s) to TCO, using a disclosure form.
 1. The disclosure must:
 - a. provide 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.
 3. Faculty, staff, and students may ask the TCO to verify that pursuant to this policy a specific Intellectual Property is not University IP or that it is available for a certain specific use.
- D. Upon receipt by TCO of a disclosure form as described above, the case will be assigned to a TCO representative. The assigned representative will facilitate evaluation of the Intellectual Property 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. termination of whether Intellectual Property 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.
 4. 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, but not limited to, any filing decisions regarding Intellectual Property protection or transfer of the University IP.
 2. TCO will provide a detailed summary of substantive decisions regarding protection, commercialization, and/or transfer of Intellectual Property 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 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 months of receipt of a disclosure form.



Applies to: Faculty, staff, students

2. The assignment of ligations under Section IX.F will be subject to the following:
 - a. The TCO may reasonable delay, and in extreme cases deny, a request pursuant to Section IX.F.1 if the Creator's disclosure pursuant to Section IX.C lacks material details in bad faith or if the Creator failed to cooperate in good faith with TCO's reasonable requests.
 - b. The Creator who is assigned the University IP pursuant to Section IX.F.1 will grant the University a perpetual, worldwide, nonexclusive, royalty-free license limited to non-commercial use of such Intellectual Property.
 - c. The assignment of University IP to the Creator pursuant to Section IX.F.1 will not affect any other obligations of the Creator, including the obligation of disclosure and cooperation, set forth in Section IX.C, with respect to any other University IP.
 3. TCO is encouraged to cause assignment to Creator(s) any University IP which, in TCO's 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.
 4. In case of multiple Creators, the University or OSIF will assign the Intellectual Property 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 this Section IX.F (or an assignment from OSU to OSIF), TCO will not assign the University IP for no consideration.
- G. 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 Faculty Paid External Consulting policy and the Conflict of Interest and Work Outside the University policy; 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, the Office of Legal Affairs, and/or the University Mediation Program.
 - B. If informal processes 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.
 6. IPPC will publish its reports (after removing relevant information, if needed for addressing reasonable privacy or secrecy concerns) and the decisions of the senior vice president for business and finance or the



Applies to: Faculty, staff, students

provost. The publication should be reasonably accessible to the University community and preferably be available online. Those reports and decisions will guide future actions and decisions by the TCO and IPPC.

XI. Policy Review and Revisions

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.

XII. This policy replaces the existing “Policy On Patents And Copyrights”.