

Chapter 10 – Intellectual Property Rights

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[see last page for list of amendments adopted]

10.01 Statement of Basic Philosophy and Objectives.

- 10.01.1 The creation and development of intellectual property is a valued aspect of scholarship (for example, teaching, inquiry-driven learning, research). Further, research is a core element of new knowledge generation, discovery, and public benefit.

Research is part of the core mission of faculty and, as such, is central in the evaluation of faculty for tenure and promotion. Accordingly, the creation of intellectual property is one form of scholarship faculty can point to in their applications for tenure and promotion. Chapter 10, *Regents' Rules*, and related operating policy manuals are intended to adhere to cherished principles that enhance academic freedom of discovery, while providing a clear pathway to pursue commercialization for those faculty members interested in this aspect of scholarship. The purpose of the policy is to outline the respective rights and responsibilities that members of the faculty, staff, and students have in intellectual property created while they are affiliated with TTUS.

- 10.01.2 This policy anticipates that the scholarly efforts of TTUS, faculty, staff, and students may result in intellectual property that is potentially marketable and benefits humanity.
- 10.01.3 A good faith relationship between intellectual property creators and TTUS is essential. Therefore, in the development and disposition of inventions, TTUS will respect creator wishes to the degree consistent with other priorities expressed in this policy.
- 10.01.4 It is the policy of the board to encourage scholarly activity without regard to potential gains from royalties and other forms of income. It is further board policy, however, that, to the extent and to the degree described in this policy, intellectual property owned by

TTUS which has commercial value should be appropriately exploited to further the mission of TTUS. In all cases, however, the property rights of the affected individuals or entities may be subject to TTUS obligations under grants, contracts, or research agreements with governmental agencies, individuals, and non-governmental entities.

- 10.01.5 The Office of Research Commercialization of Texas Tech University (the “ORC”) or any successor office thereof and its Director (the “ORC Director”) are charged with the system-wide responsibility of implementing and executing board policy with respect to commercialization of intellectual property.
- 10.01.6 Effective immediately upon approval by the board, the revision of Chapter 10 adopted on October 9, 2015 replaces the revision of Chapter 10 enacted on December 12, 2008.

10.02 Definitions. For the purposes of this policy, the following terms are defined as follows:

- 10.02.1 “Commercialization.” The process of producing revenue by licensing or otherwise contracting regarding intellectual property or assigning ownership of intellectual property to a third party for the purpose of developing it into a commercial product or service.
- 10.02.2 “Copyrightable Work.” An original work of authorship which has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, including but not limited to, books, journals, software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, and pictorial and graphical works. A copyrightable work may be the product of a single author or a group of authors who have collaborated on a project.
- 10.02.3 “Covered Person.” Any person employed by TTUS, including undergraduate and graduate students, to the extent their employment responsibilities relate to or result in the development of intellectual property, and any person using TTUS resources or under the supervision of TTUS personnel. Without any intent to limit the scope of persons included, this definition also includes

adjunct and visiting faculty, as well as persons pursuing post-doctoral fellowships and persons assisting or engaging in research under the direction and supervision of faculty.

- 10.02.4 “Creator.” An individual, a group of individuals, an entity, or a group of entities subject to this policy who invent(s), develop(s), or author(s) intellectual property.
- 10.02.5 “Distance Learning.” Instruction in which the majority of the instruction occurs when the student and instructor are not in the same physical setting. A course is considered a distance education course if students receive more than one-half of the instruction at a different location than the instructor. Distance education can be delivered synchronously or asynchronously to any single or multiple location(s) through electronic correspondence or other means.
- 10.02.6 “Intellectual Property.” Collectively, all forms of patented and unpatented inventions, tangible research property, copyrightable works, copyrights, trademarks, and trade secrets. The term also includes copyrightable or copyrighted works which are TTU system administration or component institution manuals, materials or other works, such as software, which may be a part of or embedded in a larger comprehensive design, system or device.
- 10.02.7 “Invention.” A process, method, discovery, device, plant, composition of matter, software, technology or other work that reasonably appears to qualify for protection under United States patent law, chip design protection law or plant protection schemes, whether or not actually patentable.
- 10.02.8 “Office of Research Commercialization” or “ORC.” The administrative mission of the TTU Office of Research Commercialization is to promote the transfer of TTUS intellectual property for society's use and benefit, while generating income to support TTUS research and education. The ORC is responsible for: administration and implementation of the TTUS intellectual property program; assisting and advising TTUS faculty, staff, and students with regard to matters covered by this policy; and providing leadership and support through public and private sector engagement.

- 10.02.9 “ORC Director.” The Director, Office of Research Commercialization in the Office of the Vice President of Research, Texas Tech University.
- 10.02.10 “Policy.” Chapter 10, *Regents’ Rules*.
- 10.02.11 “Software.” In this policy the term “software” is used in its broad sense to refer to any computer program that may be copyrightable or patentable.
- 10.02.12 “Sponsored Research Agreement.” A grant or contract supporting TTUS research between TTUS and the federal government (or an agency thereof), a state or other governmental agency, a nonprofit or for-profit non-governmental entity, or an individual.
- 10.02.13 “Tangible Research Property.” Tangible items produced in the course of research including but not limited to such items as biological materials, engineering drawings, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Individual items of tangible research property may be associated with one or more intangible properties, such as inventions, copyrightable works and trademarks.
- 10.02.14 “Trademark (including Service Mark).” A distinctive word, design, or graphic symbol, or combination of words, designs, or graphic symbols that distinguish and identify the goods and services of one party from those of another, such as names or symbols used in conjunction with products, services, programs, plant varieties or computer programs.
- 10.02.15 “Trade Secrets.” The whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.
- 10.02.16 “TTUS Resources.” TTUS funds (including without limitation, funds derived from outside grants, contributions and research contracts), supplies, facilities, computer systems (hardware and software), space, tangible and intangible property, and personnel. In this policy, the phrase “use of TTUS resources” does not apply to

the incidental use of such resources. The use of TTUS resources by students as permitted by the terms of their enrollment and not in connection with the students' employment related to or resulting in the development of intellectual property, assisting or engaging in research under the direction and supervision of faculty, or in connection with a TTUS sponsored research agreement, is considered incidental use.

- 10.02.17 "Work for Hire." A work specially ordered or commissioned by TTUS for use as an institutional document or a contribution to a collective work, including as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas. The term also includes software, computer programs or written instructions, protocols or training aids created by TTUS employees as a regular part of their duties. For faculty, works for hire are works derived from defined tasks that fall outside the normal teaching and research mission of the university. Work that occurs within the normal scope of academic employment in the teaching and research mission of the university may be "work for hire" when accomplished pursuant to written directive and agreement.

10.03 Ownership.

- 10.03.1 Except as specifically provided in research agreements sponsored by third parties, and as provided in Section 10.03.3, intellectual property created by covered persons with the use of TTUS resources or during the course of covered persons' TTUS responsibilities is automatically owned by TTUS. All covered persons must, and do hereby, assign their rights in such intellectual property to TTUS. Intellectual property that is developed on a covered person's own time without TTUS support or use of TTUS resources is not owned by TTUS. Ownership of intellectual property developed under a sponsored research agreement or other funding arrangement shall be determined in accordance with the terms of the sponsored research agreement or other agreement, or, in the absence of such terms, is owned by TTUS.
- 10.03.2 Consulting Activities. TTUS encourages external faculty consulting as an effective mechanism for professional development and/or

establishing good relationships with the public and private sector, including industry. However, a consulting agreement between a creator and a potential user, assignee or licensee of intellectual property developed by the creator creates an inherent conflict of interest. Any creator who is a party to such a consulting agreement must fully disclose the existence and terms of such agreement to the creator's immediate supervisor and, with respect to intellectual property disclosed to the ORC, such disclosure to the ORC must include full disclosure of such conflict. Before entering into a consulting agreement, the TTUS employee must ensure that rights to intellectual property owned by TTUS are not compromised or lost as a result of the consulting activities. Further, consulting activities must not violate TTUS rules, regulations or policies or federal or state law.

10.03.3 Ownership of Copyrightable Works. TTUS encourages the preparation and publication of copyrightable works that result from teaching, research, and scholarly and artistic endeavors by TTUS faculty, staff and students. TTUS recognizes faculty, staff, and students' freedom with respect to their copyrightable works, consistent with their obligations to TTUS. Copyrightable works may be created under a variety of circumstances that impact the ownership and subsequent management thereof, as follows:

- a. Books, Articles and Similar Works. In keeping with academic tradition, and except to the extent required by the terms of any valid funding or work for hire agreement, TTUS does not claim ownership to pedagogical, scholarly or artistic works, regardless of their form of expression. Such works include but are not limited to: (i) faculty-prepared works such as syllabi, textbooks, course materials, course lectures and refereed literature; and (ii) works of students created in the course of their education, such as dissertations, papers and journal articles. However, all faculty-prepared pedagogical, scholarly or artistic works are subject to, and TTUS does hereby retain, a non-exclusive right to utilize such works for student instructional purposes. TTUS claims no ownership in popular nonfiction, novels, poems, musical compositions or other works of artistic imagination that are not works for hire. If title to copyright in works defined within this section vests in TTUS by law, TTUS

will, upon request and to the extent allowed by law, convey copyright to the creators of such copyrightable works.

- b. Further, nothing in this section is intended to change the traditional manner in which TTUS faculty, staff and students assign the copyright ownership of works intended for publication in scholarly journals.
- c. TTUS reserves the right to record faculty lectures and to allow students registered for the class for which the lecture was given to view recorded lectures that may be posted online.
- d. Works for Hire. Except as provided in Section 10.03.3.a, TTUS shall retain ownership of all copyrightable works for hire.
- e. Works Developed with Use of TTUS Resources:
 - (1) Except as provided in Section 10.03.3.a, copyrightable works that are not works for hire but are works that are developed with use of TTUS resources are owned by TTUS and must be disclosed to the ORC. In the case of a disagreement as to whether a work fits into this section, the provost (the chief academic officer) of the component institution shall make a determination.
 - (2) Copyrightable works that are not works for hire but are works that are developed under a sponsored research agreement or other funding arrangement, shall be determined in accordance with the terms of the sponsored research agreement or other agreement, or, in the absence of such terms and to the extent consistent with copyright law, are owned by TTUS.
- f. Distance learning course content generally will be treated as traditional course content. However, such content and materials may be “work for hire” if developed under a work for hire arrangement. With respect to all distance learning course content, whether work for hire or not, TTUS automatically retains a payment-free license for use of all or part of such content for use in its ongoing teaching and research mission. In the case of distance learning course content which is work for

hire, such license shall be exclusive unless otherwise agreed in writing.

- g. **Copyrightable Works Not Owned by TTUS.** Creators of copyrightable works that are not owned by TTUS own the copyrights in their works and are free to publish them, register the copyright, and to receive any revenues that may result from publication of the works. Copyrightable works to which TTUS has no ownership rights may be submitted for publication and published by TTUS. Upon acceptance by TTUS for publication, the creator shall transfer copyright of the work to TTUS, with reference to the specific TTUS publication. The ORC Director is authorized to execute and shall maintain a record of all such copyright transfer agreements.

10.04 Research Involving Third Party. Provisions for the control of and compensation for intellectual property under sponsored research agreements must be consistent with this policy. However, nothing in this policy shall preclude acceptance of a contract, grant or agreement that provides for ownership of intellectual property by the third-party sponsor under terms acceptable to TTUS, including adequate compensation to TTUS.

- 10.04.1 The ORC, in cooperation with the respective component institution's Research Services Office or Sponsored Programs Office, shall coordinate reporting requirements and other obligations to research sponsors developed under a sponsored research agreement, including but not limited to obligations to the federal government under 37 CFR Part 401.
- 10.04.2 The ORC Director shall approve all sponsored research agreements that provide for the ownership of TTUS intellectual property by a third-party sponsor.
- 10.04.3 This policy acknowledges that research conducted by TTUS may be funded in part or in whole by the United States government and that ownership of intellectual property derived therefrom is governed by federal law and regulations. To the extent that such law and regulations allow for transfer of ownership of such intellectual property back to TTUS or the creator, the ORC, in cooperation with the component institution's Research Services Office or Sponsored

Programs Office, will assist in making applications for transfer of ownership.

10.05 Disclosure of Intellectual Property. Except for the exclusions identified for certain copyrightable works in Section 10.03.3, all intellectual property created by covered persons, including intellectual property developed through sponsored research agreements and consulting contracts, shall be promptly disclosed to the ORC by the creator, and an Assignment of Rights form shall be executed. Disclosure and assignment shall be made on a form prescribed by and available from the ORC. Creators shall cooperate with TTUS and the ORC in protecting TTUS intellectual property rights in the invention.

10.06 Offers to Assign External Intellectual Property to TTUS. If an individual or entity chooses to offer to TTUS intellectual property in which TTUS has no claim, TTUS may accept an ownership or other interest in the intellectual property (subject to the provisions of Chapter 06, *Regents' Rules*, concerning gift acceptance, if the offer is intended to be a gift), provided:

- 10.06.1 The offeror agrees to all provisions (including distribution of income provisions) of this policy.
- 10.06.2 The offeror warrants that it owns all right, title and interest to the intellectual property, and that to the best of its knowledge, neither the intellectual property nor its transfer infringes upon any existing copyright or other legal rights.
- 10.06.3 The ORC will decide whether to accept or reject such offers (or, in the case of gifts, whether to recommend the chancellor or board, as appropriate, approve acceptance of the gift).
- 10.06.4 Should TTUS agree to accept the offer of intellectual property, the offeror must execute an ORC assignment agreement transferring all right, title, and interest or other agreed rights in the intellectual property to TTUS, and acknowledging that the individual or entity agrees to all provisions of this policy. In cases in which the offeror has already expended funds toward obtaining patent or other legal protection for the intellectual property, the offeror and TTUS may negotiate terms to allow recovery of documented legal and/or patent expenses from license fees, royalty, and other income, and normal revenue sharing provisions under this policy will be modified until such expenses are recovered by the party entitled to re-

covery of the expenses. The portion of revenue ordinarily allocated to a department or unit under Section 10.12.2 shall be allocated to the ORC. Further, to the extent such intellectual property is subject to ownership by the United States government, but is subject to release pursuant to federal law, the ORC shall assist in obtaining such release.

10.07 Acquisitions of Intellectual Property in Connection with New Employee.

To the extent a component institution proposes to provide separate compensation to a new faculty or research employee or the employee's previous employer for intellectual property owned by the employee or another institution, the component institution shall advise the ORC of the nature, value, and patent status of such intellectual property at the time of employment.

10.08 Assessments by the ORC. The ORC shall assess: the potential value of intellectual property to TTUS; the rights and equities of the creator, TTUS, and any third parties; and the required actions to maximize the benefits of any intellectual property to the public, TTUS, and the creator. Once an invention disclosure has been made to the ORC, the ORC shall respond to the creator(s) in writing within 90 calendar days of the date of disclosure of its desire to pursue commercial development of the intellectual property. The ORC is authorized to waive TTUS rights in intellectual property in the exercise of its sound discretion. If the ORC decides not to pursue commercial development of disclosed intellectual property, it shall notify the creator in writing and, upon written request from the creator, shall release TTUS ownership rights as provided as follows:

10.08.1 Provisions for release of rights to creators. Absent a contractual obligation to a third-party, TTUS may release its intellectual property ownership rights to a creator by written agreement, with the following provisions:

- a. TTUS shall retain a perpetual, royalty-free license to use the intellectual property, and any corresponding patents or copyrights, for non-commercial purposes, including research, education, and service.
- b. TTUS shall retain the right to a specified share of revenue (not to exceed 5%) generated from commercialization of the released intellectual property after the creator has recovered documented legal and other expenses incurred toward obtain-

ing patent or other legal protection for the intellectual property, the amount to be negotiated prior to the release. If TTUS incurred expenses toward analyzing or obtaining patent or legal protection for the released intellectual property prior to the release, the written agreement must provide for reimbursement of such costs to TTUS either by payment at the time of release or by agreement for TTUS to retain a revenue percentage in excess of 5%. Should the ORC and the creator be unable to agree on the terms of the release, the matter shall be finally resolved using the process outlined in Section 10.15.

- c. In the case of release of rights to the creator, the creator is not entitled to a share of net revenue received by TTUS under Section 10.12, and the share of net revenue ordinarily allocated to the creator will be divided among the ORC, component institution, department and unit, on a pro-rata basis.

10.09 Reasonable Cooperation. With respect to intellectual property TTUS has elected to develop, creator shall cooperate with the ORC and assist the ORC in its development efforts. In addition, the creator shall sign such development assignment, license, or other agreements and documents as may be reasonably necessary to actively develop the commercial potential of the intellectual property. TTUS, in any development, assignment, licensing or other agreement, shall, to the maximum extent possible, protect the creator's right to continue to conduct basic and tangential research and publish such research. Any publication of the intellectual property the creator makes prior to securing patent or other legal protection for the intellectual property may limit TTUS from obtaining intellectual property protection through the United States Patent and Trademark Office, the United States Copyright Office, and through foreign patent and copyright agencies. TTUS is not liable for, and creators agree to hold TTUS harmless for, any loss of intellectual property associated with the creator's publication of the intellectual property.

10.10 Implementation of Intellectual Property Agreements.

- 10.10.1 The ORC Director shall execute license agreements using a prescribed license agreement template that has been approved by the TTUS Office of General Counsel. In addition, the following guidelines apply to license agreements (including those with entities formed primarily for the purpose of developing and/or commercializing intellectual property created at TTUS), subject to the

terms of any sponsored research agreements or other contracts related to the intellectual property. The ORC will negotiate grants of rights of first option for the development and commercialization of TTUS intellectual property on a case-by-case basis in accordance with Section 10.10.3.

- 10.10.2 The ORC Director is authorized to negotiate and execute non-disclosure agreements related to ORC business, inter-institutional agreements, powers of attorney for patent filings, patent and copyright documents, license agreements, precludes to license agreements (including option agreements and memorandums of understanding), assignments of intellectual property related to inter-institutional agreements, material transfer agreements, copyright transfer agreements, and releases of TTUS intellectual property rights to creators in accordance with TTUS *Regents' Rules*, policies, and regulations, and shall consult with the chancellor, the vice president for research or other appropriate component institution officer, and the Office of General Counsel when extraordinary factors are part of the agreement being negotiated. The ORC shall maintain records of all documents executed by the ORC Director. The authority to execute such documents that involve a commitment of funds or resources is restricted to documents that have been approved by the vice president for research (or the equivalent of that position) of the component institution at which the creator is employed, and approved as to form, law, and compliance with the *Regents' Rules* and applicable policies by the vice chancellor and general counsel.
- 10.10.3 An individual or entity that is granted exclusive rights to develop or commercialize intellectual property that is patentable should be required to reimburse TTUS for all expenses incurred by TTUS in pursuing a patent and, if a patent has not been obtained, must be required to prosecute and bear the expense of obtaining patent protection for the benefit of TTUS and, in either event, the individual or entity should be required to take all actions necessary, including reasonable litigation, to protect and preserve such patented rights from infringement.
- 10.10.4 An individual or entity may be granted a right of first option for the development and commercialization of intellectual property

created at TTUS. Such agreements may only grant rights on a specific-project basis, and shall be subject to the following restrictions:

- a. Any grant of a right of first option must be authorized by the vice president for research with approval by the ORC Director.
- b. The right must exclude work where the underlying research has or will be sponsored by another party and such a right is granted as a condition for such sponsorship.
- c. The right must have limited duration to allow for assessment of relationship and relative effectiveness in moving technologies to market.

10.10.5 Equity and Other Non-monetary Returns. TTUS may negotiate, but shall not be obligated to negotiate, for equity interests and other non-monetary returns (“equity and other consideration”) in lieu of or in addition to royalty and/or monetary consideration as a part of an agreement relating to intellectual property. Revenue from equity interests shall be distributed, upon payment, in accordance with Section 10.12.

- a. TTUS may receive equity and other consideration under terms that restrict its ability to sell, distribute or otherwise deal with that consideration. In such cases, any restrictions on TTUS’ interest shall be equally applicable to the interest of the creator, unless waived or varied in writing and signed by the ORC Director and the creator.
- b. After notice to a creator’s supervisor, and subject to any relevant policies, TTUS may enter into agreements with creators for ownership of equity interests by creators to the extent authorized by Section 51.912, *Texas Education Code*, as that section may be amended from time to time.

10.10.6 TTUS does not act as a fiduciary agent or provide legal advice for any person concerning intellectual property agreements or equity or other consideration negotiated under the terms of this policy.

10.11 No Restriction on Future Research. No agreement by TTUS may provide, and no agreement may be deemed to imply, any restriction on future research, development or improvements by TTUS of any intellectual property, product or process which is the subject of such agreement. Further, no such agreement shall be deemed to create a conflict of interest which in any way will preclude future development of any intellectual property by TTUS.

10.12 Distribution of Revenue from Intellectual Property Agreements.

10.12.1 Where TTUS elects to protect intellectual property in its name, it shall award the creator a reasonable share (as set forth below) of net proceeds from royalties or other income or value after deduction of the directly assignable costs including patenting, copyrighting, marketing, licensing and protection of intellectual property rights.

10.12.2 The following provisions govern the distribution of royalties and other income from TTUS owned intellectual property, including but not limited to assignment fees, license fees, prepaid royalties, minimum royalties, running royalties, milestone payments, sublicense payments, and payments received by TTUS as a result of a settlement agreement or litigation related to enforcement of TTUS' rights in intellectual property ("revenue"), after TTUS has recouped all costs associated with protecting the intellectual property, and enforcing TTUS' rights relative to the intellectual property, including: processing the patent or copyright application; marketing and licensing the technology; and any costs that may be associated with enforcing TTUS' rights in intellectual property ("net revenue"):

Distribution of Net Revenue

<i>Creator(s)</i>	<i>ORC</i>	<i>TTUS*</i>	<i>Department**</i>	<i>Unit***</i>
40%	30%	10%	10%	10%

* "TTUS" refers to component units

** "Department" refers to department, center, or institute

*** "Unit" refers to college or school

- 10.12.3 For intellectual property assigned to TTUS for the purpose of commercialization under Section 10.06, the creator shall be entitled to 60% of net revenue, and the remaining 40% of net revenue (or more if the creator agrees to accept less than 60%) shall be distributed as agreed by the officers of the component institution, department, and unit. If the officers are unable to agree, the remaining net revenue shall be divided equally between the ORC and the applicable component institution, department, and unit.
- 10.12.4 Under extraordinary circumstances, the distribution of net revenue may be changed with the written approval of the president of the applicable component institution.
- 10.12.5 Net revenue is to be distributed as the net revenue is received, taking into account previously paid distributions. Funds distributed to the department and unit will be placed in unrestricted accounts under their control. Such funds will not be used to substitute for funds budgeted for expenditure in the routine annual operating budget which is approved by the board. If a covered person entitled to net revenue is no longer employed by TTUS, distributions will be made in accordance with TTUS accounts payable rules. If a covered person entitled to net revenue dies while still employed by TTUS, payments will be made in accordance with TTUS payroll rules concerning the death of an employee. Distributions made to a creator under this policy are not considered compensation for purposes of calculation of benefits which the creator otherwise receives under any benefit plan provided by TTUS or the State of Texas.
- 10.12.6 If TTUS receives revenue as a result of settlement or litigation related to the enforcement of TTUS' rights in intellectual property, such revenue will first be used to reimburse TTUS for expenses related to such actions. The creators are entitled to a portion of the remaining net revenue according to the distribution formulas outlined in this section.
- 10.12.7 In the event of multiple creators, the creators must reach an agreement as to the allocation of their distribution percentage consistent with the terms of this policy. Such final determination of each creator's share shall be made by written agreement signed by all parties and filed with the ORC. In the event that creators are

unable to agree as to the allocation percentage, the ORC shall apply equal distribution percentages among the creators.

10.12.8 In the event of multiple component institutions or the involvement of the TTU system administration, the chief executive officers of the component institutions and, if applicable, the TTU system administration, must reach an agreement as to the allocation of their distribution percentage consistent with the terms of this policy. In the event an agreement cannot be reached, the ORC shall apply equal distributions among the entities.

10.12.9 This policy recognizes that in addition to the traditional academic units such as departments and colleges, research, and specifically interdisciplinary research, can be sponsored by other academic units, such as centers and institutes.

a. In such instances, because of the many different combinations that may occur, this policy does not specifically provide how net revenue is to be allocated. It is, however, the intent of this policy to allocate net revenue to the units that provided the substantial level of support that triggers TTUS' ownership of the intellectual property. The policy encourages voluntary agreements between such units prior to the development of intellectual property (to allocate the percentage of net revenue that is appropriate for each unit). If no agreement can be reached prior to the generation of revenue, the chief executive officer(s) of the applicable institution(s) will resolve the allocation issue.

b. The division of net revenue from patents and copyrights managed by a patent or copyright agent will be controlled by TTUS' agreement with such agent, as approved by the board. Any deviation requires the prior approval of the board.

10.13 Distribution of Revenue from Commercialization of Copyrightable Works.

10.13.1 Net revenue from commercialization of copyrightable works is the property of the TTUS component from which the work emerged. Net revenue received from commercialization of copyrightable works will be calculated as described in Section 10.12, and distributed as follows:

- a. **Work for Hire:** The component institution funding the work for hire shall be entitled to all net revenue from distribution or commercialization of work for hire.
- b. When a component unit conducts the commercialization or distribution of the copyrightable work, the distribution of net revenue after expenses of creation and distribution shall be as follows: 50% to the component and 50% to the creator. In the event of multiple creators, the creators must reach an agreement as to the allocation of their distribution percentage consistent with the terms of this policy. Such final determination of each creator's share shall be made by written agreement signed by all parties and filed with the component unit's contracting office. In the event the creators are unable to agree as to the allocation percentage, the component unit shall apply equal distribution percentages among the creators.
- c. **Works Developed with Use of TTUS Resources:** In cases where the ORC conducts the commercialization or distribution of the copyrightable work on behalf of TTUS, the distribution of net revenue shall be made in accordance with steps outlined in Section 10.12.

10.14 Trademarks. In most situations, a TTUS trademark identifies an item of intellectual property, such as a computer program or a plant variety. In other situations, a TTUS trademark identifies an educational, service, public relations, research, training, or athletic program of a TTUS component unit. Except to the extent the trademark is licensed to a third party, TTUS, or the applicable component unit, owns all right, title and interest in trademarks related to an item of intellectual property owned by the component unit, or to a program of education, service, public relations, research, training program or athletic program of a component unit. All income from the licensing of a TTUS trademark not licensed to a third party shall belong to the component unit.

10.15 Complaint Procedure.

- 10.15.1 The purpose of these procedures is to address complaints of covered persons related to the actions or decisions made in accordance with this policy and to provide a mechanism for resolving them.

Complaints regarding intellectual property shall be administered by the ORC Director as set forth herein.

- a. Any covered person shall have the right to a hearing for redress of complaints through established channels.
- b. The time periods for action prescribed in these procedures are guidelines only, but should be followed unless a request for extension is granted for good cause by the vice president for research of the applicable component institution. In granting extensions, the ORC Director may give consideration to any extension agreements made by the parties.

10.15.2 The complainant will present a written description of the complaint, with appropriate supporting documentation, and a proposed resolution to the ORC Director within 14 calendar days after the complainant becomes aware of the action constituting the complaint. The complainant and ORC Director will meet within 14 calendar days of receipt by the ORC Director and attempt resolution of the complaint. If resolution is not reached, the ORC Director's written decision will be provided to the complainant within 3 calendar days after the meeting. If the decision is not acceptable to the complainant, or if the ORC Director does not render a written decision within 3 calendar days, the complainant may proceed as set forth below.

10.15.3 Appeal to the President.

- a. The appeal procedure is initiated by the complainant providing a written request to the president of the applicable component institution asking that the decision of the ORC Director be reviewed.
 - (1) The complainant will provide copies of the original complaint, with appropriate supporting documentation, a copy of the written decision of the ORC Director, and a proposed resolution.
 - (2) The appeal to the president shall be filed within 14 calendar days of the complainant's receipt of the written decision of the ORC Director, or, in the event the ORC

Director fails to render a timely decision, then within 17 days of the meeting held pursuant to Section 10.15.2.

- b. The president will consider all materials submitted and render a written decision to the ORC Director and the complainant within 15 calendar days of receipt of the written request. The decision of the president is final.
- c. The ORC Director and complainant may agree to a resolution of the complaint at any time from institution of the complaint until receipt of the president's decision.

10.16 Reports to the Board.

- 10.16.1 At least once a year, coincidental with a regular board meeting, the ORC Director shall prepare for the chancellor and the board a report listing the titles and a brief description of each intellectual property disclosure received since the last report, all license and assignment agreements entered into by the ORC, and the status of existing license and assignment agreements, including the distribution of revenues earned from such agreements.
- 10.16.2 Board Notification of Employee Participation in Business Entities. Any request by a TTUS employee to participate as an employee, officer or member of the board of directors of a business that has an agreement with TTUS relating to the research, development, licensing or exploitation of intellectual property in which TTUS has an ownership interest must be reported to the chancellor by the component unit through which the individual is employed, and will be submitted as a consent item to a board meeting agenda.
- 10.16.3 Reports to the State of Texas. In compliance with Section 51.912, *Texas Education Code*, as that section may be amended from time to time, the board must file a report identifying all employees who have an equity interest in or serve as employees, officers, or members of the board of directors of business entities that have agreements with TTUS relating to the research, development, licensing or exploitation of intellectual property in which TTUS has an ownership interest. The report will be filed in accordance with the requirements of Section 51.005, *Texas Education Code*. The ORC Director will submit the report through the chancellor or the chan-

cellor's designee to the Office of the Board of Regents. The Office of the Board of Regents will obtain the signature of the chair and will transmit the report to the Governor's office and other required entities.

Dates Approved or Amended:

-- *Comprehensive review of chapter*10-09-2015 • amendments throughout

See also the document entitled "Comprehensive Reviews and Updates" for a more complete explanation of the amendments listed above.