

### **30-2 Intellectual Property**

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1. **Purpose.** Within the mission of Eastern New Mexico University (the University), those affiliated with it contribute to the advancement of knowledge through basic research, enter into professional and public service and engage in creative productivity.
  - A. The University seeks to meet the objectives of academic science to disseminate the knowledge resulting from research, from professional and public service and from the creative productivity of those affiliated with the University (affiliates).
  - B. The University seeks to increase its links to the world of commerce and industry.
  - C. The University seeks to provide revenue for further research.
  - D. The University seeks to protect itself, its affiliates and the resources of the state which are invested in the University.

The purpose of the following policies and procedures is to assist in the achievement of these objectives, and to clarify the ownership interest of the University in intellectual property created by the efforts of its affiliates.

2. **Policy.** The policies established in furtherance of the above purposes are as follows:
  - A. The University shall own all intellectual property by affiliates developed under any of the following circumstances:
    - (1) The affiliate developed the property in the course of research, professional or public service, or in the course of instruction having all or any part of the cost paid from University funds or funds under control of or administered by the University;
    - (2) The development of the property is a direct result of the affiliate's duties, obligations or privileges with the University or
    - (3) The property was developed, in whole or in part, using University resources or facilities.
  - B. This policy applies to online course development and teaching. All course materials developed for ENMU (2.A. above) will remain the property of both ENMU and the faculty member.
  - C. Any affiliate owes the University an obligation to promptly disclose any intellectual property which that affiliate has developed or participated in developing.
  - D. The vice president for Academic Affairs (VPAA) shall have the responsibility for evaluation and management of the University's ownership or other proprietary interest in intellectual property.
  - E. The Intellectual Property Subcommittee (the Subcommittee), which shall consist of five (5) members of faculty and/or staff, shall be appointed by the Faculty Research and Instructional Development Committee of the Faculty Senate. The Subcommittee shall provide consultation and advice to the VPAA and perform the other functions specifically set forth for it in the procedures below. In considering a specific matter, the Subcommittee may appoint one (1) or two (2) consultants who, in the judgment of the Subcommittee, have specialized knowledge in the area being considered.

- F. Any funds received and retained by the University as a result of commercial development of intellectual property shall be used for the advancement and extension of technical and scientific investigation, research and experimentation.
- G. The University shall share with the affiliate any income derived from commercial exploitation of intellectual property developed by that affiliate, provided the affiliate adheres to and complies with the policies and procedures of the University.
- H. The VPAA, with the advice and consent of the president and the Board of Regents, shall have the authority to employ an agent, commonly called patent management agents, to manage any intellectual property if the appropriate management of such property would be outside the usual purview of the University.
- I. Intellectual property conceived by more than one (1) affiliate shall be managed by the University on the same basis as that conceived by a single affiliate.
- J. As a condition of employment, all employees of the University shall be required to acknowledge adherence to these policies and procedures in writing. If a prospective employee has work in progress which may become a valuable intellectual property, the University is, by this statement of policy, authorized to negotiate a special exception to these policies and procedures for any such work in progress.
- K. Affiliates who are not employees shall also be bound by this policy.

The foregoing purpose and policies are implemented by the following.

### **Procedures**

- 3. Definitions.** The following definitions shall be applicable throughout these policies and procedures:
- A. "Affiliate" refers to any University employee, student or any other person who has a relationship of any kind with the University.
  - B. "University" refers to Eastern New Mexico University, including each of its campuses, its off-campus centers and its associated activities.
  - C. "Third party" refers to funding agencies beyond the scope of the University (e.g. organizations which provide grants).
  - D. "VPAA" shall refer to the vice president for Academic Affairs or a particular faculty or staff member the VPAA may appoint to perform some of the duties of the VPAA with regard to intellectual property.
  - E. "Patent" includes, but may not be limited to, any of the available types of patents broadly referred to as utility patents, which refer to tangible inventions; design patents, which refer to ornamental or aesthetic creations used as such and plant patents, which include reproducible plants.
  - F. "Copyright" refers to the protection provided to authors of original works which are tangible and in a fixed form and in a fixed form which can be communicated either directly or through the aid of a machine or device. Summarized briefly as literary, dramatic, musical, artistic and other intellectual works, copyrighted materials may include, but are not limited to, literary works; musical works, including lyrics; dramatic works, including any accompanying music; pantomimes; choreographic works; pictorial works; graphic works; motion pictures; audiovisual works; sound recordings; computer equipment and programs including, but not limited to, hardware and software, which includes such examples as assemblers, compilers, sources codes, object codes, structures, firmware and all documentation on any media related to such programs; maps and architectural plans.

- G. "Intellectual property" refers to inventions, discoveries and licensable products and processes, as well as other property subject to patent, copyright or similar protection.

**4. Implementation and Dissemination.**

- A. Upon entering employment and as a condition thereof, all employees shall execute an agreement entitled "Receipt and Agreement," prepared by the University.
  - B. Students and other non-employee affiliates who have authorized access to University instruction resources, facilities, equipment or other assets shall execute an agreement entitled "Receipt and Agreement," prepared by the University, as a condition of receiving access.
  - C. All employees shall receive a copy of these policies and procedures upon entering employment.
  - D. Students and non-employee affiliates shall receive a copy of these policies and procedures upon being granted the access described in section 4. B. above.
  - E. All agreements and other documents relating to these policies and procedures shall be kept on record in the Office of the VPAA.
  - F. Any affiliate using University instruction, facilities, equipment, resources or other assets without executing a "Receipt and Agreement" shall jeopardize his or her right of ownership in, or income from, any intellectual property resulting in any way from such use.
  - G. The VPAA shall publish these policies and procedures in the Monday Memo and the student newspaper once at the beginning of each fall semester.
- 5. Disclosure.** Affiliates shall disclose to the VPAA all intellectual property within sixty (60) days of the time the property is developed into a useable, marketable or publishable form. Failure to make timely disclosure may result in a reduction or elimination of income which might otherwise be received by the affiliate as a result of development of the property.
- 6. Procedure for Development of Intellectual Property.** Upon disclosure by an affiliate, the following procedural steps for development of the intellectual property shall be taken:
- A. The VPAA shall evaluate the disclosure to determine the University's interest and the interest of any third party. If the University's interest is primary, the VPAA shall proceed to step B. If the University's interest is secondary, the VPAA shall proceed to step C.
  - B. In the case of the University's primary interest, the VPAA shall submit the intellectual property to an agent for his or her consideration of patents, copyrights or similar protection which may be contractually acquired. If the agent the University employs declines to undertake commercial exploitation of the intellectual property and file the patent application or register the copyright in the computer program, the University may take the following action:
    - (1) Submit the intellectual property to another agent or agents,
    - (2) Release the title of the intellectual property to the affiliate or,
    - (3) If required by an agreement with a third party, release the title of the property to that party.

In all events, the University shall not delay its actions unduly, as any delays could negatively affect the value of the intellectual property.

- C. The VPAA may negotiate with third parties in order to obtain the maximum ownership interest in the intellectual property for the University, and none of the provisions of these policies or procedures shall be construed in a way to limit the terms of any agreement reached with a third party.
- D. The affiliate shall receive a percentage of any net income which the University obtains from exploitation of the intellectual property; such percentage shall be determined by negotiations between the VPAA and the affiliate. For the protection of the affiliate, however, a minimum percentage shall be in accordance with the following schedule:

<b>Amount Earned</b>	<b>Affiliate's Percentage</b>
\$1–1,000	100%
\$1,001–5,000	90%
\$5,001–20,000	75%
\$20,000 and over	50%

- E. If there is a disagreement on the negotiated division of net income between the University and the affiliate, either party may refer the matter to the Subcommittee for consideration and recommendation. The recommendation of the Subcommittee and of each of the parties shall be submitted to the VPAA, who shall make a final determination on the matter.
  - F. The Subcommittee shall make its recommendations within four (4) calendar weeks of the time the matter is referred to it. The VPAA shall make his or her determination within two (2) calendar weeks of the time the recommendation of the Subcommittee is referred to him or her.
7. **Co-Inventors.** Co-affiliates shall be free to agree on any division of income between or among themselves. Advance arrangements between co-affiliates shall be honored by the University.
8. **Agreement with Agent.** Any agreement the University enters into with an agent shall be reduced to writing and shall not come into effect until the written document is signed by the VPAA and the president. Any such agreement shall include, but shall not be limited to:
- A. A commitment, on the part of the agent, to use his or her best efforts to ensure prompt protection for commercial development of the intellectual property and
  - B. A reservation to the University of a royalty-free license to use the intellectual property for non-commercial purposes.

Approved by the Board of Regents on December 12, 2008