

Intellectual Property Policy

The University of Kansas Intellectual Property Policy for the Lawrence Campus

The purpose of the Intellectual Property Policy is to foster the creation and dissemination of knowledge and to provide certainty in individual and institutional rights associated with ownership and with the distribution of benefits that may be derived from the creation of intellectual property. The policy applies to all full- or part-time employees, including students, creating intellectual property related to the scope of their employment while under contract with the university. When revenues are to be shared, the creator(s) shall obtain his/her share only after the university has recouped any direct costs borne by the university for equipment and materials and costs paid to third parties. The portion of the revenues to be shared among multiple creators shall be shared equally unless otherwise agreed in writing by the creators.

A. General Copyright Policy

The ownership of the various rights associated with copyright is dependent upon the specific type of intellectual property. The university shall assert limited ownership of some of the various rights as set forth below. Since the university has a fiduciary responsibility for the appropriate use of state funds, unless otherwise provided for under this policy, all rights associated with works produced as “work made for hire” or other works that make “substantial use” of institutional resources belong to the university. For purposes of this policy, “work made for hire” should be as defined by the AAUP statement on copyright (<http://www.aaup.org/statements/Redbook/Spccopyr.htm>)¹. “Substantial use” means that the creator receives more than normal support for the project or receives time and/or resources specifically dedicated to the project.

¹The University of Kansas, Lawrence, will be guided specifically by that portion of the AAUP policy that states, “Works created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement, may be fairly deemed works made for hire. Even absent such prior written specification, ownership will vest in the college or university in those cases in which it provides the specific authorization or supervision for the preparation of the work. Examples are reports prepared by a dean or by the chair or members of a faculty committee, or college promotional brochures prepared by a director of admissions.”

For the Kansas Geological Survey and the Kansas Biological Survey, which have separate statutory authority for preparation of reports, maps, or other documents, ownership of intellectual property developed in the course of work for the unit shall be determined pursuant to the authorizing statute. Ownership of other work shall be determined pursuant to this policy.

I. Mediated Courseware

For purposes of the university Intellectual Property Policy, the phrase “mediated courseware” means: course materials that (1) enable instructors to rely exclusively or substantially on nonclassroom contact hours for instruction, 2) make extensive use of technology, including but not limited to video conferencing, streaming media, and similar technologies, and (3) potentially could permit students from other institutions to access courses offered by the University of Kansas upon payment of a specified fee. The phrase “mediated courseware” does not include course material prepared by an instructor that makes use of the Internet for delivery or presentation, unless all of the above criteria are met.

a. The university shall have limited ownership or control rights for mediated courseware as specified below:

(1) Self-initiated mediated courseware. When employees develop mediated courseware without specific direction by the university, unless otherwise agreed, the ownership of the courseware shall remain with the employee.

Normally, no royalty, rent or other consideration shall be paid to the employee when that mediated courseware is used for instruction at the university and such mediated courseware shall not be used or modified without the consent of the creator(s). The mediated courseware shall not be sold, leased, rented, or otherwise used in a manner that competes in a substantial way with the for-credit offering of the university unless that transaction has received the approval of the Provost and Executive Vice Chancellor. Should approval be granted to offer the course outside of the university, the creator shall reimburse the university for substantial use of institutional resources from revenues derived from the transaction offering the course.

b. Mediated courseware when judged by the creator(s) to have commercial value shall be reported to a designee of the Provost and Executive Vice Chancellor. The report shall contain a description of the mediated courseware. Mediated courseware judged by the creator(s) not to have commercial value shall be considered reported when used in a University of Kansas course.

(2) Institution-directed mediated courseware. When the university specifically directs the creation of mediated courseware by assigning one or more employees to

develop the mediated courseware and supplies them with materials and time to develop the mediated courseware, the resulting mediated courseware belongs to the university, and the university shall have the right to revise it and decide who will utilize the mediated courseware in instruction. The university may specifically agree to share revenues and control rights with the employee.

Procedure: When the university directs employees to develop mediated courseware, a contract should be agreed to between the University of Kansas and the faculty member(s) before the project begins. The contract should contain clear statements regarding the following:

1. Definition of the project and participants.
2. Time commitment.
3. Compensation, such as release time, summer salary, etc.
4. Ownership of derivative works.
5. Revenue sharing.
6. Conditions of revision.
7. Credits to creators.
8. Procedures for creating an agreement on instructional uses by other institutions or licensing should those conditions warrant.

2. Scholarly and Artistic Works

Notwithstanding any use of institutional resources or “work made for hire,” the ownership of textbooks, scholarly monographs, trade publications, maps, charts, articles in popular magazines and newspapers, novels, nonfiction works, supporting materials, artistic works, and like works shall reside with the creator(s), and any revenue derived from their work shall belong to the creator(s). Except for textbooks, the university shall have royalty-free use of the work within the university, unless otherwise agreed in writing.

3. Manuscripts for Academic Journals

a. Notwithstanding any use of university resources or “work made for hire” the ownership of manuscripts for publication in academic journals shall reside with the creator(s), and any revenue derived from their works shall belong to the creator(s).

b. If the manuscript is to be published, the creator(s) shall request the right to provide the university with a royalty-free right to use the manuscript within the university in its teaching, research, and service programs, but not for external distribution, and if successful, the creator(s) shall grant such right to the university.

Procedure: Upon acceptance of the manuscript, the university will provide a royalty-free request form to be

sent to the publisher by the creator. The creator’s responsibility for this policy ends with the submission of the form.

c. Upon the establishment of national governmental or nonprofit entities whose purpose is to maintain in an electronically accessible manner a publicly available copy of academic manuscripts, the Kansas Board of Regents will review each entity and upon determination that providing the manuscripts will not jeopardize the publication of articles or infringe on academic freedom, require the creator(s) to provide to the appropriate entity a limited license for the use of each manuscript.

4. Copyrightable Software

The rights to copyrightable software with an actual or projected market value in excess of \$10,000 annually, except software included in computer-mediated courseware, shall be determined pursuant to the Board’s Patent and Copyrightable Software Policy.

Procedure: The university will provide a form for disclosing copyrightable software that a reasonable person would believe to have commercial value. The university will establish a procedure for normally rendering a decision within 45 days.

5. Student Academic Creations

The ownership of student works submitted in fulfillment of academic requirements shall be with the creator(s) with the following exception: upon request of the creators, the university shall determine ownership of works created from research or development activities that are collaborative efforts involving students, faculty or staff, or spanning several semesters. The student by enrolling in the university gives the university a nonexclusive royalty-free license to mark on, modify, retain the work as may be required by the process of instruction, or otherwise handle the work as set out in the university’s Intellectual Property Policy or in the course syllabus. The university shall not have the right to use the work in any other manner without the written consent of the creator(s). Where the creation is part of any ongoing research or development project, the involved faculty or staff shall have the right to use and to modify the creation for use within that project and related research projects without additional consent of the creator(s).

Procedure: A statement on accessibility to the university policy on intellectual property will be inserted in documents accessible to students.

B. Patent and Copyrightable Software Policy

Patents obtained on inventions or the ownership of copyrightable software with an actual or projected market value in excess of \$10,000 annually resulting from University of Kansas-sponsored research shall be retained by the university or may be assigned to the University of Kansas Center for Research, Inc. (KUCR), for the purpose of obtaining patents on inventions, receiving gifts, administering or disposing of such patents, and promoting research and the development of intellectual property at the University of Kansas by every proper means.

The following regulations shall be followed with respect to inventions or software:

1. Anyone who conceives an invention or who develops copyrightable software that is not included in mediated courseware resulting from a research project sponsored by the university shall report the matter to the Vice Provost for Research and President of the University of Kansas Center for Research, Inc., or designee, on a Patent Disclosure form, available from the University of Kansas Center for Research, Inc., or online at <http://www.research.ku.edu/techtran/inventors/invention-disclosure.doc>. Following receipt of Patent Disclosure Form, KUCR will schedule a meeting with the creators to discuss the disclosed invention.

2. If the university or the University of Kansas Center for Research, Inc., notifies the inventor that the invention does not warrant commercialization, then the inventor is free to patent it. The inventor shall be notified within 180 days of the date of submission of the invention disclosure to the University of Kansas Center for Research, Inc., that KUCR has begun to proceed with commercialization or that he or she is free to obtain and exploit a patent or other intellectual property in his or her own right. In such a case, however, the university does not relinquish its right to publish any of the data obtained in the research project. If the university or KUCR decides not to further the use of the patent or copyrightable software, it shall assign all other rights therein to the creator(s).

Procedure: Upon making a decision that the invention does not warrant commercialization, the university or the University of Kansas Center for Research, Inc., shall notify the inventor(s) in writing that they are assigned the rights therein upon execution of a KUCR Technology Release form.

3. When any revenue is obtained by or on behalf of the university or the University of Kansas Center for Research, Inc., from the commercialization of any technology including royalties, license fees or other charges based on any patent or copyrightable software, one-third of revenues shall be paid directly to the inventor or creator(s), and one-third shall be paid to the department or center to which the inventor or creator(s) belongs, per the approved Technology Transfer Revenue Distribution Policy (<http://www.research.ku.edu/kucr/policy/comp/coi/ttrdp.shtml>). Revenue sharing shall begin only after the university or KUCR recoups costs paid in support of obtaining revenue from the invention, including costs of patents.

4. The remainder of any revenue mentioned in Paragraph 3 shall be used to sponsor further research and research-related activities on behalf of the university or the University of Kansas Center for Research, Inc.

5. In case of cooperative research sponsored in part by an outside corporation or individual, a written contract shall be made between the university or the University of Kansas Center for Research, Inc., and the cooperating agency. This contract should include a statement of policy substantially equivalent to that outlined below:

It is agreed by the parties to this contract that all results of experimental work, including inventions, carried on under the direction of the scientific staff of the University of Kansas, belong to the University of Kansas or at the discretion of the University of Kansas to the University of Kansas Center for Research, Inc., and to the public and shall be used and controlled so as to produce the greatest benefit to the public. It is understood and agreed that if patentable inventions or copyrightable software grow out of the investigation and such inventions or software have commercial value, the cooperating agency shall receive preferential consideration as a prospective licensee, with a view to compensating said cooperating agency in part for the assistance rendered in the investigation.

It is further agreed that the name of the University of Kansas or the University of Kansas Center for Research, Inc., shall not be used by the cooperating agency in any advertisement, whether with regard to the cooperative agreement or any other related matter.

6. In case of a research project where it is proposed that all costs including overhead, salary of investigator, reasonable rent on the use of equipment, etc., are paid by an outside party, the outside party and the university or the University of Kansas Center for Research, Inc., shall negotiate the appropriate assignment of all patent or

copyrightable software rights prior to the provision of any funding by the outside party. The university shall reserve the right to publish all data of fundamental value to science and technology. The educational programs of students, including publication of theses, dissertations, and papers, will be given highest priority when students participate in externally funded research.

7. Changes in the above policies may be made by the university to conform to the requirements of the United States Government when contracting with the United States Government or a Federal Government Agency.

C. Trademark Policy

The university reserves the right to control and protect the trademark and service marks of the university.

D. Institutional Procedures

The university shall establish procedures that require employment contracts and course catalogs or syllabi to state that the employee or student is subject to the Intellectual Property Policy of the university and to resolve questions concerning intellectual property rights and any disputes that develop under this policy. Final decisions on disputed matters will be made by the Chancellor or designee and shall constitute final university action.

Procedure: The following statement will be included in the graduate and undergraduate catalogs: "All enrolled students are subject to the Board of Regents and university Intellectual Property Policies."

This policy is online at <http://www.provost.ku.edu>

Approved by KU University Council, 11/9/00; final version approved by Chancellor Robert Hemenway, May 15, 2001. Reviewed and updated by the Office of the Provost and Executive Vice Chancellor and the Office of the General Counsel, in consultation with the Office of Technology Transfer and Intellectual Property and the Office of University Governance, November 2006.

Related policies: Management of Conflicts of Interest Policy (<http://www.research.ku.edu/kucr/policy/comp/coi/micoi.shtml>); Institutional Conflicts of Interest Policy (<http://www.research.ku.edu/kucr/policy/comp/coi/icoi.shtml>); Technology Transfer Revenue Distribution Policy (<http://www.research.ku.edu/kucr/policy/comp/coi/ttrdp.shtml>); Employment of Students in Faculty-Owned Business Policy (<http://www.research.ku.edu/kucr/policy/comp/coi/esjob.shtml>); Conflict of Interest Committee Description (<http://www.research.ku.edu/kucr/policy/comp/coi/commitee.shtml>)

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