

**Intellectual Property Policy
Kean University
Approved 12.4.10
Kean University Board of Trustees**

I. Introduction

Kean University's ("University") policy on intellectual property is intended to encourage, support and motivate research, scholarship, creative activities, innovation and the development of new ideas by defining, recognizing and protecting respective rights and obligations; providing incentives and assistance in commercializing intellectual property where applicable; and, providing for the fair distribution of benefits.

The University recognizes that one part of its mission as an interactive public university is to serve as a major resource for regional advancement. Therefore, the University seeks to encourage and reward activities that may lead to the development of intellectual property for the public good.

This policy applies to all University employees, faculty and non-faculty, and anyone using university facilities under the supervision of university employees, as well as to undergraduate and graduate students who receive compensation from the University as research assistants and/or laboratory assistants.

II. Definitions

A. Intellectual Property

Intellectual property ("IP") is a term used to describe creations of the human intellect. The term "intellectual property" broadly includes, but is not limited to: inventions, discoveries, processes, know-how, machines, designs, composition of matter (including chemical compounds and microorganisms), asexually propagated plant varieties, methods, formulae, software, databases, writings, literary works, books, journal articles, art works, music, films, and architecture. Intellectual Property may be protected under four general categories of law: Patents, Trademarks, Copyrights, and Trade Secrets. For purposes of this policy, intellectual property means copyrighted materials, patentable materials, software, trademarks, service marks and trade secrets, whether or not formal protection under law is sought.

B. Patent

A **patent** is an exclusive right officially granted by a government to an inventor to make or sell an invention. Patents protect inventions that, by definition, are novel, useful and not obvious to one skilled in the art. A patent gives the owner the right to exclude others from making, using, or selling an invention. Patent applications must be filed with the U.S. Patent and Trademark Office ("USPTO"). Patent rights in the United States begin when the patent is granted by the USPTO and expire 20 years after the application for the patent was filed with the Office.

C. Copyright

Copyright is the legal right of authors, artists, or publishers to control the use and reproduction of their original works. Copyrights protect the tangible expression of original literary and artistic works such as books, papers, photographs, music, movies, and software. Copyright exists automatically when a work is created. Copyrighted works may be registered with the U.S. Copyright Office in the Library of Congress.

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III. Ownership of Intellectual Property

A. Inventions, Discoveries and Improvements

All inventions, discoveries and improvements, whether or not patentable, that are made, conceived, or reduced to practice in whole or in part by faculty or staff (including student research assistants) or by non-employees who participate in research projects at the University, using the facilities, equipment, funds or other resources of Kean University or who participate in research projects for the University regardless of whether University facilities are being used, will be the sole property of Kean University. All original data, records, and other documents relating to the invention will be the sole property of the University.

The University does not claim intellectual property rights to inventions by employees that are unrelated to their responsibilities or assignments *and* that were invented or improved without the use of University resources.

B. Copyrights

Copyrightable works that also qualify for protection under patent laws will be owned by the University and governed by the Inventions, Discoveries and Improvements section of this policy. The University's copyright ownership rights herein are subject to any applicable collective negotiations agreement that provides for an employee's ownership of copyrightable works. To the extent that this policy is inconsistent with such an agreement, that agreement, and not this policy, will control with respect to any employee to whom the agreement applies.

1. Traditional Academic Copyrightable Works

Scholarly and Artistic Works: All works that have traditionally belonged to faculty such as scholarly books, monographs, and journal articles, and artistic works such as musical compositions and artwork, created with their individual effort, with only incidental use of University resources, and published in pursuit of their research, in whatever format they are created, print or electronic, continue to belong to faculty and the University makes no claim to them.

Courseware: Faculty members hold copyright to all course materials they create on their own initiative in the course of their teaching responsibilities using resources ordinarily available to all or most faculty members. Course materials include materials in print, in electronic format or posted to a website.

Kean University reserves a royalty-free, non-transferable right to use all scholarly and artistic works and pedagogical materials created by faculty during the course of their employment at Kean, for academic and research purposes.

Works for Hire: All works that are created as a condition of employment (see description below) will be the sole property of the University.

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2. Substantial Use of University Resources

Kean University may elect to own the copyright on works created using substantial University resources (this does not apply to traditional scholarly or artistic work). The use of substantial University resources refers to the use of University funds, facilities, equipment or other resources which might not be ordinarily available to all or most faculty members.

Use of substantial University resources may include internal research funding, paid or released time awarded for the specific purposes of supporting the creation of the copyrightable work, use of University laboratories, specialized equipment or unique facilities, and dedicated assistance by University employees. This is a listing of examples and is not intended to be complete.

Faculty members who expect to use substantial University resources in the creation of a copyrightable work are encouraged to consult with his or her dean for advice. Deans may consult the Office of the Vice President, Institutional Advancement & Research which will, whenever feasible, make a determination on copyright before the work is created and inform the faculty member of this determination as expeditiously as possible.

3. Works Created as a Condition of Employment

A "work for hire" under copyright law is:

- work prepared by an employee within the scope of his/her employment (examples include a software programmer, graphic artist, script writer, etc.)
- or, if the work is created by an independent contractor or freelancer, the work may be considered a work for hire **only if all** of the following conditions are met:
 - the work must come within one of the nine limited categories of works considered works for hire under copyright law (US Copyright Act of 1976):
 1. contribution to a collective work
 2. part of a motion picture or other audiovisual work
 3. translation
 4. supplementary work
 5. compilation
 6. instructional text
 7. test
 8. answer material for a test
 9. atlas
 - the work must be specially ordered or commissioned
 - there must be a written agreement between the parties specifying that the work is a work made for hire.

C. Sponsor-Supported Efforts

The rights of the University may be subject to the terms of a sponsored research project, contract or

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other agreement. To the fullest extent allowed under such agreements, the University will be the owner of all inventions or improvements conceived or reduced to practice in the performance of the sponsored work. If not specified, the University owns the intellectual property.

D. Other Efforts

Intellectual Property developed by faculty or staff under "other efforts", which may include consulting for outside organizations or collaborating with non-university personnel, can result in joint ownership of the IP by the University and other persons or their employers. Protection and possible commercialization of jointly owned IP can be difficult without prior agreement among the potential inventors. Accordingly, any outside agreement must be provided to the University for approval, and any outside agreement must include a statement that the faculty or staff member has intellectual property obligations to the University and a copy of this policy should be attached to the outside agreement.

IV. Disclosure of Intellectual Property

University employees are required to promptly disclose the development of all intellectual property in writing, through a fully-completed invention disclosure form, to the Vice President, Institutional Advancement & Research.

This timely and confidential disclosure requirement is intended to protect the rights of the inventor and the University. The United States has a "first to invent" patent system rather than a "first to file" system. Therefore, it is essential to formally document your invention through the completion of the invention disclosure form as soon as possible after you conceive it.

These disclosures are confidential and must be made prior to any public disclosure including submission for publication or attempt to patent, presentation at a professional meeting, and any private disclosure to a commercial entity or investor. The publication of an invention starts a one-year clock running on the right to file for patent protection in the United States and automatically bars filing for patent protection in almost every other country. In a global economy, loss of foreign patent rights can substantially diminish the economic value of your invention.

V. Invention and Copyright Agreements

This policy constitutes an understanding which is binding on University faculty, staff, students, and others as a condition of their use of University resources or participation in University research programs. Where the University has an obligation to disclose the creation of intellectual property to a sponsor, or where the University itself will acquire rights under this policy, it will require a formal invention and copyright agreement.

VI. Procedure for Requesting Return of Rights

The University will make a decision whether or not to initiate the filing of patent application within 120 days after receiving the invention disclosure form and will notify the inventor of its decision. If the University decides not to file a patent application, the inventor may request a transfer of title. This request must be made in writing to the Vice

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President, Institutional Advancement & Research. The Vice President may ask for the recommendation of the University's Intellectual Property Committee before either granting the request or advising the inventor that the University will file for patent protection.

If the University obtains a patent but makes no effort to commercially develop the invention within a three (3) year period, the inventor may request a transfer of title. This request must be made in writing to the Vice President, Institutional Advancement & Research. The Vice President may ask for the recommendation of the University's Intellectual Property Committee before either granting the reassignment of ownership back to the inventor or advising the inventor of the University's plans for commercial development of the invention. If the request to return title is granted, the University will retain a 10% Interest in the patent.

VII. Royalties and Proceeds Distribution

Realizing financial return from intellectual property usually requires licensing those rights to interested companies. The University shares royalties and other income from intellectual property after it has recovered direct costs related to processing the patent or copyright application and costs of commercializing the property.

Net revenues from commercialization will be paid 50% to the inventors/creators/authors and 50% to the University.

In the case of multiple authors/creators/inventors, net revenues will be divided equally unless the authors/creators/inventors unanimously agree in writing to a different distribution, which is accepted by the University.

VIII. Administration

The Vice President, Institutional Advancement & Research (or designee) is responsible for the administration of Kean University's Intellectual Property Policy. The University's Intellectual Property Committee makes recommendations to the Vice President, Institutional Advancement & Research on matters regarding University policy and intellectual property. The Finance Committee of the Board of Trustees reviews and approves patent agreements.

The Intellectual Property Committee is comprised of five members: two appointed / elected by the Faculty Senate, selected from full-time tenure-track or tenured faculty; one member appointed by President; one member appointed by the Provost/Vice President for Academic Affairs; one member appointed by the Vice President, Institutional Advancement & Research.

IX. Appeals

Appeals of an Intellectual Property decision must be made to the University's President (or designee) in writing within thirty (30) days of written notice of a decision. The determination made by the President or the President's designee constitutes the University's final decision regarding any appeal.

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X. Review and Amendments to the Policy

The Intellectual Property Committee shall periodically review this policy. This policy may be amended at anytime by the Kean University Board of Trustees or the Executive Committee of the Board of Trustees. Intellectual property that is already developed or under development at the time that an amendment to the policy is adopted will not be bound by the terms of the amendment without the voluntary written consent of both the author/creator/inventor and the University.

Adopted: December 4, 2010