

Professional Concerns Committee Agenda for November 16, 2017

UC 135
3:15 pm

1. Call to Order, Adoption of Agenda
2. Approval of Minutes from PCC Meeting of November 02, 2017
3. Chair's Report and Announcements
4. Old Business
 - Voting Item: Intellectual Property Policy (4 attachments)
5. New Business
 - Discussion Item: Health Insurance Benefits for Short-Term Non-Tenure-Track Temporary Faculty Members (1 attachment)
 - Discussion Item: Academic Freedom & Free Speech (4 attachments)
6. Adjournment

Professional Concerns Committee
Minutes for November 16, 2017
UC 135, 3:15 pm

Members in Attendance: S. Alexander, A. Al-Bahrani, K. Ankem, T. Bowers, I. Encarnacion, J. Farrar, S. Finke, K. Fuegen, N. Grant, J. Hammons, M. King, B. Karrick, K. Katkin, A. Miller, B. Mittal, G. Newell, S. Nordheim, M. Torres, M. Washington, M. Whitson, J. Wroughton.

Guests in Attendance: Sue Ott Rowlands

Members Not in Attendance: P. Bills, J. Clarkin, E. Fenton, M. Kirk, T. Songer, L. Wermeling, B. Zembrodt.

1. Call to Order, Adoption of Agenda
 - a. The Meeting was called to order, and the agenda was adopted unanimously.
2. Approval of Minutes from PCC Meeting of November 2, 2017.
 - a. The minutes were approved.
3. Chair's Report and Announcements
 - a. PCC voted at the November 2, 2017 meeting to send a resolution to Faculty Senate to oppose adoption of the revised Intellectual Property policy. The Provost withdrew the revised policy and proposed that the PCC work on a draft IP policy.
 - b. The Faculty Advocate brought a question on promotion or tenure in a non-mandatory year. Should the faculty member be able to withdraw the application and materials after a negative recommendation from the departmental review committee? K. Katkin will bring proposals for and against to a future PCC meeting.
 - c. Academic Partnerships will be discussed at the November Faculty Senate meeting.
 - d. Senate elections are coming up soon, and additional nominations are being sought for particular committees. Email Grace Hiles to self-nominate.
4. New Business: Discussion of Health Insurance Benefits for short-term Non-Tenure Track Temporary Faculty members.
 - a. Current handbook says that a full year of expected service is required before insurance is offered to the faculty member. ACA requirements are to offer insurance if the faculty member meets the hourly requirement for a semester. NKU has been following ACA requirements in contradiction to the handbook.
 - b. A proposal was presented by K. Katkin to add "or to comply with laws and regulations" to the language in the handbook to be in compliance with ACA.
 - c. This will be brought as a voting item to the December 7 PCC meeting.
5. Old Business: Intellectual Property Policy
 - a. With the withdrawal of the revisions to the IP policy, a motion to table our comments was made by M. Whitson, second by S. Finke, and the motion passed without dissent.
 - b. K. Katkin will form a subcommittee to work on a new IP policy. Email to K. Katkin to nominate for the subcommittee.

6. New Business: Academic Freedom and Free Speech
 - a. This has been an issue of interest on campus and nationally.
 - b. What should a policy say? What are our obligations to those who are not members of the NKU community? Should students be punished for shouting down speakers? Should groups be required to pay for security at events?
 - c. The Provost suggested that we invite Dan Nadler, Vice President for Student Affairs, to a future meeting. Student Affairs may already be working on a free speech policy, particularly for outside speakers.
 - d. PCC has discussed these issues before (see minutes from May 5, 2016 PCC meeting). The Board of Regents removed from the handbook freedom of speech language that had been approved by Faculty Senate.
 - e. K. Katkin will work on documents for a future PCC meeting.
7. Motion to adjourn was accepted without dissent.

Submitted,
John Farrar

Kenneth Katkin

From: nkunews-bounces@listserv.nku.edu on behalf of Gerard St. Amand
<stamand@nku.edu>
Sent: Wednesday, October 25, 2017 11:01 AM
To: nkunews Listserv
Subject: [NKUNews] Free Speech on Campus
Attachments: ATT00001.txt

Colleagues:

In recent weeks, there has been much discussion at NKU about various forms of speech. Some have questioned why the university allows what might be considered offensive communications on our campus.

Earlier this week, rather than expressing their views verbally, individuals vandalized an authorized display of crosses assembled by a student organization. Such conduct is against the law, and is unacceptable at NKU. University Police is investigating this incident, and anyone found responsible will face the appropriate consequences.

This is a good time to remind our university community of the speech rights existing on our campus. As a public university, our campus is no different than the streets, sidewalks and parks in Covington or Cincinnati. People are free to come and go, and they do not need an invitation, nor do they need permission.

While at NKU, people have the same free speech rights guaranteed under the First Amendment of the U.S. Constitution as they would in any other public space in our country. We cannot limit a person's guaranteed constitutional rights based on the content of their message.

The university places non-content-related restrictions on speakers to prevent interference with university operation. For example, the university places restrictions to ensure that pedestrian and vehicular traffic are not blocked, that access to facilities is not blocked, or that noise from the activity does not interfere with business operations, including classes. For this reason, those intending to hold rallies or forums, or use sound amplification, etc., should register with us so we can arrange at the outset for the appropriate location and time.

College campuses must remain safe places for difficult conversations about the issues that may divide us. Vandalism and personal threats stifle that debate, and in the void, hatred and animosity grow.

We will continue to encourage the free exchange of views on our campus. This means there will be people here – some affiliated with our university and some not – expressing their views publicly on a full range of what might be considered controversial topics. In addition to speaking, some may express their views through the use of signs, symbols or T-shirts. With advance notice, individuals may be granted permission to set up displays that support their message.

Northern Kentucky University recognizes the legally protected right of individuals and organizations to speak, even if their views may be considered offensive to others. The university will not interfere with their free speech rights, nor will it allow others to do so. NKU will remain a place where everyone can freely express themselves without feeling threatened.

If you encounter a speaker whose message offends you, there are acceptable actions you can take. You can ignore them and move on, or you can espouse a contrary viewpoint. You cannot, however, act in a manner that prevents others from speaking and being heard, including through authorized displays.

As individuals on a public campus, we have no legally protected right to be shielded from views we find offensive. Our own views on any given topic do not limit other people's rights to share opposing views, either verbally or visually, however disagreeable they might be to us. Indeed, the very intent of the First Amendment is to protect views that might represent minority or unpopular positions from the power of the majority and the state to suppress. Our founding fathers stood resolute in the defense of free speech rights, just as we do today.

I hope that this reminder will help all of us respond more thoughtfully and effectively to the normal clash of ideas and perspectives that are naturally present in society and on our campus.

As we continue to discuss free speech, I hope this brief summary of our rights and responsibilities will inform those discussions.

Gerry

Gerard A. St. Amand
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Highland Heights, KY 41099
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Please note that all e-mails directed to President Gerard St. Amand are subject to open records laws and may become public information.

NKU FACULTY POLICIES AND PROCEDURES HANDBOOK

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Section 16.3. ACADEMIC FREEDOM

Northern Kentucky University strongly adheres to the long-standing tradition and practice of academic freedom. In order for the University to fulfill its mission and be of service to society, the recognition of the free search for truth and its free expression is paramount. The University has an obligation to recognize and protect freedom of inquiry, teaching, and research in all facets of the academic community. The right of academic freedom will be the right of every faculty member.

The University recognizes that all faculty members are private persons and members of their respective learned professions. When they speak or write as private persons, they have the same rights and obligations as other private persons. Although faculty members are free, in public activities and statements, to identify their University affiliation, they have special obligations to be accurate, prudent, and respectful of others so that no false impression of University sponsorship or endorsement is created.

While the University will vigorously defend the concept of academic freedom, no special immunity from the law will be sought for administrators, faculty, students, or staff. The University does not, however, assume the authority of prosecutor or judge of criminal or civil misconduct that is beyond the jurisdiction of the University or that is not directly related to legitimate University interests. That is the prerogative and duty of appropriate law enforcement agencies and the courts.

If anyone at the University violates the law, that person is subject to the penalties of the law as are all other persons. In general, the University will not impose administrative sanctions for acts that violate the law beyond the civil or criminal penalties imposed by the appropriate law enforcement agency or court. However, some acts that violate the law are also acts that endanger the physical or emotional safety and well being of students, faculty, other members of the University community, or visitors, or are acts that endanger the safety of University property; persons who commit these acts may also be subject to appropriate University sanctions, consistent with due process.

The University recognizes the need for all parties charged with the responsibility of allocating University resources (money, space, personnel, equipment, library resources, etc.) to make such decisions in a fair and unbiased manner, consistent with established University priorities. Resource allocations made with punitive motivations against an academic unit or individual faculty member for positions taken in controversies within or outside the academic community will be considered unauthorized and incompatible with academic freedom. The University will not condone or support such a decision and will make every reasonable effort to correct any inequity that such a decision produces.

Report of the Committee on Freedom of Expression

The Committee on Freedom of Expression at the University of Chicago was appointed in July 2014 by President Robert J. Zimmer and Provost Eric D. Isaacs “in light of recent events nationwide that have tested institutional commitments to free and open discourse.” The Committee’s charge was to draft a statement “articulating the University’s overarching commitment to free, robust, and uninhibited debate and deliberation among all members of the University’s community.”

The Committee has carefully reviewed the University’s history, examined events at other institutions, and consulted a broad range of individuals both inside and outside the University. This statement reflects the long-standing and distinctive values of the University of Chicago and affirms the importance of maintaining and, indeed, celebrating those values for the future.

From its very founding, the University of Chicago has dedicated itself to the preservation and celebration of the freedom of expression as an essential element of the University’s culture. In 1902, in his address marking the University’s decennial, President William Rainey Harper declared that “the principle of complete freedom of speech on all subjects has from the beginning been regarded as fundamental in the University of Chicago” and that “this principle can neither now nor at any future time be called in question.”

Thirty years later, a student organization invited William Z. Foster, the Communist Party’s candidate for President, to lecture on campus. This triggered a storm of protest from critics both on and off campus. To those who condemned the University for allowing the event, President Robert M. Hutchins responded that “our students . . . should have freedom to discuss any problem that presents itself.” He insisted that the “cure” for ideas we oppose “lies through open discussion rather than through inhibition.” On a later occasion, Hutchins added that “free inquiry is indispensable to the good life, that universities exist for the sake of such inquiry, [and] that without it they cease to be universities.”

In 1968, at another time of great turmoil in universities, President Edward H. Levi, in his inaugural address, celebrated “those virtues which from the beginning and until now have characterized our institution.” Central to the values of the University of Chicago, Levi explained, is a profound commitment to “freedom of inquiry.” This freedom, he proclaimed, “is our inheritance.”

More recently, President Hanna Holborn Gray observed that “education should not be intended to make people comfortable, it is meant to make them think. Universities should be expected to provide the conditions within which hard thought, and therefore strong disagreement, independent judgment, and the questioning of stubborn assumptions, can flourish in an environment of the greatest freedom.”

The words of Harper, Hutchins, Levi, and Gray capture both the spirit and the promise of the University of Chicago. Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community “to discuss any problem that presents itself.”

Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

The freedom to debate and discuss the merits of competing ideas does not, of course, mean that individuals may say whatever they wish, wherever they wish. The University may restrict expression that violates the law, that falsely defames a specific individual, that constitutes a genuine threat or harassment, that unjustifiably invades substantial privacy or confidentiality interests, or that is otherwise directly incompatible with the functioning of the University. In addition, the University may reasonably regulate the time, place, and manner of expression to ensure that it does not disrupt the ordinary activities of the University. But these are narrow exceptions to the general principle of freedom of expression, and it is vitally important that these exceptions never be used in a manner that is inconsistent with the University’s commitment to a completely free and open discussion of ideas.

In a word, the University’s fundamental commitment is to the principle that debate or deliberation may not be suppressed because the ideas put forth are thought by some or even by most members of the University community to be offensive, unwise, immoral, or wrong-headed. It is for the individual members of the University community, not for the University as an institution, to make those judgments for themselves, and to act on those judgments not by seeking to suppress speech, but by openly and vigorously contesting the ideas that they oppose. Indeed, fostering the ability of members of the University community to engage in such debate and deliberation in an effective and responsible manner is an essential part of the University’s educational mission.

As a corollary to the University’s commitment to protect and promote free expression, members of the University community must also act in conformity with the principle of free expression. Although members of the University community are free to criticize and contest the views expressed on campus, and to criticize and contest

speakers who are invited to express their views on campus, they may not obstruct or otherwise interfere with the freedom of others to express views they reject or even loathe. To this end, the University has a solemn responsibility not only to promote a lively and fearless freedom of debate and deliberation, but also to protect that freedom when others attempt to restrict it.

As Robert M. Hutchins observed, without a vibrant commitment to free and open inquiry, a university ceases to be a university. The University of Chicago's long-standing commitment to this principle lies at the very core of our University's greatness. That is our inheritance, and it is our promise to the future.

Geoffrey R. Stone, Edward H. Levi Distinguished Service Professor of Law,
Chair

Marianne Bertrand, Chris P. Dialynas Distinguished Service Professor of
Economics, Booth School of Business

Angela Olinto, Homer J. Livingston Professor, Department of Astronomy and
Astrophysics, Enrico Fermi Institute, and the College

Mark Siegler, Lindy Bergman Distinguished Service Professor of Medicine and
Surgery

David A. Strauss, Gerald Ratner Distinguished Service Professor of Law

Kenneth W. Warren, Fairfax M. Cone Distinguished Service Professor,
Department of English and the College

Amanda Woodward, William S. Gray Professor, Department of Psychology
and the College

1940 Statement of Principles on Academic Freedom and Tenure

with 1970 Interpretive Comments

In 1915 the Committee on Academic Freedom and Academic Tenure of the American Association of University Professors formulated a statement of principles on academic freedom and academic tenure known as the 1915 *Declaration of Principles*, which was officially endorsed by the Association at its Second Annual Meeting held in Washington, D.C., December 31, 1915, and January 1, 1916.

In 1925 the American Council on Education called a conference of representatives of a number of its constituent members, among them the American Association of University Professors, for the purpose of formulating a shorter statement of principles on academic freedom and tenure. The statement formulated at this conference, known as the 1925 *Conference Statement on Academic Freedom and Tenure*, was endorsed by the Association of American Colleges (now the Association of American Colleges and Universities) in 1925 and by the American Association of University Professors in 1926.

In 1940, following a series of joint conferences begun in 1934, representatives of the American Association of University Professors and of the Association of American Colleges agreed on a restatement of the principles that had been set forth in the 1925 *Conference Statement on Academic Freedom and Tenure*. This restatement is known to the profession as the 1940 *Statement of Principles on Academic Freedom and Tenure*.

Following extensive discussions on the 1940 *Statement of Principles on Academic Freedom and Tenure* with leading educational associations and with individual faculty members and administrators, a joint committee of the AAUP and the Association of American Colleges met during 1969 to reevaluate this key policy statement. On the basis of the comments received, and the discussions that ensued, the joint committee felt the preferable approach was to formulate interpretations of the 1940 *Statement* from the experience gained in implementing and applying it for over thirty years and of adapting it to current needs.

The committee submitted to the two associations for their consideration *Interpretive Comments* that are included below as footnotes to the 1940 *Statement*.¹ These interpretations were adopted by the Council of the American Association of University Professors in April 1970 and endorsed by the Fifty-Sixth Annual Meeting as Association policy.

1. The Introduction to the Interpretive Comments notes: In the thirty years since their promulgation, the principles of the 1940 "Statement of Principles on Academic Freedom and Tenure" have undergone a substantial amount of refinement. This has evolved through a variety of processes, including customary acceptance, understandings mutually arrived at between institutions and professors or their representatives, investigations and reports by the American Association of University Professors, and formulations of statements by that association either alone or in conjunction with the Association of American

The purpose of this statement is to promote public understanding and support of academic freedom and tenure and agreement upon procedures to ensure them in colleges and universities. Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole.² The common good depends upon the free search for truth and its free exposition.

Academic freedom is essential to these purposes and applies to both teaching and research. Freedom in research is fundamental to the advancement of truth. Academic freedom in its teaching aspect is fundamental for the protection of the rights of the teacher in teaching and of the student to freedom in learning. It carries with it duties correlative with rights.³

Tenure is a means to certain ends; specifically: (1) freedom of teaching and research and of extramural activities, and (2) a sufficient degree of economic security to make the profession

Colleges. These comments represent the attempt of the two associations, as the original sponsors of the 1940 "Statement," to formulate the most important of these refinements. Their incorporation here as Interpretive Comments is based upon the premise that the 1940 "Statement" is not a static code but a fundamental document designed to set a framework of norms to guide adaptations to changing times and circumstances.

Also, there have been relevant developments in the law itself reflecting a growing insistence by the courts on due process within the academic community which parallels the essential concepts of the 1940 "Statement"; particularly relevant is the identification by the Supreme Court of academic freedom as a right protected by the First Amendment. As the Supreme Court said in *Keyishian v. Board of Regents*, 385 US 589 (1967), "Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom."

2. The word "teacher" as used in this document is understood to include the investigator who is attached to an academic institution without teaching duties.

3. First 1970 comment: The Association of American Colleges and the American Association of University Professors have long recognized that membership in the academic profession carries with it special responsibilities. Both associations either separately or jointly have consistently affirmed these responsibilities in major policy statements, providing guidance to professors in their utterances as citizens, in the exercise of their responsibilities to the institution and to students, and in their conduct when resigning from their institution or when undertaking government-sponsored research. Of particular relevance is the "Statement on Professional Ethics" adopted in 1966 as Association policy (AAUP, *Policy Documents and Reports*, 11th ed. [Baltimore: Johns Hopkins University Press, 2015], 145–46).

attractive to men and women of ability. Freedom and economic security, hence, tenure, are indispensable to the success of an institution in fulfilling its obligations to its students and to society.

Academic Freedom

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.⁴ Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.⁵
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.⁶

4. Second 1970 comment: The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. The passage serves to underscore the need for teachers to avoid persistently intruding material which has no relation to their subject.

5. Third 1970 comment: Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 "Statement," and we do not now endorse such a departure.

6. Fourth 1970 comment: This paragraph is the subject of an interpretation adopted by the sponsors of the 1940 "Statement" immediately following its endorsement:

If the administration of a college or university feels that a teacher has not observed the admonitions of paragraph 3 of the section on Academic Freedom and believes that the extramural utterances of the teacher have been such as to raise grave doubts concerning the teacher's fitness for his or her position, it may proceed to file charges under paragraph 4 of the section on Academic Tenure. In pressing such charges, the administration should remember that teachers are citizens and should be

Academic Tenure

After the expiration of a probationary period, teachers or investigators should have permanent or continuous tenure, and their service should be terminated only for adequate cause, except in the case of retirement for age, or under extraordinary circumstances because of financial exigencies.

In the interpretation of this principle it is understood that the following represents acceptable academic practice:

1. The precise terms and conditions of every appointment should be stated in writing and be in the possession of both institution and teacher before the appointment is consummated.
2. Beginning with appointment to the rank of full-time instructor or a higher rank,⁷ the

accorded the freedom of citizens. In such cases the administration must assume full responsibility, and the American Association of University Professors and the Association of American Colleges are free to make an investigation.

Paragraph 3 of the section on Academic Freedom in the 1940 "Statement" should also be interpreted in keeping with the 1964 "Committee A Statement on Extramural Utterances," *Policy Documents and Reports*, 31, which states inter alia: "The controlling principle is that a faculty member's expression of opinion as a citizen cannot constitute grounds for dismissal unless it clearly demonstrates the faculty member's unfitness for his or her position. Extramural utterances rarely bear upon the faculty member's fitness for the position. Moreover, a final decision should take into account the faculty member's entire record as a teacher and scholar."

Paragraph 5 of the "Statement on Professional Ethics," *Policy Documents and Reports*, 146, also addresses the nature of the "special obligations" of the teacher:

As members of their community, professors have the rights and obligations of other citizens. Professors measure the urgency of these obligations in the light of their responsibilities to their subject, to their students, to their profession, and to their institution. When they speak or act as private persons, they avoid creating the impression of speaking or acting for their college or university. As citizens engaged in a profession that depends upon freedom for its health and integrity, professors have a particular obligation to promote conditions of free inquiry and to further public understanding of academic freedom.

Both the protection of academic freedom and the requirements of academic responsibility apply not only to the full-time probationary and the tenured teacher, but also to all others, such as part-time faculty and teaching assistants, who exercise teaching responsibilities.

7. Fifth 1970 comment: The concept of "rank of full-time instructor or a higher rank" is intended to include any person who teaches a full-time load regardless of the teacher's specific title. [For a discussion of this question, see the "Report of the Special Committee on Academic

probationary period should not exceed seven years, including within this period full-time service in all institutions of higher education; but subject to the proviso that when, after a term of probationary service of more than three years in one or more institutions, a teacher is called to another institution, it may be agreed in writing that the new appointment is for a probationary period of not more than four years, even though thereby the person's total probationary period in the academic profession is extended beyond the normal maximum of seven years.⁸ Notice should be given at least one year prior to the expiration of the probationary period if the teacher is not to be continued in service after the expiration of that period.⁹

Personnel Ineligible for Tenure," *AAUP Bulletin* 52 (September 1966): 280–82.]

8. Sixth 1970 comment: In calling for an agreement "in writing" on the amount of credit given for a faculty member's prior service at other institutions, the "Statement" furthers the general policy of full understanding by the professor of the terms and conditions of the appointment. It does not necessarily follow that a professor's tenure rights have been violated because of the absence of a written agreement on this matter. Nonetheless, especially because of the variation in permissible institutional practices, a written understanding concerning these matters at the time of appointment is particularly appropriate and advantageous to both the individual and the institution. [For a more detailed statement on this question, see "On Crediting Prior Service Elsewhere as Part of the Probationary Period," *Policy Documents and Reports*, 167–68.]

9. Seventh 1970 comment: The effect of this subparagraph is that a decision on tenure, favorable or unfavorable, must be made at least twelve months prior to the completion of the probationary period. If the decision is negative, the appointment for the following year becomes a terminal one. If the decision is affirmative, the provisions in the 1940 "Statement" with respect to the termination of service of teachers or investigators after the expiration of a probationary period should apply from the date when the favorable decision is made.

The general principle of notice contained in this paragraph is developed with greater specificity in the "Standards for Notice of Nonreappointment," endorsed by the Fiftieth Annual Meeting of the American Association of University Professors (1964) (*Policy Documents and Reports*, 99). These standards are:

Notice of nonreappointment, or of intention not to recommend reappointment to the governing board, should be given in writing in accordance with the following standards:

1. *Not later than March 1 of the first academic year of service*, if the appointment expires at the end of that year; or, if a one-year appointment terminates during an academic year, at least three months in advance of its termination.

3. During the probationary period a teacher should have the academic freedom that all other members of the faculty have.¹⁰
4. Termination for cause of a continuous appointment, or the dismissal for cause of a teacher previous to the expiration of a term appointment, should, if possible, be considered by both a faculty committee and the governing board of the institution. In all cases where the facts are in dispute, the accused teacher should be informed before the hearing in writing of the charges and should have the opportunity to be heard in his or her own defense by all bodies that pass judgment upon the case. The teacher should be permitted to be accompanied by an advisor of his or her own choosing who may act as counsel. There should be a full stenographic record of the hearing available to the parties concerned. In the hearing of charges of incompetence the testimony should include that of teachers and other scholars, either from the teacher's own or from other institutions. Teachers on continuous appointment who are dismissed for reasons not involving moral turpitude should receive their salaries for at least a year from the date of notification of dismissal whether or not they are continued in their duties at the institution.¹¹

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2. *Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two-year appointment terminates during an academic year, at least six months in advance of its termination.*
 3. *At least twelve months before the expiration of an appointment after two or more years in the institution.*

Other obligations, both of institutions and of individuals, are described in the "Statement on Recruitment and Resignation of Faculty Members," *Policy Documents and Reports*, 153–54, as endorsed by the Association of American Colleges and the American Association of University Professors in 1961.

10. Eighth 1970 comment: The freedom of probationary teachers is enhanced by the establishment of a regular procedure for the periodic evaluation and assessment of the teacher's academic performance during probationary status. Provision should be made for regularized procedures for the consideration of complaints by probationary teachers that their academic freedom has been violated. One suggested procedure to serve these purposes is contained in the "Recommended Institutional Regulations on Academic Freedom and Tenure," *Policy Documents and Reports*, 79–90, prepared by the American Association of University Professors.

11. Ninth 1970 comment: A further specification of the academic due process to which the teacher is entitled under this paragraph is contained in the "Statement on Procedural Standards in Faculty Dismissal Proceedings," *Policy Documents and Reports*, 91–93, jointly approved by the

5. Termination of a continuous appointment because of financial exigency should be demonstrably bona fide.

Endorsers

Note: Groups that changed names subsequent to endorsing the statement are listed under their current names.

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| Association of American Colleges and Universities..... | 1941 |
| American Association of University Professors..... | 1941 |
| American Library Association (adapted for librarians)..... | 1946 |
| Association of American Law Schools..... | 1946 |
| American Political Science Association..... | 1947 |
| American Association for Higher Education and Accreditation..... | 1950 |
| American Association of Colleges for Teacher Education..... | 1950 |
| Eastern Psychological Association..... | 1950 |
| Southern Society for Philosophy and Psychology..... | 1953 |
| American Psychological Association..... | 1961 |
| American Historical Association..... | 1961 |
| Modern Language Association..... | 1962 |
| American Economic Association..... | 1962 |
| Agricultural and Applied Economic Association..... | 1962 |
| Midwest Sociological Society..... | 1963 |
| Organization of American Historians..... | 1963 |
| Society for Classical Studies..... | 1963 |
| American Council of Learned Societies..... | 1963 |
| American Sociological Association..... | 1963 |

American Association of University Professors and the Association of American Colleges in 1958. This interpretive document deals with the issue of suspension, about which the 1940 "Statement" is silent.

The "Statement on Procedural Standards in Faculty Dismissal Proceedings" provides: "Suspension of the faculty member during the proceedings is justified only if immediate harm to the faculty member or others is threatened by the faculty member's continuance. Unless legal considerations forbid, any such suspension should be with pay." A suspension which is not followed by either reinstatement or the opportunity for a hearing is in effect a summary dismissal in violation of academic due process.

The concept of "moral turpitude" identifies the exceptional case in which the professor may be denied a year's teaching or pay in whole or in part. The statement applies to that kind of behavior which goes beyond simply warranting discharge and is so utterly blameworthy as to make it inappropriate to require the offering of a year's teaching or pay. The standard is not that the moral sensibilities of persons in the particular community have been affronted. The standard is behavior that would evoke condemnation by the academic community generally.

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| Southern Historical Association | 1963 | American Speech-Language-Hearing Association..... | 1968 |
| American Studies Association..... | 1963 | Association of Social and Behavioral Scientists | 1968 |
| Association of American Geographers | 1963 | College English Association..... | 1968 |
| Southern Economic Association | 1963 | National College Physical Education Association for Men..... | 1969 |
| Classical Association of the Middle West and South..... | 1964 | American Real Estate and Urban Economics Association..... | 1969 |
| Southwestern Social Science Association..... | 1964 | Council for Philosophical Studies | 1969 |
| Archaeological Institute of America | 1964 | History of Education Society..... | 1969 |
| Southern Management Association..... | 1964 | American Musicological Society..... | 1969 |
| American Theatre Association (now dissolved) | 1964 | American Association of Teachers of Spanish and Portuguese..... | 1969 |
| South Central Modern Language Association..... | 1964 | Texas Community College Teachers Association..... | 1970 |
| Southwestern Philosophical Society..... | 1964 | College Art Association of America..... | 1970 |
| Council of Independent Colleges..... | 1965 | Society of Professors of Education | 1970 |
| Mathematical Association of America..... | 1965 | American Anthropological Association..... | 1970 |
| Arizona-Nevada Academy of Science | 1965 | Association of Theological Schools | 1970 |
| American Risk and Insurance Association..... | 1965 | Association of Schools of Journalism and Mass Communication | 1971 |
| Academy of Management | 1965 | Academy of Legal Studies in Business..... | 1971 |
| American Catholic Historical Association..... | 1966 | Americans for the Arts | 1972 |
| American Catholic Philosophical Association | 1966 | New York State Mathematics Association of Two-Year Colleges..... | 1972 |
| Association for Education in Journalism and Mass Communication..... | 1966 | College Language Association..... | 1973 |
| Western History Association | 1966 | Pennsylvania Historical Association..... | 1973 |
| Mountain-Plains Philosophical Conference.... | 1966 | American Philosophical Association..... | 1974 |
| Society of American Archivists | 1966 | American Classical League | 1974 |
| Southeastern Psychological Association..... | 1966 | American Comparative Literature Association..... | 1974 |
| Southern States Communication Association..... | 1966 | Rocky Mountain Modern Language Association..... | 1974 |
| American Mathematical Society..... | 1967 | Society of Architectural Historians..... | 1975 |
| Association for Slavic, East European, and Eurasian Studies..... | 1967 | American Statistical Association..... | 1975 |
| College Theology Society | 1967 | American Folklore Society | 1975 |
| Council on Social Work Education..... | 1967 | Association for Asian Studies..... | 1975 |
| American Association of Colleges of Pharmacy | 1967 | Linguistic Society of America | 1975 |
| American Academy of Religion | 1967 | African Studies Association | 1975 |
| Association for the Sociology of Religion | 1967 | American Institute of Biological Sciences | 1975 |
| American Society of Journalism School Administrators (now merged with the Association of Schools of Journalism and Mass Communication)..... | 1967 | North American Conference on British Studies..... | 1975 |
| John Dewey Society | 1967 | Sixteenth-Century Society and Conference ... | 1975 |
| South Atlantic Modern Language Association..... | 1967 | Texas Association of College Teachers..... | 1976 |
| American Finance Association | 1967 | Association for Jewish Studies | 1976 |
| Association for Social Economics | 1967 | Association for Spanish and Portuguese Historical Studies | 1976 |
| Phi Beta Kappa Society | 1968 | Western States Communication Association.... | 1976 |
| Society of Christian Ethics | 1968 | Texas Association of Colleges for Teacher Education..... | 1977 |
| American Association of Teachers of French | 1968 | Metaphysical Society of America..... | 1977 |
| Eastern Finance Association | 1968 | American Chemical Society | 1977 |
| American Association for Chinese Studies | 1968 | Texas Library Association..... | 1977 |
| American Society of Plant Biologists..... | 1968 | American Society for Legal History | 1977 |
| University Film and Video Association | 1968 | Iowa Higher Education Association | 1977 |
| American Dialect Society | 1968 | American Physical Therapy Association | 1979 |

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| North Central Sociological Association..... | 1980 | Council of Teachers of Southeast | |
| Dante Society of America..... | 1980 | Asian Languages | 1994 |
| Association for Communication | | American Association of Teachers of Arabic... | 1994 |
| Administration..... | 1981 | American Association of Teachers of | |
| National Communication Association..... | 1981 | Japanese..... | 1994 |
| American Association of Physics Teachers..... | 1982 | Academic Senate for California | |
| Middle East Studies Association | 1982 | Community Colleges..... | 1996 |
| National Education Association..... | 1985 | National Council for the Social Studies..... | 1996 |
| American Institute of Chemists | 1985 | Council of Academic Programs in | |
| American Association of Teachers | | Communication Sciences and Disorders | 1996 |
| of German | 1985 | Association for Women in Mathematics | 1997 |
| American Association of Teachers of Italian... | 1985 | Philosophy of Time Society..... | 1998 |
| American Association for Applied | | World Communication Association | 1999 |
| Linguistics..... | 1986 | The Historical Society..... | 1999 |
| American Association for Cancer Education... | 1986 | Association for Theatre in Higher Education.. | 1999 |
| American Society of Church History..... | 1986 | National Association for Ethnic Studies..... | 1999 |
| Oral History Association..... | 1987 | Association of Ancient Historians | 1999 |
| Society for French Historical Studies | 1987 | American Culture Association | 1999 |
| History of Science Society..... | 1987 | American Conference for Irish Studies | 1999 |
| American Association of Pharmaceutical | | Society for Philosophy in the | |
| Scientists | 1988 | Contemporary World..... | 1999 |
| American Association for Clinical | | Eastern Communication Association..... | 1999 |
| Chemistry | 1988 | Association for Canadian Studies | |
| Council for Chemical Research | 1988 | in the United States..... | 1999 |
| Association for the Study of Higher | | American Association for the History of | |
| Education..... | 1988 | Medicine..... | 2000 |
| American Psychological Association | 1989 | Missouri Association of Faculty Senates..... | 2000 |
| Association for Psychological Science..... | 1989 | Association for Symbolic Logic | 2000 |
| University and College Labor Education | | American Society of Criminology..... | 2001 |
| Association..... | 1989 | American Jewish Historical Society | 2001 |
| Society for Neuroscience | 1989 | New England Historical Association | 2001 |
| Renaissance Society of America..... | 1989 | Society for the Scientific Study of Religion | 2001 |
| Society of Biblical Literature | 1989 | Society for German-American Studies | 2001 |
| National Science Teachers Association | 1989 | Society for Historians of the Gilded Age | |
| Medieval Academy of America | 1990 | and Progressive Era..... | 2001 |
| American Society of Agronomy | 1990 | Eastern Sociological Society | 2001 |
| Crop Science Society of America | 1990 | Chinese Historians in the United States..... | 2001 |
| Soil Science Society of America | 1990 | Community College Humanities | |
| International Society of Protistologists..... | 1990 | Association..... | 2002 |
| Society for Ethnomusicology | 1990 | Immigration and Ethnic History Society | 2002 |
| American Association of Physicists | | Society for Early Modern Catholic Studies | 2002 |
| in Medicine | 1990 | Academic Senate of the California State | |
| Animal Behavior Society..... | 1990 | University | 2004 |
| Illinois Community College Faculty | | Agricultural History Society | 2004 |
| Association..... | 1990 | National Council for Accreditation | |
| American Society for Theatre Research..... | 1990 | of Teacher Education | 2005 |
| National Council of Teachers of English..... | 1991 | American Council on the Teaching | |
| Latin American Studies Association..... | 1992 | of Foreign Languages..... | 2005 |
| Society for Cinema and Media Studies..... | 1992 | Society for the Study of Social Biology | 2005 |
| American Society for Eighteenth-Century | | Society for the Study of Social Problems | 2005 |
| Studies..... | 1992 | Association of Black Sociologists..... | 2005 |
| Council of Colleges of Arts and Sciences..... | 1992 | Dictionary Society of North America | 2005 |
| American Society for Aesthetics..... | 1992 | Society for Buddhist-Christian Studies..... | 2005 |
| Association for the Advancement | | Society for Armenian Studies..... | 2006 |
| of Baltic Studies..... | 1994 | Society for the Advancement of | |
| American Council of Teachers of Russian..... | 1994 | Scandinavian Study | 2006 |

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| American Physiological Society | 2006 | Chinese Language Teachers Association | 2014 |
| National Women’s Studies Association | 2006 | Coordinating Council for Women | |
| National Coalition for History | 2006 | in History..... | 2014 |
| Society for Military History | 2006 | Ecological Society of America | 2014 |
| Society for Industrial and Applied | | Institute for American Religious and | |
| Mathematics | 2006 | Philosophical Thought | 2014 |
| Association for Research on Ethnicity and | | Italian American Studies Association..... | 2014 |
| Nationalism in the Americas | 2006 | Midwestern Psychological Association..... | 2014 |
| Society of Dance History Scholars..... | 2006 | Modern Greek Studies Association..... | 2014 |
| Association of Literary Scholars, Critics, | | National Association of Professors | |
| and Writers | 2006 | of Hebrew..... | 2014 |
| National Council on Public History..... | 2006 | National Council of Less Commonly | |
| College Forum of the National Council of | | Taught Languages | 2014 |
| Teachers of English..... | 2006 | Population Association of America | 2014 |
| Society for Music Theory | 2006 | Society for Italian Historical Studies..... | 2014 |
| Society for Historians of American | | Society for Psychophysiological Research..... | 2014 |
| Foreign Relations..... | 2006 | Society for Romanian Studies..... | 2014 |
| Law and Society Association | 2006 | Society for Textual Scholarship..... | 2014 |
| Society for Applied Anthropology..... | 2006 | Society for the History of Children and | |
| American Society of Plant Taxonomists..... | 2006 | Youth..... | 2014 |
| Society for the History of Technology | 2006 | Society for the Psychological Study | |
| German Studies Association..... | 2006 | of Social Issues..... | 2014 |
| Association of College and Research | | Society for the Study of the Multi-Ethnic | |
| Libraries | 2007 | Literature of the United States | 2014 |
| Czechoslovak Studies Association..... | 2007 | Society of Civil War Historians | 2014 |
| American Educational Studies Association | 2007 | Society of Mathematical Psychology | 2014 |
| Southeastern Women’s Studies Association .. | 2009 | Sociologists for Women in Society | 2014 |
| American Academy for Jewish Research..... | 2014 | Urban History Association | 2014 |
| American Association for Ukrainian | | World History Association | 2014 |
| Studies..... | 2014 | American Educational Research | |
| American Association of Italian Studies | 2014 | Association..... | 2014 |
| American Theatre and Drama Society | 2014 | Labor and Working-Class History | |
| Central European History Society | 2014 | Association..... | 2014 |
| Central States Communication Association.... | 2014 | Paleontological Society | 2014 |

MEMORANDUM

To: PCC
From: Ken Katkin, Chair
Re: Proposed Revisions to New Draft Intellectual Property Policy
Date: November 16, 2017

BACKGROUND

On October 26, 2009, the Board of Regents of Northern Kentucky University adopted an Intellectual Property (IP) policy for the University. This policy superseded an earlier IP Policy that had appeared in the 1994 version of the NKU Faculty Handbook. The 2009 IP policy remains in effect today, and appears as Appendix F in the current version of the NKU Faculty Handbook.

In Spring 2016, in response to request from PCC Members and other faculty members, PCC took up the issue of IP policy. At that time, NKU Vice Provost for Graduate Education, Research and Outreach Dr. Samantha Langley-Turnbaugh met with PCC to solicit PCC's concerns about the 2009 policy. Over the summer of 2016, Dr. Langley-Turnbaugh drafted a proposed new policy, as well as two additional explanatory documents that explained aspects of the draft policy. In Fall 2016, Dr. Langley again met with PCC to review the draft policy. In this meeting, several concerns with the draft policy were raised. Dr. Langley then agreed to revise the draft policy to address these concerns.

At our meeting of March 2, 2017, PCC discussed a Committee document (dated Feb 23, 2017) that set forth various specific concerns with the draft IP policy that had been raised by PCC Members. At the end of that discussion, however, the PCC did not vote to submit its discussion document to the NKU Administration. Instead, rather than recommending any particular revisions, on March 2, 2017 the PCC recommended that Faculty Senate should vote a simple resolution of opposition to adoption of the administration's draft IP policy. This recommendation reflected the PCC's concerns that—as compared with the 2009 IP policy currently in effect—the draft policy proposed in Spring 2017 would have:

- Enabled the university to assert copyright ownership in works of scholarly and creative activity created by faculty members, even in the absence of an express agreement;
- Enabled the university to assert copyright ownership in teaching materials created by faculty members, even in the absence of an express agreement;
- Changed the stated purpose of the intellectual property from meeting “the need to encourage the production of creative and scholarly works” to “facilitating the process whereby NKU creative and scholarly works may be put to public use and/or commercial application”;
- Created ambiguity about ownership of intellectual property in some instances where the current policy provides clarity; and
- Reduced the royalty rates and expense-reimbursements paid to faculty members whose patentable intellectual property is commercialized with the assistance of the University.

At the Provost's request, the PCC's recommendation of March 2, 2017 was not taken up by Faculty Senate. This delay allowed time for further efforts to be made towards achieving a mutually agreeable IP Policy. As a result of these efforts, on October 9, 2017, the administration issued a new proposed draft IP policy.

NKU's PROPOSED DRAFT POLICY (October 2017)

This new draft addresses some—but not all—of the concerns previously expressed by PCC. Accordingly, as discussed herein, the PCC remains concerned that that—as compared with the 2009 IP policy currently in effect—the new draft policy proposed on October 9, 2017 continues to yield the following objectionable results:

- creates a new concept entitled “exceptional NKU support” that expropriates intellectual property rights from NKU's most productive faculty members and introduces unnecessary confusion about copyright ownership in scholarly works authored by NKU faculty members of average productivity.
- expropriates copyright ownership in many works of creative activity created by faculty members, and thereby imposes unfair and punitive costs on certain productive faculty members, primarily in the School of the Arts;
- creates ambiguity about ownership of intellectual property in some instances where the current 2009 policy provides clarity; and
- creates confusion about copyright ownership in teaching materials created by faculty members, in the absence of an express agreement.

Over the years, the faculty has expressed concerns about the 2009 Intellectual Property policy now in effect. The proposed draft policy does address some of those concerns. Unless amended as indicated below, however, the proposed draft policy would leave the faculty worse off than under the present policy.

Exceptional NKU Support

Section IV.F of the proposed draft policy introduces a new term of art called “exceptional NKU support.” This term replaces a similar—but more limited—term codified in NKU's current IP policy that is entitled “substantial use of university resources.” Under both the current policy and the proposed draft policy, NKU faculty members are presumed to retain copyright in their own scholarly and creative work, unless the production of that work is facilitated by “substantial use of university resources” (under the current policy) or “exceptional NKU support” (under the proposed policy). In addition to changing its name, however, the proposed new policy also greatly expands the scope of the exception.

Under the current policy, faculty members are deemed to have been aided by “substantial use of university resources” only if the faculty member received resources which:

- (1) fall outside of the scope of the [faculty member's] normal job responsibilities or . . .
- (2) entails the [faculty member's] use of such resources that are not ordinarily available

to all or virtually all faculty, administrators, staff or students with comparable status in the same division, college, department or academic program.

Under Section IV.F of the proposed draft policy, in contrast, faculty members would be deemed to have received “exceptional NKU support” if they received any of the following benefits:

a reduction in the levels of teaching, scholarship or other NKU assigned activities; or

Greater than incidental use of NKU facilities such as laboratories, studios, specialized equipment, production facilities or specialized computing resources in direct support of the work in question; or

Specifically designated NKU funds to support the work’s creation, publication, or production; or

Significant use of funding from gifts to NKU to support the creation of the work.

These proposed definitional changes would broaden the scope of the exception to an extraordinary degree. Only a handful of NKU faculty members obtain resources that “are not ordinarily available to all or virtually all faculty, administrators, staff or students with comparable status in the same division, college, department or academic program,” as must occur under the current policy before a faculty member risks loss of copyright in her work. But as explained herein, perhaps the majority of productive, research-active NKU faculty members would be caught within the coverage of the expansive new definition of “exceptional NKU support.”

Several Colleges at NKU maintain “active scholar” or “differential teaching load” policies, under which faculty members who remain active and productive in their scholarship earn lighter teaching loads than other faculty members. Under the proposed new policy, the “reduction in the levels of teaching” afforded to “active scholars” would jeopardize those faculty members’ copyrights in their own work—even though such “active scholar” policies are ordinarily available to all or virtually all faculty members with comparable status in the same division, college, department or academic program.

Similarly, some colleges at NKU pay small bonuses for publication of especially impactful scholarship. Under the proposed new policy, these bonuses seemingly would qualify as “specifically designated NKU funds to support the work’s creation, publication, or production,” and might sometimes be paid out of “funding from gifts to NKU.” As such, a faculty member who accepted such a bonus would surrender the copyright in her work, even though the bonus program is ordinarily available to all or virtually all faculty members with comparable status in the same division, college, department or academic program.

Further, faculty who receive internal grants funded from gifts to NKU would surrender the copyright to their work. In cases where the gift is designated for a particular department (e.g., the donor is a retired faculty member), faculty whose research is supported by that gift would similarly surrender copyright to their work.

Winning a University-wide honor (such as a Regents Professorship or the Frank Sinton Milburn Outstanding Professor Award) similarly could cost the winner her copyrights, since these awards convey both teaching reductions and specifically designated NKU funds to support the creation, publication, or

production of additional scholarly or creative work. This is so, even though the opportunity to win such awards is ordinarily available to all faculty members with comparable status.

University-wide sabbaticals, project grants, and summer fellowships also would seem to fall within the general definition of “exceptional NKU support” set forth in the draft policy, but for their particular and express exemption. Equivalent programs within colleges, however, are not specifically exempted and therefore would also pose traps for unwary faculty members.

Finally, the impact of the proposed changed definition would fall most heavily on faculty members who engage in creative activity, particularly those in the School of the Arts. In Section IV.E of the draft policy, the term “traditional works of scholarship” is defined to include “creative works” including “play scripts, theatrical productions, poems, works of music and art.” This provision appears to promise similar intellectual property protection to “creative works” created by faculty members as to “scholarly works.” In practice, however, the new definition of “exceptional NKU support” in the proposed policy claws back protection for the rights of faculty members engaged in creative activity, rendering it largely illusory.

This is because the term “exceptional NKU support” is defined in Section IV.F to include “[g]reater than incidental use of NKU facilities such as . . . studios, specialized equipment, production facilities or specialized computing resources in direct support of the work in question.” The creation of visual artworks normally would make greater than incidental use of such facilities. Artwork is generally created in art studios dedicated for that use. Pottery and sculpture, for example, are created using kilns, which are specialized equipment used for the creation of the work. Web design is accomplished through the use of specialized computing resources. Because production of visual artworks generally will involve the greater than incidental use of such facilities, under the draft policy the University could claim copyright ownership in such materials made by faculty members—even though such facilities ordinarily are available to all or virtually all faculty members with comparable status in the same division, college, department or academic program.

In addition, Section VII.C.1 of the proposed draft policy seems to impose additional disparate burdens on faculty who engage in creative activity in music and the performing arts. As discussed above, the draft policy would expropriate copyrights from faculty members under a wide variety of circumstances. Most faculty members, however, would retain a nonexclusive license to make noncommercial uses of their own work, even after the university took ownership of the copyright in that work. This is not so, however, for “recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators.” Thus, if the University were to make a recording of a faculty member’s musical or theatrical performance, for example, then the faculty member might not retain even a nonexclusive license to use or distribute that recording noncommercially.

For these and other reasons, it is critically important to the faculty that the new definition of “exceptional NKU support” set forth in the proposed draft policy be abandoned.

Online Teaching Materials

The draft proposal’s new section on online teaching materials seeks to add some needed clarification to this contentious subject. The faculty agrees with what seems to be the general approach set forth in the draft: faculty members who create online teaching materials should be able to sell their

copyrights in those materials to NKU, if NKU is willing to pay a price for the copyrights that the faculty member is willing to accept.

As drafted, however, the draft policy could constitute a trap by which unwary faculty members might be induced unwittingly to cede copyrights in their online teaching materials. By invoking the broad concept of "Exceptional NKU support," the policy creates conditions under which a faculty member paid a stipend to teach an online course might thereby unwittingly cede copyright to course materials created by that faculty member. Faculty members in this situation should be provided with clear notice that they have been commissioned to develop online teaching materials for the university, rather than simply paid a bonus to teach an online course. An express written agreement is the most fair and transparent method of ensuring that the faculty member's alienation of copyright is knowing and voluntary.

CONCLUSION

Based on the foregoing concerns, the Faculty recommends that the following revisions be incorporated into the proposed draft policy. Without these revisions, the proposed draft policy would be severely faculty-unfriendly and would leave the faculty worse off than under the present policy. In that event, the PCC would recommend that Faculty Senate issue a resolution opposing adoption of the proposed draft policy, and instead leaving the current (2009) policy in effect.

NORTHERN KENTUCKY NKU

Intellectual Property Policy

This intellectual property policy was approved on.....and replaces all previous Intellectual Property or Patent policies and revisions. It is effectiveas approved by the Board of Regents of Northern Kentucky University.

1. Introduction

Northern Kentucky University, hereinafter referred to as the "University," is dedicated to teaching, research, and the sharing of knowledge with the public. The University recognizes as two of its major objectives the production of new knowledge and the dissemination **of old and new** knowledge. Inherent in these objectives is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other inventions, some of which may have potential for commercialization. Such activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide additional educational opportunities for participating students, and promote the general welfare of the public at large. Such creative and scholarly works and

inventions that have commercial potential may be protected under the laws of various countries that establish rights regarding "Intellectual Property," a term that includes patents, copyrights, trade secrets, trademarks, plant variety protection, and other rights. Such Intellectual Property often comes about because of activities of University faculty, administrators, staff and students who have been aided through use of University resources, including facilities, equipment, funds, etc. The University as well as the authors, creators, or inventors, hereinafter referred to as the "**Originators**," "**Creators**" have rights that must be protected in order that future creativity may be encouraged and stimulated. It is therefore important to establish clear policies regarding the ownership, commercialization, and financial rewards resulting from the creation of such Intellectual Property. In order to establish the respective rights and obligations of the University and Originators regarding Intellectual Property, the University has established the following Intellectual Property Policy.

II. ENTITIES AFFECTED

Describe the positions, units, departments, groups of people, or other constituencies to which the policy applies or has a material effect.

Academic Affairs, including the Provost's Office, faculty, staff, students, Administration & Finance; Legal Affairs; Northern Kentucky Research Foundation (NKURF) board

[Why is there no Section III?]

4. Definitions

- A. "**Invention**" shall include but is not limited to any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, which is or may be patentable or which may be commercially licensable, and any mark used in connection with these items.
- B. "**Patentable Intellectual Property**" describes inventions, discoveries, and manufacturing designs that have been conceived or reduced to practice, and are novel, useful, and non-obvious, and therefore likely to be subject to protection under United States patent law. It also includes, but it not limited to, the physical embodiments of intellectual effort, such as machines, devices, apparatus, instrumentation, computer programs, and biological materials.
- C. "**Copyrightable Intellectual Property**" describes original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, dramatic works, sound recordings, software, traditional or electronic correspondence, and instructional materials (including online instructional materials), that are likely to be subject to protection under United States copyright law.

- D. **"Creator"** shall include faculty (including part-time, visiting and lecturer appointments), visiting researchers, staff, administrators, students, volunteers, any groups or combinations thereof, and any others using funds, facilities or resources of NKU as the authors, creators, or inventors of Intellectual Property.
- E. **"Traditional Works of Scholarship"** are scholarly and creative works regardless of their form, which are created by academic appointees or students, and which have not been the subject of Exceptional NKU Support or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software.
- F. **"Exceptional NKU Support"**

refers to the use of University funds (including grants, contracts or awards made to the University or its designee by extramural sponsors), laboratory, office space, studio, audiovisual, video television, broadcast, personal computers, servers, licensed software, computer networks, or other facilities, equipment, resources and faculty, staff or students which (1) fall outside of the scope of the Creator's normal job responsibilities or the student's academic program, or (2) entails the Creator's use of such resources that are not ordinarily available to all or virtually all faculty, administrators, staff or students with comparable status in the same division, college, department or academic program. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment incidental to outside activities that are permitted under the University's Ethical Principles and Code of Conduct (Administrative Regulation AR-1-1.0-1) and the Faculty Handbook.

Ordinarily, a reduction in the levels of teaching, scholarship or other NKU assigned activities shall not constitute Exceptional NKU Support. In particular, differential teaching loads awarded under "active scholar" policies or other college or departmental policies shall not constitute Exceptional NKU Support. Similarly, ordinary NKU Project Grants, Summer Fellowships, and Sabbaticals awarded by the Provost's Office on recommendation of the Faculty Senate Benefits Committee shall not constitute Exceptional NKU Support. No faculty member shall be deemed to have received Exceptional NKU Support unless that faculty member has expressly and individually agreed, in writing, to this characterization as a condition of receiving the grant or award of support at issue.

~~is financial or other support (facilities, equipment, etc.) for research and teaching activities that exceeds the norm for a faculty member or student's research or for teaching in his or her field or department. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment. The following examples define Exceptional NKU Support when applied in support of a revenue producing work. It is the responsibility of the dean or~~

~~equivalent supervisor in concert with the Vice Provost of Graduate Education, Research and Outreach to evaluate situations and determine whether exceptional NKU support has occurred. Faculty members or other employees have an obligation to notify their supervisor when they believe their work will involve more than incidental use.~~

~~i. Extended use of time and energy by the creators in creation of a work that results in a reduction in the levels of teaching, scholarship or other NKU assigned activities. Ordinary NKU Project Grants, Summer Fellowships, and Sabbaticals awarded by the Provost's Office on recommendation of the Faculty Senate Benefits Committee shall not constitute Exceptional NKU Support.~~

~~ii. Greater than incidental use of NKU facilities such as laboratories, studios, specialized equipment, production facilities or specialized computing resources in direct support of the work in question.~~

~~iii. Specifically designated NKU funds to support the work's creation, publication, or production~~

~~iv. Direct assignment or commission from NKU to undertake a creative project as part of the creator's regular appointment.~~

~~v. Significant use of funding from gifts to NKU to support the creation of the work~~

~~vi. Production of the works under specific terms of a sponsored research grant or contract.~~

~~vii. For Online Instruction, Exceptional NKU Support might include: provision of designated technical assistance, such as audio-visual department personnel or a qualified graduate assistant, to assist development of an online course, or provision of specialized software or hardware purchased for a particular online project, or provision of other technical services commissioned from a third party to assist with a particular online project which exceeds normal NKU support for traditional courses, or commissioned by NKU by the provision of release time or other compensation to a faculty member as an adjustment to normal assigned duties for the purpose of creating an online course, which exceeds normal NKU support for traditional courses.~~

G. "NKU Works" are materials (~~including Online Instructional Materials~~) that:

- i. have been specifically commissioned by a NKU office, ~~and, except~~ as expressly provided ~~otherwise~~ in a written agreement, **and may** include recordings (whether audio, video, audiovisual, film, or other media) of performances, presentations, talks, course materials or other educational or extracurricular activities of NKU students, faculty, staff, visitors, and/or third parties, that are made by or at the request of NKU;
- ii. have been created by NKU employees who are not academic appointees;

- iii. have been developed with Exceptional NKU Support; or
- iv. constitute Externally Funded Works.

H. “**Externally Funded Works**” are ~~copyrightable or~~ patentable works resulting from funds given to the NKU by external sources.

V. RESPONSIBILITIES

Provide the position titles, departments, or divisions that are responsible for implementing the policy. Next to each entity, enumerate the responsibilities necessary to implement and enforce the policy.

VI. COMMITTEE

If the policy creates an official university committee, describe the Committee’s role, responsibilities, and composition (titles of positions).

VII. PROCEDURES

Describe the MINIMUM ACTIONS required to fulfill the policy’s requirements. This section should NOT INCLUDE internal protocols, guidelines, optional or purely desirable actions.

1. What is Covered

The primary functions of the University are education, research and public service. It is in the context of public service that the University supports efforts directed toward bringing the fruits of University research and creative works to public use and benefit. In many cases, mere publication of the work will be sufficient to transfer University research and artistic works to the public. In other cases, it is necessary to encourage industry, through protection of the Intellectual Property and the granting of certain licensing rights, to invest its resources to develop products and processes for use by the public.

Generally speaking, ownership of patentable or potentially patentable work is vested in NKU. This policy reaffirms the presumption that faculty members own the copyright to their **scholarly and creative work** ~~traditional works of scholarship~~. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the creator of the work, and NKU Works, as to which NKU retains ownership. Trademarks, service marks, symbols, designs, slogan, and seals used to identify the services of NKU are not subject to the provisions of this Intellectual Property Policy.

A. Patentable Intellectual Property

- i. NKU owns and shall have the sole right to determine the disposition of NKU Works and Patentable Intellectual Property under this Policy, including decisions concerning patent licensing and sale. Determination of those dispositions shall take into account the interests of NKU, the public, and the Creator.
- ii. Upon becoming subject to this policy, Creators will assign all right, title, and interest in NKU Works and Patentable Intellectual Property to NKU. Creators shall disclose promptly to NKU any potentially Patentable Intellectual Property on forms made available by NKU.
- iii. NKU shall assess all disclosures submitted to it in a timely fashion, normally within 60 days, to determine whether NKU should seek patent protection for the intellectual property. NKU shall promptly notify the Creator of the intellectual property of the results of its assessment.
- iv. Distribution of revenues derived from Patentable Intellectual Property shall be distributed to all Creators in accordance with Section 6 of this policy, unless legal requirements or contractual agreements require otherwise.
- v. **NKU shall not seek to block a faculty member from publishing the results of scholarly activity even in cases where ownership of Patentable Intellectual Property might vest in the University under this Policy.**

B. Copyrightable Works ~~Traditional Works of Scholarship:~~

- i. This policy recognizes the long standing custom and understanding that faculty members own copyright to their ~~Traditional Works of Scholarship~~ **scholarly and creative work. In general, this understanding extends to administrators, staff and students with regards to their professional work or studies. A member of NKU is entitled to copyright from any such Traditional Works of Scholarship.** Individual work so defined is automatically exempt from the formal review procedures of this policy.
- ii. ~~NKU retains a nonexclusive, perpetual, royalty-free license to use Traditional Works of Scholarship for noncommercial purposes.~~

If a Creator is unsure if a specific Traditional Work may contain Intellectual Property that would not be exempted under the terms of this Policy, they may submit an Intellectual Property Research Disclosure Form and request an expedited review to reach a determination as such. Within 30 days of receipt, a written response shall be provided stating whether or not the Traditional Work also contains Intellectual Property that is required to be disclosed under the Policy.

- i. On-line instructional materials **created by faculty members** are considered Traditional Works of Scholarship, unless they are specifically commissioned **under an express individual agreement that transfers copyright in the work to NKU** ~~by NKU from a faculty member or any other person;~~

~~ii. created using Exceptional NKU Support, or~~

iii. created by non-faculty staff within the scope of their employment, in which case they are considered NKU Works. This policy only applies to the aspects of the materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials.

C. NKU Works

- i. NKU owns and retains all rights to use and commercialize NKU Works. NKU may assign its ownership rights to NKURF so that NKURF can manage the intellectual property. Creators hereby assign all right, title, and interest in NKU Works to NKU. NKU may choose to forego or modify its ownership of a NKU Work and associated rights, through a written agreement with the Creators of the work and/or NKURF.
- ~~ii. In the absence of contractual or legal restrictions to the contrary, and with the exceptions noted below, NKU grants Creators who are academic appointees or students non-exclusive rights to non-commercial use and distribution of NKU Works they have authored. **The rights granted Creators under this subsection shall not extend to the following NKU Works: (a) recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators; or (b) software authored by Creators.**~~

D. Externally Funded Works

Externally Funded Works shall be considered NKU Works for all purposes, except that the terms of their respective sponsorship agreements or applicable laws shall take priority over this policy.

Exceptions. NKU will not hold any ownership rights in Intellectual Property to the extent that:

- i. federal or state law provides that some party other than NKU holds one or more of such rights;
- ii. the Intellectual Property related to same was produced both outside the scope of the faculty or staff member's employment or Research, and without exceptional NKU support.
- iii. the Intellectual Property related to same is a Traditional Work, unless the Traditional Work was specifically commissioned by NKU;
- iv. the Intellectual Property was produced by gratis faculty, unless the Intellectual Property was produced utilizing Exceptional NKU Support or personnel of NKU, or specifically commissioned by NKU.

In the above situations (D.ii., D.iii., and D.iv.) the work shall be deemed the property of the Creator and may be registered for legal protection and/or commercialized by the Creator at the Creator's expense.

- v. **Public Domain Preference.** The Creator, or Creators acting collectively when there are more than one, is free to place an invention in the public domain for non-commercial, academic dissemination purposes if that would be in the best interest of technology transfer, and if doing so is not in violation of the terms of any agreements that supported or governed the work. NKU will not assert intellectual property rights when Creators have placed their inventions in the public domain, but NKU does expect that the Intellectual Property be disclosed along with the Creator's request that they be allowed to disseminate the Intellectual property by placing it in the public domain.

2. Who is Covered

- A. For all employees of NKU in any capacity, full time or part time, this policy is a condition of employment.
- B. Persons who create intellectual property using NKU resources in whole or part, whether or not they have an employment relationship, student relationship, or other relationships with NKU.
- C. Students who independently create Intellectual Property arising out of their participation in programs of study at NKU without the use of Exceptional NKU Support, and that do not result from their employment by NKU, will retain the legal rights thereto ("Student Intellectual Property"). Intellectual Property created by students through the use of Exceptional NKU Support or in connection with their employment by NKU is owned by the NKU.

A student, as a condition of enrollment, grants a perpetual, royalty-free license to the NKU to reproduce and publicly distribute, on a noncommercial basis, Student Intellectual Property such as copies of student project reports, theses or dissertations, ~~including any computer software developed as part of the student project, thesis or dissertation.~~

3. Authority

- A. **Overall responsibility.** The overall responsibility of this policy is vested in the Vice Provost for Graduate Education, Research and Outreach. This will include operations at the NKU level and management of activity of NKURF as related to NKU Works and Patentable Intellectual Property. The Vice Provost for Graduate Education, Research and Outreach, in consultation with Legal Affairs, is authorized, subject to NKU's contract policy, to enter contracts for the development of NKU Works or Patentable Intellectual Property. NKU Works or Patentable Intellectual Property assigned to NKURF shall be managed by NKURF on behalf of NKU according to the policies outlined in this document.

- B. Responsibilities of the NKU/NKURF.** NKU, in conjunction with NKURF, will be responsible for determining the feasibility of commercializing NKU Works or Patentable Intellectual Property. If such property is deemed to have commercial value, NKU will assign its rights to the NKURF and the NKURF will have the legal and financial responsibility to carry the commercialization forward. All costs, including protecting and promoting copyright or patent applications, will be paid by NKU or the NKURF. The NKURF, in conjunction with NKU, will be responsible for making decisions regarding the marketing and/or licensing of all NKU Works or Patentable Intellectual Property. In general, all licenses will include a nonrefundable license fee, patent or copyright expense reimbursement, royalty and minimum royalty payments, and a requirement of diligence and march-in rights where the licensee does not perform adequately.

The Creator of the Intellectual Property may request in writing that all NKU or NKURF rights in such NKU Works or Patentable Intellectual Property be reassigned to the Creator. To the extent the Intellectual Property is not subject to any restrictions, and provided that all other co- Creators, if any, of the subject NKU Works or Patentable Intellectual Property consent to the request, NKU or NKURF shall reasonably consider such a request. Any reassignment of the rights by NKU or the NKURF to the Creator shall be limited only to the substance disclosed in the original disclosure form officially on record with NKU and further subject to NKU reserving perpetual rights to use the subject Intellectual Property for any noncommercial purpose, such as research and other educational purposes, at no cost to NKU.

- C. Responsibilities of the Creator.** In addition to the disclosure responsibilities set forth in Section B above, Creator will cooperate with NKU or its designee in its effort to evaluate and protect the commercial value of any NKU Works or Patentable Intellectual Property. This would include but not be limited to notifying the appropriate office of any third party interest in the property and assisting in the preparation of any legal documents required to protect the NKU Works or Patentable Intellectual Property. The Creator will also work collaboratively with NKURF to determine the best course of action regarding the commercialization and marketing of the Intellectual Property. To ensure that NKU is aware of all such Intellectual Property, all those persons covered by this Policy are required to disclose to NKU any Intellectual Property, except those Traditional Works as defined in Section 2. When in doubt about whether or not Intellectual property may, in a reasonable opinion, have commercial value, the Creator should complete an Intellectual Property Research Disclosure Form and consult with the Office of Graduate Education, Research and Outreach about any commercial potential. Such disclosure shall occur either simultaneously with or prior to public disclosure.
- D. Signatory Authority.** Unless otherwise designated in writing by the Vice Provost for Graduate Education, Research and Outreach, signature authority for subjects covered by this Policy shall rest solely in the Vice Provost for Graduate Education, Research and Outreach.
- E. Intellectual Property Review Committee.** The Board of NKURF will serve as the Intellectual Property Review Committee. The Vice Provost for Graduate Education, Research and Outreach or designee will serve as the chairperson. The Board may consult with others as they see fit.

4. Revenue Distribution

A. Royalties and Other Income. All royalties and other income arising from NKU Works or Patentable Intellectual Property which has been assigned to NKURF shall be administered by the Vice Provost for Graduate Education, Research and Outreach. Expenses to be paid out of gross income include:

1. Direct costs paid by the University or its designee in conjunction with:
 - processing of patent or copyright protection,
 - marketing or licensing the Intellectual Property, and
 - any other legal costs related to technology transfer and commercialization.
2. costs as described in a contract of support. This would occur when University funds provided a grant, sabbatical, or other support for research that led to the Intellectual Property and where a contract specifying repayment accompanied the grant, sabbatical, or offer of support;
3. documented out-of-pocket costs paid by the Originator.

Total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) will be disbursed as described in the table below:

Distribution of Royalties for Intellectual Property Owned by University

| Net License Revenue | Originator ¹ | College ² | Department | NKURF | GERO |
|------------------------|-------------------------|----------------------|------------|-------|------|
| <\$5,000 | 100% | | | | |
| \$5,001 <> \$50,000 | 60% | 10% | 10% | 10% | 10% |
| > \$50,001 | 50% | 12.5% | 12.5% | 10% | 15% |

In general, these royalties are awarded to the Originator in recognition of his or her significant intellectual contribution to the University. Royalty payments to the Originator's department and college are given to promote additional research and creative works within the department and college. NKURF's portion of the royalties will be used as operating funds in support of its general mission, ongoing management of Intellectual Property matters and to cover the costs of commercialization. Royalties deposited in the GERO fund are to underwrite its functions as well as to provide general support for other research and scholarly activities on campus.

¹ The Originator's rights to share in net income as stated above shall remain with the individual or pass to the individual's heirs and assigns for so long as revenue is derived from the property.

² If the Originator does not report to a college dean, then the administrative unit most comparable to the college will receive this share of the royalties.

- B. **Multiple creators.** In the case of multiple Creators, the Creators shall list what they believe to be the appropriate percentage contributions of each Creator at the time an Intellectual Property Research Disclosure Form is submitted. If the Creators cannot reach an agreement among themselves, the NKURF Board shall meet to evaluate the claims of all Creators and render a binding decision. The NKURF Board may rely on testimony from the Creator's Deans and Department Heads in so doing, but is not required to do so.

5. Dispute Resolution

Disputes arising over the application of this policy shall be brought to the attention of the Provost, who shall refer the matter to the NKURF Board. The committee will render a determination in writing to the Provost within thirty (30) days of receiving the Creator's written appeal. The Committee's decision regarding disputes may be appealed in writing to the Provost within thirty (30) days of the Committee's decision. The decision of the Provost will constitute the final decision of the University.

6. Agreements

Consulting: It is the responsibility of individual members of the NKU community to ensure that the terms of their consulting agreements with third parties do not conflict with this Policy or any of their other commitments to the NKU. Each individual should 1) make the nature of their obligations to the NKU clear to any third party for whom the individual expects to consult and 2) should inform such third parties that the NKU does have a formal Intellectual Property Policy, and further inform third parties that such Policy is available online at <http:xxxxx>. More specifically, the scope of any consulting services should be expressly distinguished from the scope of research commitments at the NKU, and should not utilize any NKU facilities or resources without first negotiating appropriate compensation for such use with the NKU. In the case of conflict between requested consulting and NKU research commitments, individuals should work with the Office of Research, Grants and Contracts to establish an appropriate Sponsored Research Agreement. Rights to inventions arising from a business or industry sponsored research project should be prescribed in the sponsored research agreement.

VIII. REPORTING REQUIREMENTS

Process of Disclosure

As a condition of employment or matriculation, all faculty, staff, other employees, and students of the NKU agree to comply with the policies of NKU. A copy of this Policy shall be available, electronically and in printed form, for all faculty, staff, other employees, and students. On request, a set of guidelines for reporting Intellectual Property will be made available to any faculty, staff, other employees, or student by the Office of Graduate Education, Research and Outreach.

- A. **Intellectual Property Research Disclosure Form.** Whenever a NKU faculty, staff, other employee, or student, operating under the scope of this Policy, creates or obtains

patentable research results that may have commercial value and do not fall within the scope of the exception of this Policy Section 3, the Creator shall notify the Vice Provost for Graduate Education, Research and Outreach in writing via an official Research Disclosure Form.

- i. If the Creator believes that the content of the Intellectual Property Research Disclosure Form falls within one of the exceptions of Section 3, the Creator shall mark the Intellectual Property Research Disclosure Form as such and request an expedited review.
- ii. The Creator shall make available originals or copies of all documents and designs, including logs or research workbooks, as requested, that are necessary to support the value and scope of the Intellectual Property.
- iii. Moreover, the Creator shall assist NKU or NKURF in obtaining and maintaining legal protection by disclosing essential information, signing applications and other necessary documents and assigning any rights to technology provided, however, that NKU or NKURF shall reimburse the Creator for any out-of-pocket expenses incurred by providing such assistance.
- iv. Written Response. The Vice Provost for Graduate Education, Research and Outreach or designee shall provide a written communication to the Creator with notification of the date of receipt of the Intellectual Property Research Disclosure Form, and evaluate the merits of the Intellectual Property and the equities involved.

The decision shall convey one of three alternatives:

- a. **ELECTED.** If NKU or the NKURF Board finds potential commercial value in the Research Disclosure, NKU will notify the Creator that it has “ELECTED to Retain Title” and will move forward with marketing of the Research Disclosure. The Vice Provost for Graduate Education, Research and Outreach will apprise the Creator, in writing, of all marketing and development activities NKU has undertaken with respect to their Research Disclosure every six months. It is important to have a close working relationship between the creator and the GERO office. Creator’s knowledge of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees. If the Creator is unsatisfied, they may appeal to the Intellectual Property Committee for a release of the invention as described in the Research Disclosure.

NKU has a contractual obligation to inform federal agencies of inventions within two months after they are disclosed to the Office of Graduate Education, Research and Outreach, to elect to retain title within two years, and to file a patent within one year of election.

If NKU elects to retain title, the creator will be eligible to apply for commercialization gap funds to further develop their intellectual property. Should budget considerations constrain fund availability faculty will be notified at the beginning of the academic year.

PENDING. NKU encourages full disclosure as early as possible in the development process. If the invention is not yet fully developed, the Vice Provost for Graduate

Education, Research and Outreach or designee shall provide feedback and place the Research Disclosure in a “PENDING” status until further developments are disclosed. When a Research Disclosure is placed in PENDING status, the Office of Graduate Education, Research and Outreach shall work with the Creator to define what steps need to be taken to ready the Research Disclosure for re-evaluation. Once such steps are undertaken and new information is provided, the Office of Graduate Education, Research and Outreach shall re-activate the file and treat it as a new Research Disclosure.

- b. **NON-ELECTED.** If NKU or the NKURF Board finds there is not enough potential commercial value in the Research Disclosure to warrant further NKU investment, they will notify the Creator that the NKU has “Not Elected to Retain Title” and will either release title to the Federal Sponsor if so required, or offer to release title to the Creator upon receipt of their formal written request.

The Vice Provost for Graduate Education, Research and Outreach shall also notify the chairperson of the Creator's department and the appropriate dean or vice president:

- a) At the time of Research Disclosure that the disclosure of an Invention has been made; and
 - b) At the time of NOTICE TO CREATOR by providing a copy of such NOTICE and the decision therein conveyed.
- v. **Release of Intellectual Property.** If NKU or the NKURF Board elects to release some or all ownership rights to Creator, the Creator shall be free, subject to law and prior agreements, to proceed independently only with respect to the specific Invention disclosed.

- B. Development of Technology.** Upon ELECTION of the Invention in the Intellectual Property Research Disclosure, the Office of Graduate Education, Research and Outreach shall make every reasonable effort to develop the Intellectual Property. Costs for such development may be covered by grant (when allowable), departmental or central administration funds.

Development options include, but are not limited to:

- i. evaluating and processing the Invention through a patent application, or copyright registration filed by NKU or NKURF;
- ii. assigning the Intellectual Property to a patent management firm for evaluation and processing;
- iii. assigning or licensing* to a commercial firm; and
- iv. negotiating and recommending equity positions with company(s) willing to commercialize the Intellectual Property.

*The Creator(s) has first right of refusal to commercialize their invention.

A. EXCEPTIONS

Describe when exceptions are allowed, the process by which exceptions are granted, and the title of the university official authorized to grant the exception.

NKU will not hold any ownership rights in Intellectual Property to the extent that:

1. federal or state law provides that some party other than NKU holds one or more of such rights;
2. the Intellectual Property related to same was produced both outside the scope of the faculty or staff member's employment or Research, and without exceptional NKU support.
3. the Intellectual Property related to same is a Traditional Work, unless the Traditional Work was specifically commissioned by NKU;
4. the Intellectual Property was produced by gratis faculty, unless the Intellectual Property was produced utilizing Exceptional NKU Support or personnel of NKU, or specifically commissioned by NKU.

B. TRAINING

List the positions, departments, offices, or divisions responsible for implementing training. Include the entities that should receive training (e.g. Staff, Faculty, Administrators, etc.) and the frequency at which training should be delivered (at-hire, annually, bi-annually, etc.)

C. COMMUNICATIONS

DISCUSSION DRAFT – NOT VOTED OR APPROVED

List any university committees, groups, boards, councils, or other groups to which this policy or revisions to this policy should be communicated. **Faculty Senate**.

Click here to enter text.

D. REFERENCES AND RELATED MATERIALS

Link any forms or instructions needed to comply or implement this policy. If links are unavailable, attach forms to this policy as examples.

RELATED POLICIES

Link any currently existing policies related to this policy. If unable to obtain a link, simply list the names of the related policies.

Indicate any revisions to this policy using the table below. Include the type of revision and the month & year the revision was approved

| REVISION TYPE | MONTH/YEAR |
|--------------------------------|--------------------|
| APPROVED | |
| Revision (Estimated) | 02/2017 |
| Revision | 11/2009 |
| Revision | 11/2005 |

INTELLECTUAL PROPERTY

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: HYBRID

RESPONSIBLE OFFICIAL TITLE: VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, & OUTREACH

RESPONSIBLE OFFICE: OFFICE OF THE VICE PROVOST FOR GRADUATE EDUCATION, RESEARCH, & OUTREACH

EFFECTIVE DATE: UPON PRESIDENTIAL APPROVAL

NEXT REVIEW DATE: PRESIDENTIAL APPROVAL PLUS FOUR YEARS

SUPERSEDES POLICY DATED: [CLICK HERE TO ENTER A DATE.](#)

REQUIRES LEGAL/COMPLIANCE REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES I.T. POLICY COUNCIL REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES PROFESSIONAL CONCERNS COMMITTEE REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES FACULTY SENATE APPROVAL:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES HUMAN RESOURCES REVIEW:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

REQUIRES BOARD OF REGENTS APPROVAL:

(PER SECTION V. OF THE APPROVED POLICY REQUEST FORM) YES NO

I. POLICY STATEMENT

Northern Kentucky University, hereinafter referred to as the "University," is dedicated to teaching, research, and the sharing of knowledge with the public. The University recognizes as two of its major objectives the production of new knowledge and the dissemination knowledge. Inherent in these objectives is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other inventions, some of which may have potential for commercialization. Such activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide additional educational opportunities for participating students, and promote the general welfare of the public at large. Such creative and scholarly works and inventions that have commercial potential may be protected under the laws of various countries that establish rights regarding "Intellectual Property," a term that includes patents, copyrights, trade secrets, trademarks, plant variety protection, and other rights. Such Intellectual Property often comes about because of activities of University faculty, administrators, staff and students who have been aided through use of University resources, including facilities, equipment, funds, etc. The University as well as the authors, creators, or inventors, hereinafter referred to as the "Creators," have rights that must be protected in order that future creativity may be encouraged and stimulated. It is therefore important to establish clear policies regarding the ownership, commercialization, and financial rewards resulting from the creation of such Intellectual Property. In order to establish the respective rights and obligations of the University and Creators regarding Intellectual Property, the University has established the following Intellectual Property Policy.

II. ENTITIES AFFECTED

Describe the positions, units, departments, groups of people, or other constituencies to which the policy applies or has a material effect.

IV. DEFINITIONS

Define any terms within the policy that would help in the understanding or interpretation of the policy.

- A. **"Invention"** shall include but is not limited to any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, which is or may be patentable or which may be commercially licensable, and any mark used in connection with these items.
- B. **"Patentable Intellectual Property"** describes inventions, discoveries, and manufacturing designs that have been conceived or reduced to practice, and are novel, useful, and non-obvious, and therefore likely to be subject to protection under United States patent law. It also includes, but is not limited to, the physical embodiments of intellectual effort, such as machines, devices, apparatus, instrumentation, computer programs, and biological materials.
- C. **"Copyrightable Intellectual Property"** describes original works of authorship that have been fixed in a tangible medium of expression, including books, articles, artwork, music, dramatic works, sound recordings, software, traditional or electronic correspondence, and instructional materials (including online instructional materials), that are likely to be subject to protection under United States copyright law.
- D. **"Creator"** shall include faculty (including part-time, visiting and lecturer appointments), visiting researchers, staff, administrators, students, volunteers, any groups or combinations thereof, and any others using funds, facilities or resources of NKU as the authors, creators, or inventors of Intellectual Property.
- E. **"Traditional Works of Scholarship"** are scholarly and creative works regardless of their form, which are created by academic appointees or students, and which have not been the subject of Exceptional NKU Support or external contracts or grants. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, instructional materials, and non-patentable software.
- F. **"Exceptional NKU Support"** is financial or other support (facilities, equipment, etc.) for research and teaching activities that exceeds the norm for a faculty member or student's research or for teaching in his or her field or department. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment. The following examples define Exceptional NKU Support when applied in support of a revenue producing work. It is the responsibility of the dean or equivalent supervisor in concert with the Vice Provost of Graduate Education, Research and Outreach to evaluate situations and determine whether exceptional NKU support has occurred. Faculty members or other employees have an obligation to notify their supervisor when they believe their work will involve more than incidental use.
 - i. Extended use of time and energy by the creators in creation of a work that results in a reduction in the levels of teaching, scholarship or other NKU assigned activities. Ordinary NKU Project Grants, Summer Fellowships, and Sabbaticals awarded by the Provost's Office on recommendation of the Faculty Senate Benefits Committee shall not constitute Exceptional NKU Support.

- ii. Greater than incidental use of NKU facilities such as laboratories, studios, specialized equipment, production facilities or specialized computing resources in direct support of the work in question.
- iii. Specifically designated NKU funds to support the work's creation, publication, or production
- iv. Direct assignment or commission from NKU to undertake a creative project as part of the creator's regular appointment.
- v. Significant use of funding from gifts to NKU to support the creation of the work
- vi. Production of the works under specific terms of a sponsored research grant or contract.
- vii. For Online Instruction, Exceptional NKU Support might include: provision of designated technical assistance, such as audio-visual department personnel or a qualified graduate assistant, to assist development of an online course, or provision of specialized software or hardware purchased for a particular online project, or provision of other technical services commissioned from a third party to assist with a particular online project which exceeds normal NKU support for traditional courses, or commissioned by NKU by the provision of release time or other compensation to a faculty member as an adjustment to normal assigned duties for the purpose of creating an online course, which exceeds normal NKU support for traditional courses.

G. "NKU Works" are materials (including Online Instructional Materials) that:

- i. have been specifically commissioned by a NKU office, and, except as expressly provided otherwise in a written agreement, include recordings (whether audio, video, audiovisual, film, or other media) of performances, presentations, talks, course materials or other educational or extracurricular activities of NKU students, faculty, staff, visitors, and/or third parties, that are made by or at the request of NKU;
- ii. have been created by NKU employees who are not academic appointees;
- iii. have been developed with Exceptional NKU Support; or
- iv. constitute Externally Funded Works.

H. "Externally Funded Works" are copyrightable or patentable works resulting from funds given to the NKU by external sources.

V. RESPONSIBILITIES

Provide the position titles, departments, or divisions that are responsible for implementing the policy. Next to each entity, enumerate the responsibilities necessary to implement and enforce the policy.

VI. COMMITTEE

If the policy creates an official university committee, describe the Committee's role, responsibilities, and composition (titles of positions).

[Click here to enter text.](#)

VII. PROCEDURES

*Describe the **MINIMUM ACTIONS** required to fulfill the policy's requirements. This section should **NOT INCLUDE** internal protocols, guidelines, optional or purely desirable actions.*

1. What is Covered

Generally speaking, ownership of patentable or potentially patentable work is vested in NKU. This policy reaffirms the presumption that faculty members own the copyright to their traditional works of scholarship. Copyrightable works are subdivided into Traditional Works of Scholarship, ownership of which remains with the creator of the work, and NKU Works, as to which NKU retains ownership. Trademarks, service marks, symbols, designs, slogan, and seals used to identify the services of NKU are not subject to the provisions of this Intellectual Property Policy.

A. Patentable Intellectual Property

- i. NKU owns and shall have the sole right to determine the disposition of NKU Works and Patentable Intellectual Property under this Policy, including decisions concerning patent licensing and sale. Determination of those dispositions shall take into account the interests of NKU, the public, and the Creator.
- ii. Upon becoming subject to this policy, Creators will assign all right, title, and interest in NKU Works and Patentable Intellectual Property to NKU. Creators shall disclose promptly to NKU any potentially Patentable Intellectual Property on forms made available by NKU.
- iii. NKU shall assess all disclosures submitted to it in a timely fashion, normally within 60 days, to determine whether NKU should seek patent protection for the intellectual property. NKU shall promptly notify the Creator of the intellectual property of the results of its assessment.
- iv. Distribution of revenues derived from Patentable Intellectual Property shall be distributed to all Creators in accordance with Section 6 of this policy, unless legal requirements or contractual agreements require otherwise.

B. Traditional Works of Scholarship

- i. This policy recognizes the long standing custom and understanding that faculty members own copyright to their Traditional Works of Scholarship. A member of NKU is entitled to copyright from any such Traditional Works of Scholarship. Individual work so defined is automatically exempt from the formal review procedures of this policy.
- ii. NKU retains a nonexclusive, perpetual, royalty-free license to use Traditional Works of Scholarship for noncommercial purposes.

If a Creator is unsure if a specific Traditional Work may contain Intellectual Property that would not be exempted under the terms of this Policy, they may submit an Intellectual Property Research Disclosure Form and request an expedited review to reach a determination as such. Within 30 days of receipt, a written response shall be provided stating whether or not the Traditional Work also contains Intellectual Property that is required to be disclosed under the Policy.

- iii. On-line instructional materials are considered Traditional Works of Scholarship, unless they are:
 - i. specifically commissioned by NKU from a faculty member or any other person,
 - ii. created using Exceptional NKU Support, or
 - iii. created by non-faculty staff within the scope of their employment, in which case they are considered NKU Works. This policy only applies to the aspects of the materials that are separable from other protected intellectual property that is incorporated into or utilized by the online materials.

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- i. NKU owns and retains all rights to use and commercialize NKU Works. NKU may assign its ownership rights to NKURF so that NKURF can manage the intellectual property. Creators hereby assign all right, title, and interest in NKU Works to NKU. NKU may choose to forego or modify its ownership of a NKU Work and associated rights, through a written agreement with the Creators of the work and/or NKURF.

- ii. In the absence of contractual or legal restrictions to the contrary, and with the exceptions noted below, NKU grants Creators who are academic appointees or students non-exclusive rights to non-commercial use and distribution of NKU Works they have authored. The rights granted Creators under this subsection shall not extend to the following NKU Works: (a) recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators; or (b) software authored by Creators.

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In the above situations (D.ii., D.iii., and D.iv.) the work shall be deemed the property of the Creator and may be registered for legal protection and/or commercialized by the Creator at the Creator's expense.

- v. **Public Domain Preference.** The Creator, or Creators acting collectively when there are more than one, is free to place an invention in the public domain for non-commercial, academic dissemination purposes if that would be in the best interest of technology transfer, and if doing so is not in violation of the terms of any agreements that supported or governed the work. NKU will not assert intellectual property rights when Creators have placed their inventions in the public domain, but NKU does expect that the Intellectual Property be disclosed along with the Creator's request that they be allowed to disseminate the Intellectual property by placing it in the public domain.

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- A. For all employees of NKU in any capacity, full time or part time, this policy is a condition of employment.
- B. Persons who create intellectual property using NKU resources in whole or part, whether or not they have an employment relationship, student relationship, or other relationships with NKU.
- C. Students who independently create Intellectual Property arising out of their participation in programs of study at NKU without the use of Exceptional NKU Support, and that do not result from their employment by NKU, will retain the legal rights thereto ("Student Intellectual Property"). Intellectual Property created by students through the use of Exceptional NKU Support or in connection with their employment by NKU is owned by the NKU.

A student, as a condition of enrollment, grants a perpetual, royalty-free license to the NKU to reproduce and publicly distribute, on a noncommercial basis, Student Intellectual Property such as copies of student project reports, theses or dissertations, including any computer software developed as part of the student project, thesis or dissertation.

3. Authority

- A. **Overall responsibility.** The overall responsibility of this policy is vested in the Vice Provost for Graduate Education, Research and Outreach. This will include operations at the NKU level and management of activity of NKURF as related to NKU Works and Patentable Intellectual Property. The Vice Provost for Graduate Education, Research and Outreach, in consultation with Legal Affairs, is authorized, subject to NKU's contract policy, to enter contracts for the development of NKU Works or Patentable Intellectual Property. NKU Works or Patentable Intellectual Property assigned to NKURF shall be managed by NKURF on behalf of NKU according to the policies outlined in this document.
- B. **Responsibilities of the NKU/NKURF.** NKU, in conjunction with NKURF, will be responsible for determining the feasibility of commercializing NKU Works or Patentable Intellectual Property. If such property is deemed to have commercial value, NKU will assign its rights to the NKURF and the NKURF will have the legal and financial responsibility to carry the commercialization forward. All costs, including protecting and promoting copyright or patent applications, will be paid by NKU or the NKURF. The NKURF, in conjunction with NKU, will be responsible for making decisions regarding the marketing and/or licensing of all NKU Works or Patentable Intellectual Property. In general, all licenses will include a nonrefundable license fee, patent or copyright expense reimbursement, royalty and minimum royalty payments, and a requirement of diligence and march-in rights where the licensee does not perform adequately.

The Creator of the Intellectual Property may request in writing that all NKU or NKURF rights in such NKU Works or Patentable Intellectual Property be reassigned to the Creator. To the extent the Intellectual Property is not subject to any restrictions, and provided that all other co- Creators, if any, of the subject NKU Works or Patentable Intellectual Property consent to the request, NKU or NKURF shall reasonably consider such a request. Any reassignment of the rights by NKU or the NKURF to the Creator shall be limited only to the substance disclosed in the original disclosure form officially on record with NKU and further subject to NKU reserving perpetual rights to use the subject Intellectual Property for any noncommercial purpose, such as research and other educational purposes, at no cost to NKU.

- C. **Responsibilities of the Creator.** In addition to the disclosure responsibilities set forth in Section B above, Creator will cooperate with NKU or its designee in its effort to evaluate and protect the commercial value of any NKU Works or Patentable Intellectual Property. This would include but not be limited to notifying the appropriate office of any third party interest in the property and assisting in the preparation of any legal documents required to protect the NKU Works or Patentable Intellectual Property. The Creator will also work collaboratively with NKURF to determine the best course of action regarding the commercialization and marketing of the Intellectual Property. To ensure that NKU is aware of all such Intellectual Property, all those persons covered by this Policy are required to disclose to NKU any Intellectual Property, except those Traditional Works as defined in Section 2. When in doubt about whether or not Intellectual property may, in a reasonable opinion, have commercial value, the Creator should complete an Intellectual Property Research Disclosure Form and consult with the Office of Graduate Education, Research and Outreach about any commercial potential. Such disclosure shall occur either simultaneously with or prior to public disclosure.
- D. **Signatory Authority.** Unless otherwise designated in writing by the Vice Provost for Graduate Education, Research and Outreach, signature authority for subjects covered by this Policy shall rest solely in the Vice Provost for Graduate Education, Research and Outreach.

E. **Intellectual Property Review Committee.** The Board of NKURF will serve as the Intellectual Property Review Committee. The Vice Provost for Graduate Education, Research and Outreach or designee will serve as the chairperson. The Board may consult with others as they see fit.

4. Revenue Distribution

A. Royalties and Other Income. All royalties and other income arising from NKU Works or Patentable Intellectual Property which has been assigned to NKURF shall be administered by the Vice Provost for Graduate Education, Research and Outreach. Expenses to be paid out of the gross income include:

1. Direct costs paid by the University or its designee in conjunction with:
 - processing of patent or copyright protection,
 - marketing or licensing the Intellectual Property, and
 - any other legal costs related to technology transfer and commercialization.
2. costs as described in a contract of support. This would occur when University funds provided a grant, sabbatical, or other support for research that led to the Intellectual Property and where a contract specifying repayment accompanied the grant, sabbatical, or offer of support;
3. documented out-of-pocket costs paid by the Originator.

Total net proceeds (total income less expenses directly related to obtaining rights and royalties from such property) will be disbursed as described in the table below:

DISTRIBUTION OF ROYALTIES FOR INTELLECTUAL PROPERTY OWNED BY UNIVERSITY

| Net License | Originator ¹ | College ² | Department | NKURF | GERO |
|------------------------|-------------------------|----------------------|------------|-------|------|
| <\$5,000 | 100% | | | | |
| \$5,001 <> \$50,000 | 60% | 10% | 10% | 10% | 10% |
| > \$50,001 | 50% | 12.5% | 12.5% | 10% | 15% |

In general, these royalties are awarded to the Originator in recognition of his or her significant intellectual contribution to the University. Royalty payments to the Originator's department and college are given to promote additional research and creative works within the department and college. NKURF's portion of the royalties will be used as operating funds in support of its general mission, ongoing management of Intellectual Property matters and to cover the costs of commercialization. Royalties deposited in the GERO fund are to underwrite its functions as well as to provide general support for other research and scholarly activities on campus.

B. Multiple creators. In the case of multiple Creators, the Creators shall list what they believe to be the appropriate percentage contributions of each Creator at the time an Intellectual Property Research

¹ The Originator's rights to share in net income as stated above shall remain with the individual or pass to the individual's heirs and assigns for so long as revenue is derived from the property.

² If the Originator does not report to a college dean, then the administrative unit most comparable to the college will receive this share of the royalties.

Disclosure Form is submitted. If the Creators cannot reach an agreement among themselves, the NKURF Board shall meet to evaluate the claims of all Creators and render a binding decision. The NKURF Board may rely on testimony from the Creator's Deans and Department Heads in so doing, but is not required to do so.

5. Dispute Resolution

Disputes arising over the application of this policy shall be brought to the attention of the Provost, who shall refer the matter to the NKURF Board. The committee will render a determination in writing to the Provost within thirty (30) days of receiving the Creator's written appeal. The Committee's decision regarding disputes may be appealed in writing to the Provost within thirty (30) days of the Committee's decision. The decision of the Provost will constitute the final decision of the University.

6. Agreements

Consulting: It is the responsibility of individual members of the NKU community to ensure that the terms of their consulting agreements with third parties do not conflict with this Policy or any of their other commitments to the NKU. Each individual should 1) make the nature of their obligations to the NKU clear to any third party for whom the individual expects to consult and 2) should inform such third parties that the NKU does have a formal Intellectual Property Policy, and further inform third parties that such Policy is available online at <http:xxxx>. More specifically, the scope of any consulting services should be expressly distinguished from the scope of research commitments at the NKU, and should not utilize any NKU facilities or resources without first negotiating appropriate compensation for such use with the NKU. In the case of conflict between requested consulting and NKU research commitments, individuals should work with the Office of Research, Grants and Contracts to establish an appropriate Sponsored Research Agreement. Rights to inventions arising from a business or industry sponsored research project should be prescribed in the sponsored research agreement.

VIII. REPORTING REQUIREMENTS

Process of Disclosure

As a condition of employment or matriculation, all faculty, staff, other employees, and students of the NKU agree to comply with the policies of NKU. A copy of this Policy shall be available, electronically and in printed form, for all faculty, staff, other employees, and students. On request, a set of guidelines for reporting Intellectual Property will be made available to any faculty, staff, other employees, or student by the Office of Graduate Education, Research and Outreach.

- A. **Intellectual Property Research Disclosure Form.** Whenever a NKU faculty, staff, other employee, or student, operating under the scope of this Policy, creates or obtains patentable research results that may have commercial value and do not fall within the scope of the exception of this Policy Section 3, the Creator shall notify the Vice Provost for Graduate Education, Research and Outreach in writing via an official Research Disclosure Form.
 - i. If the Creator believes that the content of the Intellectual Property Research Disclosure Form falls within one of the exceptions of Section 3, the Creator shall mark the Intellectual Property Research Disclosure Form as such and request an expedited review.
 - ii. The Creator shall make available originals or copies of all documents and designs, including logs or research workbooks, as requested, that are necessary to support the value and scope of the Intellectual Property.
 - iii. Moreover, the Creator shall assist NKU or NKURF in obtaining and maintaining legal protection by disclosing essential information, signing applications and other necessary documents and

- assigning any rights to technology provided, however, that NKU or NKURF shall reimburse the Creator for any out-of-pocket expenses incurred by providing such assistance.
- iv. **Written Response.** The Vice Provost for Graduate Education, Research and Outreach or designee shall provide a written communication to the Creator with notification of the date of receipt of the Intellectual Property Research Disclosure Form, and evaluate the merits of the Intellectual Property and the equities involved.

The decision shall convey one of three alternatives:

- a. **ELECTED.** If NKU or the NKURF Board finds potential commercial value in the Research Disclosure, NKU will notify the Creator that it has “ELECTED to Retain Title” and will move forward with marketing of the Research Disclosure. The Vice Provost for Graduate Education, Research and Outreach will apprise the Creator, in writing, of all marketing and development activities NKU has undertaken with respect to their Research Disclosure every six months. It is important to have a close working relationship between the creator and the GERO office. Creator’s knowledge of their research, and of companies active in related technologies, are key elements of the technical and market assessment for an invention and of the search for licensees. If the Creator is unsatisfied, they may appeal to the Intellectual Property Committee for a release of the invention as described in the Research Disclosure.

NKU has a contractual obligation to inform federal agencies of inventions within two months after they are disclosed to the Office of Graduate Education, Research and Outreach, to elect to retain title within two years, and to file a patent within one year of election.

If NKU elects to retain title, the creator will be eligible to apply for commercialization gap funds to further develop their intellectual property. Should budget considerations constrain fund availability faculty will be notified at the beginning of the academic year.

PENDING. NKU encourages full disclosure as early as possible in the development process. If the invention is not yet fully developed, the Vice Provost for Graduate Education, Research and Outreach or designee shall provide feedback and place the Research Disclosure in a “PENDING” status until further developments are disclosed. When a Research Disclosure is placed in PENDING status, the Office of Graduate Education, Research and Outreach shall work with the Creator to define what steps need to be taken to ready the Research Disclosure for re-evaluation. Once such steps are undertaken and new information is provided, the Office of Graduate Education, Research and Outreach shall re-activate the file and treat it as a new Research Disclosure.

- b. **NON-ELECTED.** If NKU or the NKURF Board finds there is not enough potential commercial value in the Research Disclosure to warrant further NKU investment, they will notify the Creator that the NKU has “Not Elected to Retain Title” and will either release title to the Federal Sponsor if so required, or offer to release title to the Creator upon receipt of their formal written request.

The Vice Provost for Graduate Education, Research and Outreach shall also notify the chairperson of the Creator's department and the appropriate dean or vice president:

- a) At the time of Research Disclosure that the disclosure of an Invention has been made; and
- b) At the time of NOTICE TO CREATOR by providing a copy of such NOTICE and the decision therein conveyed.

- v. **Release of Intellectual Property.** If NKU or the NKURF Board elects to release some or all ownership rights to Creator, the Creator shall be free, subject to law and prior agreements, to proceed independently only with respect to the specific Invention disclosed.

B. **Development of Technology.** Upon ELECTION of the Invention in the Intellectual Property Research Disclosure, the Office of Graduate Education, Research and Outreach shall make every reasonable effort to develop the Intellectual Property. Costs for such development may be covered by grant (when allowable), departmental or central administration funds.

Development options include, but are not limited to:

- i. evaluating and processing the Invention through a patent application, or copyright registration filed by NKU or NKURF;
- ii. assigning the Intellectual Property to a patent management firm for evaluation and processing;
- iii. assigning or licensing* to a commercial firm; and
- iv. negotiating and recommending equity positions with company(s) willing to commercialize the Intellectual Property.

*The Creator(s) has first right of refusal to commercialize their invention.

IX. EXCEPTIONS

Describe when exceptions are allowed, the process by which exceptions are granted, and the title of the university official authorized to grant the exception.

NKU will not hold any ownership rights in Intellectual Property to the extent that:

- i. federal or state law provides that some party other than NKU holds one or more of such rights;
- ii. the Intellectual Property related to same was produced both outside the scope of the faculty or staff member's employment or Research, and without exceptional NKU support.
- iii. the Intellectual Property related to same is a Traditional Work, unless the Traditional Work was specifically commissioned by NKU;
- iv. the Intellectual Property was produced by gratis faculty, unless the Intellectual Property was produced utilizing Exceptional NKU Support or personnel of NKU, or specifically commissioned by NKU.

X. TRAINING

List the positions, departments, offices, or divisions responsible for implementing training. Include the entities that should receive training (e.g. Staff, Faculty, Administrators, etc.) and the frequency at which training should be delivered (at-hire, annually, bi-annually, etc.)

Click here to enter text.

XI. COMMUNICATIONS

List any university committees, groups, boards, councils, or other groups to which this policy or revisions to this policy should be communicated.

[Click here to enter text.](#)

XII. REFERENCES AND RELATED MATERIALS

REFERENCES & FORMS

Link any forms or instructions needed to comply or implement this policy. If links are unavailable, attach forms to this policy as examples.

[Click here to enter text.](#)

RELATED POLICIES

Link any currently existing policies related to this policy. If unable to obtain a link, simply list the names of the related policies.

[Click here to enter text.](#)

REVISION HISTORY

Indicate any revisions to this policy using the table below. Include the type of revision and the month & year the revision was approved

| REVISION TYPE | MONTH/YEAR APPROVED |
|-----------------|---------------------|
| Revision | 02/2017 (Estimated) |
| Revision | 11/2009 |
| Revision | 11/2005 |
| Choose an item. | |
| Choose an item. | |
| Choose an item. | |
| Choose an item. | |

APPENDIX F

INTELLECTUAL PROPERTY POLICY

(Revised Version – 10/26/2009)

I. Preamble

Northern Kentucky University, hereinafter referred to as the “University,” is dedicated to teaching, research, and the sharing of knowledge with the public. The University recognizes as two of its major objectives the production of new knowledge and the dissemination of old and new knowledge. Inherent in these objectives is the need to encourage the production of creative and scholarly works and the development of new and useful materials, devices, processes, and other inventions, some of which may have potential for commercialization. Such activities contribute to the professional development of the individuals involved, enhance the reputation of the University, provide additional educational opportunities for participating students, and promote the general welfare of the public at large. Such creative and scholarly works and inventions that have commercial potential may be protected under the laws of various countries that establish rights regarding “Intellectual Property,” a term that includes patents, copyrights, trade secrets, trademarks, plant variety protection, and other rights. Such Intellectual Property often comes about because of activities of University faculty, administrators, staff and students who have been aided through use of University resources, including facilities, equipment, funds, etc. The University as well as the authors, creators, or inventors, hereinafter referred to as the “Originators,” have rights that must be protected in order that future creativity may be encouraged and stimulated. It is therefore important to establish clear policies regarding the ownership, commercialization, and financial rewards resulting from the creation of such Intellectual Property. In order to establish the respective rights and obligations of the University and Originators regarding Intellectual Property, the University has established the following Intellectual Property Policy.

II. Objectives of the Policy

- A. To clarify the University’s values with regard to intellectual property.
- B. To encourage the creation and transfer of knowledge.
- C. To clarify rights and responsibilities of all parties involved in the development of intellectual property.
- D. To provide for a system to assist Originators and the University in bringing new discoveries into public use.
- E. To define the legal rights of all parties and to provide for the disposition of these interests.
- F. To safeguard intellectual property against unauthorized use.

III. Definitions

- A. “**Copyrightable Works**” shall include but is not limited to any copyrightable material as defined by federal law. For purposes of this Policy, Copyrightable Works is divided into

two categories: (1) Traditional Copyrightable Works, and (2) Encoded Copyrightable Works. However, some materials created at the University are both copyrightable and patentable (*e.g.*, a Encoded Copyrightable Work may embody a patentable invention).

- B. “Traditional Copyrightable Works”** shall include but is not limited to printed materials such as books, manuscripts, journal articles and reviews; works of art such as paintings, sculptures, musical or dramatic compositions, choreographic works, pictorial or graphic works, movies, and television programs; course materials such as lecture notes, exams, class syllabi, workbooks, laboratory manuals; and any other materials that have historically been the property of the Originator.
- C. “Encoded Copyrightable Works”** shall include but is not limited to computer software, databases, circuit diagrams, engineering drawings and other technologies used to support the electronic capture, storage, retrieval, transformation and presentation of digital data and information or to interface between digital forms and other communications and information media. The University will exercise its equitable ownership interest in Encoded Copyrightable Works under the circumstances identified below.
- D. “Invention”** shall include but is not limited to any discovery, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, which is or may be patentable or which may be commercially licensable, and any mark used in connection with these items.
- E. “Intellectual Property”** refers to all Copyrightable Works and Inventions.
- F. “Originator”** shall include faculty (including part-time, visiting and lecturer appointments), visiting researchers, staff, administrators, students, volunteers, any groups or combinations thereof, and any others using funds, facilities or resources of the University as the authors, creators, or inventors of Intellectual Property. If a group of individuals with assistance from the University originate Intellectual property, they will be treated as an individual with respect to this policy. Therefore, they are responsible to decide issues that relate to their shared ownership.
- G. “Substantial Use of University Resources”** refers to the use of University funds (including grants, contracts or awards made to the University or its designee by extramural sponsors), laboratory, office space, studio, audiovisual, video television, broadcast, personal computers, servers, licensed software, computer networks, or other facilities, equipment, resources and faculty, staff or students which (1) fall outside of the scope of the Originator’s normal job responsibilities or the student’s academic program, or (2) entails the Originator’s use of such resources that are not ordinarily available to all or virtually all faculty, administrators, staff or students with comparable status in the same division, college, department or academic program. The term does not include the use of personal office space, local telephone, library resources and personal computer equipment incidental to outside activities that are permitted under the University’s

Ethical Principles and Code of Conduct (Administrative Regulation AR-I-1.0-1) and the Faculty Handbook.

- H. “University Assigned Works” or “Works for Hire”** refer to those works within the scope of the Originator’s University employment or, in the case of faculty, specifically assigned to the Originator by the University. This includes projects that have been assigned for the purpose of use by a larger University audience – *e.g.* a syllabus template, course materials for use in a multiple section course, distance learning or online course materials or videos for which the creator is compensated for developing, promotional materials for a department or other unit of the University. The conditions of such an assignment are negotiable between the Originator and the University and must be documented prior to commencing the assignment. Documentation will address compensation, ownership of the Intellectual Property, reproduction and usage rights, and be signed by the Originator and the University's authorized designee.

IV. Ownership Rights in Intellectual Property

All Intellectual Property produced by an Originator is presumed to be owned by the University or its designee unless it falls within one of the exceptions defined herein. In general, the University will assign all of its ownership rights in Intellectual Property to the Northern Kentucky University Research Foundation, Inc. (NKURF). NKURF shall manage the Intellectual Property on behalf of the University according to the policies laid out in this document.

A. Copyrightable Works:

This policy recognizes the longstanding custom and understanding that faculty members own copyright to their scholarly and creative work. In general, this understanding extends to administrators, staff and students with regards to their professional work or studies. Therefore, copyright ownership of all work created by faculty, administrators, staff, students or others shall vest in the Originator except under the following circumstances:

For both Traditional and Encoded Copyrightable Works:

1. *Subordination to Other Agreements:* Copyright ownership of all material that is developed in the course of or pursuant to a sponsored research or other agreement to which the University or its designee is a party shall be determined in accordance with the terms of the sponsored research or other agreement. In the absence of terms specifically assigning ownership, the copyright shall become the property of the University only if the terms of such agreement directly or indirectly create University obligations as to Intellectual Property developed thereunder or if ownership is conferred upon the University by operations of another provision of this Policy.
2. *University Assigned Work or “Works for Hire”:* The copyright of material that is created by administrators, staff or students within the scope of University employment or by faculty pursuant to a specific direction or agreed assigned duty

(other than the traditional obligation of teaching courses) from the University or any of its units shall be the property of the University.

For Encoded Copyrightable Works Only:

1. *Substantial Use of University Resources:* Copyright ownership of all Encoded Copyrightable Works which are developed with the Substantial Use of University Resources shall reside in the University.

B. Inventions:

All Inventions made by an Originator with a University appointment and resulting from activities carried out in furtherance of his or her University responsibilities, and/or with the Substantial Use of University Resources, including those provided through an externally funded grant, contracts, or other type of award or gift to the University, shall be owned by the University or its designee.

C. Student Ownership Issues:

Intellectual Property created by students are additionally subject to the following rules:

1. The University makes no claim to copyright or patent ownership of works created by students working on their own, *i.e.* not within the scope of an employment relationship with the University or in conjunction with one of its employees, and not making Substantial Use of University Resources.
2. Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.
3. Students who are hired to perform specific tasks that contribute to Intellectual Property will ordinarily not have rights to ownership of that work, regardless of the source of funds from which they are paid or the portion of work performed or contributed by the student.
4. Students working collaboratively (*i.e.* unpaid or unfunded work) with other Originators on projects that result in Intellectual Property *may* be granted the same rights and obligations as any other Originator working collaboratively on the project. Students and other Originators should establish these rights in writing *at the outset of their collaboration*. Unless otherwise informed by the parties, the University will presume that any Student working collaboratively on a project with other Originators has no rights and obligations with regard to the Intellectual Property.
5. If none of the above relationships apply, students performing work compensated by the University are subject to the same provisions governing any other Originator of Intellectual Property.
6. Where Intellectual Property arising out of the student's own original work and participation in programs of study at the University is retained by the student,

including copyright in theses or dissertations, the student shall grant to the University or its designee a royalty-free perpetual non-exclusive license and consent to reproduce, use and publicly distribute the Intellectual Property for the following limited purposes of the University: (1) institutional promotion and marketing, (2) education and instructional use, and (3) entries into appropriate competitions. In each instance, the University shall clearly recognize or acknowledge the student for his/her creative or scholarly work.

D. Waivers

The rights and responsibilities set forth herein constitutes an understanding which is binding on the University faculty, administrators, staff and students as a condition of their participation in University research, teaching, educational programs and service programs, and for their use of University funds, space, or facilities. Provisions of this policy may be waived only in extraordinary and compelling circumstances by the provost or the president.

V. Procedures and Responsibilities

A. Disclosure

Whenever an Originator creates Intellectual Property which is, or may be, owned by the University as set forth in this policy, s/he must disclose as soon as practicable, but not more than thirty (30) calendar days after the work is completed, the Intellectual Property to the University or its designee by completing the “Intellectual Property Disclosure Form” available in the Office for Research, Grants and Contracts, and submitting it to:

**Northern Kentucky University
Research Foundation, Inc.
Attn: Executive Director
Nunn Drive, AC 616
Highland Heights, KY 41099**

Originator’s duty to disclose the creation of Intellectual Property shall be completed before disclosing the work to any other third party internal or external to the University.

Faculty or staff members who engaged in consulting work or in private business activities outside of their regular University employment are responsible for ensuring that such services or activities do not conflict with this Policy nor with the University’s commitments; and that the University’s rights and the individual’s obligations to the University are in no way abrogated or limited by the terms of such agreements. Faculty and staff members shall make it clear to those with whom they make such agreements their obligations to the University and shall ensure that other parties to the agreement are provided with a current copy of this Policy.

B. Commercialization of Intellectual Property

The primary functions of the University are education, research and public service. It is in the context of public service that the University supports efforts directed toward bringing the fruits of University research and creative works to public use and benefit. In many cases, mere publication of the work will be sufficient to transfer University research and artistic works to the public. In other cases, it is necessary to encourage industry, through protection of the Intellectual Property and the granting of certain licensing rights, to invest its resources to develop products and processes for use by the public. To this end, the University and Originators agree to be responsible for the following:

1. Responsibilities of the University

The Northern Kentucky University Research Foundation (NKURF) will be responsible for determining the feasibility of commercializing Intellectual Property. If the property is deemed to have commercial value, the NKURF will have the legal and financial responsibility to carry the commercialization forward. All costs, including protecting and promoting copyright or patent applications, will be paid by the University or the NKURF and be filed in its name. The University or its designee will be solely responsible for making decisions regarding the marketing and/or licensing of all Intellectual Property. In general, all licenses will include a nonrefundable license fee, patent or copyright expense reimbursement, royalty and minimum royalty payments, and a requirement of diligence and march-in rights where the licensee does not perform adequately.

In cases where the University has an ownership interest in Intellectual Property and NKURF or other designee has not provided the Originator a report detailing its ownership right and the current state of commercialization, including any steps taken in patenting, marketing or licensing the Intellectual Property, within one (1) year of receipt of a completed disclosure form, the Originator of the Intellectual Property may request in writing that all University rights in such Intellectual Property be reassigned to the Originator. To the extent the Intellectual Property is not subject to any sponsored project rights or restrictions, and provided that all other co-Originators, if any, of the subject Intellectual Property consent to the request, the University or its designee shall reasonably consider such a request. Any reassignment of the rights by the University to the Originator shall be limited only to the substance disclosed in the original disclosure form officially on record with NKURF and further subject to the University reserving the rights to use the subject Intellectual Property for research and other educational purposes.

2. Responsibilities of the Originator

In addition to the disclosure responsibilities set forth in Section A above, Originator will cooperate with the University or its designee in its effort to evaluate and protect the commercial value of any University Intellectual Property. This would include but not be

limited to notifying the appropriate office of any third party interest in the property and assisting in the preparation of any legal documents required to protect the Intellectual Property. The Originator will also work collaboratively with NKURF to determine the best course of action regarding the commercialization and marketing of the Intellectual Property.

3. Royalties

Except in the case of Works for Hire, royalty income received by the University through the sale, licensing, leasing or use of Intellectual Property, which the University owns pursuant to any section of this Policy, will first be used to reimburse documented expenses in the following order:

- a. documented out-of-pocket costs paid by the Originator,
- b. costs as described in a contract of support. This would occur when University funds provided a grant, sabbatical, or other support for research that led to the Intellectual Property and where a contract specifying repayment accompanied the grant, sabbatical, or offer of support;
- c. direct costs paid by the University or its designee in conjunction with
 - i. processing of patent or copyright protection,
 - ii. marketing or licensing the Intellectual Property, and
 - iii. any other legal costs related to technology transfer and commercialization.

After expenditures are reimbursed, the royalties and other income will be disbursed as described in the table below:

Distribution of Royalties for Intellectual Property Owned by University

| <u>Net License Revenue</u> | <u>Originator</u> ¹ | <u>College</u> ² | <u>NKURF</u> | <u>General Fund</u> |
|----------------------------|--------------------------------|-----------------------------|--------------|---------------------|
| ≤ \$5,000 | 100% | | | |
| \$5,001 < \$50,000 | 60% | 20% | 20% | |
| \$50,001 < \$100,000 | 50% | 20% | 20% | 10% |
| ≥ \$100,000 | 25% | 15% | 15% | 45% |

In general, these royalties are awarded to the Originator in recognition of his or her significant intellectual contribution to the University. Royalty payments to the

¹ The Originator's rights to share in net income as stated above shall remain with the individual or pass to the individual's heirs and assigns for so long as revenue is derived from the property. In cases where the Originator is a

² If the Originator does not report to a college dean, then the administrative unit most comparable to the college will receive this share of the royalties.

Originator's college are given to promote additional research and creative works within the college. NKURF's portion of the royalties will be used as operating funds in support of its general mission, ongoing management of Intellectual Property matters and to cover the costs of commercialization. Royalties deposited in the University's General Fund are to compensate it for the use of public resources as well as to provide general support for other research and scholarly activities on campus.

C. Appeals

Disputes arising over the application of this policy shall be brought to the attention of the Provost, who shall refer the matter to the Intellectual Property Committee. This will be a five person, standing committee appointed by the President with two persons nominated by the Faculty Senate, and one each nominated by the Staff Congress, Student Government Association, and the provost. The committee will render a determination in writing within thirty (30) days of receiving the Originator's written appeal. A copy of the decision shall also be forwarded to the Office of Legal Affairs and General Counsel for review. The Committee's decision regarding disputes may be appealed in writing to the president and the Board of Regents, respectively, within thirty (30) days of the committee's decision. The decision of the Board of Regents will be final.

VI. Advice and Interpretation

Members of the University community may obtain advice from the Office of the Associate Provost for Research on the application of this Policy to their work or studies, and from the Office of Research, Grants and Contracts information about restrictions on Intellectual Property ownership related to grants or other sponsored agreements. Disclosure forms and other model agreements regarding this Policy can also be obtained from the Office of Research, Grants and Contracts.

VII. Policy Modifications

Recommendations regarding changes to this policy should be sent to the chairperson of the Intellectual Property Committee for appropriate action.

Statement on Copyright

This statement was approved in March 1999 by the Association's Special Committee on Distance Education and Intellectual Property Issues. It was adopted by the Association's Council and endorsed by the Eighty-Fifth Annual Meeting in June 1999.

The objective of copyright is, in the words of the US Constitution, to "promote the progress of science and useful arts." To achieve that objective, authors are given exclusive rights under the Copyright Act to reproduce their works, to use them as the basis for derivative works, to disseminate them to the public, and to perform and display them publicly. Institutions of higher learning in particular should interpret and apply the law of copyright so as to encourage the discovery of new knowledge and its dissemination to students, to the profession, and to the public. This mission is reflected in the 1940 *Statement of Principles on Academic Freedom and Tenure*: "Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition."

Academic Practice

Within that tradition, it has been the prevailing academic practice to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes. Examples include class notes and syllabi; books and articles; works of fiction and nonfiction; poems and dramatic works; musical and choreographic works; pictorial, graphic, and sculptural works; and educational software, commonly known as "courseware." This practice has been followed for the most part, regardless of the physical medium in which these "traditional academic works" appear; that is, whether on paper or in audiovisual or electronic form. As will be developed below, this practice should therefore ordinarily apply to the development of courseware for use in programs of distance education.

Unilateral Institutional Policies

Some colleges and universities have promulgated policies, typically unenforced, that proclaim traditional academic works to be the property of

the institution. Faculty handbooks, for example, sometimes declare that faculty members shall be regarded as having assigned their copyrights to the institution. The Copyright Act, however, explicitly requires that a transfer of copyright, or of any exclusive right (such as the exclusive right to publish), must be evidenced in writing and signed by the author-transferor. If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they abide by a faculty handbook that purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future.

Other colleges and universities instead proclaim that traditional academic works are "works made for hire," with the consequence that the institution is regarded as the initial owner of copyright. This institutional claim is often stated to rest upon the use by the faculty member, in creating such works, of college or university resources, such as office space, supplies, library facilities, ordinary access to computers and networks, and money.

The pertinent definition of "work made for hire" is a work prepared by an "employee within the scope of his or her employment." In the typical work-for-hire situation, the content and purpose of the employee-prepared works are under the control and direction of the employer; the employee is accountable to the employer for the content and design of the work. In the case of traditional academic works, however, the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. This is the very essence of academic freedom. Were the institution to own the copyright in such works, under a work-made-for-hire theory, it would have the power, for example, to decide where the work is to be published, to edit and otherwise revise it, to

prepare derivative works based on it (such as translations, abridgments, and literary, musical, or artistic variations), and indeed to censor and forbid dissemination of the work altogether. Such powers, so deeply inconsistent with fundamental principles of academic freedom, cannot rest with the institution.

College or University Copyright Ownership

Situations do arise, however, in which the college or university may fairly claim ownership of, or an interest in, copyright in works created by faculty (or staff) members. Three general kinds of projects fall into this category: special works created in circumstances that may properly be regarded as "made for hire," negotiated contractual transfers, and "joint works" as described in the Copyright Act.

1. *Works Made for Hire.* Although traditional academic work that is copyrightable—such as lecture notes, courseware, books, and articles—cannot normally be treated as works made for hire, some works created by college or university faculty and staff members do properly fall within that category, allowing the institution to claim copyright ownership. 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 with 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 developed by a dean or by the chair or members of a faculty committee, or college promotional brochures prepared by a director of admissions. Some institutions appear to treat course examinations as falling within this category, but the stronger case can be made for treating examinations as part of the faculty member's customary instructional materials, with copyright thus owned by the individual.

The Copyright Act also defines as a "work made for hire" certain works that are commissioned from an individual who is not an employee but an "independent contractor." The institution will own the copyright in such a commissioned work when the author is not a college or university employee, or when the author is such an employee but the work to be created falls outside the normal scope of that person's employment duties (such as a

professor of art history commissioned by the institution under special contract to write a catalog for a campus art gallery). In such situations, for the work-made-for-hire doctrine to apply there must be a written agreement so stating and signed by both parties; the work must also fall within a limited number of statutory categories, which include instructional texts, examinations, and contributions to a collective work.

2. *Contractual Transfers.* In situations in which the copyright ownership is held by the faculty (or staff) member, it is possible for the individual to transfer the entire copyright, or a more limited license, to the institution or to a third party. As already noted, under the Copyright Act, a transfer of all of the copyright or of an exclusive right must be reflected in a signed document in order to be valid. When, for example, a work is prepared pursuant to a program of "sponsored research" accompanied by a grant from a third party, a contract signed by the faculty member providing that copyright will be owned by the institution will be enforceable. Similarly, the college or university may reasonably request that the faculty member—when entering into an agreement granting the copyright or publishing rights to a third party—make efforts to reserve to the institution the right to use the work in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, nonexclusive basis.
3. *Joint Works.* Under certain circumstances, two or more persons may share copyright ownership of a work, notably when it is a "joint work." The most familiar example of a joint work is a book or article written, fully collaboratively, by two academic colleagues. Each is said to be a "co-owner" of the copyright, with each having all the usual rights of the copyright owner (i.e., to license others to publish, to distribute to the public, to translate, and the like), provided that any income from such uses is shared with the other. In rare situations, an example of which is discussed immediately below, it may be proper to treat a work as a product of the joint authorship of the faculty member and his or her institution, so that both have a shared interest in the copyright.

New Instructional Technologies

The development of new instructional technologies has led to some uncertainties with regard to the respective rights of the institution and its

faculty members. For example, courseware prepared for programs of distance education will typically incorporate instructional content authored and presented by faculty members, but the college or university may contribute specialized services and facilities to the production of the courseware that go beyond what is traditionally provided to faculty members generally in the preparation of their course materials. On the one hand, the institution may simply supply "delivery mechanisms," such as videotaping, editing, and marketing services; in such a situation, it is very unlikely that the institution will be regarded as having contributed the kind of "authorship" that is necessary for a "joint work" that automatically entitles it to a share in the copyright ownership. On the other hand, the institution may, through its administrators and staff, effectively determine or contribute to such detailed matters as substantive coverage, creative graphic elements, and the like; in such a situation, the institution has a stronger claim to co-ownership rights.

Ownership, Control, Use, and Compensation: Informed Allocation of Rights

Given the varying roles possibly played by the institution and the faculty member, and the nascent state of distance-education programs and technologies, it is not likely that a single principle of law can clearly allocate copyright-ownership interests in all cases. In some instances, the legal rules may warrant the conclusion that the college or university is a "joint author"; in other instances, that the institution should be compensated with royalties commensurate with its investment; and in yet others, that it has some sort of implied royalty-free "license to use" the copyrighted work. It is therefore useful for the respective rights of individual faculty members and the institution—concerning ownership,

control, use, and compensation—to be negotiated in advance and reduced to a written agreement. Although the need for contractual arrangements has become more pressing with the advent of new instructional technologies, such arrangements should be considered even with respect to more traditional forms of authorship when the institution seeks to depart from the norm of faculty copyright ownership. An alternative format—perhaps somewhat less desirable, because less likely to be fully known to and appreciated by individual faculty members—would be detailed and explicit institutional regulations dealing with a variety of pertinent issues, subject to the strictures noted above concerning copyright transfers. Such regulations should, of course, give great weight to the views of the faculty, and may be reflected either in widely available institutional policy documents or in collective bargaining agreements.

Whoever owns the copyright, the institution may reasonably require reimbursement for any unusual financial or technical support. That reimbursement might take the form of future royalties or a nonexclusive, royalty-free license to use the work for internal educational and administrative purposes. Conversely, when the institution holds all or part of the copyright, the faculty member should, at a minimum, retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works authored by that faculty member. In the context of distance-education courseware, the faculty member should also be given rights in connection with its future uses, not only through compensation but also through the right of "first refusal" in making new versions, or at least the right to be consulted in good faith on reuse and revisions.

Statement on Intellectual Property

The statement that follows, prepared by a subcommittee of the Association's Committee A on Academic Freedom and Tenure, was approved by Committee A and adopted by the Association's Council in November 2013.

The management of inventions, patents, and other forms of intellectual property in a university setting warrants special guidance because it bears on so many aspects of the university's core missions, values, and functions, including academic freedom, scholarship, research, shared governance, and the transmission and use of academic knowledge by the broader society. Intellectual property refers broadly to patents, copyrights, trademarks, and (according to some definitions) trade secrets, in addition to the underlying subject matter that is controlled by the owner of these property rights established by statute (namely, inventions, works of authorship, and identifiers that distinguish goods and services in the marketplace). Patents provide the owner with the right to exclude others from practicing—making, using, and selling—an invention.¹ A patent, unlike a copyright, goes beyond the protection of written expression to accord an exclusive right to the operational principles that underlie the invention. Copyright prohibits unauthorized copying or modification of particular instances of expression; a patent permits the exclusion of work created independently, is not limited to the precise “expression,” and has no “fair use” exception, even for nonprofit purposes. Thus, patents may have an additional and potentially substantial impact on university research, may affect the value and role of scholarly publication, and may influence collaborations and the transfer of technology developed or improved in other research settings. The management of university-generated intellectual property is complex and carries significant consequences for those involved in direct negotiations (faculty inventors, companies, university administrators, attorneys, and invention-management agents) as well as those who may be affected (competing companies, the public, patients, and the wider research community).

Whether ownership of a particular invention resides with the inventors or is assigned by the inventors to a university technology-transfer office, a university-affiliated foundation, or an independent invention-management agency, it is

essential that all those involved recognize the distinctive role that inventions arising out of scholarly research should have. Faculty investigators and inventors, together with university administrators, must communicate this role and hold those involved accountable when they are engaged in the development and deployment of patent rights.

One fundamental principle should be clear: inventions are owned initially by their inventors. That principle is established in both the US Constitution and federal patent law. As the US Supreme Court affirmed in its 2011 decision in *Board of Trustees of Leland Stanford Junior University v. Roche Molecular Systems, Inc (Stanford v. Roche)*,² faculty inventors in a university setting are also the initial owners of their inventions. Ownership of patent rights that may attach to an invention, however, may be transferred to another party by a written instrument. Thus, control of patent rights may be distinguished from ownership, since the initial patent owner may choose to enter a contract with (or transfer title to) another entity that manages those patent rights on his or her behalf. A university may become the owner of patent rights in a faculty invention by voluntary assignment, as was the case at most universities prior to 1980.

Some universities have sought to make their ownership of all faculty patent rights a condition of employment, citing the use of university facilities as a justification for asserting their ownership. Some also insist that externally funded research contracts specify that the university will manage all the resulting intellectual property. Though these strategies are increasingly preferred by many universities, there is little to indicate that such ownership claims advance university interests, whether taken narrowly as the pursuit of income from patent licenses or broadly in terms of the social value of research and access to its results. The 2011 *Stanford v. Roche* ruling affirmed that such rationales for the nonvoluntary confiscation of faculty intellectual property are often unfounded.

For many years university policies recognized that faculty members owned their intellectual property but required that they share profits with the institution when patentable intellectual property was commercialized. The AAUP regards such policies as fair and reasonable, so long as the faculty inventor or creator determines whether and how the work is to be marketed. Faculty members should have the right to distribute some work—software being a common example—for free if they choose.

Universities have often distinguished between copyrightable and patentable intellectual property, ceding faculty ownership of the former and asserting institutional ownership of the latter. But both are products of scholarship and protected by academic freedom, which provides for control by faculty authors over dissemination of their works.

A fundamental problem that arises from university ownership of patent rights to faculty inventions is that it tends to create institutional conflicts of interest between the university's governance role and its financial and competitive interests in exploiting patented inventions for its own benefit. It is all too easy for universities to conflate royalty income with their public service mission to enhance economic growth while failing to perceive, or to acknowledge, the conflict that arises with respect to other institutional responsibilities and the university's long-standing commitment to the broad dissemination of knowledge.

Inventions—despite distinctions often drawn in university policy statements—are a natural outgrowth of scholarly activities. The scholarly nature of university-based inventions does not simply disappear with the addition of a potential patent or other intellectual property rights. Thus, the fundamental rights of faculty members to direct and control their own research do not terminate when they make an invention or other research discovery; these rights properly extend to decisions involving invention management, intellectual property licensing, commercialization, dissemination, and public use. Faculty inventor "assignment" of an invention to a management agent, including the university that hosted the underlying research, should be voluntary and negotiated, rather than mandatory, unless federal statutes or previous sponsored-research agreements dictate otherwise.³ Faculty inventors and investigators retain a vital interest in the disposition of their research inventions and discoveries and should, therefore, retain rights to negotiate the terms of their disposition. The university, or its management agents, should not undertake intellectual property development or

take legal actions that directly or indirectly affect a faculty member's research, inventions, instruction, or public service without the faculty member's or inventor's express consent. Of course, faculty members, like other campus researchers, may voluntarily undertake specific projects, including online courses, under explicit and signed work-for-hire contracts. When such work-for-hire agreements are truly voluntary, their contracted terms may legitimately narrow faculty intellectual property rights.

Faculty members have a collective interest in how university inventions derived from academic research are managed. Through shared governance, they also have a responsibility to participate in the design of university protocols that set the norms, standards, and expectations under which faculty discoveries and inventions will be distributed, licensed, and commercialized. The faculty senate, or an equivalent governing body, should play a primary role in defining the policies and public-interest commitments that will guide university-wide management of inventions and other knowledge assets stemming from campus-based research. These management protocols should devote special attention to the academic and public-interest obligations traditionally central to the university mission. Governing bodies should also consider the formation of a specially assigned faculty committee to review the university's invention-management practices regularly, represent the interests of faculty investigators and inventors to the campus as a whole, and make recommendations for reform when necessary.

Standards should be set for the handling of faculty intellectual property rights in the design and subsequent use of instructional materials, including online courses. Course syllabi at many institutions are considered public documents; indeed, they may be posted on universally accessible websites. It is thus to be expected that teachers everywhere will learn from one another's syllabi and that syllabi will be disseminated as part of the free exchange of academic knowledge. Faculty lectures or original audiovisual materials, however, unless specifically and voluntarily created as works made for hire, constitute faculty intellectual property. As components of faculty-designed online courses, they cannot be revised, edited, supplemented, or incorporated into courses taught by others without the consent of the original creator. Nor can an online course as a whole be assigned to another instructor without the consent of the faculty member who created the course, unless, once again, the faculty member agreed to treat the course as a work made for hire

with such ownership rights residing in the institution. Faculty governing bodies have a special—and increasing—responsibility to ensure that faculty members are not pressured to sign work-for-hire agreements against their will.

Just as the right to control research and instruction is integral to academic freedom, so too are the rights of faculty members to control the disposition of their research inventions. Inventions made in the context of university work are the results of scholarship. University policies should direct all invention-management agents to represent and protect the expressed interests of faculty inventors along with the interests of the institution and the broader public. Where the interests diverge irreconcilably, the faculty senate, or an equivalent governing body, should adjudicate the dispute with the aim of selecting a course of action that promotes the greatest benefit for the research in question, the broader academic

community, and the public good. Students and academic professionals should also have access to grievance procedures if they believe their inventor rights or other intellectual property rights have been violated. Students should never be urged or required to surrender their intellectual property rights (for example, in their dissertations) in advance to the university as a condition of participating in a degree program.

Notes

1. "Practicing an invention" first of all means taking the concept and giving it material embodiment, a key step in its manufacture.
2. 131 S.Ct. 2188 (2011).
3. The term *invention-management agent*, as used in this statement, covers all persons tasked with handling university-generated inventions and related intellectual property, including, for example, university technology-transfer offices, affiliated research foundations, contract invention-management agents, and legal consultants.

MEMORANDUM

To: PCC

From: Ken Katkin, Chair

Re: Proposed Revisions to Faculty Handbook re Health Insurance Benefits for Short-Term Non-Tenure-Track Temporary (NTTT) Faculty Members

Date: November 16, 2017

Section 1.4 of the NKU Faculty Handbook governs certain terms and conditions of employment for full-time, non-tenure-track, temporary faculty members (NTTTs) at NKU. In this context, in pertinent part, the fourth paragraph of Section 1.4 of the Handbook currently states that for full-time NTTTs, "health insurance is provided by the University if the appointment is full-time for the complete academic year."

To comply with the Affordable Care Act, however, the University now provides health insurance to full-time NTTTs who are expected to work on average 30 hours or more per week for three months or more, even if those NTTTs are contracted to work for less than a complete academic year. Therefore, to bring the Faculty Handbook into conformity with the current practice required under the Affordable Care Act, Section 1.4 of the Handbook should be amended.

Therefore, I propose that PCC recommend to Faculty Senate that the relevant language in the fourth paragraph of Section 1.4 of the NKU Faculty Handbook be amended by adding the following words:

"health insurance is provided by the University if the appointment is full-time for the complete academic year **or to comply with local, state, or federal laws or regulations.**"

On the following page, the paragraph at issue is set forth as it currently appears in the Faculty Handbook, and as it would appear, as amended.

NKU Faculty Handbook Section 1.4, fourth paragraph (current language):

Non-tenure-track, temporary faculty are provided with Social Security contributions by the University. In addition, health insurance is provided by the University if the appointment is full-time for the complete academic year.

NKU Faculty Handbook Section 1.4, fourth paragraph (with amendment highlighted):

Non-tenure-track, temporary faculty are provided with Social Security contributions by the University. In addition, health insurance is provided by the University if the appointment is full-time for the complete academic year **or to comply with local, state, or federal laws or regulations.**

NKU Faculty Handbook Section 1.4, fourth paragraph (as amended):

Non-tenure-track, temporary faculty are provided with Social Security contributions by the University. In addition, health insurance is provided by the University if the appointment is full-time for the complete academic year or to comply with local, state, or federal laws or regulations.