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**RESEARCH POLICY SERIES
POLICY AND PROCEDURE STATEMENT ON
INTELLECTUAL PROPERTY
AT
MISSISSIPPI STATE UNIVERSITY**

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1. Introduction

Mississippi State University (MSU) is dedicated to learning, service, and research. A primary means for implementing these three areas of dedication is the transfer and dissemination of knowledge to the public. MSU personnel recognize as two of their major objectives the development of new knowledge and dissemination of both old and new knowledge to the public. Inherent in these objectives is the need to encourage production of new and useful devices and processes, the publication of scholarly and creative works, and development of computer software. Such activities (1) contribute to the professional growth of the faculty, staff, or students involved, (2) enhance the reputation of the University units concerned, (3) provide additional educational opportunities for participating students, and (4) enhance the general welfare of the public at large.

MSU recognizes the fact that in the community of scholars there are certain indisputable rights to freedom of expression. MSU encourages the search for knowledge and truth and does not abridge the scholar's right to reveal his/her findings, even if in doing so he/she may find variances with students and professional peers, as well as with the lay community.

Patentable inventions and patentable and copyrighted materials, which are defined later as Intellectual Property, often come about because of activities of MSU faculty and other employees through the use of University resources. It becomes significant, therefore, that MSU use all of its available resources to insure utilization of such inventions and materials for the public good and to expedite their development and marketing. Concurrently, the rights and privileges of inventors or creators must be preserved so their initiatives, as well as those of other faculty, staff, or students, may be further encouraged and stimulated.

MSU recognizes and encourages development of new and useful devices and processes, publication of scholarly works, and development of computer software as an integral part of the processes of learning, service, and research. MSU acknowledges that faculty and other employees regularly prepare, usually through individual effort and initiative, articles, pamphlets, books, and other scholarly works that may be subject to the provisions of copyright law and may generate royalty income for the authors, inventors, or creators. Publication, manufacture, or production may also result from work supported either partially or completely by the institution. Given the diversities in knowledge and procedures in a University community, the variety and numbers of works created are continually increasing, thereby causing the ownership of such materials to be an increasingly complex issue.

MSU recognizes the need for increased development and dissemination of software technology as a means of enhancing both old and new knowledge. Inasmuch as MSU is aware of the dynamic nature of software and that the value of intellectual property comes from the ability of its owner to control its use and that such value is directly related to the degree of protection it enjoys under the law, MSU encourages the protection of such expressions of knowledge by the utilization of appropriate intellectual property laws and the creation of comprehensive software technology transfer and commercialization policies and procedures.

The foregoing considered, MSU hereby establishes the following policy with respect to the developmental process, protection, transfer, and commercialization of rights to Intellectual Property, defined below, resulting from the work of its faculty and other employees.

2. Definitions

- 2.A "Intellectual Property" shall mean any patentable materials, copyrighted materials, trademarks, software, art and creative endeavors and trade secrets, whether or not formal protection is sought.
- 2.B "Patentable Materials" shall mean items other than software that reasonably appear to qualify for protection under Title 35, Section 101, USC of the United States or other protective statutes, including patentable plants, whether or not patentable thereunder.
- 2.C "Copyrighted Materials" shall mean the following:
- (1) Books, journal articles, texts, glossaries, bibliographies, class notes, study guides, laboratory manuals, reports, syllabi, tests, and proposals;
 - (2) Lectures, musical or dramatic compositions, unpublished script, works of art;
 - (3) Films, filmstrips, charts, transparencies, and other visual aids;
 - (4) Video and audio tapes or cassettes;
 - (5) Live video and audio broadcasts;
 - (6) Programmed instructional materials;
 - (7) Mask works;
 - (8) Other materials or works, other than software, that qualify for protection under the copyright laws of the United States (USC 102), whether or not registration with the US Copyright Office has been applied for.
- 2.D "Software" shall mean one or more computer programs existing in any form, along with any associated operational procedures, manual, or other documentation, whether or not protectable or protected by patent or copyright. The term "computer program" shall mean a set of instructions and statements of related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.
- 2.E "Trademarks" shall mean all trademarks, service marks, trade names, seals, symbols, designs, slogans, or logotypes associated with intellectual property developed as a result of research conducted by MSU personnel.

The trademarks, service marks, symbols, designs, slogans, seals, and logotypes representing MSU and described in Policy and Procedures Index, Trademark Licensing Policy found in Volume I, Presidential Matters, Section 06. University Counsel, page 06, shall not be subject to the provisions of this Intellectual Property Policy.

- 2.F "Trade Secrets" shall mean information including, but not limited to, technical or non-technical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers that: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper and legal means by, other persons, who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- 2.G "Patentable Plant" shall mean an asexually reproduced distinct and new variety of plant.
- 2.H "Mask Work" shall mean a series of related images, however fixed or encoded: (i) having or representing a predetermined, three dimensional pattern of metallic, insulating, or semiconductor material present or removed from the layers of a semiconductor chip product; and (ii) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.
- 2.I "Novel Plant Variety" shall mean a novel variety of sexually reproduced plant. Newly developed plant materials (termed Novel Plant Varieties), produced by University-funded plant breeding

programs are covered under the existing University policy, "Release and Distribution of Newly Developed Plant Materials."

- 2.J "Scholarly and Creative Works" shall mean traditional academic publications, such as professional papers published in scholarly journals, or newly created texts published in journals or books.
- 2.K "Nominal Use of University Resources" shall mean use that is customary or usual given the employee's appointment and academic assignments. For example, the use of office, computer, photocopier, telephone, office supplies, secretarial assistance, and other assigned resources in the ordinary support of his or her responsibilities and assigned activities is considered to be nominal. University personnel may make such Nominal Use of University resources and devote office time in carrying out a range of professional activities.
- 2.L "Substantial Use of University Resources" shall mean use of University facilities, equipment, personnel and an employee's own time beyond nominal (or customary) as described above. Substantial Use of resources occurs when creation of the work or intellectual property in question requires use of University resources beyond those allocated to individuals in support of assigned responsibilities and activities within their respective departments or colleges. Such usage may occur as a result of actions of the personnel involved, may occur when specific assignments are given to personnel, or may occur in situations where contracts or other obligations are involved.

The following examples generally define Substantial Use when they are applied, singly or in combination, in support of a revenue-producing work. It is the responsibility of the dean, director, or equivalent supervisor to evaluate situations and determine whether or not Substantial Use of resources has occurred. Faculty members or other employees also have an obligation to notify their supervisors promptly when they believe their work will involve more than Nominal Use.

The following are examples of Substantial Use:

- a. Extended use of time and energy by the developer(s) in creation or promotion of a work that results in a reduction in the levels of teaching, scholarship, or other assigned University activities, and the developer's(s') anticipated instructional load in these areas is at a level significantly lower than normal;
- b. Greater than customary or Nominal Use of University facilities such as laboratories, studios, equipment, production facilities, or specialized computing resources in direct support of development of the work in question;
- c. Extraordinary University funding in support of the work's creation, publication, manufacture or production;
- d. Direct assignment or commission from the University to undertake a creative project as a part of the developer's regular appointment;
- e. Substantial Use of funding from gifts to the University to support creation of the work(s) involved;
- f. Production of the works under specific terms of a sponsored research grant or contract;
- g. Use of specifically designated University funds to support media production.

3. Intellectual Property Advisory Committee

An Intellectual Property Advisory Committee will oversee and evaluate the intellectual property management program; review current procedures and practices and make recommendations for future directions; resolve

conflicts of interest; arbitrate and recommend final decisions concerning ownership of intellectual property; and assist in mediating and resolving any disputes between the University and developers.

A majority of the committee will be composed of elected faculty. The Committee on Committees will appoint the remainder of the committee based on nominations by the deans/directors, with final approval by the President. Committee membership will include no fewer than four and no more than ten experienced faculty, administrative, and professional staff members, one of whom shall be designated by the President to serve as Chair. Care will be taken to include representation from areas with major, constant involvement with intellectual properties. The Chair may add additional non-voting members as necessary. The MSU Director of Intellectual Property and Technology Licensing will be an *ex officio*, non-voting member of this committee.

4. Intellectual Property Policy Applicability

This policy shall be applicable to all full or part-time, adjunct, visiting faculty, faculty and other employees of Mississippi State University.

5. Assignment of Rights

If any intellectual property is determined, in accordance with this policy, to be owned by MSU, the developer/creator will execute an assignment of rights, wherein they assign all rights, title and interests to MSU, with exceptions noted in 7.C. Formal execution of this assignment may be accomplished when disclosure is made with the Office of Intellectual Property and Technology Licensing or when a patent application is filed.

Students of MSU shall not be required to execute an assignment of rights unless they are employees of MSU or hold awards such as scholarships or fellowships through MSU under which the funding body has placed restrictions as to intellectual property developed during the course of the award. In the event that a student is required to assign his/her rights to MSU as an employee of MSU or a financial awardee through MSU under which the funding body has placed restrictions as to intellectual property developed during the course of the award, this policy shall be applicable to them.

6. Determination of Rights in Intellectual Property

6.A Sponsored Research Efforts

Grants or contracts between external sponsors and MSU, under which intellectual property is produced, may contain specific provisions with respect to disposition of rights to such property. The sponsor (1) may specify that the materials be placed in the public domain, (2) may claim reproduction, license-free use, or other rights, or (3) may assign all rights to MSU.

6.B University Assigned Efforts

Ownership of intellectual property developed as a result of an assigned University effort or commission to undertake a creative project (as noted in 2.L.c earlier) shall reside with MSU. The general obligation to engage in Scholarly and Creative Works as a part of an employee's core responsibilities in teaching, research, and service does not constitute a specific assignment for this purpose.

6.C Individual Efforts and Copyright

Scholarly or Creative Works may result from usual activities of faculty and Nominal Use of University resources, e.g., articles for publication in scholarly journals, textbooks for publication and sale by commercial publishers. Because there is no specific assignment for faculty to develop such scholarly or creative works, although they may be incorporated into the regular recognition and rewards processes of MSU because they are used throughout the academic community as a measure of the quantity and quality of the research and teaching effort, these works are not considered work for hire but professional activities wherein the copyright is vested with the creator who is entitled to royalties or other income derived from such works.

Copyrightable materials created with Substantial Use of university resources or for research and educational use in the laboratories and classrooms of MSU are considered to be work for hire, and so copyright of these materials is vested with MSU in accordance with Section 6.B.

6.D **Other Efforts**

Ownership rights to intellectual property developed under circumstances other than those listed in Sections 6.A through 6.C shall be determined on an individual basis by the Intellectual Property Advisory Committee and approved by the President or his or her designee. The inventor's or creator's dean/director or supervisor shall make a recommendation as to ownership of the intellectual property to the Intellectual Property Advisory Committee through the appropriate vice president.

7. **Administrative Procedures**

7.A **Responsibility**

The Vice President for Research and the Vice President for Agriculture, Forestry and Veterinary Medicine, who is signatory for intellectual property activities for the Division of Agriculture, Forestry and Veterinary Medicine, will exercise responsibility for administration of the principles and policies set forth in this policy. That responsibility shall be executed through establishment and utilization of the Office of Intellectual Property and Technology Licensing, the Director of which reports to the Vice President for Research, and the MSU Intellectual Property Advisory Committee, which reports to the Vice President for Research.7.B

7.B **Intellectual Property Administration Organization**

MSU may utilize either the Office of Intellectual Property and Technology Licensing or the Mississippi State University Research and Technology Corporation, hereafter referred to as "RTC", as its intellectual property administration organization.

The procedures for utilization of the RTC shall be as follows.

An Intellectual Property Administration Agreement shall be established between MSU and the RTC. This agreement will provide for the assignment of MSU-owned intellectual property to the RTC. The RTC shall administer the intellectual property.

The Office of Intellectual Property and Technology Licensing, upon instruction from the appropriate vice president, shall transfer responsibility for the administration of the intellectual property to the RTC.

The RTC is authorized to seek protection for potential licensing purposes for those intellectual properties transferred to it.

The Office of Intellectual Property and Technology Licensing is authorized to seek protection for potential licensing purposes for intellectual properties that are not transferred to the RTC.

Should a college, school, laboratory, center, or individual inventor/creator deem intellectual property protection necessary for purposes other than potential licensing, that unit must fund such protection.

7.C **Disclosure of Intellectual Property**

Patentable Materials and Software. Disclosure is required for all Patentable Materials and Software categorized as 6.A (Sponsor Supported Efforts) or 6.B (University Assigned Efforts). MSU personnel shall promptly provide the Office of Intellectual Property and Technology Licensing with a disclosure statement describing their inventions, software, new material, devices, and processes using forms provided by the Office of Intellectual Property

and Technology Licensing. MSU personnel shall sign all documentation necessary to protect and commercialize the intellectual property.

Scholarly and Creative Works. Disclosures are not required for Scholarly and Creative Works categorized as 6 B (University Assigned Efforts) when such works are for public use or for internal use (e.g. instructional or research purposes) even though ownership resides with MSU. When such works may be licensable to third parties, disclosure is required using forms provided by the Office of Intellectual Property and Technology Licensing.

Disclosures are not required for Scholarly and Creative Works categorized as 6. C in which the copyright is vested with the creator, such as articles for publication in scholarly or professional journals.

The University has a responsibility to inform a disclosing employee in a timely manner regarding its decision to pursue protection via patent, or other means, of disclosed materials, devices, processes, or other inventions. The University will notify the employee in writing of its intent to pursue or decline to pursue protection. Such notification will be provided within 90 days of a written request from the disclosing employee. Failure by the University to provide written intent to pursue protection within the 90-day time period will indicate declination of the University to pursue such protection. University failure to secure protection within one year of notifying the disclosing employee of intent to do so will also indicate University declination to pursue such protection. Declination to pursue protection frees the disclosing employee to pursue independently protection of the material, device, process or other invention. When the University declines to pursue protection of the disclosed materials, devices, processes, or other inventions the disclosing employee may request that such intellectual property be assigned to the RTC so that the employee may negotiate the terms under which the RTC or the disclosing employee pursues protection.

7.D **Confidentiality**

Certain contractual obligations and governmental regulations require that information be maintained in confidence. Additionally, some works, such as computer software, may best be protected and licensed as trade secrets. Some inventions must be maintained in confidence for limited periods to avoid the loss of patent rights. Accordingly, the timing of publications and/or presentations is important, and MSU personnel shall use their best efforts to keep the following items confidential:

- (1) All information or material designated as confidential in a contract, grant, or similar document;
- (2) All information or material designated or required to be maintained as confidential under applicable government statutes or regulations; and
- (3) All information relating to intellectual property developed by MSU personnel, which may be protected under this policy, until application has been made for protection.

7.E **Collaboration**

Collaboration between MSU personnel and persons not employed or associated with MSU, including researchers at other universities or companies, can result in development of intellectual property that is jointly owned by MSU and the other persons or their employers. Protection and commercialization of such jointly owned intellectual property could be difficult without extensive cooperation and agreement among the owners. Accordingly, it is important for MSU personnel involved in or contemplating collaborative activities that may result in development of intellectual property to advise the Office of Intellectual Property and Technology Licensing of such activities.

7.F Distribution of Income

Income derived from the commercialization of any MSU-owned Intellectual Property shall be distributed as outlined below. Income derived from the commercialization of any RTC-owned Intellectual Property shall be distributed below or according to a distribution as agreed upon at the time of an assignment of MSU Intellectual Property to the RTC.

- (1) First, all income will be used to reimburse out-of-pocket expenses incurred by MSU or the RTC, as appropriate, during the commercialization process. Such expenses shall be limited to documented incremental costs for: (a) protecting (e.g. patent prosecution and/or copyright registration, patent/copyright maintenance); (b) defending; (c) marketing; and (d) licensing the IP. Such expenses shall also include costs for (e) enhancing the marketability or any other aspect of the IP; and (f) dealing with RTC equity interest associated with the IP. Specifically excluded are costs associated with generating the IP (i.e. research costs).
- (2) After all expenses have been reimbursed, all subsequent income shall be distributed as follows:

Subsequent Income ¹	First \$5,000	\$5,000 - \$100,000	Above \$100,000
Inventor(s)/Creator(s) ^{2,5,6}	100%	50%	40%
Inventor's(s)/Creator's(s') College, Department, Center, or Unit ^{3,8}	0%	25%	30%
Development Fund ⁴	0%	10%	15%
MSU Office of Intellectual Property and Technology Licensing or Research and Technology Corporation ⁷	0%	15%	15%

Notes:

1. Every 5 years this document will be updated, and these amounts will be adjusted upward or downward in accordance with the 5-year compounded rate of change of the U.S. Consumer Price Index of all urban consumers (CPI-U) published by the Bureau of Labor Statistics, which is based on a U.S. city average for all items. The value shall be rounded to the nearest \$100.
2. In the case of multiple inventors/creators, the inventors'/creators' share shall be distributed among all inventors/creators in accordance with a letter of agreement signed by all inventors/creators. The letter of agreement shall be approved by the appropriate vice president prior to the submission of the patent application or final execution of a license agreement. The Office of Intellectual Property and Technology Licensing or the RTC will prepare this letter.
3. Distribution to the appropriate involved unit(s), based on their support of the research, will be recommended to the appropriate vice president, through each unit's appropriate dean/director, by the appropriate department head.
4. The Development Fund will be used for the further development of intellectual properties, which appear to have significant commercial potential but are not yet at the stage where they can be effectively evaluated by third parties. Expenditure of funds held in the Development Fund shall be recommended by the Intellectual Property Advisory Committee to the President for approval.
5. The inventor's(s') share shall continue to be paid to the inventor even if the inventor(s)

leaves the University. In the event of the inventor's death the royalty will become part of the inventor's estate.

6. Inventor(s) may arrange for their personal share of royalty income to be retained by MSU or the RTC (e.g., to support their research program).
7. This share (distributed to IP/TL or RTC) will be used to support the University's intellectual property and technology licensing program. This support includes patenting and licensing expenses.
8. Used in the table, "college" includes the Mississippi Agricultural and Forestry Experiment Station (MAFES), the Mississippi State University Extension Service (MSU/ES), and the Forest and Wildlife Research Center (FWRC).

8. Appeals and Conflicts

An inventor may appeal a decision or determination made pursuant to this policy by submitting an appeal in writing to The Intellectual Property Advisory Committee within 30 days of receiving notice of the decision or determination.

The Intellectual Property Advisory Committee shall review the appeal and make a recommendation to the Vice President for Research who will render a decision in writing within 30 days of receiving the recommendation from the Committee. The Vice President for Agriculture, Forestry and Veterinary Medicine will be consulted as appropriate before said decision is rendered.

The inventor may appeal the decision of the Vice President for Research to the President of MSU, who will make the final decision and notify the inventors in writing.

9. Changes in Policy

This policy may be changed by the President on the recommendation of the Vice President for Research and/or the Vice President for Agriculture, Forestry and Veterinary Medicine and the Intellectual Property Advisory Committee.

In the event of conflict between this policy and the Intellectual Property Policy of the Board of Trustees of State Institutions of Higher Learning, the latter shall prevail.

10. Intellectual Property Ownership Examples

Below are examples that can be used as guides in implementing the policy as applied to the ownership of intellectual property.

a. Case one: A faculty member in the College of Arts and Sciences writes a royalty-producing book of poems. Some of the work is done during the week as part of his scholarly activity, and some is done on weekends. He teaches in the department at a level that the department chair feels is appropriate, serves on a college committee and is involved in other citizenship activities. Furthermore, he makes no Substantial Use of University resources apart from his office, computer, and the library.

Disposition: Nominal Use of University resources is involved. The faculty member owns the intellectual property and all royalty income.

b. Case two: A faculty member is granted a half-time teaching load during the fall semester in order to prepare materials for publication that she developed in connection with a course. The University also pays her a salary for the spring semester to work full-time on the project. Her department pays one student assistant to help edit the materials, while another student assistant verifies sources and notes. This arrangement permits her to write the materials over the fall, spring, and summer semesters so that she is prepared to return to full-time classroom work the next fall.

Disposition: The dean determines that the support provided the faculty member exceeds the nominal level in the department, thus the University may assert ownership or seek repayment of costs. In this case, the dean and faculty member agree that repayment of certain costs is the appropriate resolution. Once the costs have been determined in consultation with the Office of Intellectual Property and Technology Licensing, and repaid, the property is treated under the terms for Nominal Use of resources.

c. Case three: A faculty member in the Department of Art arranges for a leave of absence, without pay but with full benefits, so she can complete a series of watercolor paintings featuring the scenic country of Southern Utah. All work is done off the campus using no University facilities.

Disposition: The payment of benefits would not ordinarily be considered as a substantial source of University support. Because the leave of absence has no other University support, the creative work belongs to the faculty member, and no income resulting from the sale of the paintings is shared with the University.

d. Case four: Several faculty members working under the direction of the Department of Music Education produce a concert that is shown nationally on PBS and sold on compact discs and video tapes through the Office of Intellectual Property and Technology Licensing. The project is funded by the Department of Music Education and produced on campus with University equipment.

Disposition: University resources were used substantially; therefore, the University owns the intellectual property.

e. Case five: A faculty member in the Department of Biological Sciences is released from teaching and assigned full-time to the research and writing of a textbook to be used in all sections of a required survey course. The author relies on materials developed by all the faculty members presently teaching the course and is given substantial amounts of student and secretarial help. By agreement, royalties will go to support research and writing of all department faculty.

Disposition: Because substantial University support is involved, as determined by the dean, the University owns the rights to the book and the distribution of income, as described in paragraph 7.F.

11. Development Funds

Development Funds shall be used for the further development of intellectual properties, which appear to have significant commercial potential, but are not yet at the stage where they can be effectively evaluated by third parties. Expenditure of funds held in an MSU Development Fund shall be recommended by the Intellectual Property Advisory Committee to the President of MSU for approval. Separate Development Funds will be administered by the Office of Intellectual Property and Technology Licensing and the RTC.

MSU faculty and staff may apply for use of these funds through their respective department and college to the appropriate vice president for submission to the Intellectual Property Advisory Committee. The Office of Intellectual Property and Technology Licensing and the RTC will publish detailed instructions for such application at least annually.

Applications will consist of short (not to exceed five pages) descriptions of the development to be carried out by the faculty member. Emphasis should be placed on the anticipated commercial viability of the work and why normal extramural funding is not appropriate for this work.

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For information about this policy, contact the reviewing department.

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