



POLICY & PROCEDURE DOCUMENT

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I PURPOSE AND SCOPE

The policies set forth herein constitute an understanding which is binding on WKU faculty, staff, and students as a condition of their participation in WKU research, teaching, and service programs and for their use of WKU funds, facilities, or other resources.

A PURPOSE

1. to make clear the university's values with regard to intellectual property;
2. to encourage research, scholarship, creative activity and new knowledge;
3. to facilitate the dissemination of knowledge and technology for the benefit of the University community and society;
4. to provide an administrative system to assist faculty and staff members in bringing new discoveries and developments into public use;
5. to provide an administrative system to evaluate, where appropriate, the commercial significance of new discoveries and developments;
6. to provide for the equitable disposition of interests in shared intellectual property among the author, creator, developer, the university and, where applicable, the external sponsor;
7. to provide incentives to creators in various forms, including professional development, recognition, and financial compensation; and
8. to safeguard intellectual property, so that it may receive adequate and appropriate legal protection against unauthorized use.

B SCOPE

1. This policy covers all intellectual property conceived, first reduced to practice, written, or otherwise produced by faculty, staff, or students of WKU using WKU funds, facilities, or other resources.

C DEFINITIONS

Intellectual property, for the purpose of this policy, is defined as the tangible or intangible results of scholarship, research, development, teaching, or other intellectual activity. Intellectual property may include but is not limited to the following (non-exclusive) categories:

1. Inventions, discoveries, or other new developments that are appropriate subjects of patent applications;
2. Written materials; exhibits; sound, video, and other media productions; computer programs; computer-based instructional materials; works of art including paintings, sculptures, and musical compositions; and all other material that may be copyrightable;
3. Tangible research materials including biological, chemical, physical, and technological products; as well as analytical procedures and laboratory methods. These may or may not be patentable or copyrightable.

II POLICY

1. By law, all rights to intellectual properties, except those exempted hereafter, shall be owned and controlled by WKU. When a WKU faculty member, staff member, or student creates an item of intellectual property that, under the terms of this policy may be owned and controlled by WKU, the creator shall report the intellectual property to the Vice President for Research by completing a Disclosure Form.
2. The creator shall also: cooperate in the execution of legal documents and in the review of literature and prior art (e.g., patent searches); be given the opportunity to assist in the further commercial development of the intellectual property and have an interest in and share in any income derived from the commercialization of such property.
3. Traditional products of scholarly activity that have customarily been considered to be the unrestricted property of the author or creator are exempted from this general policy. Such traditional products include books, monographs, articles, reviews, and works of art (including paintings, sculptures, plays, choreography, musical compositions); and individual course materials such as syllabuses, exams, transparencies, study guides, workbooks, and manuals. Also included are instructional software, webpages, and internet-based instructional materials developed by faculty members in the course of their usual scholarly, pedagogical, and service activities. The latter include projects undertaken during sabbatical leaves, faculty fellowships, and other special assignment periods intended for such activities.
4. This exemption is also understood to encompass works produced by students, either alone or with the assistance of WKU faculty or staff, if they fall under the foregoing

description. WKU will not claim ownership rights to such traditional works, and it specifically disclaims any potential rights to do so under the "work made for hire" provisions of the U.S. Copyright Act, unless there is a predetermined written agreement.

- a. The U.S. Copyright Act defines a "work made for hire" as: (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.
 - b. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes; and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.
5. Works produced in certain WKU support units (non-academic departments) whose mission includes the production of works for instructional, public service, or administrative use, and which employ designated staff or faculty for the purpose of producing such works (e.g., Career Services, Sponsored Programs, Recruitment & Admissions, Alumni Relations), are deemed to be works made for hire and, therefore, the property of WKU. Such works may include brochures, films, videotapes, web-based courses, recordings, displays, drawings, slides, models, computer programs, and the like. WKU shall own and control all such works produced in such units for such purposes. Income from the use of such works shall be subject to WKU resource management and budgeting policy.
 6. The utilization of WKU support units in order to prepare instructional materials does not automatically transform such materials into work made for hire or deprive faculty of ownership rights. Rather, it generally continues the university's traditional role of facilitating the faculty's usual teaching activities and thus may fall under the exemption in II 4(a). Exceptional cases and interpretative disagreements will be brought to the IPC or its Designee(s) for adjudication. Disposition shall be made by the IPC and/or its Designee(s), according to the following factors: the initiation of the creative effort, control over the work's content and form of expression, and the amount of extraordinary or non-usual support afforded by the university. Creators should consult with their immediate administrative superiors in order to determine whether an official disclosure of such materials is required. The WKU support unit should discuss with the creator the ownership, use, and disposition of all materials prior to their creation.
 7. Arrangements for expertise or talent from other units, or from outside WKU, may be utilized to create, further develop, produce or commercialize the creation. Compensation for these arrangements may include a fixed fee payment or payments based on sales or usage of such works, to be negotiated by WKU, the creator and the party providing the additional expertise or talent. Such payments are considered to be a part of the costs of

production. Commercialization of such works outside WKU must be through assignment to WKU, which shall be responsible for the commercial development.

8. However, in recognition of the differences among these units and regular academic departments, different and unique revenue-sharing arrangements may be made with the approval of the President of WKU or his/her designated representative. Nothing in this paragraph shall limit the rights of the employees of such units to works produced or developed outside the scope of their employment and not involving the use of WKU facilities or resources.
9. WKU shall own and control the rights to intellectual property resulting from sponsored projects. In some instances, the provision of additional or unusual funding, background information, product samples, or confidential proprietary data by a sponsor may create a situation in which the sponsor may claim partial ownership of intellectual property that might result from the sponsored project. In such cases, final disposition of the property may be negotiated as a part of the sponsored project agreement.
10. In those cases where the final disposition of the property has not been negotiated as part of a sponsored project agreement, WKU will proceed as described under Commercialization (III B).

III PROCEDURE

A. GENERAL

1. The legal interests of WKU and its faculty members, staff members, and students in any intellectual property, except traditional products of scholarly activity (as noted in II 3-4) shall be determined in accord with this policy by the Vice President for Research, with advice from the IPC.
2. The IPC shall be a committee appointed by the Vice President for Research in consultation with the Provost, Academic Deans, and Executive Committee of the University Senate. Its members shall be members of the faculty and staff chosen to provide broad technical expertise across various disciplines, and an outside member with relevant expertise. Additional expertise may be sought by the IPC as needed in the consideration of a particular intellectual property matter. The IPC shall be advisory to the Vice President for Research.
3. All intellectual property shall be disclosed by the creator(s) to the Vice President for Research prior to public disclosure.
 - a. If the Vice President for Research, after consultation with the President and the Provost, determines that the intellectual property under consideration is exempted he or she shall release the property to the creator and WKU shall not claim the property.
 - b. The Vice President for Research, the President and the Provost may determine that WKU has a legal interest in the property but that the chances of successful commercialization are minimal or that the costs of pursuing such commercialization outweigh the income potential. In such cases the Vice President for Research may, in writing, release the property to the creator as above, with copies to the President and Provost.

- c. If the Vice President for Research finds that WKU has an ownership right in the creation but that the creation has not been developed to the point where a decision as to patentability or commercialization is possible. The Vice President for Research will work with the creator to establish alternative ways of further development.
- d. If the Vice President for Research determines that WKU has a legal interest in the property and judges that there is a reasonable chance for successful commercialization, then:
 - (i) the Vice President for Research shall inform the creator in writing that WKU claims ownership rights to the property;
 - (ii) the Vice President for Research shall determine and record the rights of the creator to share in any income with WKU according to the royalty sharing procedure; and
 - (iii) the creator shall execute an acknowledgment and, where applicable, an assignment of ownership rights to WKU.
4. The Vice President for Research will have the responsibility for valuing the intellectual property so that WKU's interests in any subsequent negotiations are protected. The process for licensing, selling, or otherwise conveying intellectual property will comply with any applicable federal or state statutes. With close consultation with the creator and written advice from the WKU General Counsel and Vice President for Finance and Administration counsel, the Vice President for Research shall determine the appropriate method of protection of the property and, where appropriate, obtain such protection. All costs of protection shall be borne by WKU, and shall be offset against future income. The President and Provost will be copied on all such determinations.
5. The Vice President for Research may, after obtaining written advice from the WKU General Counsel, file a provisional patent application, after receiving sufficient information from the creator for filing of said application. WKURF may apply for a utility patent before the twelve-month deadline in which to file a utility patent application claiming priority to the provisional patent application, or, following consultation with the WKU General Counsel, may release the creation to the creator. WKURF has the discretion to elect to initially proceed with the filing of a utility or a design patent application without the filing of a provisional patent application.
6. If, after obtaining written advice from the WKU General Counsel, WKURF decides not to proceed with the filing of intellectual property protection, it shall allow the inventor to pursue intellectual property protection at his or her own expense. The WKURF, through the Vice President for Research, shall keep the creator informed of its their actions in a timely manner. In the event protection and exploitation usage of intellectual property proceeds at the expense of the creator, WKURF shall not be considered to have waived does not necessarily waive any part of its share of net royalties.
7. If WKURF decides not to proceed with the filing of foreign intellectual property protection after obtaining written advice from the WKU General Counsel, it shall allow the inventor to pursue foreign intellectual property protection, and foreign exploitation of said intellectual property, under the same conditions as the preceding section.

8. WKU faculty, staff, students, or external parties, may request that WKURF accept, for management and commercialization, intellectual properties not originally subject to this policy. If WKURF accepts management and commercialization responsibilities for such intellectual property, the intellectual property shall become subject to, and shall be treated in accord with, all provisions of this policy. If the management and commercialization of the intellectual property includes an offer of sale of the intellectual property, WKURF and the owner of the intellectual property shall come to an a written agreement as to percentage of the sales price to be retained by WKU, with a copy to the Vice President for Finance and Administration and the Vice President of Research, before an offer of sale may be extended.
9. Intellectual property given to WKU by external parties shall be assigned to the WKURF for management in accord with appropriate parts of this policy. The Vice President for Finance and Administration, the Vice President of Research, and the WKU General Counsel shall be informed, in writing, of such assignments.

B. COMMERCIALIZATION

1. All intellectual property assigned to WKU shall be further assigned to WKURF for purposes of protection and commercialization. Patent or copyright coverage may be sought, or the property may be treated as proprietary information, technical know-how, or trade secret.
2. In seeking and developing commercialization of intellectual property, WKURF, shall be guided by the following principles:
 - a. The primary objective and responsibility of WKURF shall be to exercise due diligence so that the products of its intellectual activity are brought into the widest possible use for the general benefit of WKU and the broader public. This objective includes the possibility of the granting of an exclusive license for or sale of intellectual property. If the commercialization of the intellectual property includes an offer of sale of the intellectual property, WKURF and the creator of the intellectual property shall enter into a written agreement as to percentage of the sales price to be retained by WKURF, before an offer of sale may be extended. The Vice President for Finance and Administration, the Vice President of Research, and the WKU General Counsel shall be informed of and provided a copy of such agreements.
 - b. Intellectual property should be treated as an asset of WKU and an appropriate return should be sought.
 - c. Active creator participation in all commercialization efforts shall be vigorously sought.
3. In an effort to commercialize the intellectual property, WKURF will seek a variety of written arrangements such as licenses, outright assignment or sale of rights, partnerships, and joint ventures. The selection of particular arrangements will depend on the circumstances of each. In all cases, the Vice President for Finance and Administration, the Vice President of Research, and the WKU General Counsel shall be informed of and provided a copy of such agreements.

4. In some situations it may be in the best interest of WKURF, the general public, and the creator to enter into commercialization arrangements with entities wholly or partially owned or controlled by the faculty, staff, or students who originated the property. Due to the potential of such arrangements for contributing to the economic development of the state and local areas, such arrangements may be considered and accepted, provided they are not specifically prohibited by law and that adequate provisions, including full disclosure of interests, are made to avoid or otherwise protect against conflict of interest on the part of those involved.
5. Commercialization of intellectual property by WKURF may involve discussions and negotiations over months and sometimes years. Based on national data, the process more often fails than succeeds. If no commercialization has occurred within a reasonable period after the property has been transferred to WKURF, the creator may submit a written request to the WKURF, with a copy to the Vice President of Research, that all rights be transferred.
6. Such requests should be directed to the President of WKURF, who shall explain what efforts have been made, what additional efforts are planned. If the President of WKURF, following consultation with and written advice from the Vice President for Research and the WKU General Counsel, determines that there is little chance of successful commercialization, all rights may be transferred to the creator. If the President of WKURF, following consultation with and written advice from the Vice President for Research and the WKU General Counsel, determines that WKURF has undertaken reasonable efforts to commercialize and that further WKURF efforts offer reasonable chances of success, the creator's request shall be denied. Such denials will be accompanied by a written report, copied to the Vice President for Research and the WKU General Counsel, summarizing the factors considered by the President of WKURF in arriving at the decision. The creator may request a review of the disposition in accordance with this paragraph annually. Such requests should be directed to the President of WKURF, with a copy to the Vice President for Research and the WKU General Counsel.

C. PROCEDURE FOR SHARING ROYALTY INCOME

1. Gross receipts refer to agreed-upon payments specified in a license or other commercialization agreement. Net revenue is defined as gross receipts, which include royalties, license fees, profits from sales, and similar payments received by WKU or WKURF, minus necessary deductible costs incurred by WKU and/or WKURF (e.g., patent applications, patent search fees, patent services, patent maintenance fees, mailing, phone/facsimile, or courier costs; necessary travel; and auditing fees and expenses). WKURF shall reserve the rights to suspend distribution of net revenue when there is reason to believe that substantial deductible costs will be incurred in the future. The creator shall be informed of such decisions. A detailed accounting of revenue and costs shall be made available to the creator upon distribution of royalties or upon request.
2. Net revenues as defined in Section III.C.1 derived from the commercialization of intellectual property covered by this policy shall be shared as follows: 40% to the creator and 10% to the WKURF. The remaining 50% will be distributed as follows: 25% to the

General Fund and 25% to the college/department or equivalent administrative unit of the creator (these two percentages may be negotiated based on actual expenditures).

3. The department's share shall be retained in a separate account and shall be available for expenditure by the department, subject to approval by the Provost and the Vice President for Finance and Administration. Such funds may be allowed to carry forward across fiscal years.
4. In the case that WKURF decided not to pursue either domestic or foreign protection of intellectual property, and where the creator pursued this at their own expense, net royalties are, by default, still subject to the same distribution as specified in the preceding section. In this case, the creator shall provide the President of WKURF, the Vice President for Research and the Vice President for Finance and Administration a detailed accounting of costs incurred upon request.
5. The creator's rights to share in revenue as stated above shall remain with the individual or pass to the individual's heirs and assigns for so long as net income is derived from the property.
6. When two or more individuals have made substantial creative contributions to intellectual property, such persons will determine among themselves, in writing with a copy to the Vice President for Research, the Vice President for Finance and Administration, and the WKU General Counsel, the individual share each will receive. A copy of the agreement will be filed with the Vice President for Research, the Vice President for Finance and Administration, and the WKU General Counsel at the time of disclosure. In the event that they cannot reach such agreement, each individual will have the opportunity to present written and oral statements to the IPC. After such presentations, the IPC will make a recommendation to the Vice President for Research who, following consultation with and written advice from the Vice President for Finance and Administration and the WKU General Counsel, shall make a final determination.
7. Under exceptional circumstances, the creators may, among themselves, request to amend the distribution of royalties due to the creators among themselves, and/or may add creators to share in their allocation. In the case of a unanimous request of this type, the Vice President for Research may, following consultation with and written advice from the Vice President for Finance and Administration and the WKU General Counsel, agree to an amended distribution.
8. Creators may make a charitable gift of all or part of their income shares to the WKU Foundation to support WKU creative activities. Upon request by a creator, and the consent of the Vice President for Development and Alumni Relations, the WKU Foundation will retain all or part of the creator's share in a separate account within the WKU Foundation, the WKU Office of Development or the Office of Research for expenditure in accord with the creator's wishes. The creator may restrict such gifts to any particular program or unit of WKU, as permitted by applicable law. Such requests may be limited in duration to a specific time period or to some specific future event (e.g., the creator's retirement or resignation from WKU) and may be cancelled or modified by the creator at any time upon written request to the Vice President for Development and Alumni Relations and the WKU Vice President for Research.
9. This revised policy and any subsequent revisions shall not change revenue-sharing

agreements entered into prior to the adoption of the original or revised policy.

D. SHARING OF RESEARCH MATERIALS

There is a long tradition in some fields of sharing research materials. WKU encourages this cooperation. However, commercialization rights and product liabilities make it advisable that there be a written agreement among the parties prior to entering into any type of sharing arrangement. This agreement is generally referred to as a Material Transfer Agreement. When significant costs to WKU are involved in producing the material, provision for the recovery of those costs not covered by sponsor support shall be considered in making a sharing agreement. A copy of any such agreement shall be maintained by the provided to the Provost, the Vice President for Finance and Administration, and the General Counsel, and Office of Research.

E. CONSULTING AGREEMENTS

1. Any faculty or staff member engaged in consulting work or in business is responsible for ensuring that clauses in the individual's agreements are not in conflict with this policy, with WKU's Consulting Policy, or with WKU's commitments or agreements with third parties; and that WKU's rights and the creator's obligations to WKU are in no way abrogated or limited by the terms of such agreements. Questions about potential conflicts should be directed to the Office of Research, with a copy to the WKU General Counsel.
2. Faculty and staff members shall make clear to those with whom they make such agreements their obligations to WKU and shall ensure that other parties to the agreement are provided with a current copy of this policy.

F. REVISIONS AND MODIFICATIONS TO THIS POLICY

This policy is subject to ongoing assessment and future modification. The version of this policy in effect at the time of disclosure is binding. Faculty members and others are therefore expected to acquaint themselves with the current version, which is kept on file at the library and the Offices of the President, Provost and Sponsored Programs, and posted on the Sponsored Programs website at <http://www.wku.edu/research/>.

IV REASONS FOR REVISION

WKU Board of Regents - January 28, 2000

Revised and Approved by WKU Board of Regents – January 31, 2003, January 25, 2013.