

**FROSTBURG STATE UNIVERSITY  
INTELLECTUAL PROPERTY POLICY**

**I. INTRODUCTION**

The primary mission of universities is to create, preserve, and disseminate knowledge. When that knowledge takes the form of intellectual property, a university must establish a clear and explicit policy that will protect the interests of both its creators and the university while ensuring that society benefits from the fair and full dissemination of that knowledge.

Through their teaching and research, faculty, staff and other members of the University community are encouraged to engage in meaningful activities to educate students, stimulate creative inquiry, inspire solutions to problems through the discovery of new knowledge, share the wealth of their understanding with their colleagues, students and the public at large and create an atmosphere that inspires exploration and discovery. In addition, the University recognizes that it has an obligation to serve those who look to it for expertise by providing the highest quality services and products it can offer from the richness of its resources and opportunities.

As the University strives to achieve these goals, valuable intellectual property inevitably will be created. The University has an interest in the intellectual property developed by its faculty and staff in the course of their work at the University. A primary aim of the University is to encourage those who work within the University community to engage in the kind of creative enterprise that is likely to generate new ideas and discoveries by recognizing and protecting the interests of those creators in and to such intellectual property. In order to balance the University's interest and the interest of the individual creators within the University community, this policy is hereby adopted.

**II. EFFECTIVE DATE**

This policy will be effective on July 1, 2002 ("Effective Date"). It will apply to all intellectual property disclosed to the University on or after July 1, 2002. Intellectual property disclosed to the University prior to the Effective Date will remain subject to the UMS Policy on Patents effective May 31, 1990 or the UMS Policy on Copyrights effective May 31, 1990, unless otherwise agreed by the University and all creators of the intellectual property (or the heir or assignee of any creator's share of Revenue).

**III. DEFINITIONS**

The terms defined in this section are given special meanings in this policy and appear capitalized throughout.

- A. Personnel.** All University employees, full-time and part-time, including Student Employees acting within their Scope of Employment, and non-employee consultants, visitors, and others using University resources.
- B. Resources Usually and Customarily Provided.** All resources provided unless specified otherwise, in advance and in writing, as a condition of using the resource.
- C. Revenue.** Consideration paid in cash or equity by a third party in exchange for specific intellectual property rights. Revenue does not include research support in any form (e.g., sponsored research agreements, restricted grants, unrestricted grants, or equity), tuition income, and contract income received by the University including contract income received in lieu of tuition.
- D. Scope of Employment.** All activities, related to the field or discipline of the faculty member's appointment, including the general obligation of a faculty member to teach, to do creative work, and to conduct research, or related to the employment responsibilities of non-faculty Personnel, and for which Personnel receive compensation from the University, where compensation is any consideration, monetary or otherwise, including but not limited to, title and the ability to use University resources.
- E. Sponsored Research Agreements.** Grants, contracts, cooperative agreements, and other agreements under which research or development activities will be carried out, or other agreements administered by the University that relate to intellectual property created under the agreement.
- F. Students.** Persons enrolled in a University, acting within the course of their academic work, including, but not limited to, undergraduates, graduate and professional students, non-degree students, and not-for-credit students.
- G. Student Employee.** A Student who is also a University employee, acting within the Scope of Employment.
- H. Technology-Mediated Instruction.** Educational and instructional programs offered by the University by means of electronic or digital transmissions of Technology-Mediated Instructional Materials to students and participants who participate in the program distant from the instructor.
- I. Technology-Mediated Instructional Materials.** Materials including but not limited to course syllabi; tests, quizzes, exams and assignments; lectures that are fixed in a print, audio-video, electronic, or digital form; reading lists; bibliographies and recommended readings; laboratory manuals; visual materials such as tables, charts, diagrams, transparencies, films and film strips, photographs and illustrations; video and/or

audiotaped readings, performances, programs; computer programs and software; and multimedia materials and projects incorporating some or all of the above materials that are used in Technology-Mediated Instruction.

- J. **University.** Frostburg State University at all of its locations, unless otherwise noted.

#### IV. GENERAL PROVISIONS

- A. **Purpose.** The purpose of this policy is to set forth the terms, conditions, and procedures whereby the University System of Maryland, Personnel, and Students establish and maintain their interests in intellectual property created by or used at USM institutions, taking into account intellectual property laws governing patents, copyrights, trademarks, and other forms of intellectual property. This policy governs the ownership and protection of such property at the University.
- B. **Scope of Application.** All Personnel and Students shall comply with this policy, as amended from time to time. This Policy will be included in paper and electronic versions of Frostburg State University Policies and Procedures.
- C. **Protecting University Interests.** Personnel and Students may not (1) sign agreements or take any action on behalf of the University unless they are authorized agents of the University, or (2) make unauthorized use of the name of the University. In cases where Personnel or Students take such actions, the University is not bound to honor those actions or agreements.
- D. **Acquisition.** The University may acquire ownership or use of intellectual property by assignment, license, gift, bequest, or any other legal means. The University shall administer such intellectual property in accordance with this policy unless otherwise required by the terms of the acquisition.
- E. **Administration of Intellectual Property that is not University-owned.** At the request of the owner, intellectual property not owned by the University may be administered by the University. In such cases this policy shall govern that administration unless the University agrees otherwise in writing.
- F. **Sponsored Research.**
  - 1) **Ownership.** Sponsored research agreements shall provide that all intellectual property developed by Personnel or Students under such agreements shall belong to the University; however, the University, on a case-by-case basis (as circumstances warrant and consistent with applicable private use restrictions, e.g., under bond covenants), may agree to assign ownership or licensing rights to the sponsor, subject to the University's right to use and reproduce the intellectual property for research and educational purposes. The President or designee shall approve any such agreement.

- 2) **Federal Sponsorship.** Any research project that is funded, in whole or in part, by a federal agency is subject to specific federal statutes and regulations. Those regulations generally allow the University to elect title to any invention that is conceived of or first actually reduced to practice in the performance of federally-funded research with the purpose of commercializing the invention, subject to the government's rights which include reservation of a nonexclusive license to use the invention world-wide for government purposes.

**G. Implementation Authority.** The Chancellor shall have the authority and responsibility for implementation and coordination of this policy. The President shall have the authority and responsibility to implement and coordinate this policy within the University. Subject to the other provisions of this policy and applicable law, the President may enter into agreements with respect to ownership, licensure, disposition of intellectual property, disposition of royalty income, resolution of disputes, and other matters related to intellectual property in which the University has an interest under this policy, and may register intellectual property; seek protection under copyright, trademark, and/or patent laws; and enforce, defend, manage, and take any action relevant to the institution's intellectual property rights that is necessary for the proper administration of this policy.

#### **H. Administration of University Policy.**

- 1) **Initial Point of Contact.** The President of Frostburg State University designates the Office of University Counsel as the initial point of contact for notification and disclosure of intellectual property issues and for any disputes concerning intellectual property.
- 2) **Disclosure by Personnel.** It shall be the obligation of University Personnel to disclose, promptly and in a complete and timely manner, to the Office of University Counsel, all inventions, patents and University supported works, including work funded by grants. Such disclosure shall be in writing on such forms as may be required and must be acknowledged by the signature of the creator's department chair. Failure to make the required disclosure may result in disciplinary action.

### **V. COPYRIGHTS**

**A. Ownership by Creator.** Personnel and Students shall have all rights in copyrights of their work, subject to Section V.B. below, with the following exceptions.

- 1) **Scope of Employment.** The University owns all rights in copyright for work produced by non-faculty Personnel within the Scope of Employment.

- 2) Sponsored Research Agreements. The University owns all rights in copyright for work produced by Personnel or Students under Sponsored Research Agreements.
- 3) Signed agreements. The University owns all rights in copyright for all work as stated in written agreements.
- 4) Computer Programs and Software. Ownership of copyrighted software and computer programs is addressed in Section VII.
- 5) Technology-Mediated Instructional Materials. Ownership and use of technology-mediated instructional materials is addressed in Section VIII.

## **B. Right of Use**

- 1) University rights. The University shall have the right to use and reproduce for research and educational purposes scholarly and original works, whether owned by the University, Personnel, or Students, for which it has provided resources.
- 2) Additional Rights. If the University wishes to secure additional rights in copyrighted work, it shall so specify in writing at the time it provides resources beyond Resources Usually and Customarily Provided or other consideration.

## **C. Responsibilities of Personnel and Students**

- 1) Assignment. For work to which the University has or had right of ownership or use under this policy, Personnel and Students shall, upon request, execute all legal documents designed to assist the University, or its assignees, in proving or benefiting from such rights, as deemed appropriate by the University.
- 2) External Collaborations. See Section IV.C and the Policy on Professional Commitment of Faculty, BOR 41.0 II-3.10.
- 3) Use of Copyrighted Materials. All Personnel and Students are responsible for complying with University guidelines on the fair use of copyrighted material and for complying with the requirements of copyright law, including obtaining required permissions to use copyrighted material. Personnel and Students shall not exercise any rights under copyright law in works owned by others unless they have the prior written permission of the copyright holder, the work is in the public domain, or their use of the work qualifies as a fair use under copyright law. See Appendix A.
- 4) See Appendix A, attached to this Policy. The University will authorize certain individuals to assist in compliance with federal law, including, but not limited to:

- a) The Director of the Ort Library, or designee, with respect to fair use guidelines, photocopying and scanning of materials, and use of reserve materials;
- b) The Director of the Office of Duplicating, or designee, with respect to photocopying of materials;
- c) The University Webmaster, who may review webpages and other materials before permitting placement on University websites.
- d) The Director of Research and Sponsored Programs, with respect to intellectual property issues arising from externally funded grants.

#### **D. Responsibilities of the University**

- 1) Agreement Regarding Use of Resources Beyond Resources Usually and Customarily Provided. When the University authorizes or directs efforts to create a work or works using University resources beyond Resources Usually and Customarily Provided, it shall enter into a written agreement addressing the extent of use of resources, the schedule for the project (if appropriate), control over the work and its revisions, and ownership of the work. When the work done by Personnel routinely involves resources beyond Resources Usually and Customarily Provided, compliance with this section may be accomplished by including the required terms in an employment agreement.
- 2) Sharing of Revenue. The University shall remit to creators or their assignees or heirs, their share of Revenue from copyrights as specified in Section XI.A. of this policy.
- 3) Use of Copyrighted Materials. The University guidelines for copyright are attached as Appendix A.

## **VI. PATENTS**

### **A. Ownership**

- 1) University Ownership
  - a) Within Scope of Employment. The University owns inventions created by Personnel within the Scope of Employment.
  - b) Use of University Resources. The University owns inventions created by Personnel, graduate Students, or professional Students with the use of University resources.

- c) Signed Agreements. The University owns all inventions made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.
- 2) Creator Ownership.
  - a) Outside Scope of Employment. Personnel, graduate Students, and professional Students own patent rights to inventions conceived and first reduced to practice outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements.
  - b) Student Ownership. Undergraduate, non-degree, and not-for-credit Students own inventions they create unless the invention is subject to another provision of this Section VI.

## **B. Responsibilities of Personnel and Students**

- 1) Disclosure. Personnel and Students shall disclose inventions which are subject to University ownership to University Counsel in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose.
- 2) External Collaborations. In accord with Section IV.C., Personnel and Students may not: (a) sign patent agreements or other documents (e.g., invention reports, licenses, assignments, Material Transfer Agreements, or Confidential Disclosure Agreements) which abrogate the University's rights; (b) make unauthorized use of the name of the University; or (c) transfer material relating to intellectual property outside the University, except pursuant to a properly authorized Material Transfer Agreement. See also the Policy on Professional Commitment of Faculty, BOR II-3.10.
- 3) Assignment. As to an invention in which the University has a right to ownership or use, the inventor, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the invention, including assignment of any patents or patent applications relating to the invention.

## **C. Responsibilities of University**

- 1) Timely Evaluation. The University shall evaluate inventions disclosed in accordance with Section VI.B.1) and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection; the scope of patent protection; and whether and how to pursue, limit or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any invention in which it has an interest.

- 2) **Timely Information.** The University shall inform inventors in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of inventions disclosed in accordance with Section VI.B.1). Terms of agreements which constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify inventors promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize an invention.
- 3) **Commercialization by Inventors.** The University, at its discretion and consistent with the public interest, may license intellectual property to the inventors on an exclusive or non-exclusive basis. Inventors must demonstrate technical and business capability to commercialize the intellectual property. Agreements with inventors shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.
- 4) **Assignment of Ownership.** The University may assign ownership to the inventors as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the inventors, the transfer to the inventors of the University's interest in any invention that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the invention before it can agree to negotiate the transfer of the University's interest in an invention to the inventors.
- 5) **Sharing of Revenue.** The University shall remit to the inventors or their assignees or heirs, their share of Revenue from inventions as specified in Section XI.B. of this policy.

## **VII. COMPUTER PROGRAMS AND SOFTWARE**

### **A. Ownership.**

- 1) **University Ownership.**
  - a) **Within the Scope of Employment.** The University owns computer programs and software created by Personnel within the Scope of Employment.
  - b) **Use of University Resources.** The University owns computer programs and software created by Personnel, graduate Students, or professional Students with the use of University resources.

- c) Signed Agreements. The University owns all computer programs and software created or made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.
- 2) Personnel Ownership.
- a) Outside Scope of Employment. Personnel, graduate Students and professional Students own software and computer programs conceived and first reduced to practice, and/or authored, outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements.
  - b) Student Ownership. Undergraduate, non-degree, and not-for-credit Students own computer programs and software they create unless the computer program or software is subject to another provision of this Section VII.

## **B. Responsibilities of Personnel and Students**

- 1) Disclosure. Personnel and Students shall disclose computer programs and software that are subject to University ownership to the Office of University Counsel in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose. Disclosure may include deposit of a digital-time-stamped copy of the software program, with appropriate annotations.
- 2) External Collaborations. See Section IV.C. See also the Policy on Professional Commitment of Faculty, BOR II-3.10.
- 3) Assignment. As to a computer program or software in which the University has a right to ownership or use, the creator, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the computer program or software, including assignment of any patents, copyrights, patent applications or copyright applications relating to the work.

## **C. Responsibilities of University.**

- 1) Timely Evaluation. The University shall evaluate computer programs and software disclosed in accordance with Section VII.B.1) and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection, the scope of patent protection, and whether and how to pursue, limit, or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any computer program or software in which it has an interest.

- 2) **Timely Information.** The University shall inform creators in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of computer programs or software disclosed in accordance with Section VII.B.1). Terms of agreements that constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify creators promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize computer programs or software.
- 3) **Commercialization by Creators.** The University may, at its discretion and consistent with the public interest, license intellectual property to the creators on an exclusive or non-exclusive basis. Creators must demonstrate technical and business capability to commercialize the intellectual property. Agreements with creators shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.
- 4) **Assignment of Ownership.** The University may assign ownership to the creators as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the creators, the transfer to the creators of the University's interest in any computer program or software that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the intellectual property before it can agree to negotiate the transfer of the University's interest in intellectual property to the creators.
- 5) **Sharing of Revenue.** The University shall remit to the creators or their assignees or heirs, their share of Revenue from computer programs or software as specified in Section XI.B. of this policy.

## **VIII. TECHNOLOGY-MEDIATED INSTRUCTIONAL MATERIALS.**

### **A. Ownership**

- 1) **By Creator.** Personnel and Students shall own original Technology-Mediated Instructional Materials that they create unless:
  - a) Otherwise agreed to, in writing, with the University; or
  - b) Technology-Mediated Instructional Materials are created pursuant to a Sponsored Research Agreement.

- 2) By Written Agreement. The agreements referred to in Section VIII.A.1) shall address, at a minimum:
  - a) Responsibility for payment of costs incurred to develop Technology-Mediated Instructional Materials; and
  - b) Limitations and conditions on the right of the University, Personnel or Students to use Technology-Mediated Instructional Materials; and
  - c) Authority to register copyright in, seek patent protection for, or otherwise protect Technology-Mediated Instructional Materials; and
  - d) Compensation to and, under appropriate circumstances, Revenue sharing with Personnel or Students. Compensation to Personnel and Students shall not be based on enrollment without the prior written approval of the Provost; and
  - e) Authority to evaluate and modify Technology-Mediated Instructional Materials; and
  - f) Authority to select and selection of instructors for Technology-Mediated Instruction; and
  - g) Compliance with copyright law.

**B. University Rights of Use.** The University shall have a right and license to use Technology-Mediated Instructional Materials and Technology-Mediated Instruction that it does not own pursuant to Section VIII but for which is has provided, pursuant to a written agreement, resources beyond Resources Usually and Customarily Provided. The University's use shall be solely in connection with University-offered programs of instruction and education.

**C. Commercialization of Technology-Mediated Instructional Materials**

- 3) Authority to Sell Technology-Mediated Instructional Materials. Personnel and Students shall not license, sell or otherwise grant third parties a right to use Technology-Mediated Instructional Materials or Technology-Mediated Instruction that they have created and own, and which include the name of the University, any University trademarks, service marks or symbols, or any intellectual property of any kind that is owned by the University without the prior approval of the President or designee.
- 4) Revenue Sharing. The allocation, distribution and use of net Revenue obtained from the commercialization of Technology-Mediated Instructional Materials shall be agreed upon by the parties in writing on a case-by-case basis.

## **IX. OTHER TYPES OF INTELLECTUAL PROPERTY**

- A. Tangible Research Property.** The principles in Section VI. that apply to inventions and patents also apply to tangible research property.
- B. Mask Works.** The principles in Section VI. that apply to inventions and patents also apply to mask works.
- C. Plant Varieties.** The University owns and may protect or commercialize plant varieties according to the principles of Section VI.
- D. Trademarks, Service Marks, and Trade Dress.** Trademarks, service marks, and trade dress may be created in association with an underlying license for another form of intellectual property, such as a patent or a plant variety (“associated with other intellectual property”), or independently, such as a university logo or symbol (“independently created”).
  - 1) **Associated with Other Intellectual Property.** The University owns a trademark, service mark or trade dress if it is associated with other intellectual property owned by the University.
  - 2) **Independently Created.** The University owns trademarks, service marks, and trade dress that are independently created by Personnel within the Scope of Employment unless the University agrees otherwise in writing.
  - 3) **Commercialization.** The University may commercialize or license its trademarks, service marks, and trade dress.
  - 4) **Registration.** The president or designee shall approve registration of trademarks or service marks, at the state or federal level.

## **X. INTERINSTITUTIONAL AGREEMENTS**

In this Section X only, “University” shall mean one of the following: a constituent institution of the University System of Maryland, the University of Maryland Biotechnology Institute, the University of Maryland Center for Environmental Science, or the University System of Maryland Office.

- A. Joint Appointments and Affiliations.** This section applies when an individual has an appointment in and receives support for research or creative work from two or more Universities and when a Student or Student Employee is earning a degree in one University but doing research or creative work in another.
  - 1) **Ownership.** When more than one University can claim ownership to intellectual property under this policy, they own it jointly.

- 2) Management Agreements. Universities that are or may become joint owners of intellectual property shall enter into agreements stating which University will be responsible for management of the intellectual property. Universities are encouraged to negotiate standard agreements whenever possible.
  - a) Terms to be Addressed. The agreements shall state which institution will be responsible for prosecution of patent applications or other forms of intellectual property protection, which institution will license the intellectual property, how expenses and deductions from Revenue will be allocated, and how institutional net revenue will be shared. The distribution of each University's share of Net Revenue, Project Specific Costs, and General Costs shall be addressed in the management agreement.
  - b) Student Requirements. With regard to Students and Student Employees, agreements shall specify whether the degree-granting University or the supporting University will be responsible for managing intellectual property they create when that property is subject to University ownership.
- 3) Responsibilities of Managing University. The University managing intellectual property under an agreement shall promptly inform the other University or Universities about steps taken with regard to ownership. Such information shall include at minimum copies of the invention disclosure form, documents associated with filing for statutory protection, assignment of rights, and license agreements. If the managing University decides not to proceed, the other owning University or Universities shall have the right to assume responsibility as the managing University.
- 4) Distribution of Revenue. The managing University shall distribute Revenue to the creators and share net revenue in all cases according to Section XI.
- 5) Disputes. The President may ask the Chancellor to intercede if the Universities are unable to reach agreement or differ in their interpretation of an agreement. The Chancellor's decision shall be final and binding on all parties.

**B. Joint Creators.** This section applies when Personnel or Students from two or more Universities collaborate.

- 1) Early Notification. As soon as collaborators from different Universities recognize that their efforts have resulted in, or are likely to result in, the creation of intellectual property subject to this policy, they shall inform their respective Universities that an agreement is needed.
- 2) Agreements Govern. Signed agreements between Universities shall determine ownership of intellectual property, responsibility for managing it, and distribution of expenses and Revenue resulting from its development. Universities whose Personnel

or Students are engaged in frequent collaboration are encouraged to negotiate standard agreements within the framework of this policy.

- 3) Disputes. The President may ask the Chancellor to intercede if the Universities are unable to reach agreement or differ in their interpretation of the agreement. The Chancellor's decision shall be final and binding on all parties.

## **XI. REVENUE SHARING**

Unless otherwise agreed to in writing by the creators of a work or inventors of an invention, each named creator or inventor shall receive equal shares of net Revenue.

**A. Copyrights.** The University shall share with creators Revenue it receives from copyrights of their work, subject to certain exceptions.

- 1) Exceptions.
  - a) Scope of Employment. Revenue generated from work produced by non-faculty Personnel within the Scope of Employment is excluded from sharing. However, the University may elect, by written agreement or University policy, to pay up to fifty percent of net Revenue to such non-faculty Personnel.
  - b) Contract. When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the contract govern.
  - c) Equity. Equity shall be distributed in accord with Section XI.G.
  - d) Technologically-Mediated Instructional Materials. The University, Personnel, Students involved shall agree on a case-by-case basis, in writing, on the allocation, distribution, and use of net Revenue pursuant to Section VIII.
- 2) Deductions from Revenue. The University shall make the following deductions from Revenue before distributing net Revenue (Section XI.A.3).
  - a) Creators' Share. First, ten percent of Revenue shall be distributed among the creators of the work until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. The limit in FY2003 is \$10,000 to be shared among the inventors. The Chancellor shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100.
  - b) General Costs. Second, the University will deduct 30% of Revenue to cover the general cost of developing, obtaining, managing, and defending creative works, unless otherwise agreed to by the University and creators, in writing.

- c) Project Specific Costs. Third, the remaining 60% of the Revenue received from a work shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the copyright, and in developing, marketing, licensing, and defending the work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by creators on behalf of their own works but only if the University had authorized such expenses in advance in writing.
  - d) Residual Creators' Share. Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the creators until the threshold dollar amount has been paid, as specified above in Section XI.A.2)a).
- 3) Distribution of Net Revenue. Net Revenue is the revenue remaining after deductions under XI.A.2.
- a) Creators' Share. The University shall distribute among the creators fifty percent (50%) of the net Revenue it receives from their creative work unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with creators provide otherwise.
  - b) University's Share. The University shall receive fifty percent (50%) of the net Revenue. Eighty-five percent (85%) of the University's share of the net Revenue received on account of a particular copyrightable work shall be dedicated to the creation of original copyrightable works and scholarship in the department or analogous unit of the creator of each particular copyrightable work, up to \$100,000 per fiscal year per department or analogous unit when practicable. The remaining fifteen percent (15%) of the University's share of net Revenue shall be used to support the creation of original copyrightable work and scholarship in other departments and units of the University. When it is not practicable to allocate \$100,000 per fiscal year to a particular department or the amount exceeds \$100,000 in a particular fiscal year for a particular copyrightable work, the President or designee may allocate the funds for use within another department of Frostburg State University.
- 4) Timely Distribution. The University shall distribute accrued Revenue due creators under this policy at least annually unless funds are withheld to assure that all applicable licensing and related expenses have been accounted for. Distribution will be made along with a statement of related income and expenses.

**B. Patents and Computer Programs and Software.** The University shall share with inventors or creators Revenue which it receives from their inventions or creations as provided in this section.

- 1) Exceptions.

- a) Contract. When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the agreement govern.
  - b) Equity. Equity shall be distributed in accord with Section XI.G.
- 2) Deduction from Revenue. The University shall make the following deductions from Revenue before distributing net Revenue (Section XI.B.3).
- a) Creator's or Inventors' Share. First, ten percent of Revenue shall be distributed among the creators or inventors until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. The limit in FY2003 is \$10,000 to be shared among the inventors or creators. The Chancellor shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100.
  - b) General Costs. Second, the University shall deduct 30% of Revenue to cover the general cost of developing, obtaining, managing and defending inventions or creative work, unless otherwise agreed to by inventors or creators and the University, in writing.
  - c) Project Specific Costs. Third, the remaining 60% of Revenue received from a creative work, patent or invention shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the patent and in developing, marketing, licensing, and defending the patent or licensable invention or creative work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by inventors or creators on behalf of their own works but only if the University had authorized such expenses in advance in writing.
  - d) Residual Creators' Share. Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the creators until the threshold dollar amount has been paid, as specified in Section XI.B.2)a).
- 3) Distribution of Net Revenue. Net Revenue is the Revenue remaining after the deductions in Section XIB.2.
- a) Creator's Share. The University shall distribute among the inventors or creators fifty percent (50%) of the net Revenue it receives from their inventions or creations unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with inventors or creators provide otherwise.
  - b) University's Share. The University shall receive fifty percent (50%) of the net Revenue. Twenty-five percent (25%) of the University's share of the net Revenue received on account of an invention shall be dedicated to research and

the promotion of patenting and patents. If practicable, seventy-five percent (75%) of the University's share of net Revenue from each invention will be designated as follows: 30% to general University programs, 15% to the inventor's department, 15% to the inventor's college and 15% to departmental scholarships. When it is not practicable to allocate the University's share of net Revenue as described herein, the President or designee may allocate funds for similar use within other departments of the University.

- c) **Timely Distribution.** The University shall distribute accrued Revenue due creators under this policy at least annually unless funds are withheld to assure that all applicable licensing and related expenses have been accounted for. Distribution will be made along with a statement of related income and expenses.

**C. Tangible Research Property, Mask Works, and Plant Varieties.** When tangible research property, mask works, or plant varieties are licensed, Revenue shall be distributed in the same manner that Revenue is distributed under Section XI.B.

**D. Trademarks, Service Marks, and Trade Dress.**

1) **Creators' Share.**

- a) **Associated with Other Intellectual Property.** Revenue received from commercialization of a trademark, service mark, or trade dress that is related to an intellectual property license shall be shared with creators of the trademark, service mark, or trade dress, as specified in Section XI.B.
- b) **Independently-Created Trademark, Service Mark, or Trade Dress.** Except as provided herein or unless subject to prior written agreement between the creators and the University, the University will not share the Revenue from commercialization of a trademark, service mark, or trade dress with the individuals who created the trademark, service mark, or trade dress

2) **University Ownership.** Revenue received from commercialization of a trademark, service mark, or trade dress licensed independently and not directly related to another form of intellectual property license shall not be shared and shall belong to the University.

**E. Joint Appointment.** In situations covered by section X., the University's share of net Revenue shall be divided equally among the Universities unless otherwise provided by written agreement.

**F. Joint Creators.** If joint creators are from different Universities, the University's share of net Revenue shall be divided equally unless determined by signed agreements as provided in Section X.B.2.

## **G. Equity.**

- 1) Issuance of Shares. Equity may be issued separately to the University and the inventors or creators.
- 2) Distribution of Shares. Equity in a commercial venture received as consideration for intellectual property rights shall be shared equally between the University and the creators, unless a different distribution is negotiated in an agreement signed by the University and the creators of the relevant intellectual property.
- 3) Timely Distribution. When the University receives all shares directly, as soon as practicable after the University receives equity, and subject to the creators receiving any conflict of interest exemptions that must be granted and complying with any conditions for those exemptions, the University shall transfer equity shares to the creators. The University and creators shall have independence in their exercise of equity holder privileges within the constraints of law, policy, specific exemption under Maryland law from the State Ethics Law, and contractual agreements.
- 4) Unqualified Persons. Personnel or Students not qualified to hold the equity under applicable law shall designate a qualified person to receive the equity. If no designee is named within thirty days of a written request by the University to do so, the right to a share of the equity shall be forfeited to the University.

## **XII. ADMINISTRATION**

**A. University Implementation.** The University has provided the Chancellor with a copy of this Policy for approval prior to initial adoption. Revisions to this Policy shall not be effective until approved by the Chancellor in writing.

**B. Authority to Subcontract.** The University may enter into contracts with third parties in connection with the development, administration, and protection of its intellectual property.

### **C. Special Cases.**

- 1) Issues not addressed. The Board of Regents recognizes that special cases will arise that are not specifically covered by this policy. In such cases, the President may make a decision on how to proceed and report that decision to the Chancellor. Alternatively, the President may submit such cases to the Chancellor or designee for resolution. All decisions on such cases shall be reported to the Intellectual Property Committee, which will take them into account in its annual review of this policy.
- 2) Policy waivers. Only the Chancellor may waive any provision of the USM IP Policy or of any University's approved policy on intellectual property. All decisions concerning waiver shall be reported to the Intellectual Property Committee and to the Board of Regents.

#### **D. USM Intellectual Property Committee.**

At the request of the Chancellor, the President shall submit nominations of persons to serve on the USM Intellectual Property Committee.

#### **E. University Intellectual Property Committee.**

- 1) **Membership.** The President shall appoint a Committee on Intellectual Property to review intellectual property issues and/or determine University interest in claiming ownership of intellectual property. The President will assure that faculty members constitute a significant proportion of the membership.
- 2) **Responsibilities.** The Committee shall advise the President on intellectual property matters. It shall convene at least once each academic year to review the University's Intellectual Property policy and procedures and recommend revisions to it. The Committee shall also meet at the call of the President. The President may refer to the Committee for its recommendations on matters relating to the policy and procedures, including relevant matters not addressed by the policy and procedures, and suggestions for revisions. The President may ask the Committee for advice on the resolution of disputes over intellectual property.
- 3) **Creator's Right to Participate.** Whenever the Committee considers the application of the policy and/or procedures in making a decision about a specific work, Personnel or Students who created the work or a representative may make a written presentation and an oral presentation to the Committee.

### **XIII. REPORTING**

The President shall report annually to the Chancellor and the Board of Regents on intellectual property activity at the University. The report, in a format to be determined by the Chancellor, shall include data for the preceding year on disclosures, patent applications, patent awards, licenses, and start-up companies, distinguishing when appropriate between Maryland-based companies and those outside of the State. The report shall also include data on revenue and expenditures associated with the University's technology transfer function.

## Appendix A

### GUIDELINES FOR THE USE OF MATERIALS PROTECTED BY COPYRIGHT

*Note: This Appendix is provided for information and clarification, however, these Guidelines are not a part of the FSU Intellectual Property Policy.*

The purpose of copyright is to further knowledge for the public good by providing authors and/or creators with an economic incentive to publish their works. While the intent of the United States Copyright Law (Title 17, United States Code, Sect. 101, *et seq.*) (“Copyright Law”) is to protect the rights of creators and producers of intellectual property, certain exemptions have been made to facilitate the use of information in academic environments. These exemptions are generally referred to as “fair use” exceptions. Fair use and other exceptions to the law have proven to be open to various interpretations and a number of common myths exist regarding copyright and fair use, often resulting in confusion as to what constitutes the educational fair use of copyrighted materials. The full text of the Copyright Law and its legislative history, plus analysis and commentary, are available in the Lewis J. Ort Library. Faculty, students, staff members and others with questions about the use of copyrighted materials should contact the Ort Library for guidance on their use. Additional information on copyright use is available from the University’s Office of Duplicating, the Office of Research and Sponsored Programs and the University Webmaster.

The University expects that the highest ethical standards as well as compliance with public laws and regulations will prevail in the conduct of its activities. It is the University’s policy that all members of the University community will adhere to the provisions of the Copyright Law, the University System of Maryland Policy on Intellectual Property and the University Policy on Intellectual Property. Members of the University community who willfully disregard the Copyright Law, the University System of Maryland Policy on Intellectual Property or the University Policy on Intellectual Property do so at their own risk and assume all liability.

May 1, 2002

Ref. BOR IV – 3.20