Motion: Update of the Intellectual Property Policy

Motion

The Faculty Senate recommends replacing the existing Section 3.4 of the *Teaching and Research Faculty Handbook* with the attached text.

The Faculty Senate also recommends updating the current internal governance document to correspondingly incorporate the change in the IP Committee membership, as follows:

IV.B.3, paragraph 2:  
**Membership composition**: One administrator appointed by the Vice President for Business Affairs and the Vice President for Academic Affairs; and six teaching and research faculty members, one from each college, to be appointed by the Faculty Senate executive council; a representative of the library, to be appointed by the dean of the library; an AP senate member, to be appointed by AP senate executive council; and one ex-officio representative from the Office of Sponsored Programs, to be appointed by the Provost.

Rationale

This proposed policy updates the existing Section 3.4 to explicitly address IP issues involving on-line courses, development of software, etc., clarifying that these creations fall under the same guidelines as traditional course material and faculty authorship. The proposed policy fully protects traditional academic researching, publication and teaching materials while leaving the door open for (say) voluntary collaboration and investment in distance education projects.

Another difference is that university ownership of faculty IP is no longer set at an arbitrary threshold of $10,000. Instead, the policy clarifies a need for explicit contracts that accompany any significant investment for directed work (such as summer salary to develop a specific course, or lab equipment intended for more than ordinary

research).

Proposed RU IP Policy

Proposal to Faculty Senate / March, 2013

Faculty Handbook Section 3.4, Intellectual Property

[3.4 Intellectual Property](#h.p17j4of12v7j)

[3.4.1 Introduction](#h.gf6xdondcoc1)

[3.4.2 Objectives](#h.e6bdpu933a9d)

[3.4.3 Membership and Administration of the IP Committee](#h.v34xstz3ke4u)

[3.4.4 Definitions](#h.6cdpchtv1y5r)

[3.4.5 Applicability](#h.ggvjw36tewbm)

[3.4.6 Administration of Intellectual Property](#h.20pjrqsyo91l)

[3.4.7 Patents](#h.3dg2aonasm8t)

[3.4.7.1 University Interests in Inventions](#h.98j0rfqyu1du)

[3.4.7.1.1 Faculty](#h.ko7vry2ah6cz)

[3.4.7.1.2 Students](#h.noorc3qey4t9)

[3.4.7.1.3 Other Employees](#h.f375nmchz2ft)

[3.4.7.2 Partnership with University](#h.67j48xvzdtc6)

[3.4.7.3 Procedures for Review of Invention Disclosures](#h.2bmvfdh0y4xu)

[3.4.7.4 Publication and Public Use](#h.mz8kthn6x1h1)

[3.4.7.5 Sponsored Research](#h.9hi7p7g1wnbe)

[3.4.7.6 Income from Patents](#h.jtvow8v65kum)

[3.4.8 Copyright](#h.nabz3des8v09)

[3.4.8.1 Ownership of Non-Directed Academic Works](#h.giidu3lls39t)

[3.4.8.1.1 Faculty](#h.y2k52zwyuiof)

[3.4.8.1.2 Students](#h.ib23bsm113wq)

[3.4.8.1.3 Other Employees](#h.wymhe6hzehs9)

[3.4.8.2 Sponsored or Other Contracted Works](#h.fzravcj8nlyj)

[3.4.8.3 Income from Copyright](#h.loe03fbjghgb)

[3.4.8.3.1 Works not Owned by Radford University](#h.cbmzilks7wg8)

[3.4.7.3.2 Works in Which Radford University Has an Ownership or Income Interest](#h.xxecm8c3e3vx)

[3.4.8.4 Revision of Materials](#h.9am65pb0g6pc)

[3.4.9 Trademarks, Service Marks, and Trade Names](#h.hksev5dqww74)

[3.4.10 Trade Secrets](#h.wzvmulhbmypo)

[3.4.11 Disclosure of Intellectual Property and Related Records](#h.lg5ub9u8yvgr)

[3.4.12 Confidentiality](#h.v3cb8zk7vsav)

[3.4.13 Conflicts of Interest](#h.5oz30rqpo1u6)

[3.4.14 Disposition of University Income](#h.jbbcayg6z5hs)

[3.4.15 Infringement or Unauthorized Use of Intellectual Property](#h.4qeon6ox2a0r)

[3.4.16 Use of Intellectual Property by the University](#h.9uiy2uhc28eb)

[3.4.17 Dispute Resolution](#h.xgkgu26eh4zt)

### 3.4 Intellectual Property

#### 3.4.1 Introduction

The copyright for all teaching materials, research and publications authored by Radford University faculty members belongs to those faculty members, unless there is a specific contract assigning part or all of the rights to the university. Such contracts are typically negotiated when significant university investment is contemplated, for example, a summer stipend to develop a distance education course.

Patent rights also belong to faculty members unless significant university or third party investment has been made. In the case of significant university or third party investment, agreements for investments in research should specifically identify patent rights.

In the absence of contractual agreements, all rights are retained by faculty authors and inventors.

#### 3.4.2 Objectives

Consistent with policies adopted by the Board of Visitors of Radford University, and principles of internal governance, this Intellectual Property Policy is intended to:

1. Establish ownership criteria for intellectual Property developed by members of the Radford University community;

2. Provide appropriate incentives for creative intellectual effort by faculty, staff, students, and others associated with the University;

3. Establish principles for determining the interests of the constituent institutions, inventors, and sponsors in regard to inventions and/or discoveries;

4. Protect academic freedom of faculty to publish traditional scholarship;

5. Establish basic guidelines for administration of this policy.

#### 3.4.3 Membership and Administration of the IP Committee

Radford University’s Intellectual Property Committee shall be established consisting of six teaching and research faculty members, one from each college, to be appointed by the Faculty Senate executive council; a representative of the library, to be appointed by the dean of the library; an AP senate member, to be appointed by AP senate executive council; one ex-officio representative from the Office of Sponsored Programs, to be appointed by the Provost; and ~~one ex-officio representative from the Office of~~ an Intellectual Property Administrator, who shall be appointed by the Vice President for Finance and Administration and the Vice President for Academic Affairs.

The Intellectual Property Committee is an advisory committee reporting to the Office of the Provost and to the Faculty Senate. The committee shall consider and suggest appropriate Intellectual Property policies; provide advice concerning methods for protecting the copyright, patent and trademark interests of all University community members as well as the University itself; and consider problems, disputes, or issues involving Intellectual Property at RU.

#### 3.4.4 Definitions

Intellectual Property – Intellectual Property, sometimes abbreviated as IP, encompasses copyrights, patents and trademarks in general.

Copyright – A copyright is the exclusive right to make copies, license, and otherwise exploit a particular literary, musical, or artistic work, whether printed, audio, video, etc. Such rights in a work created on or after January 1, 1978, generally endure for a term consisting of the life of the author and 70 years after the author’s death.

Directed Work – A “directed work” is a work that is specifically funded by, or created at the direction of, or created pursuant to contract with, the University (including, but not limited to, works for hire by faculty or other EPA employees). It excludes works that are part of the normal scope of assigned duties.

Non-Directed Academic Works – A “non-directed academic work” is a pedagogical, scholarly, literary, software, or aesthetic (artistic) work originated by a faculty member resulting from non-directed effort. Such works may include textbooks, manuscripts, scholarly works, instructional materials, assignments, exams, distance learning materials not falling into one of the other categories of this policy, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their creator. Works whose creation is supported by faculty development grants or sabbaticals are non-directed academic works.

Patent – A patent is the exclusive right granted by a government to an inventor to manufacture, use, or sell an invention for a certain number of years. To be patentable, the invention or discovery must have utility, novelty, and be non-obvious. The U.S. Patent & Trademark Office has determined that software which meets certain technical and legal criteria may be patentable. In the event that software originally disclosed as a Copyrightable Work is subsequently determined to be patentable subject matter, and RU chooses to seek patent protection for the software, such software shall be managed under this policy as patentable Intellectual Property.

Sponsored or Other Contracted Works – A “sponsored or other contracted work” is any type of copyrightable or patentable work developed with funds supplied under a contract, grant, or other arrangement between the University and third parties, including sponsored research agreements.

Work Made for Hire – A “work made for hire” is:

1. A work prepared by an employee within the scope of his or her employment, not including non-directed academic works; 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 work shall be considered a work made for hire. See [17 U.S.C. § 101](http://www.google.com/url?q=http%3A%2F%2Fwww.law.cornell.edu%2Fuscode%2Ftext%2F17%2F101&sa=D&sntz=1&usg=AFQjCNFkXGtdnkIV9L4PIUZJBHgUZPCNcw) (definition of “work made for hire”).

#### 3.4.5 Applicability

This statement of policy and procedures applies to all persons employed by the University, to all students and to any other person or entity using facilities, staff or funds subject to control or supervision by the University.

This document, as amended from time to time, shall be deemed to constitute part of the conditions of employment of every employee, including student employees, and of the conditions of admission, enrollment and attendance by every student of the University. Unless otherwise excepted by the provisions hereof, this policy shall apply to intellectual property of all types (including any invention, discovery, trade secret, technology, scientific or technological development, computer software, conception, design, creation or other form of expression of an idea) regardless of whether such property is subject to protection under patent, trademark, or copyright laws, or other constitutional, statutory or common law.

The provisions of this document shall be interpreted and applied in conformity with policies adopted by the Board of Visitors of Radford University and internal governance procedures.

#### 3.4.6 Administration of Intellectual Property

The duties of the Intellectual Property Administrator shall be to ensure that appropriate registration forms and supporting documents are filed with the Copyright Office, Library of Congress, or the Patent and Trademark Office; and to negotiate and draft licenses and other royalty agreements; and to draft necessary agreements for specially commissioned works; and to adopt other procedures consistent with the provisions of this document and RU Policies. All referrals to the President or Provost, or such officer’s designee, under these policies and procedures, shall follow established procedures and administrative channels of communication.

Agreements which grant a third party the right to make, use, or sell a patented invention, invention know-how, or trade secret that has been disclosed and assigned to, or is otherwise owned by, the University, or which grant a third party the right to reproduce, sell or use a copyrighted work, trademark, service mark, or trade name in with the University owns an interest, shall require written approval by the President or that officer’s designee, usually the Administrator.

Individuals subject to these policies and procedures may not: (a) sign agreements with third parties which may abrogate the University’s rights and interests, nor (b) without prior written authorization, use the name of the University or any of its units in connection with any intellectual property in which the University has an interest.

As a condition of their respective employment or enrollment and attendance, employees and students shall execute any and all declarations, assignments of all rights in any intellectual property and related research data or other records and materials, or other documents deemed necessary by the University to protect its interests in such property.

Notwithstanding this or any other provision of these policies and procedures, an individual who delivers and/or assigns intellectual property or other ownership rights in research data or other records and materials related to the intellectual property disclosed hereunder shall be allowed to continue use of such data, records and materials, or reproductions or derivatives thereof, as part of instruction, research, or creative or scholarly activities, conducted by the individual fulfillment of employment or student academic responsibilities to the extent that such use does not interfere with the University’s ownership, use and commercialization of the intellectual property. A determination of acceptable use shall be made upon request by the Provost or such officer’s designee.

The responsibility for protection, commercial marketing and licensure of intellectual property, and for maintenance of appropriate fiscal records, is assigned to the President or such officer’s designee. The University recognizes that the evaluation of inventions and discoveries and the administration, development and processing of patents, licensable inventions and other intellectual property involves substantial time and expense and requires talents and experience not ordinarily found in its staff; therefore, in most cases it expects to contract with outsiders for these services. The President or that officer’s designee may enter into a contract or contracts with an outside organization covering specific inventions or discoveries believed to be patentable and patents developed therefrom, or covering all such inventions, discoveries, patents or other intellectual property in which the University has an interest.

When the University asserts or retains an ownership interest in intellectual property, all expenses of copyright registration, patenting and other forms of protection sought by the University shall be borne initially by the University.

#### 3.4.7 Patents

##### 3.4.7.1 University Interests in Inventions

###### 3.4.7.1.1 Faculty

The University may have an ownership interest in patentable inventions of faculty, staff, and students that fall outside the scope of non-directed academic works.

###### 3.4.7.1.2 Students

Students retain full ownership of patentable works they produce as part of their studies unless there is a prior contractual agreement. When significant use by students of university facilities, personnel, or other resources is contemplated, the university may require, as a condition this use of facilities, that patent rights of the student-developed invention or creation be reserved to the university, in whole or in part. In such cases, a written contract regarding ownership and use of student creations or inventions should be signed by the student and the University.

###### 3.4.7.1.3 Other Employees

Works or patents developed by employees who are not students or faculty shall be considered under the traditional work-for-hire employment rationale.

##### 3.4.7.2 Partnership with University

The University also may have an interest in inventions under the terms of contracts, grants, or other agreements. Faculty, staff, and students whose inventions are made on their own time and without University facilities, staff, or other resources and which inventions are, therefore, their exclusive property as specified by RU Policies, may avail themselves of the opportunity to submit the invention to the University for possible patenting and/or commercial exploitation and management under written terms to be agreed between the inventor and the University.

##### 3.4.7.3 Procedures for Review of Invention Disclosures

1. Recognizing that patents are often granted to those who are first to file, employees and others who are subject to these policies and procedures by virtue of their employment or use of University services or facilities, either alone or in association with others, shall promptly disclose to the Provost or the Intellectual Property Administrator any invention or discovery (including those made under cooperative arrangements); provide complete information thereon; and cooperate with University in protecting potential patent and know-how rights in accordance with RU Policies and these policies and procedures.

2. The Provost or that officer’s designee will promptly acknowledge receipt of completed disclosure forms and will distribute such forms to the Intellectual Property Committee for consideration at its next meeting.

3. The RU Intellectual Property Committee will review each written disclosure within 10 working days. The inventor or that person’s representative shall be allowed to examine all written materials submitted to the Committee in connection with the disclosure and to make a written and, where practicable, oral presentation to the Committee. The Committee will make recommendations to the Provost or that officer’s designee on the proper disposition of the invention to secure the interests of the University, the inventor, the sponsor, if any, and the public. Its recommendation may include, but is not limited to, one or a combination of the following:  
 a. To submit the disclosure for review by a patent or invention management firm;  
 b. To make inquiries of potential licenses that may have an interest in the invention, including the financing of a patent application, where applicable;  
 c. To study the practicality of applying for a patent with University resources (an option with limited application because of financial constraints);  
 d. In proper cases, to release the University’s rights to the inventor in accordance with RU policies, subject to an agreement to protect the interests of the University, the sponsor, if any, and the public, including an obligation to pay to the University a percentage of any royalties or other income generated through assignment, licensure or other commercial exploitation of the invention; or  
 e. With concurrence of the inventor(s), to dedicate the University’s interest in the invention to the public.

4. As promptly as practicable, the Provost will respond to the Committee’s recommendation, and the inventor will be notified in writing of the decision by the Provost, or such officer’s designee, on (a) whether the University plans to file a patent application, (b) whether the University will accept assignment of the invention for patenting, licensing and/or commercial handling as applicable, and/or (c) the equities involved, including financial participation. If the University chooses neither to file a patent application nor otherwise make an invention available commercially, nor to dedicate to the public an invention in which it asserts its rights, the invention will be released in writing to the inventor, subject to the terms of an applicable sponsored research contract, if any. If no patent application is filed within 8 months following the decision of the Intellectual Property Committee, all patent rights revert to the inventor. If, after the University has filed a patent application, it decides to abandon the application, the inventor will be promptly notified in writing, and the University’s rights in the invention will be released by written agreement to the inventor, subject to the terms of an applicable sponsored research contract, if any.

5. In those cases in which the University has obtained a patent without obligation to sponsors, if the University has made no arrangement (e.g., a license agreement, search for prospective licensees or other commercially reasonable effort) for commercial development of the invention within one year from the date of the issuance of the patent and each year thereafter, the inventor(s) may request in writing a release of the University’s patent rights. The Provost or such officer’s designee will promptly either grant the request or advise the inventor(s) of the University’s plans for the development of the invention,

##### 3.4.7.4 Publication and Public Use

The University strongly encourages scholarly publication of the results of faculty and student research. Though RU Policies do not limit the right to publish, except for short periods of time necessary to protect patent rights, the publication or public use of an invention constitutes a statutory bar to the granting of a United States patent for the invention unless a patent application is filed within one year of the date of such publication or public use. Publication or public use also can be an immediate bar to patentability in certain foreign countries.

In order to preserve rights in unpatented inventions in which the University retains an interest, it shall be the duty of the inventor, or of the inventor’s supervisor if the inventor is not available to make such report, to report forthwith to the Provost or that officer’s designee any publication, submission of manuscript for publication, sale, public use, or plans for sale or public use, of an invention if a disclosure has previously been filed. The inventor shall promptly notify the Provost or that officer’s designee of the acceptance for publication of any manuscript describing the invention or of any sale or public use made or planned by the inventor. An invention may not be disclosed before the filing of a patent or provisional patent application in the United States Patent and Trademark Office to any person who is not employed the University or working in cooperation with the University upon that invention, unless the disclosure is made subject to a written Confidential Disclosure and Limited Use Agreement signed by the Provost or that officer’s designee and all signatories necessary to bind the other party or parties to the agreement.

##### 3.4.7.5 Sponsored Research

In cooperative undertakings sponsored by, or involving, third parties, provisions for the control of patents normally should be consistent with the general policy stated above. However, it is recognized that in some cases the interests of other entities (federal or state agencies, corporations, etc.) will justify modifications of the general policy. In those cases, the provisions with respect to patents shall appear in the applicable memorandum of understanding or agreement for the review and approval of the Provost. It is intended and provided that disclosed inventions will be identified and managed in accordance with patent policy and procedures.

Nothing in this policy shall be interpreted as precluding the acceptance of a contract, grant, or agreement which provides for ownership of inventions and patent rights by the cooperating agency or organization; provided, however, due regard shall be given to the interests of the general public and inventors in such instances.

##### 3.4.7.6 Income from Patents

1. The University shall share technology transfer revenue that it receives from patents or inventions with the inventors. Specific provisions of grants or contracts may govern rights and revenue distribution regarding inventions made in connection with sponsored research; consequently, revenues that University receives from such inventions may be exclusive of payments of royalty shares to sponsors or contractors. Moreover, the University may contract with outside persons or organizations for the obtaining, managing and defending of patents. Any expenses incurred for the services of such persons or organizations, as well as any and all incremental expenses incurred by the University in obtaining and maintaining patents and/or in marketing, licensing, and defending patents or licensable inventions, shall be deducted before the University distributes revenues, subject to the provisions of paragraph 2 below.

2. The revenues that the University receives from a patent or invention (net of expenses described in paragraph 1 above) shall be distributed at least annually as follows:  
 Inventor: 50%;  
 University funds to be applied to Academic Affairs: 50%.  
Applicable laws, regulations, or provision of grants or contracts may, however, require that a lesser share be paid to the inventor. In no event shall the share payable to the inventor by the University be less than 15% of the gross royalties received by the University. In the case of co-inventors, each percentage share described in this paragraph as due a sole inventor shall be subdivided equally among the co-inventors unless all the co-inventors provide the University a written instrument signed by each of them allocating ownership among themselves.

3. To the extent practicable and consistent with state and University budget policies, amounts allocated to the University pursuant to paragraph 2 will be dedicated to support University research and commercialization activities, including research in the inventor’s department or unit, if approved by the Provost or that officer’s designee.

4. In the event that a person contributes an invention to the University, a written agreement accepting such contribution shall be executed by the President or that officer’s designee, subject to approval and acceptance of The Board of Trustees of the Radford Foundation of Radford University. In the event that a person otherwise assigns an invention to the University for value, the terms of the agreement shall include a statement governing the division of income between the University and the assignor and a statement making these policies and procedures applicable to any development or refinement of the invention.

#### 3.4.8 Copyright

##### 3.4.8.1 Ownership of Non-Directed Academic Works

###### 3.4.8.1.1 Faculty

Faculty members retain full ownership of scholarly or creative works they produce as part of their traditional obligation to publish such works and the university’s tradition of upholding academic freedom. The exception to this rule is when the faculty member’s work is performed under a specific written contract with the university.

If a work is created as part of a specific assigned duty, outside of the scope of ordinary teaching and research obligations, the copyright may belong, in whole or in part, to the University. In this case, a clear written contract should explain the specific rights and responsibilities of the faculty member, along with other information (such as agreements about profit sharing, moral rights to content decisions, rights of publicity, etc.)

Written contracts are recommended in situations where directed works (such as a distance education project) involve substantial university investments. The University should inform faculty members of previous comparable contracts, and negotiations should be conducted in a transparent manner. Examples of appropriate contracts should be made available in an appropriate location, for instance the Office of Sponsored Programs or other IP administrative offices.

###### 3.4.8.1.2 Students

Students retain full ownership of scholarly or creative works they produce as part of their studies unless there is a prior contractual agreement. When significant use by students of university facilities, personnel, or other resources is contemplated, the university may require, as a condition this use of facilities, that ownership of the student-developed invention or creation be reserved to the university, in whole or in part. In such cases, a written contract regarding ownership and use of student creations or inventions should be signed by the student and the University.

###### 3.4.8.1.3 Other Employees

Intellectual property developed by employees who are not students or faculty shall be considered under the traditional work-for-hire employment rationale.

##### 3.4.8.2 Sponsored or Other Contracted Works

If a sponsored or other contracted work is created under an agreement that expressly requires copyright ownership by the University, the creator of the work must disclose the work to the University.

Provided there is no conflict with a sponsored agreement, the University, may release or transfer its rights to the work’s creator under an agreement negotiated between the creator and the University.

For a sponsored or other contracted work created under an agreement that does not expressly require copyright ownership by the University or a third party, the creator of the work shall own the work.

##### 3.4.8.3 Income from Copyright

###### 3.4.8.3.1 Works not Owned by Radford University

Authors and creators of original works in which the University claims no interest may exercise exclusive rights protected by copyright law, register the copyright and receive any revenues which may result therefrom.

###### 3.4.7.3.2 Works in Which Radford University Has an Ownership or Income Interest

Income received by the University through the sale, licensing, leasing or other use of copyrightable material in which the university has an ownership interest will normally be shared with the author. Compensation and division of royalties, if any, will be negotiated by written agreement prior to commencement of work on the project.

In the event that an author contributes a copyrighted work to the University, a written agreement accepting such contribution shall be executed by the President or that officer’s designee, subject to approval and acceptance of The Board of Trustees of the Radford Foundation of Radford University. In the event that a person otherwise assigns a copyrighted work to the University for value, the terms of agreement shall include a statement governing the division of royalties or other income between the University and the assignor.

##### 3.4.8.4 Revision of Materials

Materials owned by the University shall not be meaningfully altered or revised without providing the author a reasonable opportunity to assume the responsibility for the revision. If the author declines the opportunity to revise such material, the assignment of responsibility for the revision will be made by the Provost or such officer’s designee in consultation with the appropriate department or office.

#### 3.4.9 Trademarks, Service Marks, and Trade Names

Trademarks and service marks may be any work, name, symbol, or device, or any combination thereof, adopted and used by the University in the sale or advertising of goods or services to identify and distinguish such goods and services from those sold by others.

Trade names include any names used to identify Radford University and its services.

The President or such officer’s designee shall be responsible for protection and licensure of trademarks, service marks, and trade names used by or related to Radford University.

No licenses shall be granted to commercial entities for use of trademarks or service marks in connection with commercial services or stationery, alcoholic beverages, inherently dangerous products, products of obscene or disparaging characteristics, health related products, products classified as staple foods, meats, and natural agricultural products, and any other uses which in the opinion of the President or such officer’s designee, would degrade the reputation or goodwill of the University.

#### 3.4.10 Trade Secrets

Trade secrets may be comprised, generally, of any formula, pattern, device or compilation of information which gives one an opportunity to obtain an advantage over competitors who do not know or use it in commercial applications. To the extent permitted by Radford University Policies, trade secrets in which Radford University maintains an interest shall be protected in accordance with the terms of sponsored research agreements or, if none exist, by any lawful means available to the University as determined by the President or such officer’s designee.

#### 3.4.11 Disclosure of Intellectual Property and Related Records

All Individuals who are subject to these policies and procedures have a duty to disclose promptly, in writing, and prior to any disclosure either to the public or for commercial purposes, any intellectual property created or discovered by such individual, with the exception of non-directed academic works. Disclosure shall be made to the Provost or such officer’s designee.

The President or that officer’s designee may adopt policies and determine procedures in addition to, but consistent with, those set forth in RU Policies and in this document for appropriate institutional review of such disclosures. The duty to disclose arises as soon as the individual has reason to believe, on the basis of that person’s own knowledge or upon information supplied by others, that the intellectual property may be protectable under patent, trademark, or copyright law, or other applicable law. Certainty about the protections to be afforded such intellectual property is not required before a disclosure should be made.

All individuals who disclose intellectual property pursuant to these policies and procedures or RU Policies have a duty to deliver to the Provost or such officer’s designee all research data or other records and materials related to the intellectual property upon request of the Provost or such officer’s designee. As used herein, the term “research data or other records and materials related to the intellectual property” includes, but is not limited to, any recorded information, regardless of the form or media on which it may be recorded, writings, films, sound recordings, pictorial reproductions, drawings, designs, or other graphic representations, procedure manuals, forms, diagrams, work flow charts, any tangible product (e.g., equipment, furniture, sculpture or a model thereof) and its description, data files, data processing or computer programs (software), statistical records, laboratory notebooks or worksheets, field notes, edited and categorized observations, interpretations, analyses, derived reagents and vectors, tables, charts and other records, cells and cell lines, cell products, organisms, tissues, animals, synthetic compounds, samples, and any other information or materials that may aid in evaluation, use or commercialization of, or otherwise related in any way to, such intellectual property.

All financial records concerning patents or copyrights jointly owned by faculty members and the university shall be transparent and available to the faculty member.

#### 3.4.12 Confidentiality

The contents of written notifications to the Intellectual Policy Administrator by inventors and creators shall be confidential and shall not be disclosed to others within or without the university, except as may be reasonably necessary in the following situations:

– Disclosure by participants, in confidence, to legal counsel, accountants or other professionals assisting in the development or protection of intellectual property of the participants.

– Disclosure by the administrator, in confidence, to the university’s legal counsel, accountants or other professionals assisting in the development or protection of intellectual property in which the university may claim an interest.

– Disclosure by the participants or the administrator, in confidence, to the University Committee on Intellectual Property or Provost as part of the dispute resolution procedures of this policy.

– Disclosure as required by judicial process, including proper pretrial discovery.

– Reporting as required by statutory reporting requirements established by the General Assembly and implemented by the State Council of Higher Education, in cooperation with the Innovative Technology Authority.

#### 3.4.13 Conflicts of Interest

Ownership of any equity interest in a business entity that has an agreement with the University relating to research, development, licensing, or exploitation of intellectual property created or discovered by a student or employee shall be disclosed to the Provost or such officer’s designee. The Provost shall take any necessary steps to avoid injury to the University as a result of potential conflicts of interest arising out of such equity ownership.

No employee or student may serve as a director, officer, or employee of, or consultant to, a business entity that has an agreement with the University relating to research, development, licensing, or exploitation of intellectual property in which the University has an ownership interest except upon request of, or prior approval by, the President or such officer’s designee. Authorization to serve as a director, officer, or employee of, or consultant to, such a business entity may be subject to one or more conditions established to avoid injury to the University as a result of potential conflicts of interest.

The University may accept equity interests as partial or total compensation for rights conveyed in agreements with business entities relating to intellectual property owned by the University. The University may negotiate, but shall not be obligated to negotiate, an equity interest on behalf of any employee or student as a part of an agreement between the University and a business entity relating to intellectual property created, discovered, or developed by the employee or student and owned by the University.

In addition to compliance with the University’s other policies governing conflicts of interest and external professional activities, a person subject to these policies and procedures must consult with appropriate University administrators about any proposed consulting agreement with a third party when such consulting agreement contains provisions on patent rights, trade secrets, or the like. Such an agreement may not be entered by an employee or other person subject to these policies and procedures unless (1) it conforms to RU Policies and these policies and procedures or (2) the University waives its rights in any intellectual property arising from activities to be conducted in performance of the agreement.

#### 3.4.14 Disposition of University Income

In the disposition of any net income accruing to the University from patents or trade secrets, preferential consideration shall be given to the promotion of research in accordance with RU Policies.

In the disposition of any net income accruing to the University from licensure or assignment of copyright, preferential consideration shall be given to promotion of creative activities. Faculty concerns about this preference may be addressed through audit reports.

In the disposition of any net income accruing to the University from licensure of trademarks or service marks incorporating the name of the University, images of campus structures or the University mascot, preferential consideration shall be given to creation or enhancement of scholarships for athletics programs; provided, however, any trademark or service mark created to market or otherwise identify products related to inventions or discoveries arising from research or other academic activities shall be held and used strictly for academic purposes.

#### 3.4.15 Infringement or Unauthorized Use of Intellectual Property

Infringement or unauthorized use of intellectual property by University employees or students is prohibited. Any employee who engages in such conduct is subject to disciplinary sanctions established for misconduct in applicable personnel policies. Any student who engages in such conduct is subject to disciplinary sanctions established for misconduct in the Code of Student Conduct and/or Academic Integrity Code.

#### 3.4.16 Use of Intellectual Property by the University

If the University intends to use any intellectual property subject to these policies and procedures, and if that property is determined to vest in an individual inventor or author, the University will negotiate: a) use of patents as provided in Section 3.4.6.6 paragraph 2 above; b) use of traditional faculty copyrighted work as part of a comprehensive policy to encourage voluntary and mutually beneficial uses of faculty authored work, for example, in distance or online education.

#### 3.4.17 Dispute Resolution

In any case in which any creator or inventor of intellectual property disagrees with a decision of the administrator in respect to the ownership of intellectual property in which such persons claim an interest, or in respect to the sharing of royalties or other income accruing to the university through the sale, lease, licensing or other disposition of such property, such persons shall be entitled and obligated to pursue an administrative appeal within the university before pursuing any other legal or equitable remedy.

The administrative appeal shall be conducted as follows:

1. The aggrieved persons shall file with the Provost a written statement of appeal specifically identifying the nature of the dispute and specifically stating the relief requested. This statement must be filed as soon as practical after receipt by the aggrieved persons of written notice of the Administrator's decision which is being appealed.

2. Upon receipt of such a statement of appeal, the Provost shall refer the matter to the Intellectual Property Committee, which shall make written findings of fact and recommendations regarding resolution of the dispute. The committee may require, upon reasonable notice, that the aggrieved parties or the Administrator or both appear before it and provide the committee with additional information relevant to the dispute.

3. Upon receipt of the written findings and recommendations of the committee, the Provost shall state his or her decision as soon as practical, in writing, to the aggrieved parties and to the Administrator. He or she may affirm, modify or reject any determination of the committee.

4. If the Provost and the Administrator disagree, the matter shall then be referred to the President of the University to state his or her decision, in writing, to the aggrieved parties, the Administrator, and the Provost.

5. The decision of the President shall be final within the University and no further administrative appeal shall be available to the aggrieved parties or to the Administrator.