Section F8.1 Faculty Intellectual Property, Ownership, Copyright, Patent, and Revenue Policy

Section F8.1.1 Purpose

The purpose of this Policy is to describe the intellectual property interests, rights, and responsibilities in the work created by members of the East Central University community (University). This policy is a supplement to the Patent Policy and Copyright Policy promulgated by the Board of Regents of the Regional University System of Oklahoma (RUSO) and found in Section 5.13 of Chapter 5 General Policies. To the extent this policy conflicts with the general RUSO Patent Policy and Copyright Policy on issues involving distance learning, the RUSO policy prevails.

The University seeks to encourage intellectual inquiry, research, scholarship, and creativity among the members of its community in furtherance of the University's educational and academic mission. The University is committed to an academic tradition that recognizes the intellectual property rights of those who create work, including legally compliant uses of the work of others in the course of scholarly inquiry. This policy is intended to promote the free exchange of ideas and to advance the University's commitment to academic freedom. Members of the community are encouraged to pursue learning, research, academic inquiry, and other creative endeavors and to distribute, publish, and share their work.

Academic and scholarly work and research created by faculty, researchers, staff, administrators, and/or students is owned by its creator except in those limited circumstances where the work constitutes directed work or involves the use of substantial University resources, or in the case of staff or administrators, where the work is created in the course of their employment.

Section F8.1.2 Scope

This policy is applicable to intellectual property created by faculty, researchers, staff, administrators, students, and contractors of East Central University.

Section F8.1.3 Definitions

As utilized in this Policy, the following terms are defined as follows:

1. **Academic Work** means intellectual property and scholarly, pedagogical, research, or creative or artistic works in any medium developed by faculty members, researchers, or students. Academic work can include, by way of illustration, fiction and nonfiction books, textbooks, articles, dramatic works, works of visual art, musical compositions, scores, scripts, choreography, data sets, or software, as well as course syllabi, tests, problem sets, course websites, and lecture or class notes, whether in paper, electronic (i.e. online courses), or other form.
2. **Chief Academic Officer** is the Vice President for Academic Affairs of the university.
3. **Directed Work** means intellectual property and any work or invention created by staff or administrators in the course of their employment or commissioned by the University as stipulated in an agreement or contract. Directed work may be compensated by the institution or through a state, federal or private grant. It may also include work created by faculty, researchers, or students pursuant to an agreement and when supported by substantial University resources beyond those customarily provided to faculty, researchers, or students in their respective disciplines. In such instances where directed work is compensated by or pursuant to a state, federal, or private grant, contract, or agreement, the allocation/ownership of intellectual property rights shall be addressed and established prior to final and full execution of the contract/agreement.

4. **Directed Work** includes work created for institutional purposes, such as work created at the request or direction of the University. Examples may include development of course materials, software, digital and/or electronic works, promotional materials, catalogs, alumni communications, enrollment materials, training programs, personnel procedures, departmental or divisional standard operating procedures, policies, internal memoranda, reports, databases, data sets, surveys, designs, processes, and University trade secrets or other products relating to the operations and functions of the University can constitute directed work.
5. **Intellectual Property** refers to creations or works and the rights to those works under law. A variety of federal and state laws protect ownership of creative works, including writing, music, art work, photography, films, trade or service marks, software, and inventions. Depending upon their form, works can be copyrighted by their creator and/or with the government, as in the case of a writing, trademarked as in the case of a logo, or patented, in the case of an invention. In addition, an owner of a work can license or grant legal permission to the institution. Under this policy, the term "Intellectual Property" and associated terms are applied consistent with their legal meaning.
6. **Licensure** is the right to use or market the course materials for educational or institutional purposes.
7. **Substantial University Resources** means the provision of support, facilities, or services, including staff or administrative assistance, over and above the resources made available in the ordinary course of teaching, writing, lecturing, or conducting research. The term does not include incidental support customarily provided to faculty, researchers, or in connection with their work and responsibilities as faculty, or researchers. The University will not construe its provision of offices, library resources, laboratories, sabbatical leaves, computers, or IT support services to faculty in the ordinary course of their faculty responsibilities, including teaching or research, as constituting "substantial University resources" unless that support is furnished by the University for the purpose of supporting directed work, or as otherwise may be agreed upon.

Section F8.1.4 Ownership

In keeping with academic tradition, and except to the extent required by the terms of any funding agreement or for substantial use of university resources to create the work, employees who are authors of academic works own the pedagogical, scholarly, or artistic works, regardless of their form of expression. If a faculty member retains title to copyright in teaching or course materials that are not directed work, such as class notes, curriculum guides and laboratory notebooks, the university and/or the university component shall not retain a royalty-free right to use the materials for educational purposes without the express permission of the copyright owner.

The creator retains ownership of directed work; however, the University maintains a royalty-free exclusive license to use and distribute the material. In cases where the directed work involves trade secrets or other products relating to the operations and functions of the institution, the university retains the right to restrict distribution.

The creator retains ownership of an invention unrelated to creator's employment responsibilities provided that it is developed on personal time without the use of customary university resources. The invention is not owned by the university in these instances.

Section F8.1.5 For-Profit and Commercial University Uses

University resources shall not be used in connection with for-profit commercial enterprises or other non-academic or non-University purposes unless such arrangements are reviewed and approved by the University administration. However, faculty and students retain the right to publish or display their work in for-profit publications or fora, while being cognizant of their obligation to recognize East Central's identity and intellectual property interests.

Section F8.1.6 Copyrights/Patents and Royalty Distribution

All ECU personnel, in accordance with RUSO policy and basic objective of promoting creative and scholarly activities, are free to develop, create, and publish copyrightable or patentable works.

F8.1.6.1 Copyright Ownership

- Under the Copyright Revision Act of 1976, 17 U.S.C. '101 et seq. (1976), works of original authorship are protected by copyright from the time they are fixed in a tangible medium of expression, now known, or later developed.
- Copyrighted works produced by the ECU faculty and staff are the property of the creator of that work. All rights afforded copyright owners under '106 of the Act reside with the creator unless they have assigned or licensed any of the enumerated rights. Decisions relative to registering of these works with the Copyright Office are left to the individual creator.
- Copyright in directed works specifically commissioned by the university under § 201 (b) of the Act shall belong to the university. As copyright owner, the university shall make decisions relative to registering commissioned works. Royalties for university-commissioned copyrighted works may be shared by the university and the creator(s) of the work. The terms of any grant or contract relative to royalties shall take precedence over this policy should there be a conflict between them.
- Works produced under a specific contract or grant agreement between the University and a governmental or other agency or organization are **subject to the terms of the grant** or contract for purposes of copyright. If copyright ownership is not specified, such rights shall reside in the creator.
- Where University service units (such as media production department) are involved with the production of a substantially completed copyrightable product, royalties shall be distributed between the copyright owner, i.e., faculty or staff creator, and the University as provided for in a written agreement concluded prior to work being done.
- In instances in which a written agreement has not been finalized prior to the completion of the copyrightable product, the standard distribution of royalties will be provided to creator with 50 percent of the net income when mass production and distribution are accomplished by the University; 50 percent of the gross income when mass production and distribution are accomplished by an outside entity. If this standard is unacceptable to either party, the matter shall be referred to the University President, pursuant to RUSO policy section 5.13.2.

F8.1.6.2 Patents

- *General Statement:* It is in the best interest of the Board and the State of Oklahoma to encourage faculty and staff members of the Universities to undertake creative endeavors and to receive recognition thereof. The individual or individuals who make the discoveries or inventions which become the property of the University under this Policy will share in income derived by the university from the marketing of such inventions and patent rights based thereon according to such terms as the President of the university shall direct.
- As provided for below, discoveries or inventions made or created by employees, faculty, students, and staff of the university will become the property of the university. Any and all benefits accruing to the university and derived from such discoveries or inventions will be used to further the research enterprise of the university. The university through its President, or an officer of the university designated by the President, may recognize the contract with patent service organizations, such, for example, as University Patents, Inc., or Research Corporation, in regard to obtaining, maintaining and marketing of patent rights (domestic and foreign) based on discoveries or inventions which are or shall become the property of the university pursuant to this Policy. It is not contemplated that this Patent Policy shall extend to and include questions of copyright ownership.
- *Inventions and Patents.* All discoveries or inventions, whether patentable or unpatentable, and including any and all patents (domestic and foreign) based thereon and applications for such patents, which are made or conceived by any member of the faculty, staff, or student body of the university, either in the course of employment by the university or through the use of substantial university resources shall be the property of the university; and all rights therein shall be assigned, licensed, or otherwise commercially exploited as directed by the President of the university or by a duly authorized officer of the university, who shall be designated by the President of the university.

Section F8.1.7 Respect for Intellectual Property

While it is in the interest of the university and of faculty members to protect their intellectual property rights, it is also the responsibility of all parties to respect the intellectual property rights of others, both inside and outside the university community. Whenever a member of the faculty uses texts, images, or other creative materials produced by another entity, they should abide by the terms of Title 17 of the U.S. Code or whatever other copyright scheme (Creative Commons, copyleft, etc.) is claimed by the creator. This includes proper citation procedures, image captions giving credit to creators, and links to creator websites where appropriate. Faculty should be aware of the "fair use" doctrine of U.S. copyright law and its limitations, and should obtain permission from the copyright holder when fair use is not applicable.

Section F8.1.8 Conflict Resolution

In case of a dispute arising over the application of this policy and/or the ownership of intellectual property, either party of the dispute (the university or the creator/s) may submit a written request to the chief academic officer for a meeting of an ad-hoc Intellectual Property Committee (IPC) within 30 days of identification of the dispute. Disputes arising over royalty sharing for university-commissioned works shall be referred to the general counsel for the Board as per RUSO policy.

Upon receipt of a request for a meeting, the Chief Academic Officer shall convene the IPC consisting of a minimum of the following:

1. Associate vice President for academic affairs;
2. One representative from the Office of Research & Sponsored Programs;
3. Six faculty members, including at least one Faculty Senator and one representative from the ECU chapter of American Association of University Professors;
4. Legal counsel in an advisory, non-voting capacity.

Faculty should broadly represent undergraduate and graduate programs in a variety of disciplines across the academic colleges and library. Other members may be added by a majority vote of the established IPC as appropriate to the issue in need of resolution and in cases where IPC members need to recuse themselves. The Chair of the IPC will be elected by the committee at the first meeting.

Within 30 days of the chief academic officer's request, the IPC will review the facts in meetings open to observers and formulate a recommendation for resolution of the dispute to the chief academic officer. The decision of the chief academic officer will be final. The chief academic officer will render a determination within 30 days of receipt of the IPC recommendation or the university will relinquish rights to ownership of the disputed copyright.

Section F8.1.9 Need to Memorialize the Allocation of Intellectual Property Rights When Substantial University Resources Are Utilized

When the use of substantial University resources will be involved, the University should be so advised and questions regarding the allocation of intellectual property rights should be addressed prior to the undertaking. The creator of such work is responsible for advising the University in advance in order to ensure that questions of ownership can be mutually addressed at an appropriate point in time.

Section F8.1.10 Update/Revision of Policy

The Research Committee and OSPR shall periodically monitor and review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies, and propose policy revision, when such changes affect existing policies.