

TO: Craig Parks, Chair of Senate

FROM: Judith McDonald, Chair of the Faculty Affairs Committee



SUBJECT: Proposed changes to the Faculty Manual

The Associate Vice President for Economic Development and External Affairs, Anson Fatland, submitted a series of suggested changes to the Faculty Manual regarding copyrights and royalties. These changes have been reviewed by the Faculty Affairs Committee and we support the attached changes outlined in IV F Intellectual Property (starting on page 79 of the *Faculty Manual*).

Note, in particular, the additions to bullets 1. a) and e), and the changes to 3. Intellectual Property Committee

the supervisor shall not disclose financial aspects of the request except to his or her own supervisors.

## SECTION IV F. INTELLECTUAL PROPERTY

### 1. Introduction

- a.) Intellectual property is the inherent value produced by human creativity and invention, protected by law from unauthorized exploitation by others, and includes patents, copyrights, trademarks, plant variety protection certificates, and other proprietary information.
- b.) The University's patent and copyright policies are intended to encourage a healthy atmosphere conducive to research and development through a system of rewards and incentives for the creation of intellectual property while at the same time giving proper consideration to the responsibilities that the University has as a public land-grant university.
- c.) The strength of the University lies in its employees. The University's policies can provide invaluable assistance in bringing employee ideas to development and fruition within a framework of mutual trust and collegiality.
- d.) These policies are intended to spell out the responsibilities of the University and its employees and establish a framework for ethical conduct. While employees are encouraged to consider the potential market value of their inventions, they shall not be held liable for failing to recognize a potentially patentable invention. Nothing in this policy shall be construed as abridging a faculty members' academic freedom in the classroom.

- e.) Employees of Washington State University may create copyrightable works, ~~and~~ patentable, and otherwise protectable discoveries. It is desirable in the public interest in some cases to seek University intellectual property protection for these works and discoveries. Commercialization through licensing the use of the property provides an opportunity for both income to the inventor and support for further University research and scholarship.
- f.) This Intellectual Property Policy applies to all University Employees. For the Purposes of this Intellectual Property Policy, "Employee" shall be defined as any person receiving compensation for service, or any person volunteering services for the benefit of the University. Employees shall include, but not be limited to, faculty, administrative and professional personnel, classified staff, research fellows, staff assistants, and all other student employees. "Faculty" shall be defined as permanent and temporary teaching, research, service, extension, library, or student affairs appointment faculty, graduate teaching and research assistants, visiting scientists, and postdoctoral researchers. The uncompensated activities of students in furtherance of their education shall not be considered service that benefits the University within the meaning of this policy unless an agreement exists to the contrary.
- g.) **All employees accept the terms of these policies as conditions of employment or** gratis association. Employees shall agree to execute an assignment of their future patentable works and discoveries to the University. These policies may be modified by the administration with approval from the Board of Regents after consulting with faculty and staff of the University.

## 2. Applicable Laws

- a.) Federal law governs the creation of intellectual property. The United States Constitution, Article III, Section 8, gives to Congress, in order "to promote the progress of science and the useful arts, "the power to grant, for limited periods of time, to authors and inventors, the exclusive right to their respective writings and discoveries." The Copyright Act, in Title 17 of the United States Code, sets out the requirements by which an author of literary, artistic, and similar works may obtain copyright protection, and provides that in the case of a "work made for hire," the employer is the author for copyright purposes. 17 U.S.C. § 201(b). The Patent Act, in Title 35 of the United States Code, sets out the requirements by which inventors of new and useful processes, machines, manufactures, or compositions of matter may obtain patent protection.
- b.) The Washington State Ethics Law (Ethics Law), RCW 42.52, and the rules promulgated pursuant to the law, restrict the use of state resources for private purposes, and state employees are individually responsible for complying with this law. For Ethics Law purposes as it relates to this Policy, state employees are defined as all faculty, staff, and students employed by the University. The Ethics Law provides that "No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another." RCW 42.52.160. However, the Ethics Law allows state officers and employees to receive "honoraria" if "authorized by the agency where they serve." Honoraria is defined in the Ethics Law to mean "money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role." RCW 42.52.010(11).

**Comment [A1]:** Sherry to revise this addition

**Comment [A2]:** Sherry to verify the RCW reference

- c.) Consistent with the Ethics Law, this Policy authorizes— University employees, —under defined circumstances, to retain ownership to certain intellectual property created with University resources. Additionally, this Policy authorizes University employees to receive royalty payments from commercialization of certain University-owned intellectual property that they created.

### 3. Intellectual Property Committee

- a.) The Intellectual Property Committee serves as an advisory committee to the Associate Vice President for ~~Research-Economic Development and External Affairs~~ on all University intellectual property (i.e., patent, copyright, trademark, and proprietary information) especially with regard to University policy on these matters. All members of the Committee shall hold confidential all matters coming before the Committee regarding specific intellectual property.

- b.) The composition and tenure of the Intellectual Property Committee shall be:

(1) Six faculty with three-year terms, one of who will be appointed chair. The Faculty Senate may suggest faculty members to be considered by the President.

(2) Two Deans or Associate Deans of the colleges for three-year terms.

(3) One member of the administrative and professional personnel or staff, with a three-year term.

(4) Director of Office of Commercialization (OC) who serves as secretary to the Committee. Director of the Office of Grant and Research Development. Both Directors act as ex officio members to the committee.

(4)(5) Associate Vice President, Economic Development and External Affairs, who serves as an ex officio member of the committee

- c.) The quorum required for voting at a committee meeting must be no fewer than five voting members; three of whom must be faculty.

**Comment [WD3]:** Maintains voting majority with faculty.

### 4. Office of Commercialization

- a.) The Office of Commercialization (OC) (<http://commercialization.wsu.edu>) serves the University and its employees by promoting the transfer of technologies, encouraging the disclosure of intellectual property, conducting preliminary reviews of commercial potential of invention disclosures, and determining copyright and patent protection and licensing of intellectual property, OC manages invention disclosures, patenting—, license agreements, marketing efforts, federal reporting, and royalty income. The professional staff includes the Director, Program Administrative Manager, and Technology Licensing Associate(s).

## G Patent Policy

An invention may be a design, process, code, biological material, or device that shows