

## Article 39

### INTELLECTUAL PROPERTY

#### A. Intent

The intent of this Article is to establish the procedures for determining the rights and ownership of Intellectual Property produced at or for the STATE SYSTEM/UNIVERSITIES by FACULTY MEMBERS.

#### B. Policy

1. As an incentive to encourage scholarly growth, the STATE SYSTEM/UNIVERSITIES shall not claim any ownership or share of the proceeds in Intellectual Property created without substantial use of STATE SYSTEM/UNIVERSITIES resources/support/facilities.
2. In keeping with academic tradition, the STATE SYSTEM/UNIVERSITIES will not claim any ownership, interest, or share of the proceeds in the following types of Intellectual Property which are used or created for instructional purposes or as a result of scholarly activities: (a) publications, (b) textbooks, (c) educational courseware, (d) lectures, (e) recordings [video or audio], (f) original works of art, (g) fiction, including popular fiction, novels, poems, dramatic works, (h) motion pictures and other similar audio-visual works, (i), musical compositions, or (j) computer software.
3. The STATE SYSTEM/UNIVERSITIES will not claim ownership, interest, or share of the proceeds in Intellectual Property created while on sabbatical leave unless there was substantial use of STATE SYSTEM/UNIVERSITIES resources/support/facilities as defined herein.
4. All Intellectual Property developed in conjunction with organizations in partnership with the STATE SYSTEM/UNIVERSITIES resources/support/facilities shall be governed by the provisions of this Article.
5. This Article also applies to any Intellectual Property in which the STATE SYSTEM/UNIVERSITIES has an interest under the terms of grants or other agreements.
6. The provisions of this Article are subject to any applicable laws, regulations or provisions of grants or contracts, which affect the rights of Intellectual Property, made in connection with the activity.
7. All Intellectual Property developed by FACULTY MEMBERS with support from a sponsor outside the STATE SYSTEM/UNIVERSITIES shall be governed by the provisions regarding ownership in the sponsorship agreement,

grant or contract. In the absence of such terms, the ownership of such Intellectual Property shall be determined by this Article.

8. Intellectual Property that is the subject of a specific agreement between the STATE SYSTEM/UNIVERSITIES and the creator(s) thereof shall be owned as provided in such agreement.

9. Ownership and creative control of works made for hire will be governed by an agreement to be made prior to commencement of work between the STATE SYSTEM/UNIVERSITIES and the creator. The creator is one who receives payment from the STATE SYSTEM/UNIVERSITIES for the particular work.

### C. Definitions

For the purpose of this Agreement, the following definitions shall apply:

1. Intellectual Property - includes any invention, whether patentable or not, materials, data, software, information, works, whether copyrightable or not, subject matter, any trademarks, trade secrets, creations, publications, compositions, discoveries, inventions, improvements, developments and all other results of work performed by FACULTY MEMBER(s)/CREATOR(s) during the course of his/her employment with the STATE SYSTEM/UNIVERSITIES, as well as all intellectual property therein, including patents, trademarks and copyright registrations and trade protections.

2. Creator - any FACULTY MEMBER creating an item of Intellectual Property.

3. Net Income - the total income generated by the licensing, sale, distribution, or other commercialization of Intellectual Property, less the direct and indirect expenses incurred by the STATE SYSTEM/UNIVERSITIES for:

- a. Substantial use of STATE SYSTEM/UNIVERSITIES resources/support/facilities. (See Section C.4. below.)
- b. The sale or licensing of Intellectual Property.
- c. The production, development, maintenance, and distribution of Intellectual Property.
- d. Litigation and other steps to obtain, maintain, enforce, or defend the patent/copyright/trademark/trade secret/license rights of Intellectual Property.

4. Resources/Support/Facilities

a. Use of STATE SYSTEM/UNIVERSITIES resources/support/facilities will be considered substantial if the use of such resources/support/facilities is important to the creation of Intellectual Property and STATE SYSTEM/UNIVERSITIES aid exceeds a cumulative total of \$40,000 per project, for any combination of the items listed below over a three-year period. Examples of such support items include but are not limited to the following:

- (1) Alternate assignment, and/or special assignment for a specific project or task.
- (2) Use of STATE SYSTEM/UNIVERSITIES funds designated for a specific project or task.
- (3) Use of STATE SYSTEM/UNIVERSITIES-owned, administered, leased equipment, facilities, materials or technological information.
- (4) Support provided by other public or private organizations, when it is arranged, administered, or controlled by the STATE SYSTEM/UNIVERSITIES.
- (5) Assistance of one or more STATE SYSTEM/UNIVERSITIES' employees or students, or others who are assigned to a project or task.
- (6) Cash investments or cash purchases.

b. Examples of such support does not include the following:

- (1) Mere incidental use of STATE SYSTEM/UNIVERSITIES resources/support/facilities.
- (2) Normal academic use of facilities commonly available to FACULTY MEMBERS, staff, or the public, such as libraries, offices, office equipment, or Internet services.
- (3) Use of university sabbatical leave, unless Section B. 3 is applicable.

#### D. Procedures

1. In the event that the STATE SYSTEM/UNIVERSITIES provides substantial support under Section C.4. above, the STATE SYSTEM/UNIVERSITIES and FACULTY MEMBER(S) involved shall enter into an agreement, which shall set out ownership rights in any product developed.

Such document shall provide at a minimum that the FACULTY MEMBER(S) involved shall receive no less than sixty percent (60%) of the net income until the agreed substantial support of the project is repaid to the STATE SYSTEM/UNIVERSITIES and no less than seventy percent (70%) of the net income thereafter. The parties agree that a model of the agreement referenced in this subsection will be agreed upon by the parties at State Meet and Discuss. This model shall include definitions of net income and direct and indirect costs to be used in calculating project support.

2. Should the STATE SYSTEM/UNIVERSITIES wish to evaluate its ownership interests, the FACULTY MEMBER(S) and APSCUF shall work cooperatively with the STATE SYSTEM/UNIVERSITIES and with anyone to whom the STATE SYSTEM/UNIVERSITIES may refer the Intellectual Property in question for evaluation.

3. The STATE SYSTEM/UNIVERSITIES, the FACULTY MEMBER and APSCUF shall not commit any act which would tend to defeat the STATE SYSTEM/UNIVERSITIES' or FACULTY MEMBERS' interest in Intellectual Property and shall take any necessary steps to protect such interest.

4. The STATE SYSTEM/UNIVERSITIES and FACULTY MEMBERS shall promptly execute all contracts, assignments, waivers, or other legal documents necessary to delineate and effect the transfer of rights in Intellectual Property under this Article, and to obtain and enforce Intellectual Property rights.

5. Should the STATE SYSTEM/UNIVERSITIES decide to abandon or not to pursue its ownership rights, it shall assign the rights to the creator(s).

6. Except where limited by other sections of this Article, the Creator of any Intellectual Property may, with the written permission of the STATE SYSTEM/UNIVERSITIES, choose to place Intellectual Property in the public domain. In such cases, both the Creator and the STATE SYSTEM/UNIVERSITIES waive all ownership rights to said Intellectual Property. Creators wishing to place Intellectual Property in the public domain are responsible for ascertaining that the right to public dedication of that Intellectual Property is not limited by any sponsorship agreement, grant, contract, term of employment, or specific agreement between the Creator and the STATE SYSTEM/UNIVERSITIES as described herein.

7. The STATE SYSTEM/UNIVERSITIES and FACULTY MEMBERS are prohibited from signing any agreement with outside persons which may abrogate or otherwise affect the STATE SYSTEM/UNIVERSITIES' or FACULTY MEMBERS' rights and interests in this Article or which otherwise conflict with this Article.

E. Dispute Resolutions

1. Any dispute regarding the interpretation and application of the provisions of this Article shall be subject to the grievance and arbitration provisions of Article 5 of this Agreement.
  
2. Upon submission of a timely request for arbitration by either party, the Office of the Chancellor or APSCUF shall submit the dispute to the American Arbitration Association for the appointment of an arbitrator pursuant to the provisions of Article 5, Section D. of this Agreement, with the exception that the arbitrators suggested by the American Arbitration Association shall be required to have had experience with and be knowledgeable about issues involving the resolution of Intellectual Property disputes.