

**West Virginia State University Board of Governors
Meeting of September 23, 2010**

ITEM: Draft West Virginia State University
BOG Policy No. 59:
Intellectual Property Rights
Management

ADMINISTRATIVE AREA: West Virginia State University

RECOMMENDED ACTION: Approval to release one policy for the
30-day "comment" period.

PRESENTER: Drs. Gregory D. Epps, Sr., Orlando F.
McMeans, Jose U. Toledo

BACKGROUND

As research and other associated academic activities intensify at West Virginia State University, the need for a more comprehensive and detailed Intellectual Property Rights Management (IPRM) Policy is required. The IPRM policy has been assembled following as a guide policies of other reputable Institutions of Higher Education in this country. This policy provides greater safeguards to the Institution in terms of protecting its intellectual property created within its confines. The policy has been reviewed internally (e.g. intellectual property management committee, academic affairs, and faculty senate) [and WVSU R&D Board of Directors] and externally by the University's legal counsel (Steptoe and Johnson, LLC).

WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS

West Virginia State University

BOG Policy # 59

Title: Intellectual Property Rights Management Policy

Section 1. General

1.1 West Virginia State University is an 1890 Land-Grant Institution committed to the citizenry and clientele it serves via teaching, research, and extension.

1.2 The University recognizes that two of its major objectives are the production of new knowledge and the dissemination of knowledge. Inventions, discoveries, copyrightable, and other creative works that have the potential to be brought into practical use can result from the conducting of institutional research or educational activities performed at the University by its employees, in the course of their duties or through the use, by any person, of University resources such as facilities, equipment or funds. Such activities are desirable in that they contribute to the professional development of the individual, enhance the reputation of the University, provide additional opportunities for participating students, and promote the general welfare of the public at large.

1.3 The proper management of intellectual property is integral to the purpose and mission of the University.

Section 2. Purpose

2.1 The purpose of the West Virginia State University Intellectual Property Rights Policy is to encourage and recognize research and innovation within the University community, clarify ownership of intellectual property rights, create opportunities for public use of University innovations, and provide for the sharing of revenue with the creators of intellectual property when such revenue is derived from the protecting and licensing of intellectual property.

2.2 This policy provides for a fair and consistent procedure for defining intellectual property rights. The circumstance under which intellectual property is created also determines ownership rights to said property.

2.3 This policy establishes procedures for the disclosure, determination of interests, and management of intellectual property, and recognizes the rights of creators of intellectual property to financial benefits, while safeguarding the rights of the University.

Section 3. Objectives

- 3.1 To create and optimize the support mechanisms and incentives that encourage inventive work at the University.
- 3.2 To ensure that the University's mission is not compromised.
- 3.3 To provide for fair allocation of benefits between inventors and the University.
- 3.4 To establish guidelines for personal, private and government sponsors, and all other funding organizations on the dispositions of intellectual property.
- 3.5 To define the rights and responsibilities of administrators, faculty, staff, and students.
- 3.6 To ensure the widest and earliest dissemination of innovative and creative work.

Section 4. Application

- 4.1 This policy addresses both individual and University intellectual property rights, and applies to all persons creating intellectual property at West Virginia State University.
- 4.2 This policy applies to all faculty members, administrators, staff, students, and any other individuals who receive financial support from West Virginia State University, and/or who use West Virginia State University facilities or materials in the process of conceiving, and/or developing an idea, invention, or discovery.

Section 5. Administration

- 5.1 The President of West Virginia State University delegates the fiscal administration of this policy to the West Virginia State University Research and Development Corporation (WVSU R&D Corporation). Thus, the WVSU R&D Corporation's Executive Director will be the "fiscal" administrator of this policy and will be responsible for the fiscal accountability of all proceeds related to this policy (including, but not limited to, the tracking of all expenditures and revenues generated by these activities).
- 5.2 The President shall also designate a Policy Administrator responsible for the administration of this policy (e.g. Vice President or Special Assistant to the President) who will assume the primary responsibility for the overall operational administration of this policy. The Policy Administrator, in turn, has the authority to appoint an officer who will assume the daily operational administration of the policy.

5.3 The Policy Administrator (and designated officer) will administer this policy campus-wide and all activities implicated therein.

5.4 In the event of a vacancy, or for any other reason, the President shall appoint another individual to carry out the responsibilities of this policy.

Section 6. Council for Intellectual Property Rights Management

6.1 The Council for Intellectual Property Rights Management (Council) will advise the Policy Administrator, assist with coordination of activities, review current procedures and make recommendations for policy development.

6.2 The Council has the responsibility for resolving conflicts of interest that involve intellectual properties or any commercial involvements or consulting arrangements of West Virginia State University personnel. The Council is also responsible for dispute resolution.

6.3 The Council has the responsibility for reviewing disclosed intellectual property and for advising the Policy Administrator on the priority for commercialization.

6.4 The President shall appoint a council for intellectual property management consisting of a minimum of five members.

6.5 The Council shall be chaired by the Policy Administrator and should include administrative and non-administrative members of various key areas of the University (e.g. faculty members of different colleges, administrators, and staff).

6.6 The President of the University may make additional appointments and may designate another individual to serve in the event of a vacancy in one of the aforementioned positions.

Section 7. Works Subject to Intellectual Property Protection

7.1 Works subject to intellectual property protection are divided into two categories: (1) technical works or technology and (2) creative works.

7.2 Technical works include works that are generally of a scientific, engineering, or technical nature – such as patentable or unpatentable inventions, devices, machines, processes, methods, compositions, and computer software. All computer software is included in technical works except that which is clearly developed for entertainment or for instructional purpose, e.g. electronic textbooks and textbook

supplements, classroom and self-study tutorials. Technical works may include, but are not limited to, prototype devices, novel biological materials, new chemical compounds, materials having novel optical or electronic characteristics, software and programming code, and/or business methods.

7.3 Creative works include works not covered in technical works that are of an artistic, scholarly, instructional, assessment, or entertainment nature. Examples of creative work might include creative productions, such as works of art or design, musical scores, books, poems, plays, short stories, essays, novels, memoirs, screenplays, and other types of scholarly or creative writings, such as films, video and audio recordings, and instructional materials, such as textbooks and multimedia programs.

7.4 Creative works and traditional academic publications that are produced as a normal outcome of scholarly work and have minor commercial possibilities are not included except under specific and unusual circumstances as determined by the Policy Administrator. Those publications would include professional papers published in scholarly journals, scholarly books of limited use, or supplementary texts and similar materials. Likewise, juried artistic creations or performances that are the academic, noncommercial equivalents of such scholarly publications are not included.

Section 8. Definitions

8.1 For the purpose of this policy, the following terms are defined as indicated below:

8.1.1 Biological materials – shall include, but are not limited to, chemical compounds of biological origin, drugs, mutants, genetically engineered organisms, antibodies, hybridomas, cell lines, sera, supernatants, vectors, antigens, Recombinant Deoxyribonucleic Acid (cDNAs), Expressed Sequence Tags (ESTs), Single Nucleotide Polymorphisms (cSNPs), and chemical compounds including enzymes and derivatives thereof.

8.1.2 Copyrighted materials – shall include books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, proposals, lectures, musical or dramatic compositions, unpublished scripts, films, filmstrips, charts, transparencies, and other visual aids, video and audio tapes or cassettes, live video and audio broadcasts, programmed instructional materials, mask works, software, and other subject matter of works which qualify for protection under the copyright laws of the United

States (see 17 U.S.C. § 102 et seq.) or other protective statutes whether or not registered there under.

- 8.1.3 Creator – means the individual or group of individuals who authored, or were otherwise responsible for the production of the intellectual property.
- 8.1.4 Intellectual property – shall be deemed to refer to patents, copyrights, trade secrets, and technical data corresponding to technical works and creative works. Trademarks are excluded from this definition.
- 8.1.5 Net equity – means the value of the equity received by the University as a result of transferring rights in the intellectual property less the University's out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring that intellectual property.
- 8.1.6 Net income – means the gross monetary payments the University receives as a result of transferring rights in the intellectual property less the University's out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring intellectual property.
- 8.1.7 Novel plant variety – means a novel variety of sexually reproduced plant. (See 7 U.S.C. § 2321 et seq.)
- 8.1.8 Patentable inventions – shall be deemed to refer to subject matter (a new, non obvious, useful process, machine, manufacture, composition of matter or improvement) which reasonably appears to qualify for protection under the patent laws of the United States or other protective statutes, including novel plant varieties and patentable plants, whether or not patentable there under.
- 8.1.9 Patentable plant – means an asexually reproduced distinct and new variety of plant. (See 35 U.S.C. § 161.)
- 8.1.10 Scholarly work – means books, articles, and other publications, artistic creations, literary manuscripts, visual and auditory creations, and musical works, irrespective of their medium of storage or presentation. The former items are meant to include software, computer programs, and databases, but only if they are accessory to or part of a scholarly text. Textbooks and related software developed as a specific University assignment are not considered scholarly work for the purpose of this definition.

8.1.11 Significant use of University resources – is the use of University resources that is over and above the normal usage of library resources, secretarial help, word processing equipment, or other support services. Prior to completion of the creation of intellectual property, or as early as possible in the creation of intellectual property, the creator shall seek a determination of whether this definition applies to the intellectual property by fully and openly disclosing the facts surrounding the creation of intellectual property to the creator's department chair or director, who shall issue a written opinion. The creator may appeal this decision, in writing, to the Policy Administrator.

8.1.12 Software – shall include one or more computer programs existing in any form, or associated operational procedures, manuals, or other documentation, whether or not protected by patent or copyright. The term "computer program" shall mean a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specific functions.

8.1.13 Specific University assignment – means intellectual property specifically ordered or commissioned pursuant to a written, signed agreement between the University and the creator.

8.1.14 Trademarks – shall include all words, seals, symbols, designs, slogans, or logotypes developed by or associated with the University and used for the purpose of identifying the source or origin of the goods or services being provided.

8.1.15 Trade secrets – means information including, but not limited to, technical or non-technical data, a formula, a pattern or compilation, a program, a device, a method or process, a list of actual or potential customers or suppliers which: (1) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain secrecy.

Section 9. Disclosure

9.1 All members of the West Virginia State University community who are covered by this policy shall disclose the nature and detail of their anticipated

invention or discovery in writing to the Policy Administrator at the earliest possible date, preferably within 30 days of (after) making the invention or discovery, using the West Virginia State University Intellectual Property Disclosure Form.

9.2 The invention or discovery shall be disclosed to the University prior to disclosing the invention or discovery to the public.

9.3 Within a reasonable time, the Policy Administrator shall notify the inventor in writing whether it is West Virginia State University's intention to retain its interest and to acquire assignment of all ownership rights of the invention or discovery. If such notification cannot be made during that time period, the inventor shall be notified as to the reason for the delay and the additional time necessary to make such determination.

Section 10. Intellectual Property Subject to Contractual Agreements (e.g. Sponsored Research Agreements)

10.1 In the case of inventions and copyrightable works developed in the course of research funded by a sponsor pursuant to a grant or research agreement, or which is subject to a materials transfer agreement, confidential disclosure agreement, or other legal obligation requiring disclosure, the disclosure of such intellectual property will be governed by the terms of such grant or agreement, as approved by the Policy Administrator, if such terms differ from the policy.

Section 11. Guidelines Regarding Public Disclosure of Invention

11.1 Internal disclosure of an invention or creative work will not interfere with the ability to patent the invention or copyright the creative work. However, public disclosure of an invention prior to filing for a patent could preclude the availability of patent protection in most countries outside the United States. This rule applies to any non-confidential written or oral disclosure that describes the intellectual property (e.g. at a scientific meeting, in a journal, or even in an informal discussion with colleagues). Similarly, certain damages for copyright infringement can be forfeited as a result of failing to apply for a copyright registration of a creative work within a prescribed time period.

11.2 Accordingly, West Virginia State University requires inventors to disclose intellectual property to the Policy Administrator as soon as possible, and to delay public disclosure of the intellectual property until the evaluation process is completed and a patent or copyright application is filed if deemed necessary.

11.3 During this interim period, an invention may safely be disclosed outside of West Virginia State University under the protection of a confidential disclosure agreement, because disclosures made under an agreement are not considered public disclosures.

11.4 West Virginia State University requires that all inventors consult with the Policy Administrator (or designee) if they wish to disclose an invention to an outside researcher associated with a company or other organization.

11.5 Inventors should be aware that public disclosure of an invention prior to completion of the evaluation process and filing of a patent or copyright application will adversely affect the commercial value of the invention and therefore may decrease the likelihood that West Virginia State University will engage in commercialization of such invention.

Section 12. Receiving Confidential Information from Outside Researchers

12.1 If an inventor receives confidential information from an outside researcher or organization (non-profit or commercial) in relation to research performed by the inventor at West Virginia State University, the other organization or researcher may impose serious non-disclosure and non-use obligations on the confidential information and may claim an ownership interest in inventions, copyrightable works, or materials that arise in the course of research performed with such confidential information.

12.2 For this reason, only the Policy Administrator is authorized to approve and sign confidential disclosure agreements from other researchers or organizations on behalf of West Virginia State University.

Section 13. Ownership Rights

13.1 Ownership in intellectual property will be determined in accordance with the following categories of creation:

13.1.1 Individual Effort

Ownership rights to intellectual property in creative works ("Work" or "Works") shall reside with the creator of such Work if:

13.1.1.1 The Work is course material developed at the University by faculty or other employees. The University shall retain a non-exclusive, royalty-free license to use such material for educational purposes for up to twelve (12) months following the termination of the creator's employment at the University.

13.1.1.2 The Work was created by a student, not employed by the University, solely for the purpose of satisfying a course requirement. This does not apply if the transfer of ownership rights is made a condition of participation in the course.

13.1.1.3 The Work is scholarly work, unless the scholarly work was developed by the creator as a specific University assignment or was developed using significant use of University resources.

13.1.2 University – Assisted Effort

13.1.2.1 Ownership rights to intellectual property in Works developed by individuals with significant use of University resources shall reside with the University. Proceeds from the commercialization of intellectual property will be shared in accordance with the distribution of proceeds portion of this policy as an incentive to encourage further development of intellectual property.

13.1.3 University-Assigned Effort

13.1.3.1 Ownership rights to intellectual property in Works developed as a result of a specific University assignment shall reside with the University. Proceeds from the commercialization of intellectual property will be shared in accordance with the distribution of proceeds portion of this policy as an incentive to encourage further development of intellectual property.

13.1.4 Sponsor-Supported Effort

13.1.4.1 Ownership rights to intellectual property in Works developed as a result of a grant or contract with the University or the West Virginia State University Research and Development Corporation (WVSU R&D) shall reside with the University or WVSU R&D unless the terms of the grant or contract provide otherwise, in which case ownership of the intellectual property will be determined by the terms of the grant or contract.

13.1.4.2 Proceeds from the commercialization of intellectual property will be shared in accordance with the distribution of proceeds portion of this policy as an incentive to encourage further development of intellectual property.

13.1.5 Other Effort

13.1.5.1 Ownership rights to intellectual property in Works developed under any circumstances other than those listed shall be determined on an

individual basis in consultation with the Policy Administrator and any institutional oversight committee (if and when applicable).

13.1.6 Student Ownership

13.1.6.1 Students who independently develop a Work arising out of their participation in programs of study at West Virginia State University, such as theses or dissertations, research reports, or other associated academic activity, will usually retain ownership of the intellectual property rights to such Work unless:

13.1.6.2 It makes substantial use of West Virginia State University property, personnel, or facilities.

13.1.6.3 It is supported by a direct allocation of funds through the University (grant, contract, fellowship, scholarship, wage, stipend, etc.).

13.1.6.4 It is commissioned by the University.

13.1.6.5 It is otherwise subjected to contractual obligations such as a sponsored research agreement.

13.1.6.6 If any of the above conditions are met, students will be treated in the same manner as similarly situated West Virginia State University personnel. Students must promptly disclose to the Policy Administrator any Works capable of intellectual property protection which they have developed and in which West Virginia State University may have ownership rights.

13.1.6.7 Any student engaging in research or development of intellectual property under the supervision and direction of a faculty or staff member in connection with a program or activity subject to this intellectual property policy, shall have no ownership interests in the resulting intellectual property, but may be eligible to participate in the income and/or equity distribution established in this policy.

13.1.6.8 Faculty and staff who supervise or direct students shall have the students sign an Assignment of Ownership Agreement form as well as a non-disclosure form.

13.1.7 No Ownership Rights of West Virginia State University

13.1.7.1 The ownership rights to a discovery or invention and any resultant intellectual property are considered to be exclusive property of the inventor only if West Virginia State University has no interest in pursuing such ownership rights, or West Virginia State University has not contributed

to the conception or development of the discovery or invention in the way of funds, space, materials, reassigned time, or facilities and the discovery or invention was conceived and developed by the inventor on his/her own time without the use of the University facilities or staff.

13.1.7.2 It is recognized that when the invention is within the specific subject area of the inventor's current and ongoing university research activities, disputes may develop concerning whether the work was conducted by university employees wholly on their own time and without use of university support (e.g. funds, facilities, etc.).

13.1.7.3 In order to reduce the possibility of such disputes, it shall be the responsibility of the employee to provide written notice to the respective departmental head in relation to any research activities conducted independently, within the university's subject research area of the employee. This written notice shall disclose and describe the focus of these independent research activities and shall always be copied to the respective unit's Dean and Policy Administrator.

13.1.8 Release of Ownership Rights

13.1.8.1 West Virginia State University, at its sole discretion and subject only to the restrictions of a sponsoring agency or licensing agreement, may determine to release its patent rights or copyrights to the inventor/author of the invention/work. In doing so, West Virginia State University may require the recovery of any costs incurred in pursuing intellectual property protection for the invention/work as well as expenses incurred in subsequent efforts to promote the invention or work.

13.1.8.2 The transfer of rights must be approved by the Policy Administrator (with the full consent of the President), in which case the University will execute any and all documents reasonably necessary to effect the transfer.

13.1.8.3 In the event West Virginia State University transfers its patent rights or copyrights under the terms of this paragraph, the University will retain a royalty-free, non-exclusive license to any such inventions or copyrightable works for academic research and teaching.

13.1.9 Ownership Rights in Sponsored Programs

13.1.9.1 In the case of programs sponsored by government agencies or private firms with which West Virginia State University has negotiated a particular agreement regulating patents, inventions, licensing, etc., those regulations will govern.

13.1.9.2 In order to expand public use of inventions and in recognition of the need for establishing government-wide policies for the allocation of rights to federally supported inventions, Section 6 of Public Law 96-517 dealing with the disposition of rights to inventions made with Federal assistance was adopted and became effective on July 1, 1981. That section of the law provides, in general, that universities have the first right to take title to inventions resulting from research supported by Federal funding.

13.1.9.3 The policies and regulations emanating from PL 96-517 are contained in OMB Circular A-124

13.1.10 Obtaining a Patent or Copyright

13.1.10.1 In the event West Virginia State University determines that it will not file for a patent or copyright, or if West Virginia State University decides to terminate the application for a patent or copyright, the inventor shall be notified as soon as possible and he/she may proceed to obtain his/her own patent or copyright at his/her own expense.

13.1.11 Determination of Ownership Rights

13.1.11.1 In a case where there is a disagreement between the inventor and West Virginia State University, as to ownership rights or the retention of such rights by West Virginia State University, the Policy Administrator guided by the Council for Intellectual Property Management shall recommend to the President what further action West Virginia State University should take. The decision of the President shall be final.

Section 14. Commercialization of University-Owned Intellectual Property

14.1 The Policy Administrator shall have the responsibility for protection, commercial development, and administration of all University-owned intellectual property. As it is the case with all major tangible assets, all university-owned intellectual property shall be titled to the West Virginia State University Board of Governors.

14.2 This commercial development will normally occur through licensing of inventions, copyrightable works, or tangible research materials to a company.

14.3 The Policy Administrator will regularly consult with the University and Corporation's legal counselors, seek the advice of the Council for Intellectual Property Management, and inform the inventor or creator of the intellectual property throughout the commercialization process.

14.4 West Virginia State University recognizes that the continued involvement of the creator or inventor is essential for the successful commercialization of intellectual property.

Section 15. Evaluation of Commercial Potential

15.1 In the case of an intellectual property that the inventor discloses for possible commercialization by West Virginia State University, the Policy Administrator will determine its commercial potential.

15.2 To assist in this determination, the Policy Administrator (or designee) may consult with patent or copyright counsel and outside experts in particular fields.

15.3 In addition to these resources, the Policy Administrator may seek the advice of various evaluation committees with expertise in various fields of research, which the Policy Administrator shall have authority to establish at his/her discretion.

Section 16. Administrative Procedures

16.1 Once the Policy Administrator has received the Intellectual Property Disclosure Form from the creator, the University's interests in patenting and/or licensing shall be determined in a timely manner.

16.2 After preliminary evaluation by the Policy Administrator and/or designee, in consultation with the Council for Intellectual Property Management, the Policy Administrator (and/or his designee) will initiate one or more of the following actions:

16.2.1 Initiate an external evaluation of the disclosed intellectual property.

16.2.2 Develop and manage the disclosed intellectual property through the West Virginia State University Research and Development Corporation.

16.2.3 Submit the disclosed intellectual property to the Council for Intellectual Property Management for its evaluation and recommendation.

16.2.4 Comply with the terms of the grant or contract, if rights in the disclosed intellectual property are subject to terms of a grant or contract.

16.2.5 Assign title to the disclosed intellectual property to the creator.

16.3 If the disclosure is referred to the Council for Intellectual Property Management for a recommendation, the Council shall review the disclosure and, if

appropriate, hear an oral presentation by the creator, supported with visual material as needed for clarity.

16.4 The Council should retain an interest in the intellectual property, based on a determination that the disclosed intellectual property is novel, useful, non-obvious, and/or has commercial potential.

16.5 The Council will make a recommendation to the Policy Administrator as to whether the University should pursue development of the intellectual property.

16.6 The Policy Administrator will consider the recommendation of the Council and respond to the creator, in writing, whether the University intends to pursue development of the intellectual property.

16.7 If the Policy Administrator decides that the University will not pursue development of the intellectual property, the University shall transfer its rights to pursue development of the intellectual property back to the inventor/author, and the University will retain royalty-free license rights to the intellectual property.

Section 17. Distribution of Proceeds

17.1 Criteria for Income Distribution

17.1.2 The University shall share revenue received from patents or inventions with the inventors.

17.1.2 Within the context of this policy, revenues may be either monetary in nature or any tangible property of value when provided by an external source, under formal agreement with the University, with the explicit expectation of an immediate or future consideration as related to an invention or trade secret of the University.

17.1.3 Revenues the University receives from such inventions may also be exclusive of payments of royalty shares to sponsors or contractors when specified by the provisions of grants or contracts governing the rights and revenue distribution regarding inventions made in connection with sponsored research.

17.1.4 It shall be expected that the University's contracts with outside persons or organizations for the obtaining, managing and defending of patents, and any royalty shares of expenses contractually committed to such persons or organizations may be deducted before revenues accrue to the University.

17.1.5 In addition, the University may incur other expenses in completion, licensing, or other business arrangements related to the development of the intellectual property.

17.1.6 Any royalty shares or expenses committed to such external persons or organizations will be deducted before revenues accrue to the University.

17.1.7 The Office of the Policy Administrator and the West Virginia State University Research and Development Corporation will be reimbursed for any out-of-pocket expenses incurred in managing, obtaining and maintaining patent or copyright protection for a specific item of intellectual property, and in evaluating and marketing such intellectual property.

17.1.8 Thus, the revenues (net, if applicable per the preceding paragraph) which the University receives from a patent or invention will be applied first to reimburse the University for any incremental expenses incurred in obtaining and maintaining patents and/or in marketing, licensing and defending patents or licensable inventions.

17.1.9 When the intellectual property is the result of joint efforts (co-inventors or multiple creators), the creator's share of the net income or net equity will be divided equally among the creators (or the University in its sole discretion will determine a different share to be appropriate), unless a written agreement signed by all of the creators provides a different distribution and is filed with the University.

17.1.10 Applicable laws, regulations or provisions 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 or inventors in the aggregate by the University be less than 15% of net royalties received by the University. Therefore, if more than one inventor is involved, all inventors will be required to provide, in writing, to the Policy Administrator a signed agreement on the split of the inventor's share.

17.1.11 This agreement is to be submitted with the invention disclosure or prior to the first distribution of net income or net equity. Furthermore, if several patents are involved, revenue will be allocated to each patent by the Policy Administrator, based on input from the licensor or business partner.

17.1.12 In the event multiple colleges/schools or programs are involved, their shares will be distributed in the same manner as the distribution to the inventors or creators within such colleges/schools or programs, unless agreed to otherwise in writing by the colleges/schools or programs.

17.1.13 The Policy Administrator, in consultation with the Council for Intellectual Property Management, and the Deans of the appropriate college(s), may modify the distribution of net income or net equity to the creator's department and or college, if necessary, due to organizational changes or structures at the University.

17.1.14 It is understood that with the involvement of more than one college/department or other situations of equity, the revenues shared by the college/department shall be subject to regulation.

17.1.15 In the event of multiple claims by entities of the inventor's "college or school or program," the President of the University shall make the final determination of distribution amounts to those entities.

17.2 Net Income Distribution

17.2.1 The revenues, which are derived by the University from a patent or invention, as aforementioned, will be applied first to reimburse the University for any direct, incremental expenses incurred by it in investigating patentability, obtaining and maintaining the patent and in the marketing, licensing and defending the patent or licensable invention.

17.2.2 After said expenses have been reimbursed to the University, all subsequent revenues (net revenues) earned by the University will be shared as follows:

	First \$20,000 accumulated	\$20,001 - \$100,000	\$100,001 - 500,000	Over \$ 500,000
<i>Inventor/Creator(s)</i>	100 %	40 %	35 %	30 %
<i>Inventor/Creator's Department/Division</i>	0 %	10 %	10 %	10 %
<i>Inventor/Creator's College/School</i>	0 %	10 %	10 %	10 %
<i>WVSU Research & Development Corp.</i>	0 %	15 %	15 %	15 %
<i>WVSU Office of Patents &/or Technology Transfer</i>	0 %	20 %	20 %	20 %
<i>General University Patent & Research Fund</i>	0 %	5 %	10 %	15 %

17.2.3 As an institutional reward and incentive, the inventor/creator will receive 100% of the first \$20,000 proceeds in net revenue. Thereafter, the inventor shall receive 40, 35, and 30% of the net revenues according to the proceeds as indicated in the table above.

17.2.4 The inventor's Department/Division and College/School will receive 10% each, of the net revenues.

17.2.5 The WVSU Research and Development Corporation shall receive 15% of the net royalty for fiscal services provided to the University with regard to intellectual property matters.

17.2.6 The Office of Patents or Technology Transfer (under the auspices of the Policy Administrator in charge) shall receive 20% of these proceeds to cover the cost of operational expenses incurred in the management of intellectual property matters.

17.2.7 To the extent practicable, and consistent with State and University budget policies, the remaining revenue received by the University on account of an invention will be reinvested for institutional research (or teaching and outreach) purposes, including research in the inventor's department or center, if approved by the President upon recommendation of the Policy Administrator.

17.3 Acceptance of Equity

17.3.1 West Virginia State University through the West Virginia State University Research and Development Corporation may accept an equity interest in a company, provided that before West Virginia State University agrees to accept equity, it must receive the approval of the President, Policy Administrator, and the Council for Intellectual Property Management.

17.3.2 An inventor must choose either of the following approaches when negotiations commence between West Virginia State University and the company, but the choice is final once selected. If a transaction is completed before the inventor makes a choice of these approaches, Approach Two shall apply.

17.3.2.1 **Approach One:** Inventors may elect to receive thirty percent (30%) of the equity that West Virginia State University would otherwise receive in connection with the commercialization of intellectual property, in which case the inventor agrees not to receive any other equity interest from the business enterprise ("the enterprise"). The inventor may waive this restriction at his or her discretion. West Virginia State University will not receive or hold this equity on behalf of an inventor, but will instruct the enterprise to issue the equity directly to the inventor. Inventors must sign any documents required by the enterprise (e.g., stock restriction agreements) and must agree to comply with any

restrictions placed on the stock by it. If the enterprise refuses to issue the stock directly to the inventor, or if the inventor does not sign the necessary documentation, West Virginia State University will instruct the enterprise to issue the equity directly to West Virginia State University. In such event, the inventor may still receive equity independent of West Virginia State University.

17.3.2.2 **Approach Two:** Inventors may elect to receive equity directly from the enterprise independent of West Virginia State University, in which case the inventor agrees not to receive any share of equity that West Virginia State University may receive in that transaction. Inventors selecting this approach may negotiate with the corporation to receive equity by means of, for example, a consulting agreement or founders stock.

17.4 Distribution of Equity Derived from Commercialization

17.4.1 If a creator receives extraordinary compensation from or has significant equity ownership interest in the business enterprise to which the intellectual property is licensed, then such creator shall not participate in any distribution of proceeds.

17.4.2 Standard consulting fees shall not be deemed to be extraordinary compensation under this section, but shall be disclosed to appropriate University officials in accordance with the University's Conflict of Interest Policy.

17.4.3 West Virginia State University will not receive and hold equity on behalf of an inventor until liquidation. Instead, an inventor may receive equity directly from a business enterprise. Thus, when the equity received by West Virginia State University in connection with the commercialization of intellectual property is liquidated, the proceeds shall be distributed solely within the University.

17.4.4 First, to the extent the Policy Administrator and the West Virginia State University Research and Development Corporation is not fully reimbursed for out-of-pocket expenses pertaining to the intellectual property from non-equity revenue, they will be reimbursed for any remaining out-of-pocket expenses incurred in administering, obtaining and maintaining patent or copyright protection for a specific item of intellectual property and in evaluating and marketing such intellectual property.

17.4.5 The remaining proceeds from equity liquidation will be distributed as follows:

	Net Revenue Derived from Equity
<i>Inventor/Creator's Department/Division</i>	10 %
<i>Inventor/Creator's College/School</i>	10 %
<i>WVSU Research & Development Corp.</i>	20 %
<i>WVSU Office of Patents &/or Technology Transfer</i>	25 %
<i>General University Patent & Research Fund</i>	35 %

17.4.5.1 10% to the College/School that provided the resources for development of the intellectual property, to fund research and scholarship. The President of the University will determine appropriate distribution amounts if multiple schools, colleges, or programs are involved.

17.4.5.2 10% to the Department/Division that provided the resources for development of the intellectual property, to fund research and scholarship. The President of the University will determine appropriate distribution amounts if multiple schools, colleges, or programs are involved.

17.4.5.3 20% to the WVSU Research and Development Corporation to support the fiscal administration of patents and operations.

17.4.5.4 25% to the Office of the Policy Administrator to support patents and operations.

17.4.5.5 35% to West Virginia State University to fund research and scholarship.

Section 18. Conflicts of Interest

18.1 Any conflicts of interest arising from commercial development of the invention (e.g. an inventor having equity ownership in a company in which the intellectual property is assigned) will be applicable to the West Virginia State University Conflict of Interest Policy.

Section 19. Use of Name and Logo

19.1 Use of West Virginia State University's name and logo in any commercial setting requires prior approval from the Policy Administrator.

Section 20. Interpretation of Policy Exemptions

20.1 The Policy Administrator (and/or his designee) shall administer this policy in regular consultation with the Council for Intellectual Property Management.

20.2 The President shall have authority to interpret this policy and, upon recommendation of the Council for Intellectual Property Management, may grant exceptions to the policy in appropriate cases.

Section 21. Changes in Policy

21.1 This policy will be reviewed and amended, as appropriate, by the Council for Intellectual Property Management at least every two years.

21.2 This policy may be changed by the President, on the recommendation of the Council for Intellectual Property Management through the Policy Administrator.

21.3 Such changes shall not affect rights accrued prior to the date of such action.