

THE UNIVERSITY OF NORTH CAROLINA ASHEVILLE
FACULTY SENATE

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Statement of Faculty Senate Action:

EC 1: Revision to UNC Asheville's Copyright Use and Ownership Policy

Summary: UNC Asheville's Copyright Use and Ownership Policy currently does not address inventions/discoveries. This document presents an updated policy to address this. The UNC Asheville Board of Trustees delegated authority to the UNC Asheville Intellectual Property Committee to approve copyright and patent policies. The UNC Asheville Intellectual Property Committee sought feedback from the Student Government Association, Staff Council, and Faculty Senate subcommittees. The Intellectual Property Committee is requesting that the Faculty Senate approves the revised policy before they proceed to official adoption of the policy. A FWDC document will go through the Faculty Senate to add the final policy to the Faculty Handbook.

Rationale/Impact: The following Executive Summary was presented by the Intellectual Property Committee:

Why changes are necessary-

1. Since 2003, UNC Asheville's Copyright Use and Ownership Policy ("UNC Asheville Policy") addressed only copyrighted works, and didn't mention or address inventions/discoveries.
2. In the absence of a campus-specific policy that addressed inventions/discoveries, the general UNC system policy on intellectual property ("UNC Policy") controlled the ownership and revenue sharing for inventions/discoveries.
3. UNC Policy is very broad and doesn't provide enough detail on a number of topics related to inventions/discoveries.

What changes are recommended-

1. In Summer 2016, the Copyright Use and Ownership Committee ("Committee") formed a working group to suggest improvements to the UNC Asheville Policy. The following changes to the UNC Asheville Policy were recommended by the Committee, and Provost Joe Urgo concurred with them:
 - a. Change the UNC Asheville Policy name from 'Copyright Use and Ownership Policy' to 'Intellectual Property Policy'.

- b. Include helpful definitions that address key terms used throughout the revised Policy.
- c. Expand the Provost's duties and responsibilities relative to intellectual property ownership and disposition, and dispute resolution.
- d. Expand the Committee's size, ensuring it represented a broader cross-section of campus, and updated official titles.
- e. Expand the Committee's duties to reflect a broader scope relative to intellectual property ownership and disposition, and dispute resolution.
- f. Clarify initial ownership determination for Traditional or Non-Directed Copyrighted Works Involving Exceptional Use of UNC Asheville Resources, and aligned the determination with a common dispute resolution procedure.
- g. Establish an exclusive development license owned by UNC Asheville for jointly-created student works (both copyright-protected and potentially patentable) so that individual creators may not inhibit displaying the intellectual property in competitions while the creators are students.
- h. Include a section that addresses patent protection and commercialization of inventions/discoveries, specifically in the following areas:
 - i. Duty to Disclose and Assign (and an attendant procedure).
 - ii. Consulting and External Activities.
 - iii. Ownership vested in the University for inventions/discoveries generally made on work time and using University Facilities (employees), or using exceptional resources not otherwise provided to similarly-situated students.
 - iv. Dispute resolution procedures which include various due process protections, such as the right to a hearing and appeal to the Provost (final University authority).
 - v. Examples of when inventions/ discoveries would not likely be owned by the University (e.g. Inventions Made on Own Time).
 - vi. Waiving and Releasing University rights to inventions and discoveries.
 - vii. Distribution of income from commercialization of inventions and discoveries.

Intellectual Property Policy Proposal

Purpose/Introduction

In pursuit of its mission and consistent with applicable laws and policy, the University of North Carolina at Asheville (“UNC Asheville or University”) encourages faculty, staff, and students to create and make appropriate use of intellectual property (IP), and to share the results of their work through a variety of ways, including publication and the patent process.

UNC Asheville also strives to use IP fully or partially owned by the University, in a manner consistent with the public good through, where appropriate, development and commercialization efforts. Such efforts should make IP resulting from research available to industry and the public on a reasonable and effective basis and, at the same time, provide adequate recognition to inventors and creators. Patents and their commercialization, however, represent only a small part of the benefits accruing to the public from research and other University programs.

The Intellectual Property Policy (“UNC Asheville Policy” or “IP Policy”) governs the use and ownership of IP in accordance with provisions of the Copyright Act (Title 17 U.S. Code), any other applicable laws of North Carolina and the United States, and [Chapter 500.2](#) of the University of North Carolina Policy Manual (“UNC Policy”).

Scope

The IP Policy applies to all University employees, both full and part time, including faculty, and UNC Asheville students either in their capacity as student employees or making use of certain university resources attendant with the conception or development of IP. Pursuant to the UNC Policy, the IP Policy, as amended from time to time, shall be deemed to be a part of the conditions of employment of every employee, including student employees, and of the conditions of enrollment and attendance by every student at UNC Asheville. Consistent with contractual or other written agreements by and between external parties and UNC Asheville, the IP Policy may be applied to persons not associated with UNC Asheville who make their inventions and original works available to the University under circumstances where further development and refinement are compatible with University goals.

Objectives

1. To provide appropriate incentive to creative intellectual effort by faculty, staff, students and others associated with the University.
2. To establish principles for determining the interests of the University, inventors, and sponsors regarding inventions, discoveries and other IP.
3. To enable the University to develop procedures to determine the ownership interests, significance and potential commercialization of inventions and/or discoveries.
4. To provide the means for placing in the public domain the results of research, while safeguarding the interests of the University, inventor, and/or sponsor.

5. To recognize the right of the inventor, author or creator to financial benefits from the invention, discovery, creation or authored work.

Definitions

“Copyright Infringement” means use of copyrighted work violating law, this or any other applicable UNC Asheville or University of North Carolina policy.

“Derivative Work” means a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted, as well as a work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship.

“Direct Costs” means attorney’s fees, expenses, and costs for seeking, obtaining, prosecuting, maintaining patents, and/or efforts associated with developing, marketing, protecting, licensing, and/or defending patents, trademarks, copyrights, and other protectable inventions or discoveries.

“Directed Work” means a work that is specifically funded or created at the direction of UNC Asheville, including, but not limited to, works for hire by University employees. Such funding need not constitute Exceptional Use of UNC Asheville Resources in order for the work to be considered a Directed Work.

“Exceptional Use of UNC Asheville Resources” means UNC Asheville support of traditional, student or non-directed works with resources of a degree or nature not routinely made available to faculty, staff or students in a given area or discipline. Exceptional use of UNC Asheville Resources may include, but is not limited to, the following:

- a. Waiver of fees normally required to use specialized facilities and equipment, production facilities, laboratories, specialized computing resources, and studios.
- b. University funding, grants or gifts in support of the work’s creation.
- c. Reduction in other duties specifically to facilitate creation of the work.
- d. Significant University involvement in the development or creation of a student work over and above that afforded to other similarly situated students.
- e. Use or allowances of other significant resources.

Ordinary or limited use of computers, laboratory space, libraries, office space or equipment, routine secretarial services at routine levels, telephones and other informational resources shall not be considered ‘Exceptional Use of UNC Asheville Resources’. Exceptional use of University resources occurs when the University provides support for the creation of the work with resources of a degree or nature not routinely made available to faculty or EHRA non-faculty employees in a given academic department or administrative unit. It shall be the obligation of the department chair or head of an administrative unit to establish that a proposed use of resources is exceptional by reference to the practices of the department or unit. For students enrolled in a course of study, use of course laboratory, computing and library facilities, software, supplies and materials at a level ordinarily provided to students in the course are also not considered to be ‘Exceptional Use of UNC Asheville Resources.’

“Fair Use” means certain use of a copyrighted work, in particular circumstances that do not constitute copyright infringement. Fair use for activities such as criticism, comment, news reporting, teaching (including limited copying for classroom use), scholarship, or research may not constitute copyright infringement, depending on the nature and extent of the use. Determining whether use is a Fair Use requires applying four factors set out in Section 3 of the IP Policy.

“Gross Revenues” means all income actually received by the University as consideration for the commercialization, sale, license, option, or other transfer of rights to inventions that are subject to the IP Policy, including, but not limited to, option fees, royalties, license issue fees (whether cash or equity when liquidated), and milestone payments, less any amount required to be paid from gross receipts without deduction to another entity pursuant to a sponsored research agreement, inter-institutional agreement or other legally binding agreement.

“Net Revenues” means revenues remaining after deduction of direct costs from gross revenues.

“Inventions Made on Own Time” means inventions or discoveries made by University personnel or students entirely on their personal time and not involving the use of University facilities or materials. For purposes of this provision, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, extension, University service, or direction or conduct of research on University premises or utilizing University facilities. Activities performed on "personal time" shall include, but are not limited to: recreational or hobby activities and professional activities pursuant to a consulting agreement if permitted pursuant to applicable University external professional activities policies.

“Inventions or Discoveries” mean, generally, items of utility, technical information, trade secrets, devices, developments, applications, processes, compositions, life forms, tangible research materials, know-how, methods, formulae, machines, manufacture, matter or composition of matter, or any new and useful improvement thereof, whether or not patented, that has potential for patent protection or commercialization.

“Scope of Employment” means duties, actions or conduct directly or indirectly related to employment responsibilities at the University.

“Sponsored” or “Externally Contracted Works” means any work developed using funds supplied under a contract, grant, or other arrangement between UNC Asheville and a third party, including a sponsored research agreement.

“Student” means any individual enrolled in a course at UNC Asheville.

“Student Work” means a work created by a student including, but not limited to: papers, creative writing, computer programs, theses, dissertations, choreography, visual art works, designs, musical works, films, videos, digital works and other creative works.

“Traditional Works” or “Non-Directed Works” means a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty or other EHRA employee resulting from non-

directed effort. Such works may include textbooks, manuscripts, literary or scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of the IP Policy, works of art or design, musical scores, poems, films, videos, audio recordings, or any other works of the kind that have historically been deemed in academic communities to be the property of their creator.

"University facilities" shall mean any facility, including equipment, material or other resources, available to the inventor as a direct result of the inventor's affiliation with the University, and which would not be available to a non-University person on the same basis.

"University License" means a perpetual non-exclusive, non-transferable, irrevocable, royalty-free license to reproduce, distribute, publicly perform, publicly display or make derivative works of a work for any use in furtherance of UNC Asheville's mission. This license is tantamount to the "Shop Right" contemplated by the [UNC Policy](#).

"Works Made for Hire" means:

- a. A work prepared by an SHRA employee within the scope of his or her employment.
- b. 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 that the work shall be considered a Work Made for Hire. Works Made for Hire do not include Traditional or Non-Directed Works.

Policy

1. Administrative Responsibility

1.1 The Provost

The Provost is responsible for implementing the IP Policy. Duties include but are not limited to:

- 1.1.1** Developing, with the assistance of the UNC Asheville Intellectual Property Committee ("IP Committee" or "Committee"), policies and procedures to administer, supplement and interpret the Policy.
- 1.1.2** Providing advice and recommendations regarding ownership of specific works.
- 1.1.3** Resolving IP ownership disputes upon consideration of the Committee's or other recommendations, or on appeal from the Committee's IP ownership determination.
- 1.1.4** Releasing or retaining institutional rights to IP, upon consideration of the Committee's recommendation.
- 1.1.5** Accepting or declining, as appropriate, an assignment of rights to UNC Asheville from an author, inventor or creator of a work, upon consideration of the Committee's recommendation.
- 1.1.6** Contracting for the terms of transfer, shared ownership, and/or commercialization of IP at UNC Asheville.
- 1.1.7** Determining the applicability of the "Works Made for Hire" doctrine and the suitability of applying that doctrine in individual cases.

- 1.1.8 Delegating day-to-day operational Committee responsibility to an appropriate University official. Such responsibility has been delegated to the University Librarian as Committee chairperson.

2. Creation and Duties of the Intellectual Property Committee

2.1 Duties

The IP Committee shall have such responsibilities as the Provost may specify concerning IP, which include but are not limited to:

- 2.1.1 Propose to the appropriate officials and advisory or governing bodies revisions to UNC Asheville's policies on IP law compliance, IP ownership and the use of copyrighted materials (e.g. classroom use of copyrighted material, website content, interpretation of fair use and exemptions under the Digital Millennium Copyright Act (DMCA)) when such changes are deemed necessary or desired.
- 2.1.2 Recommend to the Provost a continuing program to educate UNC Asheville faculty, staff, and students about the use of IP.
- 2.1.3 Issue and, as necessary, revise guidelines to assist University faculty, staff, and students in making fair use evaluations.
- 2.1.4 Provide advice to UNC Asheville faculty, staff and students concerning interpretation of the IP Policy and its procedures.
- 2.1.5 Provide the Provost recommendations for resolution of IP ownership questions or disputes, as well as recommendations related to confirming, releasing, accepting, or declining the University's interests in IP.
- 2.1.6 Provide the Chancellor recommendations on appropriate allocations from institutional research trust fund(s).

2.2 IP Committee Composition

The Faculty Welfare and Development Committee (FWDC) recommends to the Provost faculty appointments to the IP Committee for staggered three-year terms. The IP Committee shall be constituted as follows:

UNC Asheville faculty:

Humanities (1)

Natural Sciences (1)

Social Sciences (1)

Ex officio:

University Librarian, Chair

An Associate Provost of Academic Affairs or Dean designated by the Provost

Chief Research Officer

Director, Information Technology Services and CIO

University General Counsel representative (non-voting)

Director, Communications and Marketing

Director, Undergraduate Research

Ex officio and appointed positions, with the exception of the University General Counsel representative, shall each have one vote in all matters calling for an IP Committee vote.

3. Use of Copyrighted Works by Faculty and Staff

3.1 Appropriate Use of Copyrighted Works

UNC Asheville is committed to complying with all applicable laws regarding copyright and IP use. As an institution devoted to the creation, discovery and dissemination of knowledge, UNC Asheville supports the responsible, good faith exercise of full Fair Use rights, as codified in federal law at 17 U.S.C. § 107, by faculty, staff and students in furtherance of their teaching, research, learning and service activities.

3.2 Elements of Fair Use; Good Faith Consideration Required

University faculty, staff or students who propose to make Fair Use of a copyrighted work must consider in advance the applicability of four statutory factors to be weighed in making a Fair Use analysis. These factors are:

- 3.2.1** The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes.
- 3.2.2** The nature of the copyrighted work.
- 3.2.3** The amount and substantiality of the portion used in relation to the copyrighted work as a whole.
- 3.2.4** The effect of the use upon the potential market for or value of the copyrighted work.

3.3 Procedure for Making Fair Use Determinations

The IP Committee, in consultation with the Office of General Counsel, shall issue and, as necessary, revise guidelines to assist University faculty, staff, and students in making Fair Use evaluations. Faculty, staff, and students who require assistance with Fair Use questions are encouraged to consult the University Librarian.

3.4 Copyright Infringement

The Office of General Counsel shall make the determination of whether a specific use of a copyrighted work may constitute infringement.

4. Copyright Ownership

4.1 Ownership

Ownership of copyrighted works shall depend on the category of the work in question and on the status of its creator. Categories of copyrighted works defined in the IP Policy include:

4.2 Works Created by Faculty or EHRA Non-Faculty Employees

4.2.1 Traditional Works or Non-Directed Works

4.2.1.1 Ownership

The creator of such a work shall own the work unless it is a Traditional or Non-Directed Work involving Exceptional Use of UNC Asheville Resources, a Directed Work, a Sponsored or Externally Contracted Work requiring University ownership of copyright,

or a Work for Hire (defined above). As a condition of employment, faculty and EHRA non-faculty creators of a Traditional or Non-Directed Work shall be deemed to have granted the University a University License unless such a license will impede scholarly publication or similar activities.

Traditional Works or Non-Directed Works for which authorship cannot be attributed to one or a discrete number of authors but, instead, result from simultaneous/sequential contributions over time by multiple authors, shall be owned by UNC Asheville.

4.2.2 Traditional Works or Non-Directed Works Involving Exceptional Use of UNC Asheville Resources

4.2.2.1 Ownership

UNC Asheville shall own Traditional Works or Non-directed Works Involving Exceptional Use of UNC Asheville Resources. Whether an individual work has been created through Exceptional Use of UNC Asheville Resources shall be determined initially by the department chair or director of the department in which the creator has principally been involved or from which he or she has received resources to fund the work, taking into account the nature and amount of resources customarily made available to faculty or staff in that department. If it is determined that Exceptional Use of UNC Asheville Resources occurred, the department chair or director will notify the author in writing in a form to be specified by the Provost. The department chair or director may consult with the Provost or IP Committee before communicating his or her decision to the author.

4.2.2.2 Release

Upon consideration of the department chair or director's determination as outlined above, the Provost may release or transfer UNC Asheville's rights in a Traditional Work or Non-Directed Work created through Exceptional Use of UNC Asheville Resources to the work's creator through an appropriate written agreement.

4.2.2.3 Release Agreement

Any agreement for release to a creator of a Traditional Work or Non-Directed Work created through Exceptional Use of UNC Asheville Resources shall include provisions that:

4.2.2.3.1.1 UNC Asheville shall have a University License.

4.2.2.3.1.2 If commercialization of the work generates income, either (a) the creator shall reimburse UNC Asheville for the exceptional resources provided the creator, or (b) the creator shall share income from such commercialization with UNC Asheville, in amounts and distributions reflected in Section 5 of this Policy.

4.2.2.4 Selection of Release Options; Dispute

The Provost, in consultation with the creator's department chair or director and IP Committee, shall determine which of the options available above will be selected in conjunction with the release of such a work to its creator. Disputes regarding whether a work has been created through Exceptional Use of UNC Asheville Resources shall

constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified in Section 6. However, decisions regarding financial terms made in this section shall not be subject to appeal under Section 6. In the event that the creator and UNC Asheville are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with UNC Asheville.

4.2.3 Directed Works

4.2.3.1 Ownership

UNC Asheville shall own copyright in Directed Works. Where practicable in the estimation of the creator's department chair or director, and subject to any additional terms or limitations made necessary by UNC Asheville licensing agreements, the creator shall be granted a non-exclusive, non-transferable, royalty-free license to the work for the creator's own non-commercial educational or research use.

4.2.3.2 Release

UNC Asheville may release or transfer ownership in a Directed Work to the creator.

4.2.3.3 Release Agreement

Any agreement for release to a creator of a Directed Work shall include provisions that:

4.2.3.3.1 UNC Asheville shall have a University License.

4.2.3.3.2 If commercialization of the work generates income, either (a) the creator shall reimburse UNC Asheville for the resources provided the creator in conjunction with creation of the work, or (b) the creator shall share income from such commercialization with UNC Asheville, in amounts and distributions reflected in Section 5 of this policy.

4.2.3.4 Selection of Release Options; Dispute

The Provost, in consultation with the creator's department chair or director and IP Committee, shall determine which of the options above will be selected in conjunction with the release of such a work to its creator. Disputes regarding whether a work is a Directed Work shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified in Section 6. However, decisions regarding financial terms made shall not be subject to appeal under Section 6. In the event that the creator and UNC Asheville are unable to reach agreement regarding such financial terms, ownership of the work at issue shall remain with UNC Asheville.

4.2.3.5 Joint ownership

In addition to the foregoing provisions for release to the creator of a Directed Work, the Provost and the creator, in consultation with the creator's department chair or director and IP Committee, may alternatively negotiate for joint ownership of the work.

4.2.4 Sponsored or Externally Contracted Works

4.2.4.1 Ownership

Unless the agreement expressly requires copyright ownership by the University or conveyance of rights to a third party, the creator of a Sponsored or Externally

Contracted Work shall own the work. As a condition of employment, faculty and EHRA non-faculty creators of a Sponsored or Externally Contracted work shall be deemed to have granted the University a University License.

UNC Asheville will own a Sponsored or Externally Contracted Work where the relevant agreement requires copyright ownership by the University or conveyance of rights to a third party, in which case the University will convey rights to the third party as required. In such cases, the creator of the work shall be required to report the work to the Provost, using such forms and procedures as the Provost develops. Where a proposed sponsored research agreement or research grant will require that copyrighted works be owned by the University or a third party, the Provost's designee should inform the relevant Principal Investigator of the copyright provisions and secure his or her consent to such provisions before the agreement is signed or the grant accepted.

4.2.4.2 Release

Sponsored or Externally Contracted Works owned by the University may be released to the creator or jointly assigned to the creator and the University, through the procedures provided in Section 4.2.3 (Directed Works), where the University has ascertained that such release will not conflict with the terms of the relevant agreement or grant or with written consent of the other party to the agreement or grant.

4.3 Works Created by SHRA Employees Considered Works Made for Hire

4.3.1 Ownership

Works made for hire by SHRA employees shall be owned by UNC Asheville. Exceptions to University ownership may occur where (a) the University with approval of the Chancellor or the Chancellor's designee enters into an agreement with an SHRA employee in advance of creation of the copyrighted work specifying that the work shall be owned in whole or in part by the employee; (b) University ownership is waived by the Chancellor or the Chancellor's designee; or (c) the SHRA employee creator is an author or co-author of a Traditional or Non-Directed Work, but only to the extent necessary to allow the SHRA employee creator to assign rights to academic publishers for publication made with no more than nominal consideration to the creator.

4.4 Works by Independent Contractors

4.4.1 Ownership

Works produced for the University by independent contractors shall be considered Works Made for Hire and shall be owned by UNC Asheville. No unit or department shall enter into arrangements for work to be produced by an independent contractor without a written contract, signed by an authorized University official, including but not limited to a provision that UNC Asheville shall own copyrighted works produced by the independent contractor.

4.5 Student Works

4.5.1 Ownership and Use

Students shall own copyright in Student Works except in the following cases and subject to the following conditions:

- 4.5.1.1** Copyright to Traditional Works authored by faculty with assistance from a student shall be owned by faculty or the University.
- 4.5.1.2** UNC Asheville shall own a Student Work that is a Sponsored or Externally Contracted Work where this Policy so requires, and ownership and use of such works shall be as specified in Section 4.2.4 (Sponsored or Externally Contracted Works) above.
- 4.5.1.3** Student Works created in the course of the student's employment by UNC Asheville shall be considered Works Made for Hire, and ownership and use of such works shall be as specified in Section 4.3 (Works Created by SHRA Employees Considered Works Made for Hire) above.
- 4.5.1.4** As a condition of enrollment, students grant a University License to UNC Asheville in all Student Works.
- 4.5.1.5** UNC Asheville claims an exclusive development license for Student Works created jointly by more than one student so that one student creator cannot prevent another student creator from entering the joint work in competitions, or prevent another student creator from using the work academically or professionally. After the need to control a joint work expires, and upon determination by the Provost in consultation with the student's department chair and IP Committee, the exclusive development license expires and reverts to a University License. The joint student creators are then free to use or commercialize the work as they deem appropriate, pursuant to applicable law.

5. Commercialization and Patent Policy

5.1 Duty to Disclose and Assign

University faculty, staff and students will file disclosures for all inventions and discoveries covered by the IP Policy pursuant to applicable University disclosure procedures when there is reason to believe that the invention or discovery is patentable, otherwise protectable under intellectual property laws of the United States or has commercial value. The disclosure will not be considered complete until all necessary assignments, declarations or other required documentation have been submitted. Since publication or public use can be an immediate bar to patentability in most foreign countries, it is the inventor's duty to report any publication, submission of manuscript for publication, sale, public use, or plans for sale or public use, of an invention sufficiently in advance so that the University can consider measures to protect the University's IP interests.

5.2 Consulting and or External Activities

University personnel may not sign consulting, research, patent or other agreements with outside entities or individuals that may abrogate the University's rights as stated in the IP Policy or as provided in any sponsored research agreement or grant. For example, personnel should not accept contract terms that (1) prohibit publication of proprietary data in a technical area that overlaps with his/her University research or the reporting of results to research sponsors; (2) preclude the employee from assigning to the University IP owned by the University or (3) are designed to circumvent University policies and procedures for disclosure of inventions and discoveries. Prior to signing any consulting agreement that may potentially implicate the University's IP rights, University personnel and students must bring the proposed agreement to the University's attention, in the manner prescribed by applicable University disclosure

procedures, and either obtain a waiver of University rights or otherwise modify the consulting agreement to conform with this IP Policy, as is determined by the University in its discretion. These requirements are in addition to, and do not eliminate the necessity for, any approval which may be required by applicable External Activities for Pay policies.

5.3 Ownership; Dispute

With the exception of Inventions made on Own Time, defined above, every invention or discovery or part thereof that results from (1) research conducted with University-administered funds (unless otherwise prohibited by law, or pursuant to an authorized agreement with a sponsoring agency or agencies), (2) research conducted during time devoted to normal or assigned functions in teaching, extension, University service, or direction or conduct of research on University premises or utilizing University facilities, (3) the Exceptional Use of UNC Asheville Resources, or (4) collaboration with another inventor who has a duty to assign their rights to the University, shall be the property of the University and, as a condition of employment or enrollment and attendance, shall be assigned by the inventor to the University. The initial ownership determination for inventions and discoveries shall be made by the IP Committee in accordance with applicable University disclosure and review procedures. In the student context, the term "scope of employment" as used above includes student employees of the University. As with copyrighted Student Works, the University claims an exclusive development license for inventions or discoveries, created in the classroom, laboratory or through another instructional process, jointly by more than one student as set forth in Section 4.5.1.5 above. In the University employee context, inventors or discoverers are granted a license for the inventor's or discoverer's own non-commercial educational or research use. Disputes regarding invention or discovery ownership shall be resolved under the dispute resolution procedures specified in Section 6.

5.4 Works Subject to Protection by Both Copyright and Patent Law

In cases where an invention or discovery is subject to protection under both patent and copyright law, if UNC Asheville elects to retain title to its patent rights, then the inventor(s) shall assign copyright to the University. In this case, all parties will derive income pursuant to Section 5.8.1 below.

5.5 Inventions Made on Own Time

Inventions Made on Own Time are the property of the inventor except in case of conflict with any applicable agreement between the University and a sponsoring agency or agencies.

All such inventions shall be disclosed to the University in accordance with the University's disclosure procedures. The inventor in such instances shall demonstrate the basis of the inventor's claim that the invention is an Invention Made on Own Time. The University will consider information supporting the inventor's claim and, if the University agrees, shall acknowledge in writing that the invention is the sole property of the inventor in accordance with the "waiver" provision below. Several illustrative examples are provided below to reflect the application of this provision:

Example #1: An inventor, employed by the University on a 10-month contract to teach and conduct research, creates an invention during her normal work hours and work week, and within her area of expertise. However, the invention is created at the inventor's off-campus private lab at her home (located approximately 0.5 miles from campus) despite the fact that her

normally-assigned University lab was available for her use. The inventor asserts that her invention should be considered an Invention Made on Own Time because of the location of the invention. Although these facts are relevant to the analysis, the University would likely claim an ownership interest in the invention because it was created during time devoted to the inventor's normal or assigned University duties.

Example #2: An inventor, employed by the University to teach and conduct research in computer science, invents a new type of hunting knife developed from knowledge acquired through her hobby – duck hunting. The inventor develops the idea for the new hunting knife in her University office, but actually creates the prototype for the knife at home after work one evening. Once disclosed, the University would likely have no claim of ownership in the invention because the invention relates to her hobby or recreational activities, and does not relate to her normally assigned University duties.

Example #3: An inventor, employed by the University on a 10-month contract to teach and conduct research in the field of chemistry, is hired to consult with a major pharmaceutical firm at its lab facility several hours away from campus. The consulting is performed with University permission granted pursuant to applicable University External Activities for Pay policies during the inventor's "off months" in the summer. During the consulting assignment, the inventor invents or discovers a new chemical compound which allows an important drug development breakthrough. Once disclosed, the University would likely have no claim of ownership in the invention or discovery because the invention or discovery did not occur during time devoted to normal or assigned University duties, and did not result from the inventor's use of University Facilities.

If desired by the inventor, and if agreed to by the University, Inventions Made on Own Time and utilizing the inventor's own facilities and materials may be assigned to the University. Under this arrangement, the University and inventor will memorialize mutually agreeable terms in an appropriate written agreement.

5.6 Patent Application

Patents on inventions made by University employees or students may be applied for in any country by the University or through an authorized agent(s) or assignee(s). The University shall exercise its rights of ownership of such patent(s), with or without financial gain, with due regard for the public interest, as well as the interests of inventors and sponsors concerned.

5.7 Waiver and Release of University Rights

Pursuant to this policy and ensuring commercially reasonable notice enabling inventor(s) time to assume protection of the IP, the University, after consultation with the inventor, shall cause its rights to the invention, or discovery, if any, to be waived and released to the inventor if the University determines that: (1) the invention is an Invention Made on Own Time; (2) such waiver would not conflict with any pertinent agreement between the University and a sponsoring agency or agencies; (3) the invention or discovery is clearly one that is non-patentable, not appropriate for University patent prosecution, or does not warrant further evaluation as to patentability, development, or commercialization; or (4) the invention or discovery has been returned to the University after negative evaluation by the University's agents.

5.8 Income from University IP

The inventor(s), in aggregate, shall receive an amount totaling not less than fifteen percent (15%) of the gross revenues derived from IP licensing, income from assignment or sale, or from other commercialization efforts resulting from the invention or discovery and owned by the University pursuant to this Policy. This amount will be paid from net revenues, if any, pursuant to the procedure established in Section 5.8.1 below. Income associated with or derived from IP development shall be treated as institutional trust funds to support research. After accounting for direct costs, the particular University department employing the inventor, administering the inventor's academic program (if the inventor is a student) or furnishing the research facilities will be given preferential treatment in determining allocations and/or distributions of income. Allocations are made by the Chancellor or the Chancellor's designee upon recommendation of the IP Committee.

5.8.1 Specific Distribution

Gross revenues are first applied to reimburse the University for direct costs incurred by licensing, patenting or otherwise commercializing the IP in question. In the case of co-inventors, each percentage share shall be subdivided equally among them, unless the University, in its sole discretion, determines a different share to be appropriate. University approved and recognized affiliated entities may also invest in the development and/or commercialization of IP covered by the IP Policy. On a case-by-case basis, the Provost, upon recommendation of the IP Committee, may recommend a negotiated reimbursement of such direct costs and a modified distribution formula for an affiliated entity's involvement. That recommendation shall be forwarded to the Chancellor for review, modification (if necessary), and approval.

The remaining net revenues are then distributed on a 50/20/20/10 basis as described below:

- 50% to inventor(s), but in no case less than an amount totaling 15% of gross revenues received
- 20% to a Chancellor's research trust fund (to be used to support research)
- 20% to the Office of Academic Affairs
- 10% to the Department, program, or operating unit

For example, when considering University IP which generates \$120,000 and \$100,000 in gross and net revenues, respectively, the inventor(s) would receive \$50,000 (50% of net revenues, an amount which exceeds \$18,000 (15% of gross revenues)), the Office of Academic Affairs would receive \$20,000, the Department would receive \$10,000 and the Chancellor's research trust fund would receive \$20,000.

Examples of uses of income to support research include, but are not limited to, research investments to support applied research with commercial applications, faculty start-up packages, multi-user or research service laboratory equipment purchases, research cost shares, and covering the costs and expenses associated with patent filings or other commercialization efforts.

6. Dispute Resolution

Any UNC Asheville faculty, staff, or student may seek resolution of a dispute regarding IP ownership or a determination of infringing use governed by this Policy by filing a written request with the Provost. The Provost may obtain advice and recommendations from the IP Committee, department chair(s) or director(s) and others, in attempting to informally resolve the dispute. If the dispute remains unresolved, the Provost shall, at the request of either or both parties, initiate the formal IP dispute resolution process shown in Section 6.1 below.

6.1 Process; Appeal; Disposition

For IP ownership disputes involving IP other than inventions or discoveries, the Provost shall refer the dispute to the IP Committee which will collect all relevant documents and material related to the dispute. The party shall be allowed to examine all written materials submitted for consideration in connection with the dispute and to make a written and, where practicable, oral presentation to the IP Committee if the party choose to do so. The Committee may ask for additional relevant materials if the information relevant to the dispute seems unclear or incomplete, materials that the IP Committee may consider at a subsequent meeting. Copies of all collected material will be made available to all parties prior to the IP Committee's meeting to consider the dispute. No party shall have the right to be represented by counsel before the IP Committee, but any party may be accompanied at the meeting by an adviser of his or her choosing, who shall not participate in the meeting.

The IP Committee shall issue an IP ownership decision within forty-five days of the last meeting in the matter, and will submit its findings and conclusions to the party in writing. For good cause the IP Committee Chair may extend the time period for such decision by not more than an additional thirty (30) days. The parties may appeal this decision to the Provost within thirty (30) days following receipt of the IP Committee's determination. The Provost shall review all material relevant to the dispute, and may collect any additional materials deemed appropriate to consider. After review of the relevant material and consultation with the IP Committee, the Provost shall issue a final written University decision in the matter.

For IP ownership disputes involving inventions and discoveries, the initial ownership determination for inventions and discoveries shall be made by the IP Committee, in accordance with applicable University disclosure and review procedures, as referenced in Section 5.3. (Ownership; Dispute). As stated in those procedures, the Provost shall review all material relevant to the dispute, and may collect any additional materials deemed appropriate to consider. After review of the relevant material and consultation with the IP Committee, the Provost shall issue a final written University decision in the matter.