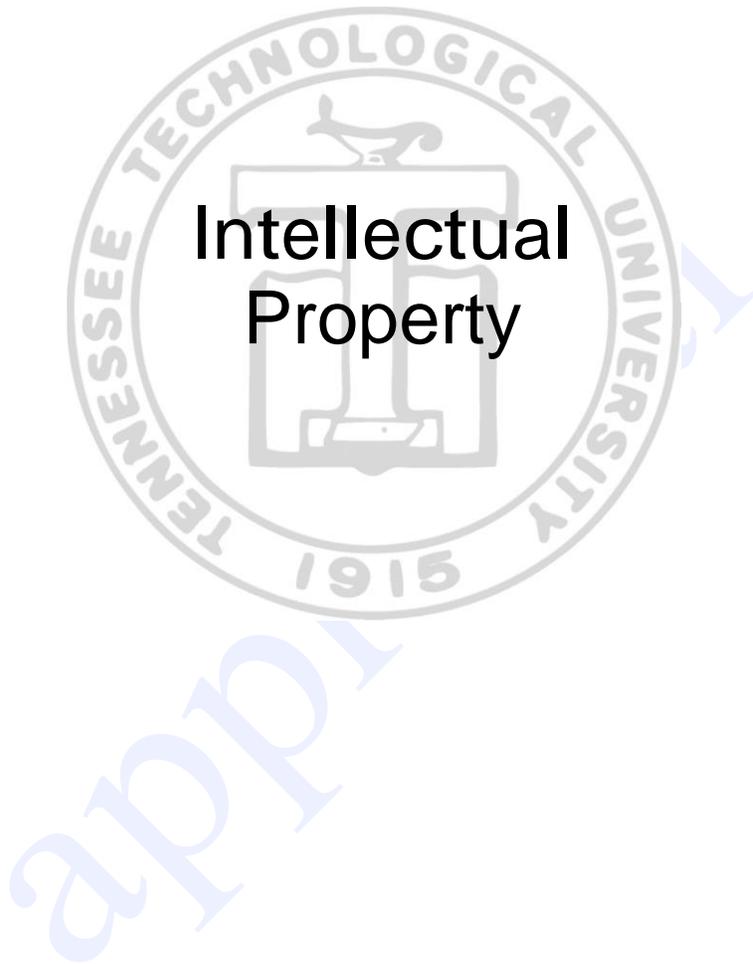


Tennessee Technological University  
Policy No. 732



# Intellectual Property

Effective Date: ~~January 1~~ January 27, 2016, 2018

Commented [CD1]: Will be determined at a later date.

**Policy No.: 732**

**Policy Name: Intellectual Property**

**Date Revised: July 1, 2020**

Commented [CD2]: Removed by Office of University Counsel

## **I. Purpose**

Tennessee Tech encourages Inventions and the production of copyrightable Works, facilitates the utilization of such Inventions and Works to the benefit of the public and members of the Tennessee Tech community, and provides for the equitable sharing of any proceeds derived from the commercial exploitation of Inventions and Works in which, pursuant to this policy, Tennessee Tech is determined to have an interest. This policy protects the interests of all concerned parties: members of the Tennessee Tech community, external sponsors of research, and the public.

The Intellectual Property Advisory Committee (IPAC) is responsible for administering the policies and enforcing the rules and regulations related to intellectual property (IP).

## **II. Review**

This policy will be reviewed every three years or whenever circumstances require review, whichever is earlier, by the Associate Vice President for Research in consultation with the Vice President for Research and Economic Development and the Office of the Provost, with recommendations for revision presented to the Administrative Council, Academic Council, and University Assembly.

## **III. Scope**

This policy shall apply to all persons employed (full-time, part-time, and temporary employees) by Tennessee Tech, to students enrolled at Tennessee Tech, and to other persons using Tennessee Tech's facilities and resources. Contracts for works-for-hire between Tennessee Tech and independent contractors should define the respective rights and responsibilities of the parties with respect to ownership of any intellectual property developed as a result of the contract.

## **IV. Definitions**

**A. Author:** person(s) responsible for creation of Work

**B. Course Materials:** excluding course syllabus, these materials include, but are not limited to, lecture notes, presentations, videos, and online course content

**C. Intellectual Property (IP):** Inventions and Works

**D. Invention:** any new discovery, use, application, process, composition of matter, article of manufacture, know-how, design, model, technological development, or biological material

**E. Inventor:** person or persons responsible for the conception of an essential element of the invention

**F. Net Income:** proceeds and dividends related to the sale, lease, or licensing of IP, minus the costs directly associated with patent prosecution, copyright registration, commercialization, defense, maintenance, and administration of IP

**G. Scholarly Works:** include articles written for publication in academic journals, textbooks, Works of fine art, musical compositions, and literary Works such as novels, short stories, and poems

**H. Scope of Employment:** activities assigned to a Tennessee Tech employee by his/her supervisor, or which fall within the employee's job description, including course syllabi but excluding miscellaneous Course Materials and Scholarly Works

Commented [CD3]: Added by Office of the President

**I. Significant Use:** utilization of Tennessee Tech funds, personnel, (including overload compensation), facilities, equipment, materials, or other resources resulting in a direct, indirect, or depreciative cost to Tennessee Tech of more than \$3,553 (in constant 2018 dollars); excludes Tennessee Tech office space, Tennessee Tech libraries, and computers provided by Tennessee Tech. Students' use of resources or facilities typically available to students in their educational activities does not constitute significant use.

Commented [CD4]: Added by Office of the President

**J. Substantial Use:** interpretations of this phrase may include but are not limited to overload salary compensation in excess of \$4,000 (in 2020 dollar value) or use in excess of 100 support hours from Center for Innovation in Teaching and Learning staff and/or other staff to provide course design, development, and deployment assistance.

Commented [CD5]: New definition provided by Executive Team for Faculty Senate.

Commented [CD6]: Removed by Office of the President.

**K. Copyrightable Work:** any copyrightable material as defined by U.S. Code Title 17, chapter 1, section 102, which includes theses and dissertations. As a condition of being awarded a degree, the student grants the University a non-exclusive right to retain, use, and distribute a number of copies of the theses and dissertations, together with the right to require its publication for archival use. However, in cases where the theses or dissertations are the result of an externally funded project with publication restrictions, the theses or dissertations would be embargoed until those restrictions are lifted. If the theses and dissertations are a result of a grant-funded project, those works are subject to other Federal and state compliance guidelines.

## **V. IP Ownership**

**A.** IP developed by persons to whom this policy applies shall be the sole and exclusive property of Tennessee Tech if the IP is:

**1.** developed within the Scope of Employment, ~~except-miscellaneous Course Material and~~ ~~except Course Materials and~~ ~~except Scholarly Work; or~~

Commented [CD7]: Removed by Office of the President.

Commented [CD8]: Added by Office of the President.

Commented [CD9]: Amy Hill made this change per Dr. Otuonye's request from the President (2/7/2020).

2. developed in the course of a project sponsored by Tennessee Tech; or

3. developed with Significant Use of Tennessee Tech resources; or

4. developed in the course of a project arranged, administered, or controlled by Tennessee Tech and sponsored by persons, agencies, or organizations external to Tennessee Tech, absent prior written agreement to the contrary.

B. Prior to Tennessee Tech providing support to a person to whom this policy applies, including release time or funding, where that support could reasonably result in an Invention or Work with commercial value, Tennessee Tech and the person(s) receiving that support shall agree in writing whether any resulting IP potentially would qualify as a Scholarly Work, provided however that it is understood that in the absence of any written agreement that provides for ownership by any such person or persons, the resulting Inventions or Works are the sole and exclusive property of Tennessee Tech.

C. IP developed outside Scope of Employment, on the employee's own time, and without the Significant Use of Tennessee Tech resources shall be the sole and exclusive property of the Inventor or Author. However, Tennessee Tech may require the Inventor or Author assign some or all ownership rights of that Invention or Work to Tennessee Tech if Tennessee Tech assists with the evaluation of IP, patent protection, or commercialization activities.

D. When more than one person is entitled to claim ownership of the IP, the Inventors or Authors shall reach agreement among themselves regarding relative contributions for the purposes of distribution of Net Income from the Invention or Work. The agreement must be in writing and notarized and submitted to the Office of Research before initial decisions about patent protection or commercialization will be made.

~~E. Tennessee Tech shall not assert ownership of any Course Materials or Scholarly Works. Ownership of Course Materials and Scholarly Works is transferred to the author(s) Tennessee Tech grants to the author a non-exclusive license to Course Materials to reproduce, perform publicly, display, transmit, distribute, and create derivative works based on the Course Materials for educational purposes. Tennessee Tech reserves all rights not expressly granted to Licensee, including the right of Tennessee Tech to continue using the Course Materials.~~

**Commented [CD10]:** Removed by Office of the President.

**Commented [CD11]:** Amy Hill made this change per Dr. Otuonye's request from the President (2/7/2020).

#### F. Online Course Materials

1. Tennessee Tech owns all online courses (where online is the only delivery mode) that are designed, developed, and deployed by faculty and/or staff if Significant Use of university resources was provided in support of the course development.

2. As a best practice, all online courses developed by faculty and staff will be guided by a memo of agreement with a clear designation of ownership.

**Commented [CD12]:** Changed "Substantial" to "Significant" by Office of the President

**Commented [CD13]:** Language provided by Executive Team of Faculty Senate.

**Commented [CD14]:** Language added by Office of the President.

3. Any distribution, licensing, or sale of Tennessee Tech-owned course materials will be with consent of the authors to the best of Tennessee Tech's ability.
4. Faculty authors will be compensated according to any royalty income in keeping with university policy.
5. Faculty and staff authors will maintain non-exclusive license for the personal use of any university-owned course materials.
6. Faculty and staff will maintain full ownership of any miscellaneous course materials such as class notes, figures, recordings, handouts, tests, etc. regardless of medium or level of university support as long as those course materials do not constitute a complete online course, provided the faculty and staff make course materials available to Tennessee Tech in order to meet Tennessee Tech's obligations under federal and state disability laws.
7. Faculty and staff are prohibited from the inappropriate use, sale, or distribution of any course materials that would constitute a violation of TTU Policy 132 (Conflict of Interest).

**Commented [CD15]:** Language added by Office of the President.

**Commented [CD16]:** Language added by Office of the President

**Commented [CD17]:** Language added by Office of the President

**Commented [CD18]:** Language added by Office of the President

**Commented [CD19]:** Language added by Office of University Counsel

**Commented [CD20]:** Language added by Office of the President.

G. Nothing in this policy shall preclude a mutually agreed upon contract between Tennessee Tech and persons to whom this policy applies wherein either party may agree to waive their rights.

## VI. Policy

- A. With regard to any invention developed in whole or part under a Federal Government grant, contract, or cooperative agreement, Tennessee Tech hereby adheres to Code of Federal Regulations 37 CFR 401 with regard to authorization, applicability of policy, ownership of IP, administrative responsibilities, Inventor rights, Author rights, appeals, and income from IP.
- B. Tennessee Tech faculty, students, and staff must submit an Invention Disclosure Form for Inventions and Works that may have commercial value if they are developed or created in whole or part during their affiliation with Tennessee Tech.
  1. The Inventor or Author shall fully cooperate with the Office of Research in the disclosure process and subsequent activities related to licensing, patenting, or commercializing of the Invention or Work.
  2. Inventors should particularly note that certain acts like presenting and publishing about the IP can prevent patent protection. Inventors should contact the Office of Research prior to engaging in these disclosure activities to discuss the potential impact.
- C. By making Significant Use of Tennessee Tech resources or participating in sponsored projects, teaching, research, or service projects, individuals (regardless of compensation) accept the principles of ownership of IP as stated in this policy.

D. Tennessee Tech and researchers shall be committed to complying with IP regulations in research, teaching, and other scholarly pursuits by complying with

1. TTU Policy 131 (Preventing and Reporting Fraud, Waste, or Abuse)

2. TTU Policy 132 (Conflict of Interest)

3. TTU Policy 735 (Conflict of Interest in Research)

4. TTU Policy 770 (Whistleblower Protection in Research)

E. Tennessee Tech adopts the following regarding income distribution between Tennessee Tech and Inventors or Authors:

1. The Inventor's or Author's share shall be 50 percent of the annual Net Income from the intellectual property.

2. The remaining 50 percent of Net Income shall be shared as follows: 20 percent to the department(s) or unit(s) which sponsored the development of the intellectual property, 10 percent to the origination college(s), and 20 percent to the Patents and Copyrights Account maintained in the Office of Research and Economic Development.

3. The Inventor and unit(s) involved shall have a written, signed agreement (refer to intellectual property income distribution form) relative to the distribution of income prior to approaching the committee to pursue a patent or copyright.

F. This policy shall be administered by the Intellectual Property Advisory Committee (IPAC).

1. The IPAC consists of faculty, staff, students, and other TTU employees experienced in IP matters.

2. The IPAC shall generally advise the Vice President for Research and Economic Development in all matters relating to this Policy.

3. Invention disclosures shall be forwarded to the IPAC for an evaluation of the ownership, patentability, and commercial potential of the Invention or Work. This evaluation may include an interview with the Inventor or Author, a preliminary prior art search, and related research. Any compensated assistance obtained from private legal counsel must be approved in advance by the President.

4. The IPAC shall provide the Vice President for Research and Economic Development with its recommendations of IP ownership and whether to seek patent protection or commercialization opportunities. All direct costs associated with those activities shall be

borne by Tennessee Tech. If the IPAC recommends that Tech not pursue patent protection or commercialization opportunities and the Vice President for Research and Economic Development concurs in that recommendation, Tech will assign its rights in the Invention or Work to the respective Inventors or Authors provided however that Tech shall have a lien on the Invention or Work to the extent that Tech has incurred any costs in its review process. Such lien shall be paid to Tech from any funds paid to the Inventors or Authors from any revenues generated by the sale or licensing of the Invention or Work and provided further that Tech shall be granted a perpetual, non-exclusive, royalty-free, fully paid-up license to use the Invention or Work for research and teaching activities.

### **VII. Violations of Policy**

Non-compliance with this policy is a serious violation, and any employee who violates it is subject to the disciplinary sanctions set forth in TTU Policy 650 (Disciplinary Action).

### **VIII. Interpretation**

The President or his/her designee has the final authority to interpret the terms of this policy.

### **IX. Citation of Authority for Policy**

T.C.A. § 49-8-203 (a)(1)(E); 37 CFR 401; 17 U.S.C. 101, 102 (a)(b), 106, and 107; U.S.C. 35; 45 CFR 650 NSF Patent Policy; Public Law 107-273

### **Approved by:**

Academic Council: \_\_\_\_\_

Administrative Council: 2016-01-27

University Assembly: 2016-04-20

**Policy No.:** \_\_\_\_\_ 732

**Policy Name:** \_\_\_\_\_ Intellectual Property

**Policy Subject:** \_\_\_\_\_ Intellectual Property

**Date Revised:** \_\_\_\_\_

### **I. Purpose**

~~Tennessee Tech encourages Inventions and the production of copyrightable Works; facilitates the utilization of such Inventions and Works to the benefit of the public and members of the~~

Commented [CD21]: Removed by Office of University Counsel

Commented [CD22]: Removed by Office of University Counsel

Tennessee Tech community,; and provides for the equitable sharing of any proceeds derived from the commercial exploitation of Inventions and Works in which, pursuant to this policy, Tennessee Tech is determined to have an interest. This policy protects the interests of all concerned parties: members of the Tennessee Tech community, external sponsors of research, and the public.

The Intellectual Property Advisory Committee (IPAC) is responsible for administering the policies and enforcing the rules and regulations related to intellectual property (IP).

## **II.— Review**

This policy will be reviewed every three years or whenever circumstances require review, whichever is earlier, by the Associate Vice President for Research in consultation with the Vice President for Research and Economic Development and the Office of the Provost, with recommendations for revision presented to the Administrative Council, Academic Council, and University Assembly.

## **III.— Scope**

This policy shall apply to all persons employed (full-time, part-time, and temporary employees) by Tennessee Tech, to students enrolled at Tennessee Tech, and to other persons using Tennessee Tech's facilities and resources. Contracts for works-for-hire between Tennessee Tech and independent contractors should define the respective rights and responsibilities of the parties with respect to ownership of any intellectual property developed as a result of the contract.

## **IV.— Definitions**

**Author:** person(s) responsible for creation of Work

**A.— Course Materials:** excluding course syllabus, these materials include, but are not limited to, lecture notes, presentations, videos, and online course content.

**Intellectual Property (IP):** Inventions and Works

**Invention:** any new discovery, use, application, process, composition of matter, article of manufacture, know-how, design, model, technological development, or biological material

**Inventor:** Person or persons responsible for the conception of an essential element of the invention.

**Net Income:** proceeds and dividends related to the sale, lease, or licensing of IP minus the costs directly associated with patent prosecution, copyright registration, commercialization, defense, maintenance, and administration of IP

**Scholarly Works:** include articles written for publication in academic journals, textbooks, Works of fine art, musical compositions, and literary Works such as novels, and collections of short

**Commented [OB23]:** Why has the Academic Council been taken out here? Clearly, research is an academic matter, even if the Provost's Office has been taken out of the consultation loop.

**Commented [OB24]:** Should there be a comma after "licensing of IP"?

~~stories, and poems.~~

~~**Scope of Employment:** activities assigned to a Tennessee Tech employee by his/her supervisor, or which fall within the employee's job description, including course syllabi but excluding Course Materials~~

~~**Significant Use:** utilization of Tennessee Tech funds, personnel, facilities, equipment, materials, or other resources resulting in a direct, indirect, or depreciative cost to Tennessee Tech of more than \$3,400 (in constant 2016 dollars); excludes Tennessee Tech office space, Tennessee Tech libraries, and computers provided by Tennessee Tech. Students' use of resources or facilities typically available to students in their educational activities does not constitute significant use~~

~~**Copyrightable Work:** any copyrightable material as defined by U.S. Code Title 17, chapter 1, section 102, which includes theses and dissertations~~

#### ~~V. IP Ownership~~

~~IP developed by persons to whom this policy applies shall be the sole and exclusive property of Tennessee Tech if the IP is:~~

~~Ddeveloped within the Scope of Employment; or~~

~~Ddeveloped in the course of a project sponsored by Tennessee Tech; or~~

~~Ddeveloped with Significant Use of resources; or~~

~~Ddeveloped in the course of a project arranged, administered, or controlled by Tennessee Tech and sponsored by persons, agencies, or organizations external to Tennessee Tech, absent prior written agreement to the contrary.~~

~~Prior to Tennessee Tech providing support to a person to whom this policy applies, including release time or funding, where that support could reasonably result in an Invention or Work with commercial value, Tennessee Tech and the person(s) receiving that support shall agree in writing whether any resulting IP potentially would qualify as a Scholarly Work, provided however that it is understood that in the absence of any written agreement that provides for ownership by any such person or persons, the resulting Inventions or Works are the sole and exclusive property of Tennessee Tech.~~

~~IP developed outside Scope of Employment, on the employee's own time, and without the Significant Use of resources, shall be the sole and exclusive property of the Inventor or Author. However, Tennessee Tech may require the Inventor or Author assign some or all ownership rights of that Invention or Work to Tennessee Tech before assisting with the evaluation of IP, patent protection, or commercialization activities.~~

**Commented [OB25]:** If "use" is a noun, this is OK. If "use" is acting as a verb, there should be commas after "retain" and "use".

~~When more than one person is entitled to claim ownership of the IP, the Inventors or Authors shall reach agreement among themselves regarding relative contributions for the purposes of distribution of Net Income from the Invention or Work. The agreement must be in writing and notarized and submitted to the Office of Research before initial decisions about patent protection or commercialization will be made.~~

~~Tennessee Tech shall not assert ownership of any Scholarly Work or Course Material.~~

~~Scholarly Works must be disclosed if they are reasonably expected to have commercial value.~~

~~Nothing in this policy shall preclude a mutually agreed upon contract between Tennessee Tech and persons to whom this policy applies wherein either party may agree to waive their rights.~~

#### ~~–VI. Policy~~

~~With regard to any invention developed in whole or part under a Federal Government grant, contract, or cooperative agreement, Tennessee Tech hereby adheres to Code of Federal Regulations 37 CFR 401 with regard to authorization, applicability of policy, ownership of IP, administrative responsibilities, Inventor rights, Author rights, appeals, and income from IP.~~

~~Tennessee Tech faculty, students, and staff must submit an Invention Disclosure Form for Inventions and Works that may have commercial value if they are developed or created in whole or part during their affiliation with Tennessee Tech.~~

~~The Inventor or Author shall fully cooperate with the Office of Research in the disclosure process and subsequent activities related to licensing, patenting, or commercializing of the Invention or Work.~~

~~Inventors should particularly note that certain acts like presenting and publishing about the IP can prevent patent protection. Inventors should contact the Office of Research prior to engaging in these disclosure activities to discuss the potential impact.~~

~~By making Significant Use of resources or participating in sponsored projects, teaching, research, or service projects, individuals (regardless of compensation) accept the principles of ownership of IP as stated in this policy.~~

~~Tennessee Tech and researchers shall be committed to complying with IP regulations in research, teaching, and other scholarly pursuits by complying with~~

~~TTU Policy 131 (Preventing and Reporting Fraud, Waste, or Abuse)~~

Commented [OB26]: Should this have a colon at the end?

~~TTU Policy 132 (Conflict of Interest)~~

~~TTU Policy 735 (Conflict of Interest in Research)~~

~~TTU Policy 770 (Whistleblower Protection in Research)~~

~~Tennessee Tech adopts the following regarding income distribution between Tennessee Tech and Inventors or Authors:~~

- ~~1. The Inventor's or Author's share shall be 50 percent of the annual Net Income from the intellectual property.~~
- ~~2. The remaining 50 percent of Net Income shall be shared as follows: 20 percent to the department(s) or unit(s) which sponsored the development of the intellectual property, 10 percent to the origination college(s), and 20 percent to the Patents and Copyrights Account maintained in the Office of Research and Economic Development.~~
- ~~3. The Inventor and unit(s) involved shall have a written, signed agreement (refer to \_\_\_\_\_ intellectual property income distribution form) relative to the distribution of income prior to approaching the committee to pursue a patent or copyright.~~

~~This policy shall be administered by the Intellectual Property Advisory Committee (IPAC).~~

~~The IPAC consists of faculty, staff, students, and other TTU employees experienced in IP matters.~~

~~The IPAC shall generally advise the Vice President for Research and Economic Development in all matters relating to this Policy.~~

~~Invention disclosures shall be forwarded to the IPAC for an evaluation of the ownership, patentability, and commercial potential of the Invention or Work. This evaluation may include an interview with the Inventor or Author, a preliminary prior art search, and related research. Any compensated assistance obtained from private legal counsel must be approved in advance by the President.~~

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~~provided further that Tech shall be granted a perpetual, non-exclusive, royalty free, full paid up license to use the Invention or Work for research and teaching activities.~~

**Commented [OB27]:** Should this be "royalty-free"?

**Commented [OB28]:** Is "full" or "fully" the proper term here?

**~~VII. Violations of Policy~~**

~~Non-compliance with this policy is a serious violation, and any employee who violates it is subject to the disciplinary sanctions set forth in TTU Policy 650 (Disciplinary Action).~~

**~~VIII. Interpretation~~**

~~The President or his/her designee has the final authority to interpret the terms of this policy.~~

**~~IX. Citation of Authority for Policy~~**

~~T.C.A. § 49-8-203 (a)(1)(E); 37 CFR 401; 17 U.S.C. 101, 102 (a)(b), 106, and 107; U.S.C. 35; 45 CFR 650 NSF Patent Policy; Public Law 107-273~~

~~Approved by:~~

~~Academic Council:~~

~~Administrative Council:~~

~~University Assembly:~~

approval