

UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

Committee on University Statutes and Senate Procedures
(Final; Action)

SP.18.13 Proposed Revision to the *General Rules*, Article III – Intellectual Property

BACKGROUND

University of Illinois *Statutes* provide for senate review of proposed changes to the intellectual property portions of the *General Rules* (Article III), unlike other revisions to the *General Rules*, which are handled by the Board of Trustees, in consultation, via the President, with the University Senates Conference (*Statutes*, Article I, Section 6 and Article XII, Section 5). University Senates Conference (USC) sent a set of proposed changes to Article III of the *General Rules* to the Senates in April 2018, which the Urbana-Champaign Senate considered at its April 30, 2018 meeting. At that time, the Senate Committee on University Statutes and Senate Procedures recommended that the Senate defer action to a later date so that concerns raised by the Senate Committee on General University Policy and the Office of the Vice Chancellor for Research could be sufficiently addressed.

USC has revised this proposed set of changes to Article III of the *General Rules*, retaining nearly all of their April 2018 alterations, while including additional changes based on the concerns raised in April by the Urbana-Champaign and Chicago Senates. In April, USC sent along their proposal with this introduction:

These revisions concern primarily two changes: (1) changing the role of the vice chancellor for research to the new vice president for economic development and innovation (shifting the responsibilities from the university level to the system level); and (2) incorporating the new system/university language being adopted across all the governing documents.

As explanatory context, here are the closing sections of a draft preamble or preface being written to accompany these changes:

Although there has been no formal legal name change to the institution, as of May 20, 2016, the University of Illinois has adopted the organizational structure and nomenclature of a system. The term “system” recognizes that there are separate universities that share an overarching strategic framework, are supported by certain shared administrative functions, and are overseen by a single governing board. The three universities include the University of Illinois at Urbana-Champaign; the University of Illinois at Chicago and its affiliated regional campuses in Peoria, Rockford, and the Quad Cities; and the University of Illinois at Springfield.

Accordingly, when describing the institution as a whole, including the three universities, the collective shall be referred to in this document (and other governance and administrative documents) as either the “University of Illinois,” the “University of Illinois System,” the “U of I System,” or the “system.” The adjectival form for such references is “system-wide.”

The University of Illinois offices that provide central administrative services are referred to as “system offices” and staff within these offices are referred to as “system administration” or “system leaders.” The adjectival form for references to such services or staff is “system- level.” To avoid confusion, these offices are not referred to as the “system.”

The individual campuses referenced above will be referred to independently as “university” and collectively as “universities.”

This change reflects the broader move away from the idea of a unitary University of Illinois, directed by a president and vice presidents, with three campus locations, to a system comprising three universities, each with its own chancellor (who is also a vice president). The emphasis may seem subtle, but is significant. Over the totality of the governing documents this reflects devolution of certain responsibilities from the system to the respective universities; and reserving the role of the system to those cases where there is a clear benefit to implementing policies across the three universities (i.e., system-wide).

Similar system/university language is also being developed for the *Statutes*, and those changes will be coming to the senates soon.

In addition to the preceding changes from April 2018, we have been asked to consider the following additional modifications:

- Lines of consultation have been clarified and made more robust:
 - the phrasing “vice chancellor for research, in consultation with the vice president for economic development and innovation” has been added to Sections 7 and 8.
 - the sentence “Should the units fail to agree mutually on a decision, the vice chancellors for research, in consultation with the vice president for economic development and innovation, shall determine the division.” has been added in lines 385-87.
 - the role the vice president for economic development and innovation is better specified in Section 8.
- University Administration has been distinguished as the “system offices” in Section 8.
- Additional clarifying references in lines 156, 350-51, and 372.
- Additional rephrasing to clarify the use of “system” throughout.

USC has determined that, unlike amending the University *Statutes*, revisions to the *General Rules* only require a single reading.

RECOMMENDATION

The Senate Committee on University Statutes and Senate Procedures recommends approval of the following revisions to the *General Rules*, Article III. Text to be added is underscored and text to be deleted is ~~struck through~~.

PROPOSED REVISIONS TO THE *GENERAL RULES*, ARTICLE III

1 ARTICLE III. INTELLECTUAL PROPERTY

2
3 SECTION 1. OBJECTIVES
4

5 Technical information, inventions, discoveries, copyrightable works and other creative works
6 that have the potential to be brought into practical use may result from the activities of
7 University of Illinois System employees in the course of their duties or through the use, by any
8 person, of University system resources such as facilities, equipment, or funds.
9

10 The first purpose of this intellectual property policy is to provide the necessary
11 protections and incentives to encourage both the discovery and development of new
12 knowledge, its transfer for the public benefit and its use for development of the economy; a
13 second purpose is to enhance the generation of revenue for the University system and to
14 provide financial and reputational benefits for the creator(s); and a third purpose is to preserve
15 the University's freedom to conduct research and to use the intellectual property created by that
16 research or pursuant to an institutional initiative. The University system is guided by the
17 following general objectives:
18

- 19 (i) To optimize the environment and incentives for research and for the creation of
20 new knowledge at within the University system;
21
22 (ii) To ensure that the educational mission of the University system is not
23 compromised;
24
25 (iii) To bring technology into practical use for the public benefit as quickly and
26 effectively as possible;
27
28 (iv) To protect the interest of the people of Illinois through a reasonable
29 consideration for the University's system's investment in its intellectual
30 property.
31

32 SECTION 2. DEFINITIONS
33

34 (a) Intellectual Property. The term "intellectual property" is broadly defined to
35 include inventions, discoveries, know-how, show-how, processes, unique materials,
36 copyrightable works, original data and other creative or artistic works which have value.
37 Intellectual property includes that which is protectable by statute or legislation, such as patents,
38 registered or unregistered copyrights, registered or unregistered trademarks, service marks,
39 trade secrets, mask works, and plant variety protection certificates. It also includes the physical
40 embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus,
41 instrumentation, circuits, computer programs and visualizations, biological materials,
42 chemicals, other compositions of matter, plants, and records of research and experimental
43 results.
44

45 (b) Traditional Academic Copyrightable Works. "Traditional academic
46 copyrightable works" are a subset of copyrightable works created independently and at the
47 creator's initiative for academic purposes. Examples may include class notes, books, theses
48 and dissertations, educational instructional materials and software (also known as courseware
49 or lessonware) that the creators may design for courses they teach, articles, non-fiction, fiction,
50 poems, musical works, dramatic works including any accompanying music, pantomimes and
51 choreographic works, pictorial, graphic and sculptural works, or other works of artistic
52 imagination that are not created as an institutional initiative (as specified in Section 4(a)(2)
53 below).
54

55 (c) Creator. "Creator" refers to an individual or group of individuals who make,
56 conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution
57 to the creation of intellectual property. "Creator" includes the definition of "inventor" used in
58 U.S. patent law for patentable inventions and the definition of "author" used in the U.S.
59 Copyright Act for copy written works of authorship.

60
61 (d) University System Resources Usually and Customarily Provided. When
62 determining ownership and license rights in copyrightable works, "University system resources
63 usually and customarily provided" includes office space, library facilities, ordinary access to
64 computers and networks, or salary. In general, it does not include the use of students or
65 employees as support staff to develop the work, or substantial use of specialized or unique
66 facilities and equipment, or other special subventions provided by the University system unless
67 approved as an exception.

68
69 Exceptions are expected in units where the tradition is to provide subvention to
70 some faculty in the form of graduate assistants to help prepare traditional academic
71 copyrightable works. Exceptions are also expected in situations where creators use University
72 system-provided facilities and resources in the creation of works of artistic imagination, for
73 example, use of studios, pottery wheels, or kilns for the creation of paintings, sculpture or
74 ceramics; use of high end computer hardware and software in the creation of artistic graphical
75 images; and so on. Other individual exceptions may be approved on a case-by-case basis [see
76 section 7(k)].

77
78 SECTION 3. APPLICATION

79
80 This policy is considered a part of the conditions of employment for every employee of
81 the University of Illinois System, and a part of the conditions of enrollment and attendance at
82 ~~the University~~ by its students. It is also the policy of the University system that individuals
83 (including visitors) by participating in a sponsored research project and/or making significant
84 use of University system-administered resources thereby accept the principles of ownership of
85 intellectual property as stated in this policy unless an exception is approved in writing by the
86 University system. All University such creators of intellectual property shall execute
87 appropriate assignment and/or other documents required to perfect, confirm, or determine
88 ownership and rights as specified in this policy.¹

89
90 This policy applies only to intellectual property disclosed after the effective date of the
91 policy (September 3, 1998).

¹The creator's obligation to assign rights to the University system is subject to the provisions of the Illinois Employee Patent Act, which provides in part (see 765 ILCS 1060/2(1)):

A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of the state and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.

93 SECTION 4. COPYRIGHTS

94

95 (a) Ownership. Unless subject to any of the exceptions specified below or in
96 Sections 4(b) and 4(c), creators retain copyright rights to traditional academic copyrightable
97 works as defined in Section 2(b) above. (See, ~~however~~ in particular, Section 4(b)(2) below.)

98

99 The University of Illinois System shall own copyrightable works as follows, and by
100 operation of this Article, such works are hereby assigned to and the property of the University
101 system:

102

103 (1) Works created pursuant to the terms of a University system agreement
104 with a third party, or

105

106 (2) Works created as a specific requirement of employment or as an
107 assigned University duty that may be specified, for example, in a written job description or an
108 employment agreement. Such specification may define the full scope or content of the
109 employee's ~~University employment~~ duties comprehensively or may be limited to terms
110 applicable to a single copyrightable work.²

111

112 (3) Works specifically commissioned by the University system. The term
113 "commissioned work" refers to a copyrightable work prepared under an agreement between the
114 University system and the creator when (1) the creator is not a University system employee, or (2) the
115 creator is a University system employee but the work to be performed falls outside the normal scope
116 of the creator's University system employment. Contracts covering commissioned works shall specify
117 that the author convey by assignment, if necessary, such rights as are required by the University
118 system.

119

120 (4) Works that are also patentable. The University system reserves the right
121 to pursue multiple forms of legal protection concomitantly if available. Computer software, for
122 example, can be protected by copyright, patent, trade secret and trademark.

123

124 (b) University System Rights in Creator-Owned Works

125

126 (1) Traditional academic copyrightable works created using University
127 system resources usually and customarily provided are owned by the creators. Such works
128 need not be licensed to the University system.

129

130 (2) Traditional academic copyrightable works created with use of University
131 system resources over and above those usually and customarily provided shall be owned by the
132 creators but licensed to the University system. The minimum terms of such license shall grant
133 the University system the right to use the original work and to make and use derivative works
134 in its internally administered programs of teaching, research, and public service on a perpetual,
135 royalty-free, non-exclusive basis. The University system may retain more than the minimum
136 license rights when justified by the circumstances of development.

137

138 (c) Student Works. Unless subject to the provisions of paragraph (a) or provided
139 otherwise by written agreement, copyrightable works prepared by students as part of the
140 requirements for a University degree program are deemed to be the property of the student but
141 are subject to the following provisions:

²Provisions (1) and (2) above define those works that fall within the scope of University employment as that term is used in the definition of "work made for hire" in the U.S. Copyright Statute (see Title 17, USC, Section 101).

142
143 (1) The original records (including software) of an investigation for a
144 graduate thesis or dissertation are the property of the University system but may be retained by
145 the student at the discretion of the student's major department.

146
147 (2) The University of Illinois System shall have, as a condition of awarding
148 the degree, the royalty-free right to retain, use and distribute a limited number of copies of the
149 thesis, together with the right to require its publication for archival use.

150
151 (d) Copyright Registration and Notice. University System-owned works shall be
152 protected by copyright notice in the name of the Board of Trustees of the University of Illinois.
153 Such copyright notice shall be composed and affixed in accordance with the United States
154 Copyright Law. Registration of the copyright for University system-owned works shall be in
155 accordance with the operational guidelines and procedures established by the vice ~~chancellor~~
156 president for economic development and innovation, pursuant to Section 7(k), below for
157 ~~research on each campus.~~ The University system may also decide to release a work to the
158 public domain and if so, should so indicate.

159
160 (e) University Press Publications. The University Press shall be responsible for
161 copyright registration of works owned by the University system and published by the Press and
162 for administering contracts with its authors. Such contracts shall define the rights and
163 obligations of the author and the University system and shall be processed as other University
164 system contracts.

165
166 (f) Compliance with the Copyright Act. University System units that administer
167 activities involving any usage regulated by the Copyright Act are responsible for knowing
168 applicable regulations, monitoring their continuing evolution, and conducting their programs in
169 full compliance with the applicable laws and regulations.

170
171
172 SECTION 5. OTHER INTELLECTUAL PROPERTY

173
174 Ownership. Except as otherwise specified in this Article or by the University of Illinois
175 System in writing, intellectual property shall belong to the University system, and by operation
176 of this Article is hereby assigned to and the property of the system, if made: (1) by a
177 University system employee as a result of the employee's duties or (2) through the use by any
178 person, including a University system employee, of University system resources such as
179 facilities, equipment, funds, or funds under the control of or administered by the University
180 system. (See also Section 4(a)(4) above.)

181
182 SECTION 6. TRADEMARKS

183
184 Trademarks and service marks are distinctive words or graphic symbols
185 identifying the source, product, producer, or distributor of goods or services. Registration of
186 trademarks or service marks, at the state or federal level, shall be approved by the appropriate
187 ~~campus university~~ or University system level officer. Proceeds received from
188 commercialization of a registered or unregistered mark that is related to an intellectual property
189 license for associated intellectual property will be shared with all creator(s) of the associated
190 property as specified in Sections 8(b) and 8(c) below. For proceeds received from
191 commercialization of a mark that is licensed independently and is not directly related to an
192 intellectual property license, the share that would normally be distributed to the creator(s) will
193 be assigned to the unit(s) from which the trademark or service mark originated. Except as
194 provided herein or subject to prior written agreement between the creator(s) and the University

195 system, the University system will not share the proceeds from commercialization of a mark
196 with the individual(s) who created the mark.

197

198 SECTION 7. INTELLECTUAL PROPERTY ADMINISTRATION

199

200 (a) Disclosure. All intellectual property in which the University of Illinois System
201 has an ownership interest under the provisions of this policy and that has the potential to be
202 brought into practical use for public benefit or for which disclosure is required by law shall be
203 reported promptly in writing by the creator(s) to the designated campus university officer
204 through the appropriate unit employee using the disclosure form provided by that unit. The
205 disclosure shall consist of a full and complete description of the subject matter of the discovery
206 or development and identify all persons participating therein. The creator(s) shall furnish such
207 additional information and execute such documents from time to time as may be reasonably
208 requested.

209

210 (b) Evaluation and Exploitation Decisions. After evaluation of the intellectual
211 property and review of applicable contractual commitments, the University system may
212 develop the property through licensing, to an established business or a start-up company, may
213 release it to the sponsor of the research under which it was made (if contractually obligated to
214 do so), may release it to the creator(s) if permitted by law and current University system policy,
215 or may take such other actions considered to be in the public interest. Exploitation by the
216 University system may ~~not~~ involve statutory protection of the intellectual property rights, such
217 as filing for patent protection, registering the copyright, or securing plant variety certification.
218 All agreements regarding intellectual property must be executed by the vice president/chief
219 financial officer and comptroller ~~and attested to by the Secretary of the Board of Trustees or~~
220 ~~their~~ his or her designees.

221

222 (c) Questions Related to University System Ownership. In the event there is a
223 question as to whether the University system has a valid ownership claim in intellectual
224 property, such intellectual property should be disclosed in writing to the University of Illinois
225 System by the creator(s) in accordance with Section 7(a). Such disclosure is without prejudice
226 to the creator's ownership claim. The University system will provide the creator with a written
227 statement as to the University's system's ownership interest.

228

229 (d) Informing Creators of Decisions. The University system will inform principal
230 creators in writing of its substantive decisions regarding protection, commercialization and/or
231 disposition of intellectual property which they have disclosed. However, specific terms of
232 agreements with external parties may be proprietary business information and subject to
233 confidentiality restrictions.

234

235 (e) University System Abandons Intellectual Property. Should the University
236 system decide to abandon development or protection of University system-owned intellectual
237 property, ownership may be assigned to the creator(s) as allowed by law and current University
238 system practice, subject to the rights of sponsors and to the retention of a license to practice for
239 University system purposes. The minimum terms of the license shall grant the University
240 system the right to use the intellectual property in its internally administered programs of
241 teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The
242 University system may retain more than the minimum license rights, and the assignment or
243 license may be subject to additional terms and conditions, such as revenue sharing with the
244 University system or reimbursement of the costs of statutory protection, when justified by the
245 circumstances of development.

246

247 (f) Commercialization. The University system may, at its discretion and consistent
248 with the public interest, license intellectual property on an exclusive or non-exclusive basis.
249 The licensee must demonstrate technical and business capability to commercialize the
250 intellectual property. The licensee may include clear performance milestones with a provision
251 for recapture of intellectual property if milestones are not achieved. The licensee may be
252 required to assume the cost of statutory protection of the intellectual property.

253

254 (g) Conflict of Interest and Commitment. Commercialization activities involving
255 University of Illinois System employees will be subject to review of potential conflict of
256 interest and commitment issues and approval of a conflict management plan in accordance with
257 applicable University system policy.

258

259 (h) University's System's Acceptance of Independently Owned Intellectual
260 Property. The University of Illinois System may accept assignment of intellectual property
261 from other parties provided that such action is determined to be consistent with the public
262 interest. Intellectual property so accepted shall be administered in a manner consistent with the
263 administration of other University system-owned intellectual property.

264

265 (i) Consulting Agreements. University System employees engaged in external
266 consulting work or business are responsible for ensuring that agreements emanating from such
267 work are not in conflict with University system policy, with the University's system's
268 contractual commitments or with University system policies regarding University system-
269 owned intellectual property. Such employees should make their non- University system
270 obligations known to the appropriate campus university officer and should provide other parties
271 to such agreements with a statement of applicable University system policies regarding
272 ownership of intellectual property and related rights.

273

274 (j) Statement by Creators. The creators of University system-owned intellectual
275 property may be required to state that to the best of their knowledge the intellectual property
276 does not infringe on any existing patent, copyright or other legal rights of third parties; that if
277 the work is not the original expression or creation of the creators, the necessary permission for
278 use has been obtained from the owner; and that the work contains no libelous material nor
279 material that invades the privacy of others.

280

281 (k) Administrative Responsibility. The president has ultimate authority for the
282 stewardship of intellectual property developed at within the University of Illinois System.
283 Pursuant to Article I, Section 2, Paragraph (d) the vice president for research economic
284 development and innovation has direct line authority for University system offices and entities
285 involved in technology commercialization and related economic development. With the advice
286 of the chancellors/vice presidents, or their designees, and in consultation with the executive
287 vice president and vice president for academic affairs and the campus university vice
288 chancellors for research, the vice president for research economic development and innovation
289 shall establish operational guidelines and procedures for the administration of intellectual
290 property, including but not limited to determination of ownership, assignment, protection,
291 licensing, marketing, maintenance of records, oversight of revenue or equity collection and
292 distribution, approval of individual exceptions, and resolution of disputes among creators
293 and/or unit executive officers.

294

295 (l) Campus University Responsibility. Each campus university may establish an
296 office which has responsibility for administering University system policies regarding
297 intellectual property as defined in this Article.

298

299 (m) Contractual Authority. Licenses, options for licenses and other agreements
300 related to commercialization or exploitation of intellectual property shall be granted in the
301 name of the Board of Trustees of the University of Illinois. All such contracts shall be
302 executed in accordance with the policies described in this Article.
303

304 (n) Administrative Guidelines and Procedures. General guidelines and procedures
305 for the administration of intellectual property shall be established by the president in
306 consultation with the University System Intellectual Property Committee (as specified in
307 Section 7(o) below) ~~and the campuses. Detailed operational guidelines and procedures for the~~
308 ~~administration of campus based responsibilities shall be established by the vice chancellor for~~
309 ~~research.~~
310

311 (o) University System Intellectual Property Committee. The University System
312 Intellectual Property Committee shall be appointed annually by the president to make
313 recommendations to the president regarding procedures, guidelines, and responsibilities for the
314 administration and development of intellectual property and such other matters as the president
315 shall determine.
316

317 (p) Appeals. After following the administrative guidelines and procedures
318 ~~established by each campus~~, the University creator or unit executive officer may appeal to the
319 University System Intellectual Property Committee to seek resolution of complaints or
320 questions regarding the matters addressed in this Article.
321

322 (q) Preferential Treatment of Sponsors. Sponsored research agreements shall
323 provide that all intellectual property developed as a result of the sponsored research project
324 shall belong to the University system unless otherwise specified in writing. The sponsor may
325 receive an option to license the resulting intellectual property on terms to be negotiated, with
326 the option to be exercised within a specified period following the disclosure of the intellectual
327 property. When the nature of the proposed research allows identification of a specific area of
328 intellectual property or application which is of interest to the sponsor, the University vice
329 chancellors for research, in consultation with the vice president for economic development and
330 innovation, may accept research agreements with terms which entitle the sponsor to reasonable
331 specific commercial rights within the defined field of interest. Otherwise, the specific terms of
332 licenses and rights to commercial development shall be based on negotiation between the
333 sponsor and the University vice chancellors for research, in consultation with the vice president
334 for economic development and innovation, at the time the option is executed by the sponsor
335 and shall depend on the nature of the intellectual property and its application, the relative
336 contributions of the University system and the sponsor to the work, and the conditions deemed
337 most likely to advance the commercial development and acceptance of the intellectual property.
338 In all cases where exclusive licensing is appropriate, such license agreements shall be executed
339 apart from the sponsored research agreement and shall require diligent commercial
340 development of the intellectual property by the licensee. The University vice chancellors for
341 research, in consultation with the vice president for economic development and innovation,
342 may also determine, on a case-by-case basis and only if allowed by law, that it is in the
343 University's system's interest to assign ownership of resulting intellectual property to the
344 sponsor as an exception to this policy when circumstances warrant such action, in accordance
345 with guidelines established by the ~~University Intellectual Property Committee pursuant to~~
346 Section 7(k), above.
347

348 (r) Exceptions to Policy. Recommendations for exceptions to the provisions of the
349 policy in this Article shall be made by the University System Intellectual Property Committee
350 to the president for presentation to the Board of Trustees. [For individual exceptions, see
351 Section 7(k).]

352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397

SECTION 8 PROCEEDS DISTRIBUTION³

(a) Proceeds. For purposes of this policy, “proceeds” shall refer to all revenue and/or equity, as defined below, received by the University of Illinois System from transfer, commercialization, or other exploitation of University system-owned intellectual property.

(1) Revenue. “Revenue” shall mean cash from payments including, but not limited to, royalties, option fees, license fees, and/or fees from the sale of the University’s system’s equity interest.

(2) Equity. “Equity” shall include, but not be limited to, stock, securities, stock options, warrants, buildings, real or personal property, or other non-cash consideration.

(b) Revenue Distribution. When revenue is received by the University system, all out-of-pocket payments or obligations (and in some cases, a reasonable reserve for anticipated future expenses) attributable to protecting (including defense against infringement or enforcement actions), marketing, licensing or administering the property may be deducted from such income. The income remaining after such deductions is defined as net revenue. In the case of multiple intellectual properties licensed under a single licensing agreement, the University system, pursuant to Section 7(k), above, shall determine and designate the share of net income to be assigned to each intellectual property.

(1) Creator’s Share. The creator (or creator’s heirs, successors, and assigns) normally shall receive forty percent (40%) of net revenue. If there are joint creators, the net income shall be divided among them as they shall mutually agree. Should the creators fail to agree mutually on a decision, the University vice chancellors for research, in consultation with the vice president for economic development and innovation, shall determine the division.

(2) Originating Unit’s Share. The originating unit normally shall receive twenty percent (20%) of net revenue. If a creator is affiliated with more than one originating unit or if there are joint creators from different units, the originating unit(s) share shall be divided among such units as agreed in writing by the responsible unit executive officers. Should the units fail to agree mutually on a decision, the vice chancellors for research, in consultation with the vice president for economic development and innovation, shall determine the division.

(3) System-Level and University’s Shares. The University system offices normally shall receive forty percent (40%) of net revenue. ~~Distribution of the University’s share~~ These funds shall be allocated in support of its the technology transfer activities and academic and research programs as determined by the vice chancellor for research at the university where the intellectual property was generated.

(c) Equity Distribution. In any instance wherein the University of Illinois System executes an agreement with a corporation or other business entity for purposes of exploiting intellectual property owned by the University system and the University system receives or is

³These proceeds distribution provisions shall apply only to revenue and equity received from agreements for commercialization that are executed subsequent to the effective date of this policy (September 3, 1998). Unless otherwise agreed in writing between the University system and the creator(s), distribution of income for commercialization prior to the effective date of this policy shall be in accordance with the policy in effect at the time the agreement was approved. Where no policy exists (e.g., for equity), this policy shall prevail.

398 entitled to receive equity, revenue from the equity shall be shared among the creator(s), the
399 originating unit(s), and the University system offices in the same proportions as revenue
400 distributions (except as specified in Section 8(d) below).

401

402 (d) Exceptions When the Creator(s) Have No Entitlement. If the University system
403 accepts research support in the form of a sponsored research agreement or unrestricted grant as
404 part of the consideration in an intellectual property license in lieu of an option fee, license fee
405 or royalty, the creator(s) shall have no entitlement to receive a share as personal income. For
406 the subset of equity that is buildings, real or personal property, or other non-cash consideration,
407 the creator(s) shall have no entitlement to receive a share as personal income.

408

409 (e) Special Distributions. Special facts or circumstances may warrant a different
410 distribution of proceeds than specified above and such distributions will be determined on a
411 case-by-case basis under the authority of the vice chancellors for research, in consultation with
412 the vice president for economic development and innovation.

413

414 (f) Revenue from Actions for Defense or Enforcement of Intellectual Property
415 Rights. When the University system offices receives revenue from third parties that results
416 from successful actions for the purpose of defending or enforcing the University's system's
417 rights in its intellectual property, such revenue may first be used to reimburse the University
418 system (or the sponsor or licensee, if appropriate) for expenses incurred in such actions. The
419 creator(s) and their originating unit(s) shall be entitled to recovery of lost royalties from the
420 remaining net revenue, in the same proportions as specified in Section 8(b) above. The
421 remaining net revenue shall be allocated in support of the University's technology transfer
422 activities and academic and research programs ~~as determined by the vice chancellor for~~
423 research at the university where the intellectual property was generated.

424

UNIVERSITY STATUTES AND SENATE PROCEDURES

Shawn Gilmore, Chair

H. George Friedman

Donald Hackmann

Saanil Joshi

William Maher

Dorothee Schneider

Nicholas Sheperd

Jeffrey Stein

Jessica Mette, *Ex officio (designee)*

Jenny Roether, *Ex officio*