

**POLICY CONCERNING THE
OWNERSHIP, DISTRIBUTION AND
COMMERCIAL DEVELOPMENT
OF
BALL STATE UNIVERSITY INTELLECTUAL PROPERTY AND
TECHNOLOGY**

PART 1. INTRODUCTION AND SELECTED DEFINITIONS

1.0 INTELLECTUAL PROPERTY AND RELATED RIGHTS

The material set forth in this document addresses the ownership, distribution, and commercial development of technology developed by Ball State University (“Ball State”) faculty, staff, and students and others participating in Ball State programs. The term “technology” is broadly defined in this document to include technical innovations, inventions, and discoveries, as well as writings, audiovisual or digital or other creative works, and other information in various forms, including computer software.

The principal rights governing the ownership and disposition of technology are known as “intellectual property” rights, which are derived primarily from federal and state legislation granting patent, copyright, trademark, trade secret and integrated circuit mask work protection.

In some instances, distribution and commercialization of technology may be accomplished by the transfer/assignment or licensing of the intellectual property rights, such as the licensing of patents or copyrights. In other instances, distribution and commercialization of technology may be aided by or depend upon access to the physical or tangible embodiment of the technology, as in the case of biological organisms, plant varieties or computer software through the appropriate transfer arrangement.

Therefore, this policy will define not only the ownership, distribution, and commercialization rights associated with the technology in the form of intellectual property, but will also define policies and procedures which govern use and distribution of the technology in its tangible form.

The following overview of intellectual property rights is limited in scope. The Ball State Technology Transfer Officer (“TTO”) at the Ball State Technology Transfer Office should be contacted for further information regarding any of these rights.

1.1 PATENTS AND PATENT RIGHTS

A patent is a grant issued by the United States Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories and possessions, for a period which expires 20 years after the patent filing.

Patents may also be granted in foreign countries; procedures for filing, regulations for patentability, and term of patent grant vary considerably from country to country.

To be patentable in most countries, an invention must be new, useful, and nonobvious. In the United States, a grace period of 12 months from the first written or oral public disclosure of an invention is allowed to file a patent application. In most foreign countries, an invention is unpatentable unless the application is filed before public disclosure (written or oral). However, if one has filed a patent application in the United States prior to disclosure, the applicant has 12 months from the date of filing in the United States to file in most non-U.S. countries without losing filing rights.

1.2 COPYRIGHTS

A copyright owner has the exclusive right to reproduce or copy the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.

Under federal copyright law, copyright subsists in “original works of authorship” which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

For an individual author, copyright protection of a work extends for the author’s life plus 70 years. For employers, copyright protection of a work extends for 95 years from the date of publication as of 1998. An “author” is a person who creates copyrightable material in any form. A copyrightable work may have more than one author.

In contrast to a patent which protects the “idea”, copyright protects the “artistic expression.” This can include, without limitation, tangible mediums of expression such as: literary work, musical work, computer program or software, video or motion picture or sound recording, digital video or digital photograph, sculpture, and so forth, in which the “expression” is embodied, illustrated, or explained.

1.3 TRADE AND SERVICE MARKS

A trade or service mark is a word, name, symbol or device (or any combination thereof) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others. In the United States, trademark ownership is generally acquired through use of a term or symbol to identify the origin of goods or services, although effective November, 1989, legislation enables organizations to file for trademark protection based on intent to use a particular term or symbol. Trade or service mark ownership is not dependent upon federal or state registration, but upon use of the mark. Registration of trade and service marks may be obtained on both the state and federal levels. However, to apply for a federal registration of a mark, it must be used in interstate commerce.

1.4 MASK WORKS

A mask work is defined as a series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product. Under the Semiconductor Chip Act of 1984, mask work protection extends for 10 years and gives the owner of the qualifying mask work exclusive rights to its exploitation. Mask works are registered with the United States Copyright Office. Failure to apply within 2 years of the initial commercial exploitation results in the termination of the exclusive rights.

1.5 TANGIBLE RESEARCH PROPERTY

The term “tangible research property” refers to those research results which are in a tangible form as distinct from intangible (or intellectual) property. Examples of tangible property can include integrated circuit chips, computer software, biological organisms or tissue, engineering prototypes (whether functional or non-functional), computer generated three-dimensional models or prototypes, engineering drawings or renderings, and other property which can be physically distributed.

Although tangible research property may often have intangible property rights associated with it, such as biological organisms which may be patented or computer software which may be either patented or copyrighted, where appropriate, tangible research property may be distributed without securing intellectual property protection by using some form of contractual agreement, such as formal contract,

materials transfer or license agreement, loan agreement, letter agreement, memorandum of understanding, or user license as further set forth in this document.

1.6 TRADE SECRET

The law of trade secret may be applied to almost any secret which is used in business or commerce and gives the owner of the trade secret a competitive edge over others. It is used to protect valuable proprietary information and is a commonly used form of protection for software. Unlike copyrights, there is no federal trade secret statute. Trade secret laws are determined by the individual states but generally adhere to similar principles. The most important aspect of this type of protection is that of secrecy. The protection will remain legally valid only as long as a trade secret is maintained, and/or reasonable efforts are undertaken to maintain its secrecy. In order to maintain protection while a trade secret is being used, it is necessary to bind those individuals having access to the secret by a contractual agreement not to disclose it. Such agreements are usually called nondisclosure or confidentiality agreements.

PART 2. BALL STATE'S POLICY STATEMENTS

2.0 GENERAL POLICY STATEMENT

The prompt and open dissemination of the results of Ball State research and the free exchange of information among scholars are essential to the fulfillment of Ball State's obligations as an institution committed to excellence in education and research. Matters of ownership, distribution, and commercial development, nonetheless, arise in the context of technology transfer, which is an important aspect of Ball State's commitment to public service. Technology transfer is, however, subordinate to education and research; and the dissemination of information must, therefore, not be delayed beyond the minimal period necessary to define and protect the rights of the parties.

2.1 INTELLECTUAL PROPERTY OWNERSHIP POLICY STATEMENT

With the exception of the written content of student theses, dissertations and research reports as addressed more fully in Section 2.1.5, intellectual property rights in inventions, mask works, trade secrets, tangible research property and copyright ownership of materials made or created by Ball State faculty, students, staff, and others participating in Ball State programs, including visitors, are as follows:

BALL STATE OWNED

(a) Patents, copyrights (including copyrights on software), maskworks, trade secrets, and tangible research property and trademarks developed by faculty, students, staff and others, including visitors participating in Ball State programs or using Ball State funds, resources or facilities, are owned by Ball State when either of the following applies:

- (1) The intellectual property was developed within the scope of employment and/or by students as part of the student's participation and receipt of instruction in any Ball State class, funded project or independent study, internship or practicum under the supervision and direction of a faculty or staff member as outlined in the discussion below regarding Student Ownership and/or in the course of, or pursuant to, a sponsored research agreement with Ball State; or

(2) The intellectual property was developed with significant use of funds, other resources or facilities administered by Ball State, as defined in Section 2.1.2.

(b) Except as set forth herein, all copyrights, including copyrighted software, will be owned by Ball State when it is created as

(1) a “work for hire” as defined by copyright law, (see Section 2.1.3), or

(2) it is “specially commissioned” by Ball State pursuant to a written agreement whereby Ball State retains copyright ownership, (see Section 2.1.3), or

(3) it is created pursuant to a written agreement with Ball State providing for transfer or assignment of copyright or ownership to Ball State.

INVENTOR/AUTHOR OWNED

Inventors/Authors, including students, will own patents/copyrights/other intellectual property when none of the situations defined above for Ball State ownership of intellectual property applies.

STUDENT OWNERSHIP

Except as set forth herein and in Section 2.1.5, under ordinary circumstances, students who independently develop intellectual property as part of, or arising outside, of their participation in programs of study at Ball State retain ownership rights to that intellectual property unless any of the conditions set forth in this section on Student Ownership and outlined above in Section 2.1(a) or Section 2.1(b) regarding Ball State owned intellectual property are applicable.

In this regard, any student engaging in research or development of intellectual property subject to Ball State ownership under Sections 2.1(a)(2), 2.1(b), or 2.1(a)(1) under a sponsored research agreement or under the supervision and direction of a faculty or staff member in connection with a class, funded project or independent study, internship, practicum or other program or activity subject to this Policy shall have no ownership interest in the resulting intellectual property.¹ By way of illustration, this may include without limitation, patentable processes or inventions, computer aided designs, digital designs, models or fabrications, or student produced films, videos or digital productions. This paragraph is not determinative of appropriate academic credit for authorship of any resulting work product in which students are supervised or directed by Ball State faculty or staff. In instances where the intellectual property may be subject to Ball State ownership, a Disclosure outlined in Part 3 of this Policy shall be made for purposes of determining ownership, cost recovery and royalty distribution.

Where copyright ownership arising out of the student’s participation in programs of study at Ball State is retained by the student in intellectual property, however, the student shall grant to Ball State a royalty-

¹ 1 For purposes of this policy, the supervision and direction of a faculty or staff member means that the contributions of the faculty or staff member can constitute the use of a significant Ball State administered resource where the contributions of the faculty or staff member are outside of usual and ordinary instruction in a Ball State class, the resulting intellectual property resulted from the direct collaboration between the faculty or staff member and the student, and the resulting intellectual property reflects the valuable contributions of the faculty or staff member.

free perpetual non-exclusive license and consent to reproduce, use and publicly distribute the intellectual property for the following limited purposes of Ball State: (1) institutional promotion and marketing; (2) educational and instructional; and (3) entries into appropriate competitions.

PRESENT ASSIGNMENT:

BY VIRTUE OF THIS POLICY AND PURSUANT TO THE TERMS OF SECTION 2.1 OF THIS POLICY, INVENTORS/AUTHORS PRESENTLY CONVEY, TRANSFER AND ASSIGN TO BALL STATE UNIVERSITY ALL RIGHTS, TITLES, AND INTERESTS IN ALL IDEAS, INVENTIONS, DISCOVERIES, WORKS OF AUTHORSHIP, AND ALL OTHER INTELLECTUAL PROPERTY, PRESENT OR FUTURE, WHETHER PATENTABLE OR NOT, THAT THE INVENTOR/AUTHOR, EITHER SOLELY OR JOINTLY WITH OTHERS, CONCEIVED OF, REDUCED TO PRACTICE, AUTHORED OR OTHERWISE CREATED DURING THE TERM OF INVENTOR/AUTHOR'S EMPLOYMENT OR ENROLLMENT AT BALL STATE UNIVERSITY, AND THAT IS DETERMINED TO BE OWNED BY BALL STATE UNIVERSITY PURSUANT TO THIS POLICY. THE INVENTOR/AUTHOR ALSO AGREES TO EXECUTE ALL DOCUMENTS THAT BALL STATE UNIVERSITY DEEMS NECESSARY TO VEST OWNERSHIP IN BALL STATE UNIVERSITY.

2.1.1 SPONSORED RESEARCH AND OTHER AGREEMENTS

PATENTS: Research contracts sponsored by the Federal Government are subject to statutes and regulations under which Ball State must acquire title to inventions conceived or first reduced to practice in the performance of the research. Ball State's ownership is subject to a nonexclusive license to the government and the requirement that Ball State retains title and takes effective steps to develop the practical commercial applications of the invention by licensing and other appropriate means.

Contracts with industrial sponsors often provide that Ball State retain ownership of patents while the sponsor is granted an option to acquire license rights to develop commercial applications of the patent.

COPYRIGHT: Normally, research contracts sponsored by the Federal Government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may consist of title to such material vesting solely in the government, but more often consist of a royalty-free license to the government with title vesting in Ball State.

When a work is created under the terms of a sponsored research agreement, authors of copyrightable works should be aware that there may be contractual terms relating to the form of the report, advance notice to the sponsor before publication, and related terms of which the authors should be aware.

GENERAL: Ball State faculty, staff and other personnel and visitors should contact SPA for additional information or assistance regarding interpretation of research contract terms; the terms of such sponsored research agreements apply not only to inventions made by faculty and staff, but also to those made by students and visitors, whether or not paid by Ball State, who participate in performing research supported, even in part, by such agreements. It is essential, therefore, that all individuals participating in the research are made aware that by the terms of this policy they are assigning their rights in the developed intellectual property to Ball State and sign Inventions and Proprietary Information Agreements prior to the disbursement of funds as provided under Section 5.0.

2.1.2 SIGNIFICANT USE OF BALL STATE-ADMINISTERED RESOURCES

When an invention, software, or other copyrightable material, mask work, trade secret or tangible research property is developed by Ball State faculty, students, staff, visitors, or others participating in

Ball State programs using significant Ball State funds, resources or facilities, Ball State will own the patent, copyright, or other tangible or intellectual property. If the material is not subject to a sponsored research or other agreement giving a third party rights, the issue of whether or not a significant use was made of Ball State funds, resources or facilities will be reviewed by the inventor/author's laboratory or unit director or department chair, and a written recommendation forwarded to the TTO, in the form of the letter that is Form 1 in Appendix A.

Ball State does not construe the payment of salary from unrestricted accounts as constituting significant use of Ball State funds, except in those situations where the funds were paid specifically to support the development of certain materials.

Generally, an invention, software, or other copyrightable material, mask work, trade secret or tangible research property will not be considered to have been developed using significant Ball State funds, resources or facilities if all of the following factors have been met:

- (1) only a minimal amount (usually not exceeding \$500) of unrestricted funds have been used; and
- (2) the invention, software, or other copyrightable material, mask work, or tangible research property has been developed outside of the assigned area of research of the inventor/author, or as to students the intellectual property has been developed outside of a Ball State class, funded project or independent study, internship or practicum; and
- (3) only a minimal amount of time has been spent using Ball State facilities or only insignificant facilities and equipment have been utilized; and
- (4) the development has been made on the personal, unpaid time of the inventor/author.

When an invention, software, or other copyrightable material, mask work, trade secret or tangible research property is not subject to a sponsored research or other agreement (such as an equipment agreement), but has been developed using significant Ball State funds, resources or facilities, the TTO may, at his or her discretion and consistent with the public interest, license the inventor(s)/author(s) exclusively or nonexclusively on a royalty basis. The inventor(s)/author(s) must demonstrate adequate technical and financial capability to commercialize the intellectual property, and the TTO will have the right to terminate such license if the inventor(s)/author(s) has not achieved effective dissemination within a reasonable amount of time (generally less than 2 years). The license and related royalty is also subject to the inventor(s)/author(s) waiving their rights to royalty sharing under this Policy. Where such a license is issued, the inventor(s)/author(s) may be required to assume some or all of the costs of filing, prosecuting and maintaining any patent rights at the discretion of Ball State University.

2.1.3 WORKS FOR HIRE

EMPLOYEES: A "work for hire," as defined by law, is a work product created in the course of the author's employment. Ownership of the work product in these situations belongs to the employer. For example, results of work assigned to staff programmers or writers of university publications are considered to have been created in the course of the author's employment and are the property of Ball State. It is the policy of Ball State that it shall own all works for hire.

NON-EMPLOYEES: Under the Copyright Act, copyright of specially commissioned works of non-employees is owned by the author and not by the commissioning party unless there is a written agreement to the contrary. All Ball State personnel are cautioned to ensure that independent contractors agree in writing in advance of work commencing that ownership of the commissioned work is assigned to Ball State, except where special circumstances apply and it is mutually agreed that the author will retain ownership.

2.1.4 TRADITIONAL WORKS OF SCHOLARSHIP

The term “Traditional Works of Scholarship” shall mean scholarly publications, journal articles, research bulletins, monographs, textbooks, books, instructional materials, play scripts, theatrical productions, poems, musical compositions, or other works of artistic imagination. Ball State shall not claim ownership of Traditional Works of Scholarship unless: (a) the work is created pursuant to a pre-arranged contractual obligation with Ball State (“work for hire”); (b) the work is created with significant Ball State administered resources as defined in Section 2.1.2. herein; (c) the work capitalizes on an affiliation with Ball State by explicit labeling of the work to gain a marketing advantage, beyond the noting of the creator’s affiliation; or (d) the copyright to such work resides in Ball State under the terms of a sponsored research or other agreement, or by operation of the copyright law or otherwise as a result of Ball State policy.

Furthermore, in those situations where copyright to such Traditional Works of Scholarship resides in Ball State under the terms of a sponsored research or other agreement, or by operation of the copyright law or otherwise as a result of Ball State policy, Ball State may at its sole discretion, upon the author’s request and to the extent consistent with the intent of the sponsor and with the recommendation of the laboratory/unit director or department chair, convey copyright to the author of such work. An author requesting a waiver of Ball State ownership should submit Form 2 in Appendix A to the TTO for review and consideration.

2.1.5 STUDENT THESES AND DISSERTATIONS

Students will own copyright in theses and dissertations; however, where significant use is made of Ball State equipment or facilities provided to Ball State without copyright or other related restrictions, students own copyright in theses or dissertations, but any software code, patentable subject matter and/or any other intellectual property contained in, or produced as part of, the theses or dissertations remain subject to Ball State ownership pursuant to Section 2.1.2 above.

Moreover, where copyright ownership is retained by the student in the theses, dissertations and/or research reports, the student shall grant to Ball State a perpetual royalty-free, non-exclusive limited license and consent to reproduce, use and publicly distribute the thesis, dissertation and/or research report for the following limited purposes of Ball State: (1) institutional promotion and marketing; (2) educational and instructional; and (3) entries into appropriate competitions.

2.2 TRADE AND SERVICE MARKS

Trade and service marks, whether registered or not, relating to goods and services developed at Ball State will be owned by Ball State.

2.3 SOFTWARE ACQUISITION

Whether the software and databases used at Ball State are owned by users or third parties and are protected by copyright and/or other laws, or are subject to license or other contractual arrangement, it is the policy of Ball State that users abide by any legal restrictions imposed by the owner of the software or database. It is the responsibility of the owner of the protected software or database to make the nature of the restrictions known to Ball State.

PART 3. TECHNOLOGY EVALUATION, PROTECTION AND DISSEMINATION

3.0 RESPONSIBILITY

The TTO is responsible for facilitating the transfer of Ball State technology for public use and benefit. The TTO evaluates, obtains proprietary protection for, and assists in the distribution of technology for research purposes, as described in this Section 3.0. The TTO also assists in the commercial development of selected technology by identifying potential markets and negotiating license and related agreements as described in Section 4.0.

3.1 DISCLOSURE

The initial step in establishing contact with the TTO is usually the submission of a Ball State Intellectual Property Disclosure for Inventors and Authors Form (See Form 3 in Appendix A). When submitted, the Technology Disclosure Form will initiate action by the TTO to make a determination regarding ownership, and to investigate the patenting (or other methods of protection) and marketing of the technology and may be accompanied by a letter requesting other action by Ball State, such as a waiver of Ball State's ownership rights in the technology (Form 2 in Appendix A).

SPONSORED PROJECTS: The terms of sponsored research and other agreements normally create obligations with respect to the reporting of inventions, technical data, and copyrightable works such as software. In particular, inventions and copyrightable works developed under sponsored research should be promptly reported to the TTO by submitting a Technology Disclosure Form. The TTO will make a determination as to the steps necessary for discharging and/or satisfying Ball State's obligations to research sponsors.

OTHER PROGRAMS: Inventions or technology developed at Ball State either as work-for-hire or with significant use of Ball State funds, resources or facilities, should also be submitted to the TTO using a Intellectual Property Disclosure for Inventors and Authors Form. Independently-owned technology need not be disclosed to the TTO unless the owner of the technology desires the TTO to assist in commercializing the technology. In the latter cases, the technology may be submitted for evaluation to the TTO using the Intellectual Property Disclosure for Inventors and Authors Form.

3.1.1 DUTY TO FILE TECHNOLOGY DISCLOSURE FORM

Whenever a faculty member, student, staff member, or a visitor employed by Ball State, participating in Ball State programs or using Ball State funds, resources or facilities creates a work of intellectual property as defined in Section 1.0 of this Policy which is, or may be, owned by Ball State as set forth in Part 2 of this Policy, he or she shall file the Intellectual Property Disclosure for Inventors and Authors

Form set forth in this Section 3.1 with the TTO as soon as practicable, but not more than thirty (30) calendar days after the work is completed.

3.1.2 DETERMINATION OF OWNERSHIP RIGHTS

Upon receipt of (1) the Intellectual Property Disclosure for Inventors and Authors Form, (2) the recommendation of the laboratory/unit director or department chair regarding whether it constitutes a work for hire and/or involved a significant use of Ball State-administered resources as addressed in Section 2.1.2, and (3) whatever additional information the TTO deems necessary or appropriate, the TTO shall make a written determination of whether the work of intellectual property is owned by Ball State pursuant to Section 2.0 of this Policy. Such determination shall be made as soon as practicable but no later than sixty (60) calendar days after the submission of the Technology Disclosure Form.

If the faculty member, student, staff member, or a visitor disagrees with the ownership determination made by the TTO, he or she may file a request for review by the Patent and Copyright Committee (the "Patent and Copyright Committee") (See Section 4.9) within ten (10) calendar days of the TTO's written determination. The faculty member, student, staff member, or a visitor shall submit with the request for review his or her written reasons for disputing the TTO's determination, and the TTO shall, within ten (10) calendar days after the request for review is submitted, submit any additional written materials supporting his or her original determination. Within thirty (30) calendar days after receiving the TTO's responsive submission, the Patent and Copyright Committee shall then review the respective submissions, and make its written advisory recommendation to the Associate Vice President for Research (as the final arbiter of this Policy under Section 6.1 of this Policy) regarding the ownership of the intellectual property. The Associate Vice President for Research shall then render the final decision under this Policy regarding ownership of the intellectual property within ten (10) days of his or her receipt of the advisory recommendation of the Patent and Copyright Committee. There shall be no further appeal from the decision of the Associate Vice President for Research.

3.2 PATENTS: PROTECTION

Although patent protection is sometimes sought for various noncommercial reasons, such as professional status, Ball State will generally not seek protection for inventions which are not commercially attractive, even if the invention is intellectually meritorious, unless otherwise requested by the sponsor of the research supporting the development. Ball State will, at its discretion, normally seek patent protection on inventions in order to pursue commercial licensing and to comply with the terms of sponsored research agreements. The procedures for obtaining patents on inventions are described in Section 4.0.

It is important to understand at the outset that any publication (or even verbal disclosure) which describes an invention prior to filing for a patent may preclude patenting in foreign countries altogether, and may also preclude protection in the United States unless a patent is filed within one year from verbal or written publication. The implications of publication upon patent rights should be discussed with the TTO and a decision on patent filing reached promptly so that publication will not be delayed.

3.3 COPYRIGHTS: ASSERTING AND REGISTERING

Copyright protection covers the “artistic expression” in the particular literary work, musical work, computer program, video or motion picture or sound recording, photograph, digital work, sculpture, article, book or other publication, in which the “expression” is embodied, illustrated, or explained, and it is sought in order to recognize authorship and protect the integrity of the work. It is also essential in order for Ball State to license copyrightable materials to commercial book publishers and others and to comply with the terms of sponsored research agreements.

A copyright is established at the time expression is fixed in a tangible medium. In order to maintain the copyright for the period prescribed under the copyright statute, notice of copyright must be affixed to the copyrightable material. Failure to affix the proper notice will cause the copyright to be lost after a certain period of time has elapsed from the first publication of the work.

The following notice is to be applied on Ball State owned works to protect the copyright:

“Copyright © [Year] BALL STATE UNIVERSITY. All rights reserved.”

The date in the notice should be the year in which the work is first published. No notice other than the foregoing is to be used for Ball State owned works.

Further, for added copyright protection, certain works should be registered with the United States Copyright Office using its official forms.

Questions concerning copyright notices and registration should be brought to the TTO.

3.4 TRADE AND SERVICE MARKS: ASSERTING AND REGISTERING

A trade or service mark may be used to protect those names and symbols associated with certain Ball State activities and events and with certain technology developments such as computer programs. Prior to registration for trademark protection, the designation “TM” after a trademark or “SM” after a service mark will give adequate notice of a claim of ownership. The designation “®” for a trademark may only be used after Federal registration.

The use of trade and service marks to protect Ball State owned technology or to designate Ball State as the origin of a product, event, activity, service, or the like, may be instituted only at the direction of the TTO. It is vitally important to note that trademark protection carries with it certain obligations on the part of the holder of the mark. Therefore, requests for use and registration of trade or service marks on behalf of Ball State must be referred to the TTO who shall then consult with Ball State’s Office of Marketing and Communications regarding use and/or registration of a Ball State mark.

3.5 MASK WORKS: ASSERTING AND REGISTERING

Protection of a mask work commences with the registration of its initial commercial exploitation. If registration for protection has not been made within two years of the initial commercial exploitation, mask work protection may be lost and the work entered into the public domain.

To protect mask work rights, the following notice is to be applied on all Ball State-owned semiconductor chip products which incorporate mask works:

“Mask work “M” or (M) BALL STATE UNIVERSITY”

Questions concerning mask work notices and registration should be brought to the TTO.

3.6 TANGIBLE RESEARCH PROPERTY

Tangible research property (TRP) such as biological materials and computer software are frequently patented or copyrighted as appropriate and thereafter licensed for commercial purposes.

However, these and other forms of TRP, including those under commercial license, generally are simultaneously distributed solely for research purposes either under simple letters of understanding, more formal licenses, materials transfer agreements, or some combination thereof.

The following sections deal only with dissemination of TRP for research and other noncommercial purposes. Commercial licensing of TRP is covered generally in Section 4.0.

3.6.1 DISTRIBUTION FOR SCIENTIFIC RESEARCH

In keeping with the traditions of academic science and its basic objectives, it is the policy of Ball State that results of scientific research are to be promptly and openly made available to others. Since the traditional modes of dissemination through scholarly exchange and publication are not fully effective for most TRP, except as dictated by Sections 3.6.2 and 3.6.3 it is Ball State's policy that those research results which have tangible form should also be promptly and openly made available to other scientists for their non-commercial scientific research, unless such distribution is inappropriate due to factors such as safety, the need to more fully characterize or develop the TRP prior to distribution, or unless such distribution is incompatible with other obligations.

3.6.2 CONTROL OF TRP

Where TRP is developed in the course of research which is subject to the terms of a sponsored research or other agreement, control over its development, storage, distribution, and use is the responsibility of the principal investigator, who will consult with the TTO for direction and guidance. In other cases, significant use of Ball State resources will be presumed, so control over TRP rests jointly with the laboratory/unit director or department chair and with the TTO. The responsibility for control includes determining if and when distribution of the TRP is to be made beyond the academic community at Ball State for scientific use by others in accordance with the terms of this policy.

3.6.3 TRP WITH POTENTIAL COMMERCIAL VALUE

Scientific exchanges should not be inhibited due to potential commercial considerations. However, TRP may have potential commercial value as well as scientific value, and the principal investigator who may wish to make TRP available for scientific use in a manner which does not diminish its value or inhibit its commercial development should seek guidance from the TTO.

The normal mechanism for commercialization of TRP is through licensing agreements as set forth in Section 4.0.

3.6.4 TRP IDENTIFICATION

Each item of TRP should have an unambiguous identification code and name sufficient to distinguish it from other similar items developed at Ball State or elsewhere. The TTO should be consulted for assistance in developing appropriate identification systems.

3.6.5 DISTRIBUTION OF BIOLOGICAL TRP TO RESEARCH COLLEAGUES

Biological materials are in many cases patentable and licensed for commercial purposes under various types of patent licenses. They are also a form of tangible research property which can be distributed for commercial and/or research purposes with or without patent protection.

Biological TRP owned by Ball State may usually be distributed internally to a research colleague for research purposes only with minimal conditions attached. Any such distribution is subject to an agreement by the recipient that commercial development or commercial use or further transfer of the biomaterial is not to be undertaken. In addition, the principal investigator may wish to control subsequent use, for example, by requiring recipients to follow a specific research protocol in the use of the biological materials.

When distributing biological TRP to research colleagues outside Ball State, at a minimum, costs of the materials and handling may be recovered from the recipient, and returned to the account which funded those costs. When costs are charged for TRP distribution, adequate documentation must be maintained for audit purposes. The TTO should be consulted for guidance when distributing biological TRP to research colleagues outside of Ball State.

If there is a possibility of biohazard or other risk associated with the transport, storage, or use of a particular biological TRP, or if the recipient is likely to use the TRP for clinical research, the TTO should be contacted for advice on the appropriate form of disclaimers of liability and indemnities.

If the biological TRP was developed under a sponsored research agreement, the TTO should be contacted to advise on possible contractual obligations with respect to the TRP prior to its distribution for noncommercial purposes. Distribution of biological TRP which is part of a patent or patent application should be coordinated through the TTO.

3.6.6 DISTRIBUTION OF COMPUTER SOFTWARE FOR RESEARCH PURPOSES

The distribution of Ball State owned computer software to colleagues for research purposes must be coordinated with the TTO if the software has potential commercial value, if the principal investigator wishes to control subsequent use, or if it is subject to the terms of a sponsored research agreement.

The TTO will provide wording for the distribution agreement necessary to preserve commercial value and will arrange for trademark and copyright registration as appropriate.

The TTO provides the service of distribution of software for noncommercial research use, charging recipients a nominal amount to cover costs associated with reproduction and distribution. In addition to the handling of administrative details, including mailing, the TTO also makes arrangements for collecting departmental costs associated with providing software for noncommercial use and returning these costs to the department.

3.6.7 OTHER TRP

Distribution of TRP other than biological TRP should follow the procedures outlined in this policy for distribution of computer software in Section 3.6.6.

PART 4. COMMERCIAL DEVELOPMENT

4.0 INTRODUCTION

It has long been acknowledged that the primary functions of a university are education, research, and public service. It is in the context of public service that Ball State supports efforts directed toward bringing the fruits of Ball State research to public use and benefit.

In many cases, mere publication of research results will be sufficient to transfer Ball State research to the public. In other cases, it is necessary to encourage industry, through protection of the intellectual property and the granting of certain licensing rights, to invest its resources to develop products and processes for use by the public.

4.1 COMMERCIALIZATION - GENERAL

The TTO will pursue the licensing of technology by researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, negotiating appropriate licenses and/or other agreements, monitoring progress, and receipting and distributing royalties to the inventors/authors in accordance with Ball State's royalty policy. When it is deemed appropriate to do so, a supporting organization of Ball State may accept an equity position partially or entirely in lieu of cash royalties.

4.1.1 INVENTOR/AUTHOR ASSISTANCE

With few exceptions, the support and cooperation of the inventor/author is critical to licensing success.

4.1.2 INVENTOR/AUTHOR OWNED TECHNOLOGY

Ball State faculty, staff, students or visitors who wish to pursue the development of their independently-owned technology through the TTO may offer such technology for evaluation by submitting a Intellectual Property Disclosure for Inventors and Authors Form. The TTO will evaluate the commercial potential and determine whether or not the technology will be accepted for licensing by the TTO, under the usual royalty sharing policies.

Faculty, staff, and students are equally free to choose some other mechanism for commercializing their independently-owned technology, but prior to such commercialization should confirm through the TTO as set forth in Section 3.0 that the technology is not subject to a sponsored research or other agreement, and/or it is not subject to Ball State ownership. If either of these conditions might apply, the inventor/author should request from the TTO an appropriate license to the intellectual property or a waiver of Ball State's rights as set forth in this Section 4.0. A waiver request is Form 2 in Appendix A.

4.1.3 COMMITMENT OF FUTURE INVENTIONS

It is the policy of Ball State not to commit future inventions to licensees even where improvements to technology are anticipated. Some very narrowly drawn exceptions may occasionally be appropriate to handle subordinate patents and well-defined derivative works for licensed software.

4.1.4 CONSULTING CONTRACTS

The TTO will generally not negotiate consulting contracts for individual inventors/authors as part of a license arrangement.

4.2 PATENTS OWNED BY BALL STATE

4.2.1 EVALUATION

Once a Intellectual Property Disclosure for Inventors and Authors Form disclosing an invention is submitted, the TTO, with whatever assistance the TTO deems necessary, will begin the process of evaluating the invention for patentability, commercial potential and obligations to sponsors. The first step will typically be a meeting with the inventor. The TTO may also request that one of the inventors participate in a literature search of prior art. Contact with industry by the TTO and/or the inventor may also be made as part of the evaluation process.

4.2.2 SPONSORED PROJECTS

If the invention arose from a sponsored research project, the TTO will file for a patent if required by the terms of the sponsored research agreement or otherwise if deemed appropriate following the TTO's evaluation of the invention, and will thereafter negotiate an appropriate license consistent with the terms of the contract.

The TTO shall be contacted for information about the specific patent terms of sponsored research agreements.

4.2.3 WAIVER OF BALL STATE RIGHTS

When it has the right to do so, Ball State may, if requested by the inventor, and at Ball State's discretion, "stand aside" in those situations where Ball State believes that it would enhance the transfer of technology to the public, is consistent with Ball State's obligations to third parties, and does not involve a conflict of interest as set forth below. By "standing aside", Ball State agrees not to exercise its common-law, contractual or statutory ownership rights to the technology, clearing the way for the Ball State inventor to seek ownership. Inventors may request that Ball State waive its ownership rights by submitting the letter that is Form 2 in Appendix A.

In the case of Federal agency sponsorship, any "stand aside" by Ball State must be made by releasing the invention to the Federal government, following which the inventor may directly petition the applicable Federal agency for a release of rights to himself or herself. Federal research agreements are generally subject to a uniform patent law which provides that universities take title to resulting inventions subject to certain obligations concerning the exploitation in the public interest, Federal approval of any assignment of ownership, preferences for licensing, the retention by the Federal government of certain license rights, and march-in rights. Decisions by the Federal sponsors to permit individual inventors to acquire ownership are generally made on a case-by-case basis with the Federal Government retaining for itself those rights previously discussed.

In the case of industrial sponsorship, Ball State usually must seek approval of the sponsor prior to waiving its ownership rights in favor of the inventor.

4.2.4 LICENSING OF BALL STATE RIGHTS TO INVENTORS

Ball State faculty, staff, or student inventors may also request a license to commercially develop their Ball State owned inventions where such licensing would enhance the transfer of the technology, is consistent with Ball State obligations to third parties, and does not involve a conflict of interest. Any

evaluation and decision about whether to license Ball State rights to inventors shall be made by the TTO with any assistance deemed necessary.

4.2.5 CONFLICT OF INTEREST OR COMMITMENT

Any of the following factors may signify a conflict of interest which will be taken into account prior to waiving or licensing Ball State's rights to inventors under this Section 4.2 or to authors/creators under Section 4.3:

- (1) an adverse impact on Ball State's educational responsibility to its students;
- (2) an undue influence on the employment commitment of the inventor/author to Ball State in terms of time or direction of effort;
- (3) a detrimental effect on Ball State's obligation to serve the needs of the general public; or
- (4) potential conflict of interest as defined or addressed by any other Ball State policy regarding Conflicts of Interest or Commitment in the Ball State Faculty and Professional Personnel Handbook.

If the inventor/author holds or will shortly acquire an equity or founder's stock and/or option position in a small, tightly-controlled company to which the invention is licensed by Ball State, a supporting organization of Ball State may accept equity in lieu, or partially in lieu, of royalty only with the prior approval of the President of the University. The inventor/author will be required to sign Ball State's Statement of Disclosure of a Conflict of Interest and/or Conflict of Commitment Form (see Form 4 in Appendix A) if a license is granted to the company in which the inventor/author has an equity position. If a Ball State supporting organization does acquire equity in lieu or partial lieu of royalties for intellectual property, it will expect the company to grant the inventor/author holding or acquiring the equity position a total equity and/or option share reflective of the inventor/author's relative contribution both to the intellectual property and to the company operations, and such inventors/authors will not receive a share of the equity paid for the license. Ball State will take this factor into account in its license negotiations with the company. For all other inventors/authors, Ball State will require that the company distribute to those inventors/authors the approximate percentages of equity that would have otherwise been distributed to them under this policy as if the payment had been made in cash.

4.2.6 RESEARCH FUNDING/EQUITY

Ball State, at its sole discretion, generally will not accept research funding from a licensee in which Ball State, through the TTO, or a Ball State inventor has an equity interest (including stocks, options, warrants or other financial instruments convertible into equity) unless:

- (i) the research is not likely to result in inventions dominated by the claims of the licensed patent or in software that is a derivative work of the licensed software; and
- (ii) if the inventor remains employed by Ball State, the research will not be conducted in the inventor's laboratory/unit group; and
- (iii) the inventor's students under the inventor's direction and control will not participate in any project funded by the licensee.

4.3 COPYRIGHTS OWNED BY BALL STATE

4.3.1 COMMERCIALIZATION BY THE TTO

Copyrightable works owned by Ball State are normally licensed through the TTO except where other arrangements are made in accordance with this policy. Copyrightable material not owned by Ball State also may be licensed through the TTO when submitted under a Intellectual Property Disclosure for Inventors and Authors Form to the TTO by its author and are accepted for licensing by the TTO.

COMPUTER SOFTWARE: Computer software in which Ball State acquires rights may be either patented or copyrighted and made available by Ball State for commercial purposes through the TTO under various forms of patent or copyright licenses. Authors and their departments will share in royalties earned from licensing as further set forth in this policy. In those instances where the authors desire to distribute commercially licensed software for research purposes or as TRP, such licensing must be coordinated with the TTO.

OTHER WORKS: Other works in which Ball State acquires rights may be either patented or copyrighted and made available by Ball State for commercial purposes through the TTO under various forms of patent or copyright licenses. Authors and their departments will share in royalties earned from licensing as further set forth in this policy. In those instances where the authors desire to distribute commercially licensed video or digital works for research purposes or as TRP, such licensing must be coordinated with the TTO.

4.3.2 WAIVER OF RIGHTS TO BALL STATE AUTHORS

When it has the right to do so, Ball State may, if requested by the author(s) and at Ball State's sole discretion, "stand aside" in those situations where Ball State believes that it would enhance the transfer of technology to the public, is consistent with Ball State's obligations to third parties, and does not involve a conflict of interest as stated in Section 4.2.5. By "standing aside", Ball State agrees not to exercise its contractual rights to the technology, clearing the way for the author(s) to seek ownership. Authors may request that Ball State waive its ownership rights by submitting the letter that is Form 2 in Appendix A.

Federal research agreements presently vary widely with respect to rights in copyrightable technical data and computer software, but in general, universities have the right to copyright and to control distribution of most materials. Several major agencies retain a large degree of control over computer software and will relinquish control only under limited circumstances.

In the case of industrial sponsorship where the sponsor acquires license rights, Ball State usually must seek approval of the sponsor prior to releasing its ownership rights in favor of the author.

4.3.3 OTHER FORMS OF AUTHOR CONTROL

Where consistent with Ball State's obligations to third parties, Ball State faculty, staff or student authors, with agreement of their laboratory/unit director or department chair and all of their co-authors, may request a license from the TTO to commercially develop their Ball State owned works, may request to have the works openly distributed through royalty-free licenses, or may request that the works be placed in the public domain. Any evaluation and decision about whether to license Ball State rights to

authors as set forth in the subsequent paragraph, to distribute the work through royalty-free licenses, or to place works in the public domain shall be made by the TTO with any assistance deemed necessary.

LICENSING TO AUTHORS:

Authors may request control of the copyrighted material through a grant of commercial license rights. Consistent with the public interest, Ball State may grant the request for author control but Ball State will retain title to the work, with the right to use it for internal educational, marketing and/or promotional purposes, the right to the payment of appropriate royalties, and the right to withdraw such licensing rights if the authors have not achieved effective dissemination as agreed. In addition, such arrangements will be subject to Ball State's Conflict of Interest and Commitment policies as stated in Section 4.2.5.

Where such requests relate to major projects that typically involve multiple authors and long development periods, determining the most effective course for dissemination shall require discussion and special negotiation with the TTO.

Ball State, through the TTO, will respond to author requests made under this policy within ninety (90) days. However, in those cases where the work, generally software, is not sufficiently developed to allow proper assessment, Ball State may require additional development prior to responding to an author request.

PUBLIC DOMAIN:

Authors may request that otherwise copyrightable material, including computer software, be placed in the public domain if such action will promote widespread use, for example by providing a means to establish a new standard such as a computer operating system.

In responding to a request to place intellectual property in the public domain, Ball State will weigh the advantages of improved access, the complexity of the work and whether or not it is ready for effective public use, whether its quality can be maintained, and the author's reasons for seeking this mode of dissemination.

4.4 TRADE AND SERVICE MARKS

Trade and Service Marks owned by Ball State are to be licensed through the TTO. Any exceptions to this procedure must be approved in advance by the TTO who shall consult with Ball State's Office of Marketing and Communications regarding any license of trade or service marks owned by Ball State.

4.5 MASK WORKS

Mask works owned by Ball State are to be licensed through the TTO. Any exceptions to this procedure must be approved in advance by the TTO. Mask works not owned by Ball State also may be licensed through the TTO when offered for licensing by the Ball State-affiliated developer of such mask work and accepted by the TTO

4.6 TANGIBLE RESEARCH PROPERTY

It is Ball State policy that any commercial distribution of Ball State owned TRP be handled only through the TTO. Software should be submitted to the TTO in the same fashion as a patentable invention, for

which the first step is preparation and submission of a Technology Disclosure Form (see Form 3 in Appendix A).

If TRP developed by Ball State as a result of research activities is to be distributed to outside users for commercial purposes, the distribution agreement must contain provisions negotiated by the TTO covering the terms under which the property may be used, limits on Ball State's liability for the TRP or products derived therefrom, and other conventional license agreement terms including those relating to any intangible property rights (such as patents) which also may be associated with the use of the tangible property.

4.7 INCOME DISTRIBUTION - GENERAL

Income received during the preceding Ball State fiscal year related to Ball State owned intellectual property shall be distributed once annually as follows:

STEP:

1. Deduct 10% from Gross Income received by Ball State related to the intellectual property for partial indirect cost recovery; thereafter, deduct Recoverable Costs and, in some cases, a direct cost reserve to arrive at the annual Adjusted Income. (See Exhibit A, attached hereto)
2. Distribute one-third of the Adjusted Income to the inventors/authors.
3. Distribute one-third of the Adjusted Income to Ball State for placement in an account to support the research and development of intellectual property by funding the operations and economic development mission of the Ball State Innovation Corporation, the Ball State Innovation Management Services LLC, and/or the Ball State Technology Transfer Office, or for funding of other Ball State priorities as determined by the President of Ball State or her designee.
4. Distribute one-third of the Adjusted Income to the Ball State department and/or units of the inventor/author up to an annual royalty amount of \$30,000. If one-third of the annual Adjusted Income exceeds \$30,000, any excess shall go to Ball State for placement in an account to support the research and development of intellectual property as designated in the preceding paragraph. (See NOTE A below)

NOTE:

A. Distribution of the "Departmental Share" shall be to the department if it is the organization which administered the research contract from which the invention arose or to the Interdepartmental Laboratory if the latter administered the contract.

4.7.1 DISTRIBUTION OF ROYALTIES AMONG MULTIPLE INVENTORS/AUTHORS

In the event there is more than one inventor/author for the intellectual property, the inventor/author share shall be divided among them as they agree in writing. In the absence of a written agreement, the inventors/authors shall attempt to reach agreement among themselves as to the fair and equitable allocation of royalties among them based upon their relative contributions to the work.

In the event they fail to reach agreement, any one of the inventors/authors may request that the Patent and Copyright Committee evaluate the relative contributions of the inventors/authors and propose an appropriate royalty allocation. Upon a written request from an inventor/author, the Patent and

Copyright Committee shall select a meeting date to consider the relative contributions of the inventors/authors and the appropriate royalty allocation. Each inventor/author involved shall be notified in writing of the meeting date and time and shall be given the opportunity to attend the meeting and to present evidence concerning his or her contribution to the invention. Based upon the evidence presented, the Patent and Copyright Committee shall then recommend a proposed royalty allocation to the TTO for implementation. Within five (5) days of this recommendation by the Patent and Copyright Committee, any of the inventors/authors may appeal the recommendation to the Associate Vice President for Research and Dean of the Graduate School. The Associate Vice President for Research and Dean of the Graduate School shall then review the recommendation of the Patent and Copyright Committee and all supporting evidence. The Associate Vice President for Research may also request that the inventors/authors provide any other evidence deemed useful or appropriate. The Associate Vice President for Research shall render his or her final decision regarding the recommendation within ten (10) days of the inventors'/authors' request for appeal. As the arbiter of this Policy, the decision of the Associate Vice President for Research shall be final.

4.8 ROYALTIES - SPECIAL CASES

In some cases distribution of royalties to individuals or departments will be impractical or inappropriate; for example, where the material was developed as a laboratory project or where the authors/inventors are not easily identifiable. The TTO, in consultation with the principal investigator (or laboratory director/department head if not under a sponsored agreement) will review the circumstances of development when such situations have been identified and will recommend an appropriate royalty allocation to the Provost of Ball State who shall be the final arbiter of this Section 4.8 of this Policy. Generally in such cases, royalties will be split between the department or laboratory and the Ball State account to support research and development of intellectual property as designated in numbered paragraphs 3 and 4 of Section 4.7.

4.9 COMMITTEE ON PATENTS AND COPYRIGHTS

An ad hoc Patent and Copyright Committee will oversee the operations of the TTO. The members of the committee shall be appointed as needed by the Associate Vice President for Research and shall consist of between 3 and 7 individuals which will include representatives from those fields of technology generally served by these offices. In addition to its responsibilities as set forth in this Policy, this committee may, from time to time, elect to create a subcommittee of experts in a specific technology whose function is to recommend policy that relates to the exploitation of that technology, or necessary amendments or supplements to this Policy.

4.10 CONFLICT OF INTEREST—SPA AND TTO OFFICE STAFF

In order to assure no present or potential future conflict of interest, an individual Sponsored Projects Administration or a Technology Transfer Office staff member should not personally invest in non-public companies that have licensed Ball State intellectual property. If a staff member is a partner in a venture fund, that staff member should not engage in licensing negotiations with any company in which that fund is invested, and those who are voting partners should not recommend Ball State companies to that fund. SPA and TTO staff members also have a special responsibility to assure that their knowledge of a Ball State license to a public company is not disseminated in any way that could affect the company's

stock price, and that the knowledge is not used for investment purposes by themselves, their families, friends or business associates. (For additional guidelines on Conflict of Interest, see Section 4.2.5 and University's Policies governing Conflicts of Interest and Commitment).

PART 5. FACULTY, STUDENT, STAFF AND VISITOR OBLIGATIONS AS TO SPONSORED RESEARCH OR FUNDED PROJECTS

5.0 GENERAL POLICY

It is the policy of Ball State that individuals through their employment by, or enrollment as students at, Ball State or by participating in a sponsored research project, or in using Ball State administered funds, resources or facilities, thereby accept the principles of ownership of technology as stated in this policy. In furthering such undertaking, all participants will sign Inventions and Proprietary Information Agreements in accordance with the following policy.

5.1 PERSONNEL INVENTIONS AND PROPRIETARY INFORMATION AGREEMENT

5.1.1 WHO MUST SIGN

Individuals at Ball State who:

- (a) receive support from sponsored research or Ball State funded projects; or
- (b) otherwise may be in a position to make, conceive or reduce to practice inventions or otherwise develop technology under sponsored research or Ball State funded projects, whether or not salary or other support is received from such projects, or through the use of significant Ball State administered funds, resources or facilities, must sign the Ball State Inventions and Proprietary Information Agreement prior to the disbursement of funds as prepared and updated from time to time by the TTO. Note that this requirement specifically extends not only to Ball State personnel but also to visiting scientists and fellows or others.

5.1.2 ADMINISTRATION

Each Ball State laboratory and department through its laboratory head or chair is responsible for ensuring that Inventions and Proprietary Information Agreements are signed by all faculty, students, staff and visitors, who may be or are involved with sponsored projects or who may have opportunities to use significant Ball State funds, resources or facilities administered by that laboratory or department. The TTO will monitor laboratory and department compliance with this requirement. All Inventions and Proprietary Information Agreements should be signed in triplicate with one copy retained by the signatory, one copy retained in the laboratory/department files and one copy sent to the TTO.

Inventions and Proprietary Information Agreement forms may be obtained from the TTO who will assist with any questions which arise in connection with such Agreements (see Form 5 in Appendix A).

PART 6. ADMINISTRATION

6.1 ASSOCIATE VICE PRESIDENT FOR RESEARCH

Except where otherwise set forth herein, the Ball State Associate Vice President for Research is the final arbiter of any disputed issues of interpretation relating to this document. In unusual circumstances and

as set forth in Sections 4.7 and 4.8 of this Policy, the Ball State President and Provost, respectively, may also authorize necessary and reasonable exceptions to the normal procedures set forth herein.

6.2 SPONSORED PROJECTS ADMINISTRATION (SPA)

The Sponsored Projects Administration (SPA) is responsible for the negotiation, execution, and administration of all Ball State agreements with external sponsors of research grants and contracts and for ensuring that the rights of the sponsors in technology developed under external grants and contracts are protected. SPA personnel, with assistance from the TTO, are available to assist all principal investigators and sponsored projects administrators in the negotiation and interpretation of intellectual property terms of grants and contracts.

Research priorities will have precedence over technology development priorities. Thus, no grant or contract terms are to be accepted which inhibit the utilization by the public of the results of research at Ball State. In unclear situations or where there appears to be a conflict between the priorities, the Associate Vice President for Research will be the final arbiter.

6.3 TECHNOLOGY TRANSFER OFFICE

The Ball State Technology Transfer Office has two principal goals. The first is to facilitate the transfer to public use and benefit of technology developed at Ball State. The second, where consistent with the first, is to provide an additional source of unrestricted income to support research and education at Ball State. The TTO will work with the Ball State developers of technology and with industry in a manner which does not interfere with the normal flow of technical and academic information through publications, conferences and consulting.

PART 7. MISCELLANEOUS

7.1 APPLICABILITY

This Policy, as amended from time to time, shall be deemed to be part of the terms and conditions of employment of every employee of Ball State, a part of the terms and conditions of every visitor appointment, and a part of the terms and conditions of the enrollment and attendance of every student of Ball State.

7.2 AMENDMENT

This Policy may be amended subject to the approval of the President of Ball State University and the Ball State University Board of Trustees.

EXHIBIT A

The 10% deduction from Gross Income is to cover a portion of Ball State's indirect costs related to technology development and transfer. "Recoverable Costs" are direct assignable expenses specific to the development and commercialization of intellectual property including, without limitation, the following types of expenses:

1. Patent filing, prosecution and maintenance fees and related legal expenses and costs including attorneys' fees.
2. Costs of goods sold.
3. Interest expense.
4. Applicable taxes.
5. Marketing studies.
6. Hiring of external consultants.
7. Professional fees (e.g. Legal and Accounting)
8. Travel expenses and per diem associated with development and commercialization of the intellectual property.
9. Developmental, promotional and marketing expenses.
10. Expenses for equipment specifically purchased for the development of the intellectual property.
11. Cost of use of a University cost-center (e.g. the University Media Services, University Recording Studio, or other income generating University cost-centers).
12. Cost of personnel hired specifically to develop and commercialize the intellectual property, including facilities and administrative costs associated therewith.
13. Any stipends or other extra pay given by the University to the Inventor/Author for development of the intellectual property.
14. Other operating expenses.
15. Other costs of development and/or commercialization.

In addition to the non-exhaustive list of Recoverable Costs listed above, Ball State may, at its discretion, identify and disclose and disclose to Inventor/Author other specific costs as "Recoverable Costs." "Recoverable Costs" do not include the costs of an Inventor/Author's normal base salary and benefits, nor does it include normal facilities and administrative costs allocable to the Inventor/Author.

When Recoverable Costs in the next fiscal year are forecast and future income appears unlikely, a direct cost reserve may be deducted at the reasonable discretion of Ball State. Any excess reserve for costs will be promptly distributed after forecast costs are incurred and paid.

Appendix A

Form 1

Form 2

Form 3

Form 4

Form 5