

South Carolina State University
INTELLECTUAL PROPERTY AND COPYRIGHT POLICY

(Revisions from the Educational Policies Council Meeting on 5-14-09 held at 2:00 pm in BB 206
are highlighted in Section X. Copyright Royalties, pp. 5-7)

Section I. Preamble

South Carolina State University (SCSU) is committed to its mission to support an environment that encourages teaching, research and public outreach activities for its faculty, students and staff. As a matter of belief and practice, SCSU encourages all faculty and staff members to publish their research papers, books, and other forms of communication in order to share their results and new knowledge with colleagues and the general public.

All research conducted by faculty, staff, and/or persons representing the University must be consistent with the goals, objectives, and mission of South Carolina State University and must contribute to the advancement and free dissemination of knowledge and the education of its students.

It is the purpose of the University to promote research and to insure maximum disclosure of research results while properly protecting the rights of all parties to the research. Therefore, in every instance where a member of the University staff is engaged in research projects and/or other activities to which the University makes a material contribution in the form of facilities, release time for the research, cost-sharing, (entirely or partially) with other external agencies and out of which a development requires protection by a patent, copyright, **trademark, trade secret or service mark**, the following policies shall apply:

- All prospective developments - ideas, discoveries and inventions that require protection by a patent, copyright, trademark, trade secret or service mark, shall be promptly reported to the appropriate administrative officer (or designee) to determine if applicable protection should be sought under the current patent policy, in order to protect the rights and interests of South Carolina State University, the applicable university employee, and the funding agency.
- Nothing shall be protected by a patent, copyright, trademark, trade secret or service mark or any notice of such intent be requested by an employee of the University without the written consent of the University or its agent.

The U.S. Intellectual Property and Copyright Laws define copyright and intellectual property ownership and any rights thereof. Accordingly, SCSU's policy is structured within the context of the U.S. Intellectual Property and Copyright Laws. The University supports the basic notion that faculty, staff and students who develop creative works (i.e. books, other published works, etc.) own the intellectual property resulting from their research, teaching, and writing. This idea is the foundation of the University's Intellectual Property and Copyright Policy. However, exceptions may result when intellectual property is developed by SCSU faculty, staff, and students

participating in programs using significant university resources such as: 1) facilities; 2) equipment; 3) personnel; 4) university funds; and 4) any other resources or obligations under the control of the University.

The University shall have no ownership rights in the following intellectual property, which shall be owned by its creator:

- Regular academic work products, provided that the regular academic work product was not assigned in writing to the University or specifically ordered or commissioned and designated in writing by the creator and University as a specially commissioned work.
- Intellectual property created by a student solely for the purpose of satisfying course requirements, unless the student assigns ownership rights in the intellectual property to the University in writing or assignment of such ownership rights to the University is made a condition for participation in a course.

For intellectual property created in the course of or pursuant to sponsored research, external sales, industrial affiliates programs, or other contractual arrangements with external (non-University) parties, ownership will be determined in accordance with the terms of the University's agreement with the external party and applicable law.

Section II. Definition of Terms

1. "Intellectual property" is a category of intangible assets which includes copyrights; patentable works, ideas, discoveries, inventions; trademarks; trade secrets; or service marks.
2. The term "inventions" shall refer to all inventions, discoveries, computer-based programs and media, processes, methods, uses, products or combinations whether or not patented or patentable at any time under the Federal Patent Act as now existing or hereafter amended or supplemented.
3. "Copyrightable works" shall include the following:
 - a) books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, tests, proposals, research methodologies and designs;
 - b) lectures, musical or dramatic compositions, unpublished scripts;
 - c) films, filmstrips, charts, transparencies and other video or audio broadcasts;
 - d) programmed instructional materials;
 - e) computer-based programs and media; and

- f) other materials or works which qualify for protection under the copyright laws of the United States or other protective statutes whether or not copyrightable there under.
4. "Net income" is defined as income received by SCSU from a SCSU-owned invention or copyrightable work not to include payments or obligations directly attributable to patenting, copyrighting, marketing, licensing, or administering the invention or work.
5. "Personnel" refers to part-time and full-time members of the faculty, staff, all other agents and employees, and undergraduate and graduate students and postdoctoral fellows of SCSU.
6. "Work for Hire" is defined by the copyright laws of the United States, and is used herein, as a work prepared by an employee or a consultant within the scope of his or her employment.
7. "Textbook" is to be construed in a broad sense to include computer-based programs and media with information content which synthesizes knowledge in specified academic disciplines and sub-disciplines.
8. "Computer-based programs and media" include software or computed code or their representation in forms such as CD-ROM, video disk, compressed video, and web-based material.
9. "Independent Faculty efforts" are "works" made in the course of independent efforts of the Faculty. The ideas came from the faculty, and the "work" was not a University-sponsored effort. Intellectual property created by the faculty member in the fulfillment of the faculty member's normal duties and responsibilities under this Agreement is presumed to be an independent effort.
10. "Encoded Works" include software and other technologies used to support the electronic capture, storage, retrieval, transformation and presentation of digital data and information or to interface between digital forms and other communications and information media. The University will exercise its equitable ownership interest in Encoded Works under the circumstances identified below.
11. "The University" - South Carolina State University.

Section III. Ownership and Disposition of Intellectual Property

Ownership of all intellectual property by academic employees, non-academic employees, or students shall vest in the creator except under any of the following circumstances:

1. Subordination to Other Agreements: Copyright ownership of all material that is developed in the course of or pursuant to a sponsored research or other agreement to which the University is a party shall be determined in accordance with the terms of the sponsored research or other agreement. In the absence of terms specifically assigning ownership, the intellectual property shall become the property of the University only if

the terms of such agreement directly or indirectly create University obligations as to intellectual property developed hereunder or if ownership is conferred upon the University by operation of another provision of this Policy.

2. Regarding Encoded Works only: Intellectual Property of Encoded Works which is developed with the "*Substantial Use*" of University resources, funds, space, or facilities shall reside in the University. For purposes of this Policy, the University resources include grants, contracts or awards made to the University by extramural sponsors. The use of University resources is "Substantial" when it entails the use of University resources not ordinarily used by, or available to all, or virtually all, members of the faculty. As the concept of "Substantial Use" evolves with changes in the customary working environment, the term may be refined by the President from time to time, following consultation with the appropriate designated committee, and such definition shall be incorporated as an Appendix to this Policy.
3. Recognition of Creator's Desire for Intellectual Control: In recognition of the creator's desire to maintain intellectual control of his or her work, the University will give consideration to views of the creator as to disposition of intellectual property rights when it takes title to an intellectual property under this Policy. Where the University owns the intellectual property under this Policy, the creator will be permitted to continue to use the property for his or her own non-commercial purposes. Distribution, if any, to academic colleagues outside of the University will be permitted under approved written agreements obtained from the University Counsel through the Vice President for Research, Economic Development and Public Service or designee.
4. Works created by students are subject to the following rules:
 - The University makes no claim to ownership of works created by students working on their own; i.e., not within the scope of an employment relationship with the University or with one of its employees, and not making "Substantial Use" of University resources.
 - Students working on a project governed by a contract or agreement to which the University is a party shall be bound by the terms of that contract or agreement.
 - Students who are hired to perform specific tasks and who contribute to a copyright, patent, trademark, trade secret or service mark will ordinarily have no rights to ownership of that work, regardless of the source of funds from which they are paid. In such cases, the party who owns the property or the rest of the work will ordinarily retain ownership of the portion contributed by the student.
 - Students working collaboratively with academic employees on projects that result in copyrightable work may be granted the same rights and obligations of copyright ownership as would another academic employee working collaboratively on the project. Students and academic employees should establish these rights at the outset of their collaboration.

If none of the above relationships applies, students performing work compensated by the University are subject to the provisions governing nonacademic employees under Section III.

Students may also be subject to rules and restrictions of their units, colleges or of the Graduate School which are not inconsistent with the University Intellectual Property and Copyright Policy. For example, students who copyright their theses or dissertations must grant the University rights to reproduce and distribute copies of their works in accordance with the policies of the University.

Section IV. Assignment to Creator

In cases where the University has ownership of intellectual property under this Policy, the University may, upon request and for good cause shown, assign ownership to the creator subject to a perpetual royalty free license to the University to use the work for its own purposes. Such requests should be submitted to the Vice President for Research, Economic Development and Public Service or designee and the President for approval.

Section V. Requirement of Disclosure

Works potentially falling into the categories described in sections I through III above shall be promptly disclosed in writing to the Vice President for Research (or his/her designee) to determine if the ownership is with the creator or the University. To determine if an Encoded Work described in sections II and III is patentable and/or copyrightable, it should be submitted to the Vice President for Research, Economic Development and Public Service (or his/her designee) for evaluation.

Section VI. Overlaps with Patent and Copyright Policy

Some materials created at SCSU are both patentable and copyrightable (e.g., a copyrightable work that embodies a patentable invention). Many Encoded Works may be patentable. For material that is both copyrightable and patentable, the Intellectual Property and Copyright Policy of the University shall govern rights in the work

Section VII. Use of Outside Consultants and Independent Contractors

Under current law, ownership of works created by outside consultants and independent contractors could reside with such individuals and not with those hiring them to perform the work at issue. Therefore, those hiring outside consultants and independent contractors should observe the precaution of having a written agreement including an assignment of intellectual property. ~~Students and nonacademic employees working outside the scope of University employment should be considered independent contractors for such purposes. Assistance in drafting such agreements shall be obtained from the Office of University Legal Counsel.~~

Section VIII. Advice and Interpretation

Members of the University community may obtain advice from the Office of the Vice President for Research, Economic Development and Public Service (or his/her designee) on the application of this Intellectual Property and Copyright Policy to their work, and information from the Office of Sponsored Programs about restrictions on intellectual property ownership related to grants or other sponsored agreements.

Section IX. Resolution of Disputes

Disputes arising over the application of this policy and the ownership of intellectual properties shall be brought to the President (or his/her designee) who shall refer the matter to a Research Policies Committee (RPC) consisting of five members appointed by the President (or his/her designee). This committee shall report its recommendations for resolution of the dispute to the President, Vice President of Research, Economic Development and Public Service, academic Dean of the faculty, and the University Legal Counsel. The decision of the President will be final. The President will render a determination within sixty (60) days of receiving written notice of the dispute or the University will relinquish rights to ownership of the disputed intellectual property.

Section X. Copyright Royalties

Except in the case of Works for Hire described in Section II above, royalty income received by the University through the sale, licensing, leasing or use of copyrightable material, which the University owns pursuant to any section of this policy, shall be distributed in accordance with the University's policy relative to patent and copyright works.

The University shall share with the creator(s) of innovations that are licensed and generate income for the University. The income will be shared with those who made the innovation according to the following Administrative Regulation.

The distribution of all Net Income shall be governed by the division set-forth in the table below (gross royalties and other income minus administrative, licensing, legal, and other related expenses, as well as payments to other entities as may be required by the University's agreements with those entities) resulting from inventions or copyrightable works to which the University has elected to take title under the *Statement of Policy in Regard to Inventions, Patents, and Copyrights*:

The University (South Carolina State University)	25%**
Creator(s)' Department/Appropriate Unit	20%
College (Dean's Office)*	20%
Creator(s)	35%**
Total	100%

*In the event that the innovation originated at the College level the percentage distribution will be 40% .

**This gives faculty greater incentives for research which benefits the university in the long term.

Explanatory notes:

1. **Definition of "Creator"** as used in this document. "Creator" means a person who has made substantial creative or authorship contributions. These can be works that qualify for protection: for a patent, copyright, trademark, trade secret or service mark. The legal

inventor(s) of the work under the patent laws; and (b) for a copyrightable work or an unpatentable Invention,

2. **Definition of "Royalties and Other Income."** The determination of what constitutes "royalties" and "other income" within the meaning of this policy rests within the discretion of the University. For example, equipment or funding for support of research received by the University shall not constitute "royalties" or "other income" under this policy. The net proceeds from the sale of equity shall be considered "other income" and shall be treated as if those proceeds were received at the time the license or option was executed.
3. **Recovery of Institutional Development Costs.** Where it is anticipated that application of the formula set forth above would not result in the recovery of development costs advanced by the University, a Department, or an independent unit, the Creator(s)' share may be reduced, and the University's, Department's, or independent unit's share may be increased, to assure reimbursement of such costs.
4. **Allocation and Distribution of Income.**
 - a. *Distribution of Departmental Share.* Upon approval of the Dean (or Vice President) the distribution of the Departmental share may be altered to fit the particular organizational structure of a Department (e.g., where the Department does not have units) or Central Administration Department, or a particular Invention/Creation situation (e.g., when two or more departments are involved).
 - b. *Allocation among Creator(s).* For Inventions, the creator(s)' share will normally be divided equally among all creators unless they agree otherwise. For copyrightable works, the Dean or authorized administrative official shall allocate the creators' share among creators, having due regard for the value and substantiality of their respective contributions.
 - c. *Retention of Creator(s)' Share by University.* Creator(s) may always arrange for his/her/their personal share(s) to be retained by the University, e.g., to support his/her/their research.
 - d. *Payments after Creator(s) Leave University.* The creator(s)' share will continue even though the individual(s) may have left the University.
 - e. *Disposition of Share Allocated to Creator(s)' Laboratory if Creator(s) Relocate.* If a portion of the Department's share under the creator(s)' control is allocated to the creator(s)' laboratory or similar facility, that portion will normally follow the creator if he/she transfers to another part of the University. However, it will not follow the creator if he/she leaves the University.
 - f. *Disposition of Department's Share if Creator(s) Relocate.* The Department's share not allocated to the creator(s)' laboratory or similar facility will ordinarily continue to be paid to the Department where the creation was made even if the creator has moved to another Department or to another institution. However, the

Dean or the authorized official may recommend alternate treatment if it is warranted.

- g. This Intellectual Property Policy includes all applicable royalties received by the University effective from the date the policy is approved by the Board of Trustees.

Section XI. Responsibilities of Parties

It is the responsibility of the University and all members of the University community to ensure adherence to this Policy. Academic faculty and staff and other creators governed by this Policy shall have the obligation to:

- Make themselves aware of and adhere to restrictions on or rights in intellectual property deriving from agreements between the University, contractor, granting agencies or other interested third-parties, or deriving from any University interest pursuant to this Policy.
- Inform the Office of the Vice President for Research, Economic Development and Public Service (or his/her designee) of materials that should be patented and copyrighted in the name of the University pursuant to the provisions of this Policy, and to cooperate with the University in obtaining such patent or copyright protection.
- Obtain permission from the Vice President for Research, Economic Development and Public Service to publish, in journals or other media, materials to which the University owns the copyright pursuant to this Policy, such permission not to be unreasonably withheld.
- Ensure that students or contractors working collaboratively or under their direction (whether or not for pay) on projects which may require protection by a patent, copyright, trademark, trade secret or service mark have signed appropriate agreements concerning the assignment of intellectual property to the creator or to the University, or such other disposition of rights to intellectual property as shall be appropriate pursuant to this Policy. Such agreements shall also clarify to students their rights to include or copyright any part of the work that they may wish to include in theses or dissertations. At the request of the Office of the Vice President for Research, Economic Development and Public Service, the University's General Counsel shall assist creators in this regard.

The University's Office of Sponsored Programs shall inform creators of their responsibilities.

The appropriate officers of the University have the obligation to respond in a timely fashion, normally within sixty (60) days, to written requests pursuant to this Policy. The University shall, furthermore, use reasonable efforts to promote works to which the University owns the intellectual property under this Policy.

Section XII. Intellectual Property Agreements

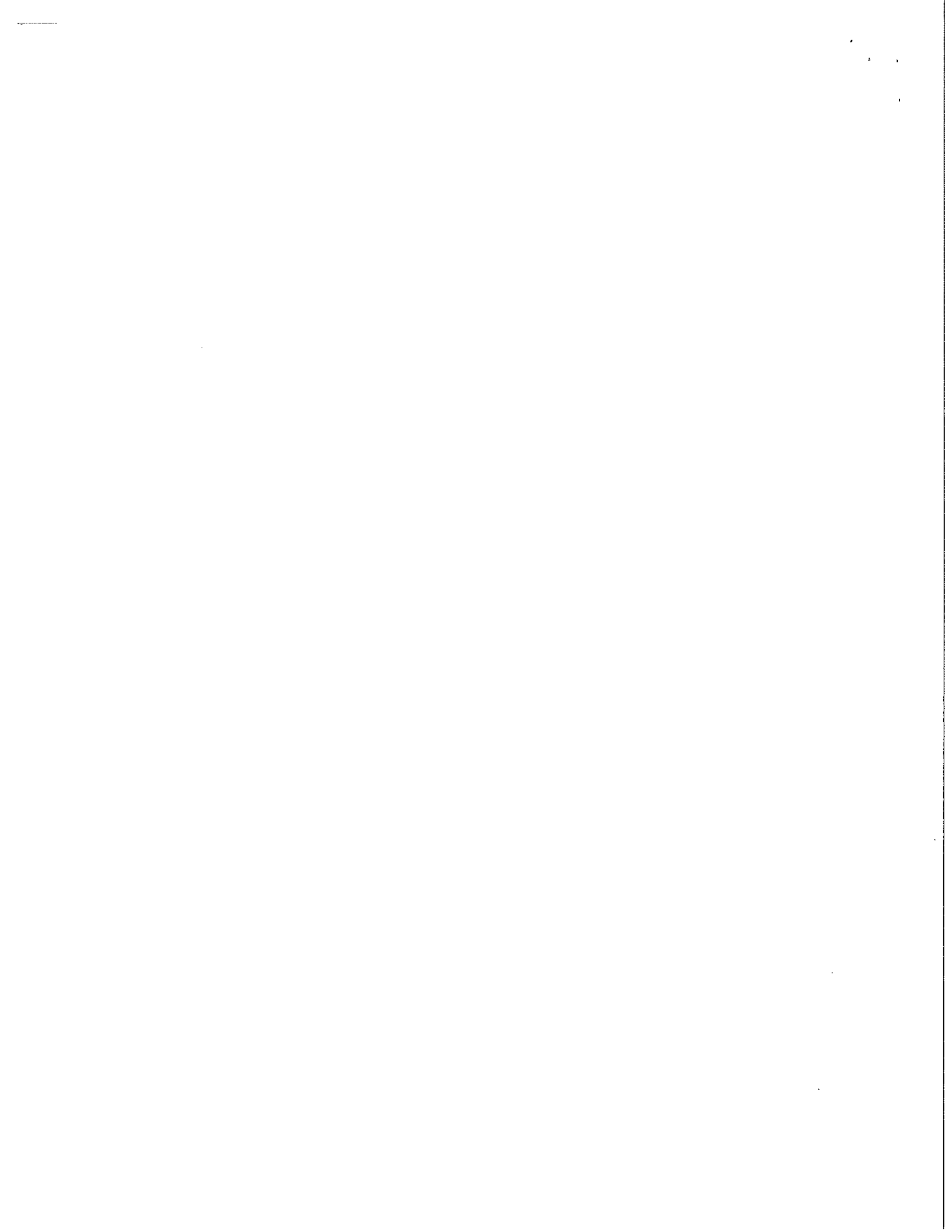
The policies set forth herein constitute an understanding that is binding on the University, and on its academic and non-academic employees, students, and others as a condition of their participation in University research programs or their use of University resources. The University may require formal intellectual property agreements to implement the policy as appropriate, but the absence of such executed agreements shall not invalidate the applicability of this policy.

Section XIII. Appendix to Intellectual Property and Copyright Policy Elaboration of Definition of Substantial Use

The Intellectual Property and Copyright Policy uses the term "Substantial Use" in determining when the University claims ownership to the intellectual property of works developed by members of the University Community. The purpose here is to augment the definition of "Substantial Use".

For purposes of this Policy, "Substantial Use" is the use of resources other than those "ordinarily available" to most or all faculty members. Such ordinarily available resources include office space and personal office equipment, office computer workstations, library and other general use information resources, and the means of network access to such resources. Minor involvement of students receiving funding from the University is also excluded from the definition of "Substantial Use". The symbiotic nature of the relationship between the University and its faculty produce benefits to both in the nature of enhanced stature and increased grant support. Thus, the University wishes to encourage teaching, scholarship and research activities on the part of its faculty and makes its facilities available to support its faculty, staff, and students in their pursuit of excellent. Nevertheless, the University does have a legitimate right to participate in the management, protection and marketing of intellectual property rights where substantial use has been made of its resources. The above definition of "Substantial Use" may be changed from time to time by the President to reflect changes in technological paradigms. Finally, it is important to recognize that where the creator's intent is to generate private revenues, i.e., commercial development, such activity may constitute a conflict of interest and should be reviewed under the standards contained in the University's Conflict of Interest policy.

Approved by the South Carolina State University Educational Policies Council May 14, 2009.



PROCEDURE FOR POLICY, PROGRAM, OR COURSE CHANGE/ADDITION/DELETION
DIRECTIONS: Enter below the description (and coding of the proposed change as it will appear in the University Catalog or any other publication. (If the change involves a course, complete the "Proposal for Course Change/Addition" form; if it is a program—new major, concentration, center, etc—complete the proposal as indicated in the "Policy and Procedure Concerning New Programs," [a SC Commission on Higher Education release]. A policy change should be fully narrated, giving reasons, benefits, etc. In each case, attach this form and follow approval steps outlined below).

HEGIS TAXONOMY NUMBER
(If applicable)

DESCRIPTION Intellectual Property and Copyright Policy

APPROVAL STEPS:

1. Submitted by [Signature] Asst. V.P. of Sponsored Programs

Name and Title

2. Reviewed by _____

Chairperson

3. Reviewed by [Signature]

Dean, Library and Information Services

4. Reviewed by _____

Dean

5. Reviewed by [Signature] For course numbering and HEGIS taxonomy

Registrar

6. Reviewed by [Signature] 9/25/09

Vice President for Academic Affairs

7. Council Action

Teacher Education, if applicable _____

Graduate Studies, if applicable _____

Educational Policies (Undergraduate

Policies and non-teaching changes _____

8. Faculty Senate

(Faculty Senate President will forward approved copy(s) [with all signatures affixed] to the Office of the Vice President for Academic Affairs)

9. President [Signature] 9/29/09

Date

10. Trustees, if applicable _____

Date