

PATENT AND COPYRIGHT

1. University Patent Policy¹

a. Introduction

It is the policy of the University to encourage the development of inventions, and where its resources permit, to reduce these inventions to practice and develop their full potential to the point of practical application. The University is a nonprofit educational institution devoted to teaching, research, and other scholarly activities in the public interest. The University's faculty, staff, and students, as part of their normally assigned duties and scholarly activities, carry on research which may be supported in part, or in whole, by the University from its own resources, or by grants or contracts with outside sponsors. The respective rights and obligations of the University, its sponsors, and its inventors relative to inventions resulting from research at the University are defined by this policy.

b. Objectives

The principal objectives of this policy are:

- 1) to encourage creative research, innovative scholarship, and a spirit of inquiry leading to the generation of new knowledge;
- 2) to facilitate the transfer of University-developed research results to commerce and industry, and to encourage the broadest utilization of the findings of scientific investigation to provide the maximum benefit to the public;
- 3) to provide an orderly procedure for determining the potential economic significance of discoveries so that commercially valuable inventions may be brought to the point of public utilization;
- 4) to establish principles for determining the rights and obligations of the University, inventors, and research sponsors with respect to inventions, and to define the equitable disposition of interests therein;
- 5) to provide incentives to inventors in the form of professional recognition, continuing research support, and direct financial compensation;
- 6) to fulfill the terms of research grants and contracts;
- 7) to safeguard the intellectual property of both the inventor and the University until appropriate patent protection is achieved; and
- 8) to facilitate institutional invention and patent agreements with parties external to the University.

¹Approved by the Faculty Senate April 24, 1995, by the President May 23, 1995, and by the Board of Trustees November 10, 1995.

c. Inventions: Definition and Reporting

1) Covered Inventions

The term "invention" as used herein is an invention which is conceived or reduced to practice under the following circumstances:

- a) where the invention involves any use of funds space, facilities, equipment, materials, or other resources of, or administered by, the University, including sponsored research projects; or
- b) where the invention arises out of the sponsored research project or is relevant to the subject matter of an agreement between the University and another party with which the inventors have been associated; or
- c) where charges relating to the invention were made to a sponsored research project or other activity involving agreement between the University and another party; or
- d) where, although not falling within any of the foregoing categories, the inventor desires to make a disclosure of the invention to the University in order either to request a release as provided below or to interest the University in taking steps to commercialize the invention.

2) Invention Reporting

To protect the rights of the inventor and the University, timely invention reporting is required. Any inventor who is a faculty member, staff member or student, shall make a timely disclosure of his/her invention in writing to the Chair of the Patent Committee. Inventions should be reported as soon after conception as possible to permit prompt evaluation and to avoid unnecessary delays in publication.

3) Failure to Make Timely Disclosure

- a) If the inventor fails to make a timely disclosure of an invention to the Chair of the Patent Committee, the University may require that an assignment of the invention be made to the University and any benefits that have accrued prior to the assignment shall be promptly paid to the University; and the inventor shall be obligated to comply with this requirement. Thereafter, unless the University shall otherwise agree in writing, all rights shall belong to the University.
- b) A disclosure of any invention shall not be considered timely if it causes the University to lose domestic or foreign rights or business opportunities in an invention. Those acts which shall be considered untimely, shall include, without limitation, publication before patent application filing, filing a patent application prior to notifying the University, unauthorized prior filing in a foreign country, failure to disclose a business arrangement with a party other than the University which in any way involves the invention, provision of information which is later determined to be false or misleading in any material respect, and failure to disclose material facts or documentation relative to an invention.

d. Ownership and Disposition

The rights and obligations of the University, faculty, staff, and students are categorized as follows:

1) University-sponsored Inventions

Inventions resulting from research which has involved significant use of funds, facilities, space, equipment, materials, or other resources of, or administered by, the University (i) shall belong to the University; (ii) shall be promptly evaluated by a University evaluation committee or outside organization designated by the University; and (iii) shall either be accepted for patenting and commercialization, or, if not accepted for patenting and commercialization, may be released to the inventor upon written request. If an invention is accepted for patenting and commercialization, such invention shall be assigned to the University as provided hereinafter and the inventor agrees to be compensated in accordance with the applicable provisions of this patent policy.

2) Externally-sponsored, Non-government-related Inventions

The ownership, disposition, and obligations respecting inventions resulting from research wholly or partially financed under contracts, grants, or written agreements by industrial, philanthropic or other organizations, or by individuals, are governed by the provisions of such contracts, grants or agreements. Inventions which are not required to be dedicated to the public or to be assigned to other parties by the provisions of such contracts, grants, or agreements shall belong to the University and shall be processed as University-sponsored inventions. If, when evaluated for patenting and commercialization by the University Patent Committee, an externally-sponsored invention is not accepted for patenting and commercialization, such invention shall be released to the sponsor or, if permitted by the sponsor, may be released to the inventor.

3) Externally-sponsored, Government-related Inventions

The ownership, disposition, and obligations respecting inventions resulting from research which has had any financial support from an agency of the Government (Local, State or Federal) are governed by the terms of the applicable agreement. Such inventions, if required by the applicable agreement, shall be promptly reported to the appropriate government agency for determination of the Government's rights and interests.

If reporting to the Government is not required by the applicable agreement, or if the Government does not retain or require all right, title, and interest in a government-sponsored invention, the University will have the invention evaluated as a University-sponsored invention.

For inventions released to the University by the Government, in the event the University evaluation with regard to patenting and commercialization is negative, the University may release the invention to the inventor if permitted to do so by the Government Agency. Because the Government retains a license and certain other rights under any patent based on work it has sponsored, the inventor shall convey to

the University such rights as the University may need in order to fulfill its obligations to the Government.

4) Inventor-retained Inventions

Inventions resulting from research conducted without any use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the University and not falling within (2) or (3) above, are the property of the inventor and are not reportable under this policy. If such inventions involve any, but not significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by the University, they are reportable but are the property of the inventor. At the option of the inventor, such inventions may be submitted for processing as University-sponsored inventions.

5) Significant Use of University Funds, Facilities, Space, Equipment, or Other Resources.

The University will not normally construe the payment of salary from unrestricted funds nor the provision of office and library facilities as constituting significant use of funds, facilities, space, equipment, materials, or other resources of, or administered by, the University. Substantial advice or assistance from one or more faculty or staff members to an inventor specifically pertaining to the invention constitutes significant use of University resources. Use of laboratory and/or computer facilities will be considered on a case-by-case basis.

e. Assignments of Inventions

1) Faculty, Staff, and Students

Any member of the faculty or staff or any student who makes, as sole or joint inventor, an invention which involved significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the University or which is subject to terms of a sponsored research or other agreement between the University and another party shall assign this invention and all associated applications and patents to the University or its designee unless the invention has been released to the inventor in accordance with the applicable provisions of the patent policy. Any member of the faculty, staff, or any student, whether before or after terminating his or her association with the University, shall do whatever is necessary to enable the University or its designee to take out patents in any and all countries on such invention. The cost and expense of making such assignments and procuring such patents shall be borne by the University or its designee.

- 2) When a student makes an invention which has not involved significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by the University, and which is not subject to the terms of a sponsored research project or other agreement between the University and another party, the University will waive its rights and the invention will be the exclusive property of the student, provided the student's rights in the invention are not altered by the terms of any financial aid received, including external sponsorship, scholarships, fellowships, traineeships, thesis expenses, or other assistance, whether or not administered by the University.

f. Administration of Intellectual Property Matters

1) Responsibilities

The Provost or his or her designee is responsible for the administration of intellectual property matters relating to inventions, patents, trade secrets, trademarks, copyrights, and publications. The Provost or his or her designee shall represent the University in all matters relating to intellectual property which affect the University's relations with government, industry, and the public. The Patent Committee is responsible for advising and making recommendations to the Provost or his or her designee concerning intellectual property matters which arise from activities of faculty, staff, and students, including inventorship, the determination of rights between inventors, the determination of rights between the inventor and the University, and the disposition of patent rights which the University does not wish to exercise. The Patent Committee shall make recommendations regarding those inventions on which patent applications will be filed and the disposition of patent rights involved, shall recommend arrangements for prosecutions of patents and commercialization of inventions, and shall consider and make recommendations on special patent, trade secret, trademark, copyright, and publication matters submitted to it for resolution.

The University may obtain services from one or a combination of the following sources to aid in the processing and/or commercialization of patents:

- a) Marketing organization(s);
- b) University Patent Counsel or other designated patent organization(s); and/or
- c) University personnel.

University inventors shall cooperate with representatives of the University and/or representatives of other organizations designated by the University to assist in the processing and commercialization of University-sponsored inventions.

2) Membership of the University Patent Committee

The membership of the committee shall, at a minimum, include a total of eight faculty and/or staff representatives, at least one of whom has knowledge of technology transfer and commercialization, and the Patent Officer. The Patent Officer, a representative of the Office of Research Administration and Finance (RAF), will administer the Patent Committee and report to the director of RAF, who is the Patent Official. The Patent Officer is appointed by, and serves as the designee of, the Patent Official. The Patent Officer is responsible for the day to day operations of the Patent Committee. Normally, patent counsel will be invited to attend committee meetings in a non-voting capacity. Non-voting guests may be invited to attend meetings as needed to provide additional expertise regarding such matters as the technical aspects of a proposed invention or concerning patent processing.

The Patent Committee faculty/staff appointment process begins with the Patent Official's soliciting faculty/staff nominees from the College Deans. These nominees are presented to the Senate Agenda Committee and to the University Research Council for their recommendations, which may include the suggestions of additional and/or alternative nominees. After considering the recommendations of the Agenda Committee, the University Research Council and the Patent Official, the Provost will make the appointments. The appointed faculty members will serve three-year

staggered terms. Should any Patent Committee member have an interest in any matter coming before the committee, that member shall recuse him/herself both from participating in deliberations concerning and from voting on any such matter(s).

Collectively, faculty/staff representatives should have multi-disciplinary backgrounds, knowledge related to important patent areas at Northeastern University, institutional diversity, and involvement with external sponsors. A quorum of the committee must be present during deliberations and voting.

If any committee member resigns or fails to complete his or her appointment to the Committee or is otherwise removed, a replacement shall be selected by the Provost or his designee to fill the vacancy during the balance of the appointment. This Committee shall meet at regular intervals and at other times upon request of the Chair.

g. Procedures

1) Processing

Inventors shall transmit disclosures of inventions to the Chair of the Patent Committee on disclosure forms provided for that purpose by the Office of Research Administration and Finance. The Chair shall place the disclosure on the agenda of the next Patent Committee meeting. Each reported invention shall be evaluated by the Patent Committee within six months of submission to determine if it is "releasable," as defined below, or if any other patent action will be taken. Any indicated patent action will be taken expeditiously so as to protect the rights of the inventor and the University and to further any contemplated publication. The Patent Committee shall recommend a consultant, agent or other organization(s) to evaluate a) the invention's suitability for patenting, and b) the commercial value of the invention.

If the Patent Committee concludes that an invention is suitable for patenting and commercial value, it may be accepted for commercialization on a best efforts basis. The University shall determine at what point, after the filing of a patent application, commercialization efforts shall begin, what mechanisms will be employed, and to what extent funds, facilities, space, equipment or other resources of, or administered by the University will be utilized.

If the Patent Committee concludes that an invention is suitable for patenting and has commercial value, it may be accepted for patenting and commercialization efforts. If accepted for patenting, the invention shall also be accepted for commercialization on a best efforts basis. The University shall determine at what point, after the filing of a patent application, commercialization efforts shall begin, what mechanisms will be employed, and to what extent funds, facilities, space, equipment or other resources of, or administered by, the University will be utilized.

If the Patent Committee concludes that the invention has little or no current commercial value, a patent application may be filed at the University's expense by the University if it is satisfied that justification has been provided to the Patent Committee to establish potential future commercial value.

2) Releases

Inventions resulting from research conducted without use of significant funds, space, facilities, equipment, materials, or resources of, or administered by, the University and not subject to any conflicting provisions of any externally sponsored research contract, grant, or agreement shall be deemed "releasable" and shall be released to the inventor upon the submission of a written request for such release. Initial findings regarding significant use of funds, space, facilities, equipment, materials, or resources of, or administered by, the University shall be made by the Patent Committee and shall be communicated to and reviewed by the Patent Official. Releases shall be executed by the Provost upon recommendation of the Patent Official or his or her designee. At the option of the inventor, released inventions may be submitted for processing as University-sponsored inventions.

For inventions other than those categorized as "releasable" as defined above, the inventor may request a release. The invention is automatically released to the inventor one year after the Patent Committee has approved it for release, should the University fail to act further on the invention during this period.

Whenever the University determines that it has no further interest in an invention, the University shall release such invention to the inventor.

Upon the grant of any release, the inventor shall agree: a) not to use funds, facilities, space, equipment, materials, or other resources of, or administered by, the University, or the University's name in the exploitation of such invention; b) that the University may retain a non-exclusive, royalty-free license for University purposes if University and/or other sponsorship was involved; and c) that the inventor will convey to the University such rights as are necessary to fulfill any obligations that the University may have to other parties.

3) Disputes and Appeals

Disputes involving invention and patent matters other than those which are entrusted by this document to any other person or entity shall be referred to the Patent Committee. The Committee shall make a written advisory recommendation to the Provost or his or her designee, who shall render a final and binding decision in any such dispute.

4) Consulting Agreements

Any faculty or staff member who is engaged in consulting work or in business is responsible for ensuring that clauses in his or her agreements do not conflict with the patent policies of the University or with University commitments. Upon request, the Division of Research Management will provide assistance in this respect. The University's rights and the individual's employment obligations to the University shall in no way be abrogated or limited by the terms of such agreements. Faculty and staff members should clearly communicate their University obligations to those with whom they make independent agreements, and they should ensure that other parties to the agreement are provided with a current statement of the University Patent Policy.

h. Royalty Income and Incentive Awards

1) Division of Licensing Fees and Royalty Income

Gross Licensing Fees and Royalty Revenues, hereafter referred to as "royalty," subject to any deductions as follows, derived from University-sponsored inventions and paid to the University, shall be distributed as follows:

- a) 30% directly to the Inventor;
- b) 30% but not in excess of \$100,000, divided equally between direct support to the inventor for his or her research and the inventor's unit to foster research in the unit. If distribution of this 30% is greater than \$100,000 per year, the inventor and involved unit head shall negotiate with the Provost or his or her designee regarding the distribution of amounts in excess of \$100,000/year between support of the inventor's research and the unit; and
- c) 40% to the Provost's Office and the University's General Fund.
If the invention is joint, then the direct 30% royalty distribution designated for an inventor shall be to the joint inventors as a group, to be divided equally between the inventors, unless the inventors provide the University with an alternative royalty distribution agreed upon by them. If the inventors are associated with different units, the royalty distribution to the units shall be to the units jointly to be divided equally, unless the University is provided with an alternative royalty distribution agreed upon by the heads of the respective units and the Office of the Provost.

If the inventor's employment with the University terminates, the inventor's share of the distribution for direct support of his or her research shall be redistributed, 5% to his or her unit and 10% to the Provost's Office and the University's General Fund.

In the event a unit ceases to exist, the distribution of the unit's funds shall be determined by the Senior Vice President for Administration and Finance upon recommendation of the Provost or his or her designee.

The term "unit" as used herein shall include, without limitation, college, department, administrative unit, group, center or institute, the functions of which are separately budgeted.

Prior to any distribution under this Section, the University reserves the right to deduct from gross royalty revenues, at its discretion, at such times and in such amounts as it deems appropriate under the circumstances, costs and expenses associated with litigation and other activities which may be incurred either in obtaining rights to inventions, in marketing inventions, or in enforcing or defending patents filed as a result of University-sponsored inventions.

If the University has entered into an agreement with a third party concerning the disposition of rights to any invention arising from research financially supported by such party, the distribution of royalty income received from any patent(s) based on said research will be governed by the terms of that agreement.

With respect to distributions of royalties made by the University, the University shall make royalty distributions in accordance with this patent policy unless directed otherwise by a court order, and the University shall be held harmless against good faith payment of royalties made in accordance with this patent policy.

i. Licensing and Royalty Income

- 1) License and Royalty Income balances in excess of \$50,000, after distributions required by the University Patent Policy, shall be disbursed at the close of the University's fiscal year.

2. Copyright Policy²

a. Policy Objectives

The objective of this policy and the associated administrative procedures is to enable Northeastern University to continue to foster the free and creative expression and exchange of ideas and comment; to preserve traditional University practices and privileges with respect to the publication of scholarly, instructional or artistic works; to establish principles and procedures for equitably sharing income derived from works of authorship produced at or for the University; and to protect the University's rights and assets.

b. Copyrightable Material

- 1) Under the Copyright Act of 1976, 17 U.S.C. sec. 102, federal statutory copyright exists in "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device."³ These works include:
 - a) written or printed works such as books, journal articles, poems, manuals, memoranda, syllabi, bibliographies, tests, computer programs, computer-driven displays, programmed instructional material and databases;
 - b) musical works, including any accompanying words;
 - c) dramatic works, including any accompanying music;
 - d) lectures, presentations and live video or audio broadcasts;
 - e) pantomimes and choreographic works;
 - f) pictorial, graphic, and sculptural works, including photographs, diagrams and sketches;
 - g) films, filmstrips, charts, transparencies and other visual aids;
 - h) motion pictures and other audiovisual works such as videotapes, audio tapes, videodiscs and cassettes; and

² Approved by the Board of Trustees, September 17, 1982. This policy applies to all University employees and to students insofar as they are engaged in the activities described herein.

³ Common Law copyright protection of a work exists in very limited circumstances before it is fixed in tangible form, and trade secret protection is available for any material that provides a business advantage not generally known to the public.

i) sound recordings.

2) Upon publication of any works of authorship, certain formalities of notice are required to prevent loss of copyright protection in the work, as described below.

c. Scope of Copyright Protection

1) The scope of copyright protection is a matter of federal law governed by the Copyright Act of 1976, 17 U.S.C. secs. 101 *et seq.* This policy is provided to identify selected copyright principles and is not intended to constitute a full description of the applicable law. Inquiries in specific cases should be directed to the Provost's Office.

2) Copyright protection for an original work of authorship extends only to the expression which constitutes the work and not to any idea, principle or discovery embodied in the work. For example, a written description of a manufacturing process is copyrightable, but the copyright only prevents unauthorized copying of the description; the process described may be freely copied by a patent.

Copyright protection only prevents copying of the copyrighted work, and does not control an independently produced similar work. Moreover, ownership of copyright is distinct from the ownership of any material object in which the work is embodied. Transfer of the ownership of any object does not of itself convey any rights in the copyrighted work embodied in that object. For example, if one purchases a videotape, one does not automatically obtain any copyright interest in the work on the tape, such as the right to make a public performance of the recorded work. Furthermore, in the absence of an agreement, transfer of the ownership of a copyright does not convey property rights in any material object.

3) The rights of the copyright owner vary with the nature of the work. These rights include the exclusive right to: a) reproduce the copyrighted work; b) prepare derivative works based on the copyrighted work; and c) distribute copies by sale or otherwise. For some works, the rights include the exclusive right to display or perform the work. The rights of copyright are subject to certain defined limitations and exceptions, including, but not limited to, the right of others to make 'fair use,' as defined by the Act, of a copyrighted work. 'Fair use' includes the reproduction of portions of the copyrighted work for purposes such as criticism, comment, news reporting, teaching, scholarship or research. Fair use should not be relied upon without the advice of counsel.

d. Ownership and Disposition of Copyrightable Material

1) The initial ownership of a work depends on how it is created, and may reside in either the author(s) or a sponsoring entity. The term 'author' shall be defined for purposes of this policy to mean the individual(s) responsible for the creation of a work. Where there is a question concerning the identity of the author(s) of a work, the Provost or his or her designee shall make a good faith determination of authorship, which shall be final and binding on all parties. In making this determination, the deciding party is to be guided by applicable law.

2) In the case of any work which is created or developed in the course of or pursuant to an agreement for sponsored research or pursuant to any other written agreement,

including an agreement between an author(s) and the University, copyright ownership shall be determined in accordance with the terms of such agreement. In the absence of such terms, the ownership of copyright in such work shall be determined by reference to paragraphs 3), 4), 5), and 6) of this Section. It is anticipated that such written agreements may contain other restrictions or obligations affecting material provided or developed pursuant to the agreement. In such cases, persons using or developing such materials shall abide by such restrictions and obligations.

- 3) All works created or developed by University faculty, staff or other employee within the scope of his or her employment shall be considered a 'work made for hire' within the meaning of the Copyright Act and copyright ownership thereof shall reside in the University. Notwithstanding the foregoing, works created by faculty for use in courses in the University may be used by such faculty as a contribution to other works provided that appropriate notice and acknowledgment of the University's ownership of copyright is included in any such other work.
- 4) Copyright ownership of any work which is created or developed by any person, including, but not limited to faculty, staff, employees and students, with the significant use of funds, facilities, space, equipment, materials or other resources of, or administered by, the University shall reside in the University. Except as provided in paragraph 3) of this Section, the University will not normally construe the payment of salary from unrestricted funds nor the provision of office and library facilities as constituting significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the University. Use of laboratory and/or computer facilities or assistance from one or more faculty or staff to an author specifically pertaining to the work constitutes significant use of University resources. In all cases the Provost or his or her designee shall make a good faith determination concerning significant use, which shall be final and binding on all parties.
- 5) Copyright ownership in any work, other than in a thesis⁴, which is not within the provisions of paragraphs 2) 3) and 4) of this Section shall reside in the author. Copyright ownership in theses shall be determined as provided in paragraph 6) of this Section.
- 6) Notwithstanding any provision herein to the contrary, in the case of a thesis generated by research performed in whole or in part by a student in the course of or pursuant to an agreement for sponsored research or other written agreement, including an agreement between an author(s) and the University, or utilizing equipment or facilities provided to the University under conditions that impose copyright restrictions, copyright ownership or control shall be determined in accordance with such agreement or restrictions. In the absence of such agreement or restrictions, copyright ownership in such a thesis shall reside in the student; however, the student, as a condition of a degree award, must grant the University the royalty-free right to reproduce and publicly distribute copies of the thesis for limited and noncommercial purposes.

⁴A 'thesis' shall be defined herein as a student work representing significant original or independent research and for which the student receives a very substantial amount of credit toward a degree or certificate. Where there is a question concerning whether or not a student work is a thesis, the Provost or his or her designee shall make a good faith determination concerning this issue, which shall be final and binding on all parties.

- 7) Where necessary to secure to the University an ownership of copyright in accordance with paragraphs 2) 3) and 4) of this Section or the rights of reproduction and distribution in accordance with paragraph 6) of this Section, all faculty, staff, employees, students, consultants, and others authorizing works for or on behalf of the University shall assign such person's rights of copyright, or grant the specified rights of reproduction and distribution, to the University. The University reserves the right to use, at its discretion, the materials or portions of any work created or developed in the course of an author(s)'s relationship with the University, or otherwise covered by this policy, for promotional, professional, or non-commercial purposes on a royalty-free basis.

e. Copyright Revenues

- 1) Except as may be provided in any other controlling document, revenues received by the University through fees or royalties for use of works in which the University has acquired rights under paragraphs 2), 3), 4), and 6) of Section d, will be apportioned in accordance with paragraph 4) of this Section among the author(s), the University, and the unit (if one exists) within the University where the works originated. The term 'unit' as used herein shall include, without limitation, department, administrative unit, group or institute, and functions of which are separately budgeted.
- 2) Prior to any distribution under paragraphs 3), 4), or 5) of this Section, the University reserves the right at its discretion to deduct from gross revenues all or any portion of:
 - a) litigation and other expenses reasonably incurred in enforcing or defending the copyright against third parties;
 - b) costs involved in licensing the copyrightable work;
 - c) fees and expenses for registering the copyright; and d) the University's production and development costs.
- 3) The author(s) and the University are authorized to conclude a written agreement concerning the distribution of revenues. The author(s), a representative of the unit and the Provost or his or her designee may negotiate such a written agreement, to be executed by the author(s) and the Provost or his or her designee, encompassing the following:
 - a) the distribution of revenues;
 - b) the schedule for revenue distribution; and
 - c) where applicable (especially to encourage the creation and development of non-print materials), advances against royalties.
- 4) Where no written agreement with respect to revenue distribution exists, the following distribution shall apply:
 - a) to the University, 60%;
 - b) to the author(s), a total of: (i) 35% of the first \$50,000 in gross revenues; (ii) 25% of the next \$50,000 in gross revenues; and (iii) 15% of the gross revenues thereafter; and

- c) to the unit, a total of: (i) 5% of the first \$50,000 in gross revenues; (ii) 15% of the next \$50,000 in gross revenues; and (iii) 25% of the gross revenues thereafter.
- 5) For purposes of paragraph 4) above, in the case of joint authors, the direct royalty distribution designated for an author shall be to the joint authors as a group, to be divided equally between the authors, unless the authors provide the University with an alternative royalty distribution schedule agreed upon by them. If the authors are associated with different units, the royalty distribution to the units shall be to the units jointly to be divided equally, unless the University is provided with an alternative royalty distribution schedule agreed upon by the heads of the respective units and the Provost or his or her designee. In the event a unit ceases to exist, the distribution of the unit's funds shall be determined by the Vice President/Treasurer upon recommendation of the Provost or his or her designee.
- 6) Except as may be prohibited by law or any other controlling document, the University reserves the exclusive right at its discretion to contract with third parties for the exercise of any of its rights of copyright.

Revenues accruing from such agreements shall be considered part of the revenues of the copyrightable works and shall be distributed in accordance with the provisions set forth in this Section.

f. Copyright Procedure

- 1) Where the University has determined that it is in its best interests to protect works in which it owns or is entitled by agreement or operation of law to own any rights of copyright, it may at its discretion register its claim to copyright. The author(s) of the work shall fully and promptly cooperate with the University and take such actions and execute such documents, including, but not limited to, assignments and applications for registration, which shall, in the opinion of the Provost or his or her designee, be reasonably necessary to perfect and confirm the University's rights of copyright.
- 2) In all cases where the University chooses to publish⁵ a work, it shall include a copyright notice in the required form and position. The notice must contain three elements:
- a) the symbol © [(P) for sound recordings];
 - b) the name of the copyright owner: NORTHEASTERN UNIVERSITY; and
 - c) the year of first publication. This is the year in which copies of the work were first placed on sale, sold, or publicly exhibited or distributed.

Advice of counsel should be obtained regarding the proper use of copyright notice.

g. Policy on Trade Secrets and Protection of Computerware

⁵ 'Publication,' under the Copyright Act, includes the distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease or lending, or the offer to distribute copies to a group of persons for further distribution or public display or performance. A public performance or display of a work does not in itself constitute publication.

- 1) Except where provided to the contrary in other controlling documents, ownership of computer databases, software and firmware produced at the University, along with any rights of copyright pertaining thereto, shall reside in the University wherever such materials are created a) by employees as works made for hire; b) under contract by or for the University; or c) with significant use of funds, space, facilities, equipment, materials, or other resources of, or administered by, the University, as described in Section d above. It should be noted that sponsored research agreements usually contain clauses affecting the ownership and disposition of computer software, firmware and databases, providing in some cases that the sponsor or the University is the owner. The Provost's office should be consulted to determine the meaning and scope of any such clauses.
- 2) Copyright protection alone may be inadequate for computerware and certain other materials. For this reason, computer software, firmware and databases owned or controlled by the University shall be maintained as trade secrets of the University until released by the Senior Vice President/Treasurer upon recommendation of the Provost or his or her designee. In addition, the Provost or his or her designee may identify other materials or classes of materials to be treated as trade secrets. Where any material is to be treated as a trade secret, the following steps shall be taken to protect such status.
 - a) The material and any copies thereof shall be physically secured against access by unauthorized individuals.
 - b) Access to the material and any copies thereof shall be limited to designated individuals who shall be as few as possible and who shall be instructed and obligated to protect any such trade secret status.
 - c) The material and any copies thereof shall bear a notice as follows: "This material is confidential and proprietary to Northeastern University. Access to this material is limited to authorized individuals. Use, reproduction or disclosure is prohibited unless authorized in writing by the University."
- 3) Initial findings with respect to the release of trade secrets of the University shall be made by the University Patent Committee and shall be communicated to and reviewed by the Provost or his or her designee. If release is authorized, the principal investigator or other faculty member directing the research in the course of which computer databases, software, firmware or other trade secrets are developed may permit their distribution subject to conditions which protect their commercial value and are consistent with any grants or contracts under which such works are developed. Databases so released may be publicly accessed (except in cases where confidential information or privacy considerations are involved, such as student, personnel, and patient records) so long as substantial copying is prevented.
- 4) It should be noted that software, firmware, databases and other trade secrets may be provided to the University from outside sources under conditions restricting their use or disclosure. Individuals authorized to access such materials shall treat them as required by the terms under which they are provided to the University.

h. Miscellaneous Provisions

- 1) Employment Agreements

The University may require faculty, staff or students to sign agreements implementing this policy as a condition of employment or as a condition of participation in a sponsored project, as may be necessary to comply with the terms of grants and contracts, or to establish record title in certain materials in the University. The University may hold legally responsible and/or impose sanctions upon employees responsible for significant violations of the terms of this policy, including but not limited to actions such as the publication other than under University copyright of materials with respect to which the University is the copyright owner under the law or the provisions of this policy.

2) Copying of Works Owned by Others

Members of the University community are warned to observe the rights of other copyright owners.

Policies pertaining to copying for classroom use or library purposes are set forth in "Use of Copyrighted Material in Classes,"⁶ are posted at appropriate University locations and are available from the University Publishing Group.

3) General Advice and Assistance

Designated personnel in the Provost's Office are available to advise on questions arising under this policy and to assist with the negotiation and interpretation of the provisions of proposed formal agreements with third parties. All determinations or interpretations to be made under this policy by the Provost or his or her designee shall be made in substantial conformity with the Copyright Act and controlling case law thereunder, where applicable. Questions regarding the specific terms and conditions of individual contracts and grants, or regarding rules, regulations, and statutes applicable to the various government agencies, may be addressed to the Provost's Office.

⁶ See "Teaching Policies and Procedures" section of this site.