

# 1.9.4 Intellectual Property

Effective Date: September 18, 2006

## **Section A - INTRODUCTION**

This policy shall govern the ownership, protection and transfer of Intellectual Property created or authored by Freed-Hardeman University faculty members, staff members, program participants or students. The purpose of this Policy is to encourage, support, and reward research and scholarship and to recognize the rights and interests of the creator, author, inventor, or innovator ("Inventor or Creator"), the public and the University. The University is committed to faculty scholarship and research, and this Policy does not diminish the right and obligation of faculty members to disseminate research results for scholarly purposes, which is considered by the University to take precedence over the commercialization of Intellectual Property. It is intended that application of this Policy will take into consideration principles of academic freedom; open and full disclosure; overall equity; fairness to the Inventor or Creator and the University; the need for understanding and goodwill among the parties who have an interest in Intellectual Property; and, reasonableness in the negotiation of licensing agreements.

## **Section B – DEFINITIONS**

Intellectual Property The term "Intellectual Property" includes tangible or intangible results of research, development, writing,

teaching or other intellectual activity. The intellectual property covered by this policy will fall into one or more of three categories:

1. Technology which can be patented;
2. Written materials, analog or digital recordings (audio or visual), photographs, films, computer programs, works of art, and all other creative works or material which can be copyrighted; or
3. Tangible research property such as biological materials, computer software, analytical procedures, etc., whether or not it may be copyrighted or patented.

Technology The term "Technology" includes tangible or intangible inventions, as the term is used in United States patent law, whether or not reduced to practice, and tangible research results whether or not patentable or copyrightable. These research results include, for example, computer programs, integrated circuit designs, industrial designs, databases, technical drawings, biogenic materials, and other technical creations.

Inventor and Conception The term "Inventor" includes the person or persons who are responsible for the conception of the technology or invention. "Conception" is defined to mean a definite and permanent idea of a complete and operative invention which a person of ordinary skill could reduce to practice without further research or study.

Extraordinary Use of University Resources The term "extraordinary use of University resources" shall mean unreimbursed use of laboratory, studio or computational facilities or equipment, human

resources or funds beyond what is ordinarily provided to faculty or staff teaching or working in a particular discipline or area. What is considered "extraordinary" will necessarily differ considerably by field, and each School/Division within the University shall annually review and establish guidelines for "extraordinary" use, which shall be communicated to its respective faculty/staff. Ordinary or incidental use of a facility (such as an office or lab) or extensive use of facilities available to the entire campus community (such as the library) shall not be included in this definition. A Creator and Inventor wishing to reimburse the University for the use of University resources should make arrangements to do so with his/her Dean or Vice President before the level of usage becomes extraordinary.

Scholarly Works The term "scholarly works" shall include, but not be limited to the publication of scholarly writings (including books, articles for journals and academic papers); research; works for exhibition or performance; the scholarship of teaching, such as the development of courses, curriculum and innovative methods of teaching; and other works traditionally associated with academic activity that significantly enhances or adds breadth to one's skills, abilities, and knowledge as a teacher and as a scholar. Scholarly works shall also include academic projects and works by students.

Income The term "Income" is defined as royalties or return received from the transfer or licensing of Intellectual Property. "Net income" is defined as the balance of income remaining after the recovery of (1) total University expenses directly related to generating and securing income from a specific technology, and (2) any special project advance

by the University. Only net income, as determined by the Executive Vice President, will be allocated to the Inventors or Creators. Upon request, the Executive Vice President will provide an Inventor or Creator with a listing of University expenses incurred to date on his or her Technology. "University expenses" will consist of expenses such as legal fees, application, issuance, and maintenance fees for patents; legal fees and other direct expenses concerning licensing or transferring that Technology; and direct marketing and patent promotion costs for that Technology. Special project advances from the University will be detailed in writing at the time the advance is made.

### **Section C – RIGHTS IN INTELLECTUAL PROPERTY**

Literary and Artistic Works All rights in scholarly books, articles and other publications, artistic, literary, film, tape, and musical works ("Scholarly Works") are granted to the faculty, staff, program participants and students who are the authors. Scholarly Works includes texts that have been stored on computer media, but excludes computer programs or computer software or databases that are neither accessory to nor an electronic expression of a scholarly text.

All rights in non-scholarly literary and artistic works which are created (1) with the extraordinary use of University resources, (2) in the course and scope of employment with the University or (3) which capitalize on an affiliation with the University are granted to the University, and income distribution shall be handled in the same manner as Technology. Commercial use of the University's name and

trademarks requires prior University approval.

Program, Chapel and Lectureship Presentations and Related Works All rights in the content of presentations on University sponsored programs, including Chapel presentations, the Annual Bible Lectureships, Christian Training Series, Horizons, Makin' Music and similar University sponsored or related activities, are retained by the presenter(s); however, the rights to any University recorded and/or produced print, film, video, tape, audio and other electronic reproductions thereof are granted to the University. Presenters should be informed of this policy in writing at the time they are invited to speak.

Broadcast, Webcast and Related Works All rights in the content of broadcasts, webcasts and other works of WFHU, TV40 and similar University produced or related programs and activities, as well as the rights to any University recorded and/or produced print, film, tape, audio, video and other electronic reproductions thereof, are retained by the University.

Technology All rights in Technology created by Freed-Hardeman faculty members, staff members, or students with the extraordinary use of University resources or funds administered by the University are granted to the University, with income to be distributed in accordance with this Policy. Faculty members working with students on research projects must inform those students in advance of the terms of this Policy and of any burdens of nondisclosure or confidentiality deemed necessary by the faculty member to protect resulting Technology.

All rights in Technology created by Freed-Hardeman faculty members, staff members, or students without the extraordinary use of University facilities or funds administered by the University, but which fall within the Inventor's or Creator's course and scope of employment, are granted to the University, with income to be distributed in accordance with this Policy, subject to the following two (2) exceptions in which the University generally will assert no ownership rights or interests:

1. Technology assigned to an outside entity by a faculty member under a consulting agreement that is consistent with University policies, including Conflicts of Interest policies, and that was disclosed in writing to the faculty member's Dean in advance of execution of the agreement by the faculty member.

2. Technology created pursuant to independent research or other outside activity that is consistent with University policies, including Conflicts of Interest policies, and that was disclosed in writing to the faculty member's Dean at the beginning phase of this research or activity. Acknowledgment in writing is to be obtained from the faculty member's Dean.

For purposes of this Policy, factors considered in determining the scope of a faculty member's employment normally would include the relationship of the Technology to that faculty member's recent teaching, research and other University activities, as well as activities stipulated in any employment contract. Disagreements concerning ownership and other matters regarding this Policy can be appealed to the Intellectual Property Committee in accordance with this Policy.

For exceptions (1) and (2) above (i.e. consulting and independent research), it is the responsibility of the faculty member to disclose and resolve in advance with his or her Dean any potential conflict of interest or overlap in claims of ownership of Technology. If no potential conflict of interest or overlap in claims to Technology is, or reasonably should be, apparent, the faculty member need only include in the disclosure the name of the company, if any, for whom the work is being done, the subject area of the work, the expected level of effort, and a statement that no potential conflict or overlap exists in claims of ownership of Technology. In order to maintain a spirit of collegiality, Inventors or Creators have the responsibility for full and open disclosure to the Dean concerning all matters relating to the commercialization of Technology in which the University has an interest.

Works-for-Hire and Employee Inventions This Policy does not apply to works-for-hire or employee inventions that are created as a specific requirement of University employment or as an assigned University duty. All rights in these works are owned by the University, with no right or interest vesting in the Inventor or Creator.

Individual Agreements Intellectual property which is the subject of a specific agreement between the University and the Inventor(s) or Creator(s) thereof shall be owned as provided in the agreement. Such agreements between the University and faculty are encouraged.

## **Section D - GOVERNANCE**

Administration The Office of the President shall be responsible for

matters of policy relating to Intellectual Property transfers and affecting the University's relations with Inventors or Creators, governments, private research sponsors, industry, and the public. The Executive Vice President shall be responsible for administration of this Policy, including the evaluation of patentability or other forms of protection, the filing of patents, licensing activities, and pursuit of infringement actions, consistent with the terms of this Policy. These responsibilities are to be carried out in coordination with the University's Intellectual Property Committee.

An Intellectual Property Committee shall be appointed by the President, with nominations for faculty positions being made by the Faculty Advisory Committee and nominations for the staff position being made by the Staff Relations Committee. The Intellectual Property Committee ("Committee") shall include four faculty members, the Executive Vice President, the University Counsel, the Library Director, the Director of Recording Services and one other staff member. The appointed faculty and staff members of the committee shall serve two year, staggered terms. The Committee shall monitor activities relating to the administration of this Policy. The Committee shall be consulted in advance concerning any material changes to the Policy and shall participate fully in the evaluation and future development of this and related policies.

The Committee shall serve as an appellate body advisory to the President in the event a disagreement occurs among Inventors or Creators or between Inventor(s) or Creator(s) and the University concerning the interpretation or application of this Policy. In cases in

which the Committee is unable to resolve the disagreement between the parties, the Committee will forward its recommendation for a resolution to the President for final decision.

At the beginning of each academic year, the Vice President for Business Services will prepare a report of the patent and licensing activities within the University for the preceding twelve (12) months, including an annual accounting statement of income and expenses from Intellectual Property in which the University has an interest. Status reports will be provided at subsequent Committee meetings upon request of the Committee.

Disclosures Intellectual Property created by Freed-Hardeman faculty members, staff members, or students with the use of University facilities or funds administered by the University, or within the Inventor's or Creator's scope of employment, shall be disclosed in writing to the Executive Vice President. These disclosures will be maintained in confidence, available only to the President and the Intellectual Property Committee.

Licensing The Inventor or Creator will cooperate with the Executive Vice President in his or her protection of University interests in disclosed Intellectual Property including executing appropriate assignments to perfect legal rights. It is anticipated that the Inventor or Creator will be an active participant in the licensing process and will be consulted prior to licensing decisions. Inventors or Creators having an interest in a potential licensee may request that the potential licensee be given the right of first negotiation, consistent with

University policy on conflicts of interest and any other applicable policies, and normally that request will be granted. If the Executive Vice President determines not to file for a patent or actively pursue the transfer of particular Intellectual Property, the University will at the Inventor's or Creator's request assign ownership of the Intellectual Property to the Inventor or Creator consistent with any existing governmental rights. These decisions normally will be made within ninety (90) days of the date of disclosure.

## **Section E - INCOME**

General Principle The general principle sought by this Policy is to direct income from income-producing discoveries toward Inventors or Creators, assure the transfer and development of those discoveries for the public benefit, and provide for the funding of future research by faculty of Freed-Hardeman University.

Allocation of Income from Technology Net income from the transfer or licensing of Technology will be allocated according to the percentages in the following Schedule. The intent of this Schedule is that small discoveries will primarily aid Inventors and Creators and their research efforts, while large inventions will aid the School proportionally more.

### SCHEDULE

| Net Income               | Inventor/Creator* | Inventor's Department* | University General Fund |
|--------------------------|-------------------|------------------------|-------------------------|
| First \$100,000 per year | 65%               | 25%                    | 10%                     |
| Above \$100,000 per year | 55%               | 30%                    | 15%                     |

\*For as long as the inventor remains at Freed-Hardeman. If the inventor leaves Freed-Hardeman, the inventor's department share shall be increased by ten percent, and the inventor's share shall be decreased by ten percent.

For co-Inventors or Creators, shares will be apportioned consistent with this schedule. Co-Inventors and Creators will be responsible for determining between them how such shares will be divided, preferably in a document written and signed when each joined the invention process. The Intellectual Property Committee will resolve any disputes concerning who is an Inventor of a Technology, or disputes as to how shares should be divided between co-Inventors. The Committee's decision will be the final determination.

The Inventor or Creator's share shall be paid directly to the Inventor or Inventors. Funds designated for the Department are to be used primarily for funding research by the faculty.

In exceptional circumstances with the approval of the appropriate Dean and the Executive Vice President, the royalty split for Technology may be adjusted subject to negotiations between the University and the Inventor and Creator.

## **Section F – EFFECTIVE DATE**

This policy shall be in effect as of the beginning of the 2006-2007

academic year and shall be applied prospectively. Rights in Intellectual Property existing as of the effective date of the policy are retained by the owners under applicable Federal law.

**Section G - PERIODIC REVIEW**

The Intellectual Property Committee, along with the Executive Vice President, shall review the provisions of this Policy and their efficacy in meeting the interests of members of the University community and the University after its first year in effect and, thereafter, at least once every five years.

I, \_\_\_\_\_, have read the Intellectual Property Policy and agree to abide by it while I do work and/or research at Freed-Hardeman University.

\_\_\_\_\_ Signature of Student

\_\_\_\_\_ Signature of Faculty Member

\_\_\_\_\_ Date