

## CHAPTER VII

### INTELLECTUAL PROPERTY

**Section 7-1. General Policy.** LSU encourages and expects its personnel to engage in creative, scholarly activities as part of their duties. All LSU personnel are required to bring to the attention of an appropriate LSU officer, at an early date, any discoveries, inventions, and works potentially subject to legal protection under patent, copyright, or other law. The inventor, the inventor's department, and the inventor's campus gain prestige, and in some cases financial benefits from commercializing an invention or discovery. Such commercialization is consistent with, and complementary to, LSU's academic mission.

#### **Section 7-2. Definitions.**

- a. **"LSU Invention"** shall mean an invention or discovery that is either conceived or first reduced to practice, in whole or in part, during activities that are: **(1)** carried on by, or under the direction of, LSU personnel, regardless of when or where conception or reduction to practice occurs; or **(2)** supported by funds under the control of LSU; or **(3)** conceived, created, designed, developed, or conducted with the use of LSU facilities, equipment, or supplies. The term **"LSU Invention"** shall also include any patent application or issued patent containing at least one claim reading on such an invention or discovery. As a limited exception, the following shall not be considered an **"LSU Invention"**: an invention or discovery that is wholly conceived and wholly first actually reduced to practice during activities that satisfy each of the following four conditions: **(1)** the activities occur during the personal, off-duty time of all involved LSU personnel; and **(2)** the activities are not supported by funds under the control of LSU; and **(3)** the activities are not performed with the use of LSU facilities, equipment, or supplies; and **(4)** the activities are unrelated to any current or past field or area of expertise, responsibility, or employment of any involved LSU personnel.
- b. **"LSU Work"** shall mean any original work of authorship that is fixed in any tangible medium of expression, and that is created or produced during an activity that is supported by LSU, in whole or in part. The term **"LSU Work"** shall also include any copyright or other legal rights derived from such a work. The support by LSU may, for example, take the form of financial support, use of facilities, use of supplies, payment of salary, the consideration provided in a particular contract, or otherwise. **"LSU Work"** shall not, however, include any work deemed to be LSU Software.
- c. **"LSU Software"** shall mean any software created or developed, in whole or in part, during activities that are: **(1)** carried on by, or under the direction of, LSU personnel, regardless of when or where the creation or development occurs; or **(2)** supported by funds under the control of LSU; or **(3)** conceived, created, designed, developed, or conducted with the use of LSU facilities, equipment, or supplies. The term **"LSU Software"** shall also include any source code pertaining to such software; any copyright derived from such software; any patent application or issued patent containing at least one claim reading on such software, or having at least one claim reading on a process or apparatus incorporating such software; and any other legal rights derived from such software.
- d. **"LSU Digital Media"** is a collective term that encompasses all LSU Software, as well as some LSU Works. All LSU Software is considered **"LSU Digital Media."** An LSU Work is considered **"LSU Digital Media"** if it is fixed in a tangible digital medium (including, by way of example, a magnetic tape, a floppy disk, a hard disk, a compact disk, a digital video disk/digital versatile disk/DVD, or an Internet website) that is intended to be used by third parties in digital form or that is intended to be distributed in digital form to third parties for consideration. An LSU Work that is transmitted to a publisher in digital form at the request of the publisher or for the convenience of the author or publisher, but that will not be distributed by the publisher to third parties in digital form (e.g., a conventional printed book whose text is prepared on a word processor) is not considered **"LSU Digital Media."** However, any digital media that otherwise satisfies the above definition, and that is intended to be distributed to third parties with a printed book (for example, a compact

disk read-only-memory packaged with a book) is considered “**LSU Digital Media.**” An LSU Work that is published electronically as part of a peer-reviewed scholarly journal on the Internet shall not be considered “**LSU Digital Media.**” Some “**LSU Digital Media**” will be treated as LSU Works, and some “**LSU Digital Media**” will be treated as LSU Software, as provided in greater detail in Section 7-4(b).

- e. “**Course Materials**” shall mean any copyrights in underlying educational materials or course content used in the *bona fide* teaching or instruction of a regularly scheduled course for credit offered by LSU, to the extent that an author of those materials, himself or herself, uses those materials in teaching the course; including portions, subsets, drafts, revisions, updates, versions, and instructional components of such materials; whether printed, digital, Internet based, CD/DVD-based, audio- or video-based, or otherwise. “**Course Materials**” may include copyrights in items that would otherwise constitute LSU Works, LSU Software, or LSU Digital Media. “**Course Materials**” shall not, however, include rights in any patent, patent application, LSU Database, LSU Mark, or LSU Invention. “**Course Materials**” shall not include any rights that are derived from a co-author who is not also directly involved in the teaching or instruction of a regularly scheduled course for credit at LSU using those materials.
- f. “**LSU Database**” shall mean a digital database that has commercial value, or that reasonably may be considered to have potential commercial value, regardless of whether the database is the subject of copyright, where the database is created or developed, in whole or in part, during activities that are: **(1)** carried on by, or under the direction of, LSU personnel, regardless of when or where the creation or development occurs; or **(2)** supported by funds under the control of LSU; or **(3)** conceived, created, designed, developed, or conducted with the use of LSU facilities, equipment, or supplies. The term “**LSU Database**” shall also include any source code pertaining to such database; any copyright derived from such database; any patent application or issued patent containing at least one claim reading on such database, or having at least one claim reading on a process or apparatus incorporating such database; and any other legal rights derived from such database, including by way of example any statutory legal protection for a database, whether the statute is enacted before or after the provisions of these *Bylaws* concerning LSU Databases take effect.
- g. “**LSU Mark**” shall mean any trade name, trademark, service mark, design, or trade dress: **(1)** that is associated with LSU, or with any campus or other part of LSU; or **(2)** that is created or produced during an activity that is supported by LSU, in whole or in part; or **(3)** that is created or produced by LSU personnel, and that is associated with any other LSU Intellectual Property. The term “LSU Mark” shall also include any goodwill associated with any such mark, and any registrations or other legal rights derived from such a mark.
- h. “**Other LSU Intellectual Property**” shall mean any intellectual property, other than an LSU Invention, LSU Work, LSU Software, LSU Digital Media, LSU Database, or LSU Mark, where the events giving rise to the creation of that intellectual property are supported by LSU in whole or in part. By way of illustration only, such “**Other LSU Intellectual Property**” may include plant variety protection applications or certificates; semiconductor mask works; trade secrets; know how; and tangible research property (e.g., semiconductor chips, software, biological organisms, prototypes, drawings, original research records, notebooks, data, and other corporeal property that can be physically or electronically distributed). In interpreting this paragraph, the principles of paragraphs (a) through (d), and (f) above shall apply by analogy where appropriate.
- i. “**LSU Intellectual Property**” shall mean, collectively, any LSU Invention, LSU Work, LSU Software, LSU Digital Media, LSU Database, LSU Mark, or Other LSU Intellectual Property.

- j. **"Distributable Royalties"** shall mean any money, corporate stock or other equity in a business organization, or other property actually received by and in the control of LSU under an authorized contract granting any rights in any LSU Invention, LSU Work, LSU Software, LSU Database, LSU Digital Media, or Other LSU Intellectual Property. However, consideration received by LSU in reimbursement of or allocated for past, present, or future attorneys fees or other legal expenses associated with LSU Intellectual Property shall not be included as part of **"Distributable Royalties."** No expenses other than reimbursed attorney's fees and legal expenses shall be deducted in calculating **"Distributable Royalties."** **"Distributable Royalties"** shall not include any consideration deemed a Research Grant or deemed Litigation Proceeds; nor shall **"Distributable Royalties"** include any amounts received by LSU that are attributable to an LSU Mark. Furthermore, no activity conducted by LSU for educational, research, or non-commercial purposes shall be deemed to give rise to **"Distributable Royalties."**
- k. **"Research Grant"** shall mean (for purposes of this Chapter VII of the *Bylaws*) any consideration received by LSU under an authorized sponsored research contract that, along with any other provisions, grants another party any rights in any LSU Intellectual Property, where LSU's disposition of that consideration is restricted by that contract to use for conducting research. A **"Research Grant"** shall not be considered Distributable Royalties.
- l. **"Litigation Proceeds"** shall mean any money or other property received by LSU as a result of any resolution of a dispute over another's use, infringement, or licensing of any LSU Intellectual Property, whether received by way of judgment, arbitration, or settlement -- and in the case of a settlement, regardless of whether any arbitration or lawsuit has been instituted. **"Litigation Proceeds"** shall not be considered Distributable Royalties.
- m. **"LSU"** or **"University"** shall mean the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, including all of its campuses, centers, institutions, facilities, and other property.
- n. **"LSU personnel"** shall mean all LSU Supervisors, Officers, Faculty, Staff, Research Associates, Postdoctoral Fellows, Instructors, Graduate Students, and other employees of LSU, whether part-time or full-time. **"LSU personnel"** shall include, for example: **(1)** faculty or other LSU personnel who are on nine-month appointments, who shall be considered **"LSU personnel"** throughout the calendar year for purposes of this Chapter VII of the *Bylaws*, **(2)** visiting faculty, and **(3)** adjunct faculty, emeritus faculty, and LSU undergraduate and professional students employed by LSU when those persons act within the course and scope of their employment by LSU. **"LSU personnel"** shall not include adjunct faculty and LSU undergraduate and professional students when those individuals are not acting as employees of LSU.
- o. **"Chancellor"** shall be construed also to include the Executive Director of the Pennington Biomedical Research Center.

### **Section 7-3. Disposition of LSU Intellectual Property.**

- a. LSU holds all right, title, and interest to all LSU Intellectual Property in all countries. LSU personnel shall execute any formal assignments to LSU of all right, title, and interest to any LSU Intellectual Property, and shall execute such other documents and perform such other lawful acts (at no out-of-pocket expense to the LSU personnel) as may be requested by LSU fully to secure LSU's interest in LSU Intellectual Property.

- b.**

  - (1)** In exceptional circumstances, LSU may waive its rights to certain items that would otherwise be LSU Intellectual Property, in favor of an outside employer of one or more LSU personnel, if LSU expressly approves in writing a valid consulting agreement between that employer and the LSU personnel, and if the consulting agreement expressly states in writing that such items shall become the property of that employer, and if the consulting agreement and all activities conducted under the consulting agreement are in full compliance with the Code of Governmental Ethics and all pertinent rules and regulations of LSU. Such waivers will not ordinarily be permitted; and will only be granted, in LSU's discretion, upon a showing of exceptional circumstances.
  - (2)** LSU will ordinarily grant to a non-governmental sponsor of funded research at LSU an exclusive right, for a limited period of time, to negotiate with LSU for a royalty-bearing license under inventions that may result from the funded research, under mutually agreeable terms. Royalty rates or other consideration to be paid for a licensed invention will not ordinarily be determined before the invention has been made, except where justified in light of exceptional circumstances. On request, a sponsor of funded research will ordinarily be granted a limited right, free of additional charge, to reproduce copies of research reports and scholarly papers resulting from the funded research, this right being limited to reproduction of copies for the sponsor's internal use or for filing with governmental regulatory agencies.
  - (3)** A purported assignment, transfer, license, assertion of ownership, or other disposition of LSU Intellectual Property by the inventor(s) or author(s), without the prior written approval of an authorized LSU official, is void and will not be recognized by LSU -- including, by way of example and not limitation, any such purported assignment or other disposition in a consulting agreement, research agreement, material transfer agreement, or confidentiality agreement.
- c.**

  - (1)** As owner of LSU Intellectual Property, LSU may manage, license, patent, register, sell, abandon, or otherwise dispose of any LSU Intellectual Property as LSU in its discretion sees fit, including but not limited to all decisions concerning potential financial benefits to be derived from any LSU Intellectual Property.
  - (2)** If LSU elects not to pursue or maintain any item within LSU Intellectual Property, then on written request from the affected inventor(s) or author(s), in LSU's discretion LSU may, with any required concurrence from a research sponsor, by written agreement with the respective inventor(s) or author(s), assign that item to the inventor(s) or author(s), subject to such conditions as the parties find mutually agreeable.
- d.** Nothing in this Chapter shall be construed to prohibit or restrict LSU personnel from publishing in academic channels any material that LSU and those personnel are otherwise free to publish. This freedom to publish does not give the author any other rights in LSU Intellectual Property; by way of example, the freedom to publish does not give the author any rights in any patentable inventions that may be disclosed in a publication. LSU personnel are cautioned that early publication can destroy or impair the legal protection that might otherwise be available for intellectual property, and where appropriate are advised to consult with their campus technology transfer officers well before the first planned publication to discuss this question further.

- e. (1) Forty percent (40%) of all Distributable Royalties as defined in Section 7-2(j) shall be paid or transferred to the respective inventors or authors. Corporate stock or other equity within Distributable Royalties shall be transferred to the respective authors or inventors in accordance with the preceding sentence as soon as LSU is legally able to transfer title to such equity, and until that time LSU shall be the sole owner of such equity. LSU shall have no liability in the event the value of such equity changes before it is distributed to the inventors or authors. Provided, however, that the Chancellor (or Chancellors) of the appropriate campus (or campuses) may direct that no part (or a reduced part) of Distributable Royalties shall be paid or transferred to the inventors where those Distributable Royalties are attributable to one or more Plant Patents or Plant Variety Protection Certificates. Further provided, that on the written request of any inventor or author, all or part of that inventor's or author's share of Distributable Royalties may be retained by LSU to support research under the direction of that inventor or author. Where the inventors' or authors' share of particular Distributable Royalties is to be paid to more than one inventor or author, the inventors or authors as a group shall receive the percentage of Distributable Royalties specified above; and that share of Distributable Royalties shall be distributed among the inventors or authors as the inventors or authors unanimously agree in writing; or, if unanimous agreement cannot be reached, in proportions and under procedures established by the President.
- (2) Ten percent (10%) of all Distributable Royalties shall be allocated to the Office of the President. Fifty percent (50%) of all Distributable Royalties shall be allocated within the appropriate campus as directed by the Chancellor of that campus. None of this remainder may be allocated directly to any individual.
- (3) A Research Grant shall be administered by LSU in accordance with the terms of the contract establishing the Research Grant, and in accordance with any applicable laws, rules, and regulations. Authors and inventors shall not be entitled to any portion of a Research Grant, except in some cases for that portion of a salary that is customarily paid from such a source, and then only in accordance with the terms of the contract establishing the Research Grant.
- (4) Litigation Proceeds shall be administered and distributed in proportions and under procedures established by the President.
- (5) If LSU directly sells research materials (not including agricultural products) to third parties, in greater than nominal quantities and for more than a nominal charge; and if those research materials incorporate an LSU Invention (patented or unpatented) that is not in the public domain at the time -- for example cell lines or laboratory animals that are not otherwise publicly available -- and if LSU therefore has no agreement with a third party as to royalties attributable to the LSU Invention; then in such a case LSU and the inventors shall agree as to a reasonable royalty rate to be imputed to net sales of the research materials, the agreed royalty rate to be treated as Distributable Royalties for all purposes. For example, the respective inventor or inventors (as a group) shall be entitled to receive a total of 40% of the imputed royalty rate applied to the net sales as the inventors' share of Distributable Royalties.

- f.** (1) All stock or other equity owned by LSU as LSU's portion of Distributable Royalties shall be managed and disposed of by an Equity Committee consisting of three members of the Board of Supervisors who are appointed by the Chairman and who have no conflict of interest. The Equity Committee shall have the authority to perform all acts that a stockholder or other equity holder lawfully may perform under applicable law. The Equity Committee or its representatives shall regularly review all equity that LSU has acquired as LSU's portion of Distributable Royalties, to decide when it should be held and when it should be sold or otherwise transferred. The Equity Committee is authorized to confer with one or more financial professionals in reaching these decisions, and to rely on the advice of such professionals in making these decisions. The Equity Committee shall notify the affected campus(es) prior to selling stock or other equity, except where exigent circumstances prevent prior notice.
- (2) To attempt to avoid potential questions of conflict of interest, appearance of conflict of interest, and liability:
- (a) No LSU personnel shall act as an officer, director, manager, or the like in any business entity in which LSU acquires stock or other equity under Chapter VII; except that where the pertinent contract granting the business entity rights in LSU Intellectual Property has been approved under the provisions of LSU's Permanent Memorandum 67, the affected inventor(s) or author(s) may hold such managerial roles in the business entity in their personal capacities, but not as representatives of LSU; and
- (b) LSU shall not otherwise attempt to influence the management or operation of any such business entity in which LSU owns equity. Exercising any voting rights associated with equity owned by LSU shall not be considered to be prohibited by this subsection.
- (3) Any equity owned by LSU as LSU's portion of Distributable Royalties shall not be further distributed within LSU, but instead shall be managed by the Equity Committee. Any cash benefits received by LSU arising from such equity ownership (for example, cash dividends, or proceeds from the sale of the equity) shall be distributed within LSU in the same relative proportions as other Distributable Royalties; except that the inventor(s) shall receive no portion of any such cash, because the inventor(s) will ordinarily have already received 40% of the equity originally received by LSU under section 7-3(e)(1).
- g.** In recognition of the administrative costs that are associated with distributing small Distributable Royalty payments, the following procedures shall be used where applicable. At any time when the cumulative total of undistributed Distributable Royalty payments received on account of a particular license of LSU Intellectual Property in a given fiscal year is less than \$250, the Distributable Royalties for that license shall not be distributed as otherwise provided, but shall instead be held by the University until the end of the current fiscal year. If, at any time during the fiscal year, that cumulative undistributed total reaches \$250, then the accumulated Distributable Royalties shall at that time be distributed as otherwise provided. At the end of each fiscal year, if LSU is holding a cumulative total in undistributed Distributable Royalty payments on account of a particular license during the preceding fiscal year of less than \$250, then 100% of those undistributed Distributable Royalty payments shall be allocated to the Office of the President. However, on the written request of any affected inventor or author, made within six months of the close of the fiscal year, the inventor's or author's forty percent (40%) share of such Distributable Royalties shall be paid to the respective inventor(s) or author(s), and the remaining sixty percent (60%) shall be retained by the Office of the President. The University shall not be required to honor any such request from an author or inventor received either before the close of the fiscal year, or more than six months after the close of the fiscal year. A separate written request must be made for each license and for each fiscal year.

- h. As a matter of University policy, LSU will not license or otherwise encumber rights in future LSU Intellectual Property whose conception is not complete as of the date the license or other encumbrance is executed; except for the strictly limited rights that may be granted to a sponsor of funded research respecting inventions resulting from the funded research, as provided in greater detail in section 7-3(b)(2).
- i. As a matter of University policy, LSU shall require that each licensee of rights in LSU Intellectual Property may not assign, transfer, or sublicense the licensed rights, without LSU's express prior written approval; provided that in its discretion LSU may agree by contract not to unreasonably withhold that approval; further provided that in its discretion LSU may agree by contract to review and pre-approve a reasonably detailed sublicensing form in a situation where it is reasonable to expect numerous sublicenses of the particular licensed LSU Intellectual Property; and further provided that LSU in its discretion may agree by contract to limit its review of a sublicense to consonance with the original license agreement and for adequate protection of LSU's interests, but otherwise to disclaim any right to approve or disapprove the business terms of a sublicense.
- j. As a matter of University policy, LSU shall require each licensee of LSU Intellectual Property, and ordinarily each sublicensee, to obtain reasonable levels of liability insurance or to have adequately capitalized self-insurance, the amount of required liability insurance to be determined in view of the reasonably perceived risks presented by the particular technology being licensed. This insurance coverage shall commence no later than the date when the first commercial sale under the license is made, or if earlier the date of the first clinical trials of a human drug or medical device; and shall continue in effect until the expiration of all applicable periods of prescription or statutes of limitation. LSU shall be named as an additional insured in each such insurance policy. On a case-by-case basis, after reviewing all pertinent facts, the requirement of liability insurance may be waived where LSU assigns all rights in LSU Intellectual Property to another party, with LSU retaining no residual rights or residual share of royalties; except that in such a case LSU may retain a nonexclusive right to practice the assigned intellectual property right for experimental, educational, or noncommercial purposes.
- k. As a matter of University policy, LSU shall require that each licensee and assignee, and ordinarily each sublicensee, of LSU Intellectual Property shall indemnify the University against claims and lawsuits arising as a result of activities related to the licensed or assigned intellectual property, whether the claim or lawsuit arises under tort law, products liability law, intellectual property law, or otherwise, the indemnity to include reasonable costs of litigation and attorneys fees.
- l. As a matter of University policy, LSU does not ordinarily permit brokerage of LSU Intellectual Property. Rather, LSU expects LSU's licensees to be directly active in developing and commercializing licensed LSU Intellectual Property. Exceptions to this policy will be permitted only upon the authorization of the Chancellor, and only upon a showing of exceptional circumstances why brokerage of particular LSU Intellectual Property is in the University's best interests in the particular circumstances.
- m. In circumstances where LSU assigns or waives certain intellectual property rights in favor of the authors or inventors, whether under Section 7-3(c)(2), Section 7-4(a), or otherwise; then, unless there is an authorized written agreement by LSU that expressly provides otherwise, in each such case the assignment or waiver shall be without representation or warranty from LSU of any kind, including no warranty or representation as to validity; scope; enforceability; inventorship; authorship; title; or absence of infringement of third party patents, copyrights, trademarks, or other third party rights. As examples: **(1)** In such a case it shall be an author's sole responsibility to obtain any necessary copyright clearances from third parties; and **(2)** In such a case it shall be an inventor's sole responsibility to obtain any necessary patent licenses from third parties. Furthermore, authors and inventors in such cases are cautioned that the waiver or assignment of such intellectual property rights by LSU does not include the right to use any LSU Mark.

**Section 7-4. LSU Works, LSU Software, LSU Databases, LSU Digital Media, and Course Materials.** The various provisions of Section 7-3 shall apply to LSU Works, LSU Software, LSU

Databases, and LSU Digital Media. In addition, the provisions of this Section 7-4 shall also apply to LSU Works, LSU Software, LSU Databases, and LSU Digital Media, but not to other forms of LSU Intellectual Property. This Section 7-4 shall also apply to Course Materials.

- a. Notwithstanding the provisions of Section 7-3(a) above, LSU releases to the respective author(s) all of LSU's interest in any copyright to a book, article, lecture, thesis, dissertation, other literary work, work of art, Course Material, or musical composition that would otherwise be an LSU Work; except that LSU's interest shall not be so released: (i) if LSU publishes the work itself; or (ii) if LSU publishes or produces a derivative work based on that work, where the derivative work is an audio, video, or digital production or broadcast, including by way of example video recordings of lectures, other recordings of lectures, distance learning activities, or other course-related activities; or (iii) if LSU is required to deliver the work to a third party under a research contract or other contract between LSU and the third party. This release of certain rights to the author(s) does not apply to LSU Software or to LSU Databases. LSU reserves a nonexclusive, paid-up, royalty-free right to distribute copies of Course Materials, theses and dissertations, both internally and to third parties, whether by electronic means, microfilm, or otherwise.

The release of rights to Course Materials only applies to the extent that an author or co-author himself or herself uses those materials in the *bona fide* teaching or instruction of a regularly scheduled course for credit at LSU, and does not extend to rights that are derived from a co-author who is not involved in the teaching or instruction of a regularly scheduled course for credit at LSU. The release of rights to Course Materials may include copyrights in items that would otherwise constitute LSU Works, LSU Software, or LSU Digital Media; such a release does not, however, include rights in any patent, patent application, LSU Database, LSU Mark, or LSU Invention.

- b. Prior to submitting any LSU Digital Media to an entity outside LSU, the author(s) shall first submit a disclosure of the LSU Digital Media to an office or committee on the author(s)' campus to be appointed by the Chancellor or the Chancellor's designee. The disclosure shall include a detailed description of the proposed LSU Digital Media, a copy of the LSU Digital Media, or both, and shall also include a statement specifying what resources (personnel, funds, equipment) were used to prepare the LSU Digital Media. The office or committee designated by the Chancellor shall then determine, on a case-by-case basis, whether the LSU Digital Media shall be treated as an LSU Work or as LSU Software for purposes of these *Bylaws*, including whether or not an express, written release of copyright to the author(s) is appropriate by analogy to Section 7-4(a). In deciding this question, the office or committee shall consider such factors as whether the LSU Digital Media more closely resembles an electronic version of a traditional printed book, versus a work substantially enhanced with multimedia; the extent to which University resources and personnel were used; the extent to which the resources and personnel of an outside party such as a publisher were used; and any other factors that the committee or office considers relevant in reaching an equitable decision.
- c. If LSU publishes an LSU Work or LSU Database itself, or if LSU directly provides others access to an LSU Work or LSU Database in exchange for consideration received directly by LSU, and if LSU therefore has no agreement with a third party concerning royalties attributable to the LSU Work or LSU Database, then twelve-and-one-half percent (12.5%) of the net sales attributable to the LSU Work or LSU Database shall be treated as Distributable Royalties for all purposes. For example, the respective author or authors (as a group) shall be entitled to receive a total of  $40\% \times 12.5\% = 5.0\%$  (five percent) of such net sales as the authors' portion of Distributable Royalties.
- d. If an LSU Work, LSU Database, LSU Digital Media, or Course Material is used by the University as part of course instruction, including without limitation Course Materials posted on the Internet and Course Materials used in distance learning, then the author(s) of the LSU Work, LSU Database, LSU Digital Media, or Course Material shall not be entitled to receive any portion of any tuition, fees, or other amounts received by LSU on account of that course, regardless of whether an author is substantively involved in the teaching of that course. LSU shall be free to use the LSU Work, LSU Database, LSU Digital Media, or Course Material as part of the course instruction in LSU's discretion. By

contrast, if LSU should receive any royalties on account of an LSU Work, LSU Database, or LSU Digital Media -- for example, royalties for videotapes, audiotapes, or digital media licensed to a third party for distribution independently of the LSU course -- then those royalties will be treated as Distributable Royalties for purposes of Section 7-3(e)(1) above.

**Section 7-5. Confidential Materials.** LSU System and LSU Campus officials are authorized to protect the confidentiality of materials that are exempt from the Louisiana Public Records Law, pursuant to La. R.S. 44:4(16) or otherwise, to the full extent permitted by law. The President, the Chancellor, the technology transfer officer for each campus, and any other individual designated by the President or by the Chancellor, may certify in writing that particular materials that have been requested under the Public Records Law are subject to a particular statutory exemption under the Public Records Law.

**Section 7-6. Miscellaneous.** On a particularized showing of exceptional circumstances justifying a departure from the policies codified above, the President is authorized in the President's discretion to approve in writing a departure from the requirements of Section 7-3(f)(2)(b). On a particularized showing of exceptional circumstances justifying a departure from the policies codified above, the Chancellor of the affected campus is authorized in the Chancellor's discretion to approve in writing a departure from the requirements of Sections 7-3(b)(1), 7-3(b)(2), 7-3(h), 7-3(i), 7-3(j), and 7-3(l). Such waivers will not ordinarily be permitted, and will be granted only where the President or Chancellor, respectively, in the President's or Chancellor's discretion, is persuaded that exceptional circumstances compel the conclusion that a particular waiver from these requirements in the University's best interests. The President or a Chancellor may delegate the authority granted by this Section 7-5 to another University officer in writing; except that the President's authority to approve departures from the requirements of Section 7-3(f)(2)(b) shall not be delegated.

