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UNIVERSITY OF ILLINOIS
URBANA-CHAMPAIGN SENATE

Committee on University Statutes and Senate Procedures
(Final; Action)

SP.15.17 Proposed Revisions to the *Statutes* to transfer the provisions regarding Intellectual Property from the *General Rules* to the *Statutes*

BACKGROUND

As part of the general revisions of the *Statutes* and *General Rules* that has been ongoing this year, the University Senates Conference has proposed that the University regulations on intellectual property, now found in the *General Rules* in Article III, be moved to the *Statutes*, becoming a new Article XIII. There are two main reasons for this proposal.

The primary and more important reason is that the rules on intellectual property rights and reciprocal obligations between creators and the University are fundamental, core principles of faculty rights. They are not merely operational matters, as are most issues dealt with in the *General Rules*.

The second reason is that revisions to this article of the *General Rules* are already required to go through a “statutes-like” review process of approval by the Senates, mandated in the *Statutes*, Article XII, Section 5. Thus, it is anomalous to say, “Changes to the *General Rules* do not require Senate review, except for this one article, which does.”

If the University is already treating it like a statutory matter, then it should simply be moved into the *Statutes*. Meanwhile, a few edits have been proposed to the text that already existed in the *General Rules*, and those are marked accordingly below.

RECOMMENDATION

The Senate Committee on University Statutes and Senate Procedures recommends approval of transferring the Intellectual Property provisions from Article III of the *General Rules* to become the new Article XIII of the *Statutes*, with revisions to the text as shown below. The existing Article XII, Section 5 of the *Statutes*, quoted below, will be superseded, and therefore is to be deleted. The existing *Statutes* Article XIII, General Provisions, is to be renumbered Article XIV. Text to be added is underscored and text to be deleted is indicated by ~~strikeout~~ (e.g., ~~sample text for deletion~~).

PROPOSED REVISIONS TO THE STATUTES, ARTICLE XII, SECTION 5

1 ~~Section 5. Rules about Research, Patents, and Publications~~

2 ~~The General Rules Concerning University Organization and Procedure shall contain rules and~~
3 ~~regulations governing patents, copyrightable works, recordings, sponsored periodicals, and the~~
4 ~~acceptance of contracts, gifts, and grants for research, and the procedures to be followed.~~

5 ~~Proposed changes in The General Rules related to patents, copyrightable works, or recordings shall be~~
6 ~~sent to the University Senates Conference which shall move as expeditiously as practicable and, if~~
7 ~~necessary, reconcile the views of the senates and advise the president and through the president the~~
8 ~~Board of Trustees before such a rule change is adopted.~~

9 **PROPOSED ADDITION TO THE STATUTES, NEW ARTICLE XIII**

10 **ARTICLE XIII. INTELLECTUAL PROPERTY**

11 **Section 1. Objectives**

12 Technical information, inventions, discoveries, copyrightable works and other creative works that have
13 the potential to be brought into practical use may result from the activities of University employees in
14 the course of their duties or through the use, by any person, of University resources such as facilities,
15 equipment, or funds.

16 The ~~primary~~ first purpose of this intellectual property policy is to provide the necessary protections and
17 incentives to encourage both the discovery and development of new knowledge, its transfer for the
18 public benefit and its use for development of the economy; a second purpose is to enhance the
19 generation of revenue for the University and to provide financial and reputational benefits for the
20 creator(s); and a third purpose is to preserve the University's freedom to conduct research and to use the
21 intellectual property created by that research or pursuant to an institutional initiative. The University is
22 guided by the following general objectives:

23

- 24 (i) To optimize the environment and incentives for research and for the creation of new
25 knowledge at the University;
- 26
- 27 (ii) To ensure that the educational mission of the University is not compromised;
- 28
- 29 (iii) To bring technology into practical use for the public benefit as quickly and effectively
30 as possible;
- 31
- 32 (iv) To protect the interest of the people of Illinois through a reasonable consideration for
33 the University's investment in its intellectual property.
- 34

35 **Section 2. Definitions**

36 (a) Intellectual Property. The term "intellectual property" is broadly defined to include
37 inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works,
38 original data and other creative or artistic works which have value. Intellectual property includes that
39 which is protectable by statute or legislation, such as patents, registered or unregistered copyrights,
40 registered or unregistered trademarks, service marks, trade secrets, mask works, and plant variety
41 protection certificates. It also includes the physical embodiments of intellectual effort, for example,
42 models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and
43 visualizations, biological materials, chemicals, other compositions of matter, plants, and records of
44 research and experimental results.

45

46 (b) Traditional Academic Copyrightable Works. "Traditional academic copyrightable
47 works" are a subset of copyrightable works created independently and at the creator's initiative for
48 academic purposes. Examples may include class notes, books, theses and dissertations, instructional
49 materials and software that creators may design for courses, ~~educational software (also known as~~
50 ~~courseware or lessonware)~~, articles, non-fiction, fiction, poems, musical works, dramatic works
51 including any accompanying music, pantomimes and choreographic works, pictorial, graphic and
52 sculptural works, or other works of artistic imagination that are not created as an institutional initiative
53 (as specified in Section 4(a)(2) below).

54

55 (c) Creator. "Creator" refers to an individual or group of individuals who make, conceive,
56 reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of
57 intellectual property. "Creator" includes the definition of "inventor" used in U.S. patent law for
58 patentable inventions and the definition of "author" used in the U.S. Copyright Act for copy written
59 works of authorship.

60
61 (d) University Resources Usually and Customarily Provided. When determining ownership
62 and license rights in copyrightable works, "University resources usually and customarily provided"
63 includes office space, library facilities, ordinary access to computers and networks, or salary. In
64 general, it does not include the use of students or employees as support staff to develop the work, or
65 substantial use of specialized or unique facilities and equipment, or other special subventions provided
66 by the University unless approved as an exception.

67
68 Exceptions are expected in units where the tradition is to provide subvention to some
69 faculty in the form of graduate assistants to help prepare traditional academic copyrightable works.
70 Exceptions are also expected in situations where creators use University-provided facilities and
71 resources in the creation of works of artistic imagination, for example, use of studios, pottery wheels, or
72 kilns for the creation of paintings, sculpture or ceramics; use of high end computer hardware and
73 software in the creation of artistic graphical images; and so on. Other individual exceptions may be
74 approved on a case-by-case basis [see section 7(k)].

75 76 **Section 3. Application**

77 This policy is considered a part of the conditions of employment for every employee of the
78 University and a part of the conditions of enrollment and attendance at the University by students. It is
79 also the policy of the University that individuals (including visitors) by participating in a sponsored
80 research project and/or making significant use of University-administered resources thereby accept the
81 principles of ownership of intellectual property as stated in this policy unless an exception is approved
82 in writing by the University. All University creators of intellectual property shall execute appropriate
83 assignment and/or other documents required to determine ownership and rights as specified in this
84 policy.¹

85
86 This policy applies only to intellectual property disclosed after the effective date of the policy
87 (September 3, 1998).

¹The creator's obligation to assign rights to the University is subject to the provisions of the Illinois Employee Patent Act, which provides in part:

A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer Any provision which purports to apply to such an invention is to that extent against the public policy of the state and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.

89 **Section 4. Copyrights**

90 (a) Ownership. Unless subject to any of the exceptions specified below or in Section 4(c),
91 creators retain copyright rights to academic copyrightable works as defined in Section 2(b) above. (See,
92 however, Sections 4(b)(2) below.)

93

94 The University shall own copyrightable works as follows:

95

96 (1) Works created pursuant to the terms of a University agreement with a third
97 party, or

98

99 (2) Works created as a specific requirement of employment or as an assigned
100 University duty that may be specified, for example, in a written job description or an employment
101 agreement. Such specification may define the full scope or content of the employee's University
102 employment duties comprehensively or may be limited to terms applicable to a single copyrightable
103 work. ~~Absent such prior written specification, ownership will vest with the University in those cases~~
104 ~~where the University provides the motivation for the preparation of the work, the topic or content of~~
105 ~~which is determined by the creator's employment duties and/or when the work is prepared at the~~
106 ~~University's expense.~~²

107

108 (3) Works specifically commissioned by the University. The term "commissioned
109 work" refers to a copyrightable work prepared under an agreement between the University and the
110 creator when (1) the creator is not a University employee, or (2) the creator is a University employee but
111 the work to be performed falls outside the normal scope of the creator's University employment.
112 Contracts covering commissioned works shall specify that the author convey by assignment, if
113 necessary, such rights as are required by the University.

114

115 (4) Works that are also patentable. The University reserves the right to pursue
116 multiple forms of legal protection concomitantly if available. Computer software, for example, can be
117 protected by copyright, patent, trade secret and trademark.

118

119 (b) University Rights in Creator-Owned Works

120

121 (1) Traditional academic copyrightable works created using University resources
122 usually and customarily provided are owned by the creators. Such works need not be licensed to the
123 University.

124

125 (2) Traditional academic copyrightable works created with use of University
126 resources over and above those usually and customarily provided shall be owned by the creators but
127 licensed to the University. The minimum terms of such license shall grant the University the right to
128 use the original work and to make and use derivative works in its internally administered programs of
129 teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University
130 may retain more than the minimum license rights when justified by the circumstances of development.

131

² Provisions (1) and (2) above define those works that fall within the scope of University employment as that term is used in the definition of "work made for hire" in the U.S. Copyright Statute (see Title 17, USC, Section 101).

132 (c) Student Works. Unless subject to the provisions of paragraph (a) or provided otherwise
133 by written agreement, copyrightable works prepared by students as part of the requirements for a
134 University degree program are deemed to be the property of the student but are subject to the following
135 provisions:

136

137 (1) The original records (including software) of an investigation for a graduate
138 thesis or dissertation are the property of the University but may be retained by the student at the
139 discretion of the student's major department.

140

141 (2) The University shall have, as a condition of awarding the degree ~~award~~, the
142 royalty-free right to retain, use and distribute a limited number of copies of the thesis, together with the
143 right to require its publication for archival use.

144

145 (d) Copyright Registration and Notice. University-owned works ~~should~~ shall be protected
146 by copyright notice in the name of the Board of Trustees of the University of Illinois. Such copyright
147 notice ~~should~~ shall be composed and affixed in accordance with the United States Copyright Law.
148 Registration of the copyright for University-owned works shall be in accordance with the operational
149 guidelines and procedures established by the vice chancellor for research on each campus. The
150 University may also decide to release a work to the public domain and if so, should so indicate.

151

152 (e) University Press Publications. The University Press shall be responsible for copyright
153 registration of works owned by the University and published by the Press and for administering
154 contracts with its authors. Such contracts shall define the rights and obligations of the author and the
155 University and shall be processed as other University contracts.

156

157 (f) Compliance with the Copyright Act. University units that administer activities
158 involving any usage regulated by the Copyright Act are responsible for knowing applicable regulations,
159 monitoring their continuing evolution, and conducting their programs in full compliance with the
160 applicable laws and regulations.

161

162 **Section 5. Other Intellectual Property**

163 Ownership. Except as otherwise specified in this Article or by the University in writing,
164 intellectual property shall belong to the University if made: (1) by a University employee as a result of
165 the employee's duties or (2) through the use by any person, including a University employee, of
166 University resources such as facilities, equipment, funds, or funds under the control of or administered
167 by the University. (See also Section 4(a)(4) above.)

168

169

170 **Section 6. Trademarks**

171 Trademarks and service marks are distinctive words or graphic symbols identifying the
172 source, product, producer, or distributor of goods or services. Registration of trademarks or service
173 marks, at the state or federal level, shall be approved by the appropriate campus or University level
174 officer. Proceeds received from
175 commercialization of a registered or unregistered mark that is related to an intellectual property license
176 for associated intellectual property will be shared with all creator(s) of the associated property as
177 specified in Sections 8(b) and 8(c) below. For proceeds received from commercialization of a mark that
178 is licensed independently and is not directly related to an intellectual property license, the share that

179 would normally be distributed to the creator(s) will be assigned to the unit(s) from which the trademark
180 or service mark originated. Except as provided herein or subject to prior written agreement between the
181 creator(s) and the University, the University will not share the proceeds from commercialization of a
182 mark with the individual(s) who created the mark.
183

184 ***Section 7. INTELLECTUAL PROPERTY ADMINISTRATION***

185 (a) Disclosure. All intellectual property in which the University has an ownership interest
186 under the provisions of this policy and that has the potential to be brought into practical use for public
187 benefit or for which disclosure is required by law shall be reported promptly in writing by the creator(s)
188 to the designated campus officer through the appropriate unit employee using the disclosure form
189 provided by that unit. The disclosure shall consist of a full and complete description of the subject
190 matter of the discovery or development and identify all persons participating therein. The creator(s)
191 shall furnish such additional information and execute such documents from time to time as may be
192 reasonably requested.
193

194 (b) Evaluation and Exploitation Decisions. After evaluation of the intellectual property and
195 review of applicable contractual commitments, the University may develop the property through
196 licensing, to an established business or a start-up company, may release it to the sponsor of the research
197 under which it was made (if contractually obligated to do so), may release it to the creator(s) if
198 permitted by law and current University policy, or may take such other actions considered to be in the
199 public interest. Exploitation by the University may not involve statutory protection of the intellectual
200 property rights, such as filing for patent protection, registering the copyright, or securing plant variety
201 certification. All agreements regarding intellectual property must be executed by the vice president/chief
202 financial officer and comptroller and attested to by the Secretary of the Board of Trustees or their
203 designees.
204

205 (c) Questions Related to University Ownership. In the event there is a question as to
206 whether the University has a valid ownership claim in intellectual property, such intellectual property
207 should be disclosed in writing to the University by the creator(s) in accordance with Section 7(a). Such
208 disclosure is without prejudice to the creator's ownership claim. The University will provide the creator
209 with a written statement as to the University's ownership interest.
210

211 (d) Informing Creators of Decisions. The University will inform principal creators of its
212 substantive decisions regarding protection, commercialization and/or disposition of intellectual property
213 which they have disclosed. However, specific terms of agreements with external parties may be
214 proprietary business information and subject to confidentiality restrictions.
215

216 (e) University Abandons Intellectual Property. Should the University decide to abandon
217 development or protection of University-owned intellectual property, ownership may be assigned to the
218 creator(s) as allowed by law and current University practice, subject to the rights of sponsors and to the
219 retention of a license to practice for University purposes. The minimum terms of the license shall grant
220 the University the right to use the intellectual property in its internally administered programs of
221 teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University
222 may retain more than the minimum license rights, and the assignment or license may be subject to
223 additional terms and conditions, such as revenue sharing with the University or reimbursement of the
224 costs of statutory protection, when justified by the circumstances of development.
225

226 (f) Commercialization. The University may, at its discretion and consistent with the public
227 interest, license intellectual property on an exclusive or non-exclusive basis. The licensee must
228 demonstrate technical and business capability to commercialize the intellectual property. The licensee
229 may include clear performance milestones with a provision for recapture of intellectual property if
230 milestones are not achieved. The licensee may be required to assume the cost of statutory protection of
231 the intellectual property.

232

233 (g) Conflict of Interest and Commitment. Commercialization activities involving
234 University employees will be subject to review of potential conflict of interest and commitment issues
235 and approval of a conflict management plan in accordance with applicable University policy.

236

237 (h) University's Acceptance of Independently Owned Intellectual Property. The University
238 may accept assignment of intellectual property from other parties provided that such action is
239 determined to be consistent with the public interest. Intellectual property so accepted shall be
240 administered in a manner consistent with the administration of other University-owned intellectual
241 property.

242

243 (i) Consulting Agreements. University employees engaged in external consulting work or
244 business are responsible for ensuring that agreements emanating from such work are not in conflict with
245 University policy, with the University's contractual commitments or with University policies regarding
246 University-owned intellectual property. Such employees should make their non-University obligations
247 known to the appropriate campus officer and should provide other parties to such agreements with a
248 statement of applicable University policies regarding ownership of intellectual property and related
249 rights.

250

251 (j) Statement by Creators. The creators of University-owned intellectual property may be
252 required to state that to the best of their knowledge the intellectual property does not infringe on any
253 existing patent, copyright or other legal rights of third parties; that if the work is not the original
254 expression or creation of the creators, the necessary permission for use has been obtained from the
255 owner; and that the work contains no libelous material nor material that invades the privacy of others.

256

257 (k) Administrative Responsibility. The president has ultimate authority for the stewardship
258 of intellectual property developed at the University. Pursuant to Article I, Section 2, Paragraph (d) the
259 vice president for research has direct line authority for University offices and entities involved in
260 technology commercialization and related economic development. With the advice of the
261 chancellors/vice presidents, and in consultation with the vice president for academic affairs and the
262 campus vice chancellors for research, the vice president for research shall establish operational
263 guidelines and procedures for the administration of intellectual property, including but not limited to
264 determination of ownership, assignment, protection, licensing, marketing, maintenance of records,
265 oversight of revenue or equity collection and distribution, approval of individual exceptions, and
266 resolution of disputes among creators and/or unit executive officers.

267

268 (l) Campus Responsibility. Each campus may establish an office which has responsibility
269 for administering University policies regarding intellectual property as defined in this Article.

270

271 (m) Contractual Authority. Licenses, options for licenses and other agreements related to
272 commercialization or exploitation of intellectual property shall be granted in the name of the Board of
273 Trustees of the University of Illinois. All such contracts shall be executed in accordance with the
274 policies described in this Article.

275

276 (n) Administrative Guidelines and Procedures. General guidelines and procedures for the
277 administration of intellectual property shall be established by the president in consultation with the
278 University Intellectual Property Committee (as specified in Section 7(o) below) and the campuses.
279 Detailed operational guidelines and procedures for the administration of campus-based responsibilities
280 shall be established by the vice chancellor for research.

281

282 (o) University Intellectual Property Committee. The University Intellectual Property
283 Committee shall be appointed annually by the president to make recommendations to the president
284 regarding procedures, guidelines, and responsibilities for the administration and development of
285 intellectual property and such other matters as the president shall determine.

286

287 (p) Appeals. After following the administrative guidelines and procedures established by
288 each campus, the University creator or unit executive officer may appeal to the University Intellectual
289 Property Committee to seek resolution of complaints or questions regarding the matters addressed in
290 this Article.

291

292 (q) Preferential Treatment of Sponsors. Sponsored research agreements shall provide that
293 all intellectual property developed as a result of the sponsored research project shall belong to the
294 University unless otherwise specified in writing. The sponsor may receive an option to license the
295 resulting intellectual property on terms to be negotiated, with the option to be exercised within a
296 specified period following the disclosure of the intellectual property. When the nature of the proposed
297 research allows identification of a specific area of intellectual property or application which is of
298 interest to the sponsor, the University may accept research agreements with terms which entitle the
299 sponsor to reasonable specific commercial rights within the defined field of interest. Otherwise, the
300 specific terms of licenses and rights to commercial development shall be based on negotiation between
301 the sponsor and the University at the time the option is executed by the sponsor and shall depend on the
302 nature of the intellectual property and its application, the relative contributions of the University and the
303 sponsor to the work, and the conditions deemed most likely to advance the commercial development
304 and acceptance of the intellectual property. In all cases where exclusive licensing is appropriate, such
305 license agreements shall be executed apart from the sponsored research agreement and shall require
306 diligent commercial development of the intellectual property by the licensee. The University may also
307 determine, on a case-by-case basis and only if allowed by law, that it is in the University's interest to
308 assign ownership of resulting intellectual property to the sponsor as an exception to this policy when
309 circumstances warrant such action, in accordance with guidelines established by the University
310 Intellectual Property Committee.

311

312 (r) Exceptions to Policy. Recommendations for exceptions to the provisions of the policy
313 in this Article shall be made by the University Intellectual Property Committee to the president for
314 presentation to the Board of Trustees. [For individual exceptions, see Section 7(k).]

316 **SECTION 8** ***PROCEEDS DISTRIBUTION***³

317 (a) Proceeds. For purposes of this policy, “proceeds” shall refer to all revenue and/or
 318 equity, as defined below, received by the University from transfer, commercialization, or other
 319 exploitation of University-owned intellectual property.

320

321 (1) Revenue. “Revenue” shall mean cash from payments including, but not limited
 322 to, royalties, option fees, license fees, and/or fees from the sale of the University’s equity interest.

323

324 (2) Equity. “Equity” shall include, but not be limited to, stock, securities, stock
 325 options, warrants, buildings, real or personal property, or other non-cash consideration.

326

327 (b) Revenue Distribution. When revenue is received by the University, all out-of-pocket
 328 payments or obligations (and in some cases, a reasonable reserve for anticipated future expenses)
 329 attributable to protecting (including defense against infringement or enforcement actions), marketing,
 330 licensing or administering the property may be deducted from such income. The income remaining
 331 after such deductions is defined as net revenue. In the case of multiple intellectual properties licensed
 332 under a single licensing agreement, the University shall determine and designate the share of net income
 333 to be assigned to each intellectual property.

334

335 (1) Creator’s Share. The creator (or creator’s heirs, successors, and assigns)
 336 normally shall receive forty percent (40%) of net revenue. If there are joint creators, the net income
 337 shall be divided among them as they shall mutually agree. Should the creators fail to agree mutually on
 338 a decision, the University shall determine the division.

339

340 (2) Originating Unit’s Share. The originating unit normally shall receive twenty
 341 percent (20%) of net revenue. If a creator is affiliated with more than one originating unit or if there are
 342 joint creators from different units, the originating unit(s) share shall be divided among such units as
 343 agreed in writing by the responsible unit executive officers.

344

345 (3) University’s Share. The University normally shall receive forty percent (40%)
 346 of net revenue. Distribution of the University’s share shall be allocated in support of its technology
 347 transfer activities and academic and research programs as determined by the vice chancellor for
 348 research.

349

350 (c) Equity Distribution. In any instance wherein the University executes an agreement with
 351 a corporation or other business entity for purposes of exploiting intellectual property owned by the
 352 University and the University receives or is entitled to receive equity, revenue from the equity shall be
 353 shared among the creator(s), the originating unit(s), and the University in the same proportions as
 354 revenue distributions (except as specified in Section 8(d) below).

355

³ These proceeds distribution provisions shall apply only to revenue and equity received from agreements for commercialization that are executed subsequent to the effective date of this policy (September 3, 1998). Unless otherwise agreed in writing between the University and the creator(s), distribution of income for commercialization prior to the effective date of this policy shall be in accordance with the policy in effect at the time the agreement was approved. Where no policy exists (e.g., for equity), this policy shall prevail.

356 (d) Exceptions When the Creator(s) Have No Entitlement. If the University accepts
357 research support in the form of a sponsored research agreement or unrestricted grant as part of the
358 consideration in an intellectual property license in lieu of an option fee, license fee or royalty, the
359 creator(s) shall have no entitlement to receive a share as personal income. For the subset of equity that
360 is buildings, real or personal property, or other non-cash consideration, the creator(s) shall have no
361 entitlement to receive a share as personal income.

362

363 (e) Special Distributions. Special facts or circumstances may warrant a different
364 distribution of proceeds than specified above and such distributions will be determined on a case-by-
365 case basis under the authority of the vice chancellor for research.

366

367 (f) Revenue from Actions for Defense or Enforcement of Intellectual Property Rights.
368 When the University receives revenue from third parties that results from successful actions for the
369 purpose of defending or enforcing the University's rights in its intellectual property, such revenue may
370 first be used to reimburse the University (or the sponsor or licensee, if appropriate) for expenses
371 incurred in such actions. The creator(s) and their originating unit(s) shall be entitled to recovery of lost
372 royalties from the remaining net revenue, in the same proportions as specified in Section 8(b) above.
373 The remaining net revenue shall be allocated in support of the University's technology transfer activities
374 and academic and research programs as determined by the vice chancellor for research.

375

UNIVERSITY STATUTES AND SENATE PROCEDURES

William Maher, Chair
H. George Friedman
Wendy Harris
Scott Jacobs
Calvin Lear
Anna-Maria Marshall
Mark Roszkowski
Cheyenne Wu
Sandy Jones, *Ex officio (designee)*
Jenny Roether, *Ex officio*
Dedra Williams, *Observer*