In July, 2014, the University of Idaho submitted a revised version of FSH 5300, Copyrights, Protectable Discoveries, and Other Intellectual Property to the State Board of Education (SBOE), and this revised version of the policy was approved by the SBOE at its August 13-14, 2014 meeting. The majority of the included changes, intended to make the University policy consistent with changes to the SBOE intellectual property policy, made in 2010 and 2013, were previously the subject of discussion between the Office of General Counsel (OGC) and the University of Idaho Intellectual Property Committee (IPC). After this discussion with the IPC, but before submission of the University policy in July 2014, the SBOE requested and the University made additional but non-substantive changes or clarifications.

In 2015, OGC reviewed the SBOE-approved version of the policy with the IPC. As a result of this review, OGC further revised the policy, clarifying scope and application of Section B-2(a)(2) of the revised policy; these revisions were endorsed by the IPC. The substantive changes required by the SBOE and the clarifications resulting from points raised by the IPC are described below.

With respect to claims by the University to intellectual property arising from use of University resources, the University increased the scope of such claims, for copyrightable works and protectable discoveries, to be consistent with SBOE policy changes made in 2010 (See SBOE Policy V.M. Sections 2(b)(i), 2(b)(ii), 2(c)(ii), and 3(a) and (b)) These changes were shared with the IPC in December 2013 and further revised after comment by the IPC in February and March of 2015.

Claims of ownership arising from any work performed by an employee of any institution during the course of their duties to the institution, excluding traditional scholarly or creative works.

- **FSH 5300 B-2 (b)(1):** Materials are “UI-Sponsored Materials” within the meaning of this policy, and shall be and are assigned to UI consistent with Subsection G, if the natural person or persons... prepared the work as part of his or her employment duties at UI, excluding those works identified in B-2-a.

- **FSH 5300 B-2 (a): Retention of Rights by University Faculty.** Except as otherwise provided in Subsection B-2, above, the natural person or persons retain the rights to (1) copyrightable works produced while on sabbatical leave; (2) course materials, study guides, and similar works prepared by University Faculty in the furtherance of their instructional responsibilities at UI. See FSH 1565 D; and (3) works prepared by University Faculty as part of the general obligation to produce scholarly or other creative works, such as, but not limited to articles, books, musical compositions, and works of art. See FSH 1565 C-2.

Claims of ownership based upon use of University resources:

- **FSH 5300 B-2(b)(5):** Materials are “UI-Sponsored Materials” within the meaning of this policy, and shall be assigned to UI consistent with Subsection G., if the natural person or persons... made “substantial use” of UI resources in the creation or development of the specific materials, provided however that the use of UI resources openly available to the public shall not be considered “substantial use” of UI resources.

- **FSH 5300 C.** “Absent a valid written agreement to the contrary, any Protectable Discoveries made by UI employees, students, or such other natural person or
persons identified above with the use of facilities (other than library resources) owned by UI or made available to it for project or research purposes are deemed to have been made in the course of working on a research program or project of UI” and FSH 5300 C-1: A Protectable Discovery made by a natural person or persons wholly on his or her own time outside of his or her duties at UI and without the use of UI facilities (other than library resources) belongs to that natural person or persons, even though it falls within the field of competence relating to the person’s UI position.

- With respect to the transfer to the University of intellectual property rights claimed by the University and/or Board, the University policy now reflects the SBOE “requirement that institution employees and other persons subject to this Board policy make a present assignment to the institution of rights, including future rights, in intellectual property to which the Board claims ownership by this policy and/or the institution claims ownership by its institutional policy…” (SBOE Policy V.M. Section 4(b)(iv). These changes were shared with the IPC in December 2013; the language of FSH 5300 has been revised since to be more consistent with the language required, under Stanford v. Roche, to effect a present assignment of rights (i.e. “do hereby assign”).
  - FSH 5300 (G): PRESENT ASSIGNMENT OF RIGHTS IN INTELLECTUAL PROPERTY. All intellectual property to which UI claims ownership by this policy shall belong to UI, and UI employees, students, and other persons subject to this policy do hereby assign to UI all rights, including future rights, in intellectual property to which UI claims ownership by this policy or as otherwise required by policy of the UI Board of Regents, and in any related application for legal protection of such intellectual property. Any person assigning intellectual property to UI subject to this Section G. shall cooperate fully with UI in preserving, perfecting, and protecting legal rights associated with such assigned intellectual property. Such cooperation may include, but is not limited to the execution, of confirmatory assignment to the University of particular intellectual property.
    - This language does not alter the obligation, under the prior versions the policy, of employees to assign such rights to the University; it affects the timing of the assignment.

- The SBOE policy required further clarification regarding institutional responsibility for the protection and commercialization of University-owned intellectual property and the distribution of royalties generated from commercialization of University-owned intellectual property. These changes were made after the initial discussion of the policy with the IPC.
  - These clarifications are found in:
    - FSH5300A-1(d). Definition of “designated agent” added at the request of the SBOE.
    - FSH5300B-4(b) and (c). Clarification of royalty distribution for commercialized copyrighted works owned by the University.
    - FSH5300C-2. Identification of unit (Office of Technology Transfer [OTT]) responsible for securing legal protection of “Protectable Discoveries,” as required by SBOE policy.
    - FSH 5300C-2(d). Clarification of the activities in which OTT may engage, with respect to “Protectable Discoveries,” as required by SBOE policy.