Differences between the existing Faculty Handbook Section 3.4 (Intellectual Property), and the proposed replacement

The proposed I.P. policy is significantly longer than the version currently in the faculty handbook, and moreover some sections have been re-numbered. Rather than the traditional strike-out/new-text comparison, the following paragraphs take the existing policy section-by-section, and describe where those same issues are dealt with in the proposal. This comparison does not repeat the text from the proposal (and it’s best read with the proposal alongside).

In addition to text that addresses topics already mentioned in the existing handbook, the proposed document contains (a) additional clarifying policy on points already partially addressed by the existing policy (interspersed), and (b) new sections addressing issues not previously addressed: see sections 3.4.1 (Introduction), 3.4.9--11 and 3.4.13--16, and 3.4.5 (Applicability).

**Existing Section 3.4 opening paragraph (statement of purpose, 2 sentences):**

The Commonwealth, by and through the University, owns intellectual property invented or created by faculty in certain cases. The following policy provides guidance as to when the University will assert its interest in intellectual property.

This concept has been expanded and incorporated into Proposed Section 3.4.2 (Objectives).

**Existing Section 3.4.1 (Definitions)**

Most existing definitions have been changed or removed:
- “Assigned Duty” is refined into the two concepts “directed work” and “work made for hire”;
- “Significant use of General Funds” is no longer mentioned in the proposed policy [and is instead resolved by advising IP stipulations included in all contracts involving significant use];
- “Employee” is removed. Proposed section 3.4.5, Applicability, details that the policy is intended to apply to all University employees.
- “Intellectual Property” is modified to just refer to “copyrights, patent, and trademarks”, and new definitions have been added for each of “copyright” and “patent”.
- “Net Royalties” are no longer given as a separate definition; the concept is dealt with more completely 3.4.7.6 (income from patents), paragraph 1.

In addition, the proposed policy adds the following terms:
- “Copyright” and “Patent” have been added to the proposal, subsuming parts of the existing “Intellectual Property” term.
- “Directed work” and “work made for hire” have been added, subsuming the existing “Assigned Duty”.
- “Non-directed academic works” has been added as a term, to specifically include traditional academic works as well as emerging forms such as software and on-line pedagogical materials.

Existing Section 3.4.2 (Ownership of Intellectual Property)

This content in this existing section has been greatly expanded, and is dealt with throughout the proposed document.

The university has an interest in intellectual property if and only if:

– the property results from or is developed by faculty or employees acting within the scope of assigned duties; or
– the property results from or is developed wholly or significantly through the use of state general funds.

The concept in first bullet above has been moved to 3.4.7.1 (Patents > University Interests in Inventions), and 3.4.8.1 (Copyright > Ownership of Non-Directed Academic Work). Note that employees other than faculty and students are considered as doing “work for hire” (proposed Section 3.4.7.1.3), which is consistent with the existing policy since classified employees work is traditionally always considered “assigned duties”, unlike faculty.

The concept in the second bullet above has been replaced with the idea that any significant use of university resources which is also an assigned duty will, for faculty, be accompanied with an additional contract. See proposed Sections 3.4.8.2 (Copyright > Sponsored or Other Contracted Works), 3.4.7.2 (Patents > Partnership with University, first sentence), and how the definition of directed work (proposed Section 3.4.4) specifically includes contracts.

Absent a prior contractual agreement, the university will not claim an interest in intellectual property invented or created in connection with course work by students who are not university employees. When significant use by students of university facilities, personnel, or other resources is contemplated, the university may require, as a condition precedent to such use by students, that ownership of the student-developed invention or creation be reserved to the university, in whole or in part. In such cases, a written understanding regarding ownership and use of student creations or inventions should be signed by the student and the University prior to such significant use by the student of university facilities, personnel, or other resources.

These concepts regarding students and separate contracts are addressed in proposed Sections
3.4.7.1.2 (Patents > University Interests in Inventions > Students), and 3.4.8.1.2 (Copyright > Ownership of Non-Directed Academic Work > Students), and the fact that the definition of “Directed Work” (proposed Section 3.4.4) specifically includes contracts.

All faculty, employees, students, and visitors at the university who participate, as inventors or creators, in the development of intellectual property in which the university may have an interest (as specified under section 3.4.1 of this policy), shall be responsible for prompt written notification to the administrator (see section 3.4.3 of this policy) of such participation and development. The written notification shall be a full disclosure of the type of intellectual property being developed, the identity of all persons participating in such development, and the percentage of interest, if any, claimed by each of the participants. The notification shall be signed by each participant unless Radford University Teaching and Research Faculty Handbook separate signed notifications are submitted addressing the same project. The participants shall furnish additional information as reasonably requested by the administrator.

The content of the above paragraph is now included in proposed Section 3.4.7.3 (Patents > Procedures for Review of Invention Disclosures), paragraph 1.

The University shall claim its interest in intellectual property by written notice from the administrator to the inventors or creators. This written notice shall be made within ninety (90) days from the time written notification is received by the administrator, as specified in section 3.4.2 above. Failure of the administrator to so notify the inventors or creators that the university is claiming an interest in such intellectual property shall constitute a waiver by the university of any interest which the University might otherwise claim.

The content of the above paragraph is now included in proposed Section 3.4.7.3 (Patents > Procedures for Review of Invention Disclosures), paragraphs 2-5. The added timeline details are based on the steps involved with applying for various types of patents (U.S. and International).

Where the University properly claims its interest in intellectual property, the inventor or creator shall be entitled to receive fifty percent (50%) of net royalties or other income accrued to the university by its sale, lease, licensing, exchange or other disposition of such intellectual property.

This same 50/50 division of income is reaffirmed in the proposed Section 3.4.7.6. It clarifies what incurred costs contribute towards calculating the net income. It also expresses the policy that University net profits shall be directed back towards research and commercialization.
**Existing Section 3.4.3 (Administration of Policy)**

The parts of this section are updated as follows.

**Existing Section 3.4.3.1 (Administrator)**

The duties of the IP Administrator are changed. The new duties are given in proposed Section 3.4.6 (Administration of Intellectual Property), first paragraph, as well as throughout 3.4.17 (Dispute Resolution). Several of the duties under the existing policy are distributed to the entire Intellectual Property Committee: reviewing invention disclosures (Section 3.4.7.3, Patents > Procedures for Review of Invention Disclosures, paragraph 3), and advising on dispute resolution (Section 3.4.17, item 2). Finally, some of the filing duties of the IP Administrator are assigned to the Provost’s office (proposed Section 3.4.7.3 (Patents > Procedures for Review of Invention Disclosures), paragraphs 2 and 4).

Note that a representative of the IP Administrator (the Vice President of Finance and Administration) is an ex-officio member of the IP Committee Proposed Section 3.4.3 (Membership and Administration of the IP Committee).

**Existing Section 3.4.3.2 (Advisory Committee)**

A University Committee on Intellectual Property shall be established consisting of five Teaching and Research faculty members and an administrator. The five Teaching and Research faculty members shall be appointed by the Faculty Senate and the administrator shall be appointed by the Vice President for Finance and Administration. Terms of appointment shall be consistent with the university’s internal governance provisions. The committee shall:

- Assist the administrator in developing standards and procedures for implementing this policy.
- Recommend amendments in this policy as needed.

This section would be replaced with Proposed Section 3.4.3 (Membership and Administration of the IP Committee). The proposed committee would consist of 6 T&R faculty (one from each college); a library rep; an AP senate member; and an ex-officio member from each of Finance & Administration and Office of Sponsored Programs.

The proposal clarifies that the committee will advise the senate on IP policy and disputes, and provide advice to the University community.

**Existing Section 3.4.3.3 (Confidentiality)**

This section has been re-numbered as the proposed Section 3.4.12 (Confidentiality), and is unchanged.
Existing Section 3.4.4 (Dispute Resolution)

This section has been re-numbered as the proposed Section 3.4.17 (Dispute Resolution), and is largely unchanged. The exact timeline (day) requirements are removed, since individual cases may require significantly different amounts of effort.