

**NUMBER:** 1424

**TITLE:** Policy on Intellectual Property

**APPROVED:** June 20, 1991 (Supersedes Policy Number 1422 on Copyrights and Policy Number 1423 on Patents Approved on April 10, 1975); Revised September 14, 2000; Revised April 8, 2010 (Policy Revised in its Entirety)

## PREAMBLE

Old Dominion University's support of the research efforts of its employees creates an intellectual environment that fosters the commercial development of new discoveries and creations which may be enhanced by patents and copyrights. As a state-supported institution of higher education, Old Dominion University has the responsibility of ensuring that these discoveries and creations are protected in the best interests of our researchers, creators, the University, and the public, in compliance with the laws of the Commonwealth of Virginia. At the same time, Old Dominion University recognizes the importance of its commitment to the principles of academic freedom and the tradition of free and open discussion of research and scholarly investigation. For the reasons specified in this preamble, the Old Dominion University Intellectual Property policy was written.<sup>1</sup>

## I. PURPOSES

The purposes of this policy are to encourage research and scholarship by protecting the interests of creators and the University in Intellectual Property; to define the responsibilities, rights and privileges of Old Dominion University, and those individuals covered under this policy; and to provide basic guidelines for the administration of all matters related to Intellectual Property in which the University has a proprietary interest in accordance with the policy guidelines developed by the State Council of Higher Education in Virginia (SCHEV) and as required by state law and provide for the distribution of royalties as described herein.

## II. DEFINITIONS

- A. Copyrighted Work - An original work of authorship fixed in any tangible medium of expression, including but not limited to literary, musical, dramatic and pictorial materials, sound and visual recordings, computer software programs, and transcripts, published or unpublished, and which property rights are protected by common law and federal copyright law, as further defined by Title 17 of the U.S. Code.
- B. Creator - Either an inventor in the context of an invention, or an author in the context of a copyrighted work.

- C. Disclosure - A report of a development, invention or creation of an original work of authorship.
- D. Invention - A new, useful and non-obvious discovery, process, composition of matter, article of manufacture, design, mask-work, model, technological development, biological or plant material, strain, variety, culture or portion, modification, improvement, translation, or extension of these items.
- E. Intellectual Property - An Invention, Know-how, Mark, or Copyrighted Work of authorship developed by anyone covered under this policy.
- F. Development Expenses - All reasonable expenses incurred by the University for goods and services to administer, protect, develop, and/or enhance the marketability or other aspect of an Intellectual Property, including, but not limited to, patent expenses, protection or litigation of Intellectual Property rights, marketing expenses, consulting fees, expenses incurred in dealing with equity interests.
- G. Gross Revenue - Proceeds actually received by the University from the license, sale, transfer, or other conveyance of an Intellectual Property, including license fees, running royalties, and equity interests paid to the University for such Intellectual Property, except that such equity interests, or portion thereof, shall not be considered "gross revenue" unless and until the equity interests, or portion thereof, are sold by the University.
- H. Net Revenues - Gross Revenue less all incurred or accrued Development Expenses and holdbacks for any known contingent liabilities.
- I. Patent Management Agent - Any organization which specializes in review of inventions, patent administration and commercialization of intellectual property.
- J. Sponsored Research - Research performed under the support of, and compensated by, a sponsoring agency.
- K. Significant Use of University Facilities or Equipment - The use of facilities or equipment owned by or under the control of the University of a reasonable value, as defined by the State Council of Higher Education for Virginia's guidelines for the development of patent and copyright policies and procedures by state-supported institutions for higher education.
- L. University - Old Dominion University, its Board of Visitors, and any and all sub-agencies of the University.
- M. University Designated Research Officer - The vice president for research or his/her designee will serve as the University's authorized agent for matters regarding the application of this policy.

- N. University Research - Research and allied activities which are directly related to the normally expected or assigned duties and responsibilities of University employees.
- O. Work Made for Hire - A creation or original work of authorship created by a University employee within the scope of his or her employment, or specified by agreement and as further defined by Sec 101 US Copyright Act.
- P. Assigned Duty - Intellectual Property created by an author or inventor where the University has specifically directed the author or inventor to develop/produce the Intellectual Property.
- Q. Proprietary Interest - Rights held by the owner of Intellectual Property that have not been waived or otherwise assigned by a separate written agreement.

### III. APPLICABILITY

This policy applies to all University employees and students who receive compensation through sponsored research, tuition/fee waivers, scholarships, assistantships, or other financial arrangements and to other individuals who make significant use of University facilities and equipment owned or otherwise made available by the University, as described in VA CODE S 23-4.3.

### IV. OWNERSHIP

#### A. Inventions

An Invention developed by any person to whom this policy is applicable as defined in Section III above shall be the property of the University if the development or invention is a product of University or sponsored research or assigned duty or was developed with the significant use of University facilities, equipment, or funds, or employee time. Nothing contained in this policy shall be construed as prohibiting the University's acceptance of an agreement which requires a different disposition of patents or patent rights than the disposition created hereunder. In the absence of terms in an agreement governing the disposition of patents, or patent rights, this policy shall apply. Absent a written agreement to the contrary, inventions by non-employees, including but not limited to visiting faculty and volunteers, shall be subject to this policy when significant use is made of the University's facilities or equipment pursuant to Section III above.

Release of Rights to the Inventor - If the University elects not to file a patent application for an invention in which it has a proprietary interest, rights to the invention may be released to the inventor, who may file for a patent subject only to restrictions which may be imposed by prior agreement.

## B. Original Works of Authorship

The University exercises its ownership rights as an employer under the concept of work-for-hire or when the materials subject to copyright, represent work performed by an employee under the direction of, or assignment by, the University. In the case of a work made for hire, the work belongs to the University as the employer of the author, and the University will be considered the author for purposes of copyright. Ownership of copyrights concerning works developed in the course of a written agreement shall be determined in accordance with the agreement.

1. Books, journal articles, papers and similar works. Subject to Section VI, and the University's rights as further defined herein the University hereby transfers to the author(s) its copyrights in such original works as papers, books, articles, musical, pictorial and similar works created by its employees when such works are not expressly made pursuant to an assigned duty. The protection and maintenance of such copyrights shall be the sole responsibility of the author(s). The University retains exclusive ownership of the rights in the Inventions incorporated in such original works, pursuant to section IV.A above and the rights to utilize such papers and articles for purposes of commercializing the Inventions inherent in such original works.
2. All other original works of authorship. For all other original works of authorship, including but not limited to lecture/instructional materials, computer software and all associated programmer and/or user manuals and other documentation, related to the employee's teaching or research responsibilities, collectively "Other Works" the University herewith gives the author(s), (subject to the rights of the other co-authors) of the copyrighted material, in which the University has a proprietary interest, a non-exclusive, non-transferable, royalty free license to make and distribute copies, to perform or display the work publicly, or to make derivative works for any non-commercial or teaching purposes, without the right to grant sublicenses. This non-exclusive license continues in force when the employee leaves the University and personally teaches a course assigned by another educational institution. The employee acknowledges and agrees that he/she has the following material obligations: (a) to notify any and all of his/her subsequent employers (and/or academic or business partners or joint-venturers) of the University's ownership of the copyrights in the Other Works; and (b) to give the University reasonable notice prior to making any commercial use of any Other Work or any invention or work of authorship that the employee, whether alone or in conjunction with others, creates or derives from any Other Work. The protection and maintenance of copyrights in such works will be at the sole discretion of the University.

3. University's rights in such copyrighted material. Except for works created under a specific written agreement, the University will give credit to the author on any copies and derivative works. Prior to using the authors name on any derivative works the University will seek the author's prior approval. Such approval may not be unreasonably withheld by the author. In the case of any disputes such disputes will be resolved pursuant to Section X of this policy.

Notwithstanding the above, all rights in copyrightable material, including but not limited to instructional materials, produced through the facilities of Academic Technology Services will be governed by a separate written agreement.

Nothing contained in this policy shall be construed as prohibiting the University's acceptance of an agreement which requires a different disposition of copyrights in which the University has a proprietary interest.

Release of Rights to the Author - If the University does not wish to exploit copyrighted works in which it has a proprietary interest, it may at its option convey the copyrights to the original author.

## V. ADMINISTRATION

### A. University Patent and Copyright Committee

The University Patent and Copyright Committee shall be appointed by the president of Old Dominion University. The committee shall consist of no more than eleven (11) members, a majority of which will consist of full-time faculty members, each from a different University department or school, with representation from all colleges, and one faculty member who shall serve as committee chair. Members shall be appointed by the president of the University to serve staggered three (3) year terms. The University's designated research officer or his/her designee and the general counsel shall serve as ex-officio members.

The University Patent and Copyright Committee shall have the following responsibilities:

1. Recommend to the president any amendments to the policy;
2. Review disputes involving University-owned intellectual property and make recommendations to the president concerning their resolutions;
3. Provide guidance and assistance to the University designated research officer in matters involving University-owned patents and copyrights.
4. Perform such other responsibilities as the president of the University may assign.

## B. University Designated Research Officer

The University designated research officer shall be the vice president for research and shall have the following responsibilities:

1. Assure compliance with patent and copyright provisions of University and sponsored research grants and contracts;
2. Establish and distribute procedures for the reporting of intellectual properties in which the University has a proprietary interest;
3. Perform initial reviews of the disclosures submitted to the University to determine the subsequent rights thereto;
4. Manage the evaluation, protection, marketing and commercialization of University Intellectual Property, that in his/her judgment is worth pursuing, through internal<sub>2</sub> and/or external resources including but not limited to patent management agents, consultants and lawyers.
5. Insure that required agreements regarding the administration of intellectual property in which the University has a proprietary interest, and consequent rights of all parties concerned, are properly executed;
6. Assist in increasing patent awareness among faculty and staff;
7. Provide annual reports of intellectual property in which the University has a proprietary interest to SCHEV in accordance with state law; and
8. Perform such other responsibilities as required to comply with state law with regard to University intellectual properties and this policy.

## VI. NOTIFICATION

Those inventors and authors subject to the provisions of this policy shall report their inventions and original works of authorship in which the University has a proprietary interest to the University designated research officer. Disclosure must be complete and reasonably in advance of any public disclosure to allow the University or Funder to protect any Intellectual Property that needs protection. The University may not suppress nor unduly delay the publication, without the consent of the authors. Where necessary the University may take custody of the original copies of scientific data and/or research records.

## VII. PROTECTION AND COMMERCIALIZATION

### A. Inventions

1. The University, at its discretion, through the University designated research officer, may submit any disclosure of a new development or invention in which it has a proprietary interest to a patent management agent for a determination of patentability and commercialization. The University may also direct negotiations, through the University designated research officer, with profit, non-profit, or governmental entities desiring to utilize and/or further develop and market an invention in which the University has a proprietary interest.
2. An invention which is the sole property of the inventor normally will not be accepted by the University for review or administration. The inventor, however, may request that the University designated research officer review his or her invention for patentability, in which case, the inventor must assign the rights to his or her invention to the University.

### B. Original Works of Authorship

The University requires employees to affix a copyright notice on any original works of authorship which they have developed and in which the University has a proprietary interest. The copyright notice should be affixed to the work in the form of a small “c” in a circle, or the word “Copyright,” the year of publication, and the name of the University.

## VIII. REVENUE DISTRIBUTION

Where the University has a vested interest in a patent or copyright, the inventor(s) or author(s) and the university will share in any Net Revenues received by or on behalf of the University.

Except as provided for in a prior written agreement, the distribution of Net Revenues shall be as follows

Inventor/Author -	50%
University -	50%

In the absence of a written revenue distribution agreement between the inventors/authors the University will distribute such net revenue equally between the Inventors/Authors.

## IX. TRANSFER OF INTELLECTUAL PROPERTY

Except when the governor’s prior written approval is required, the University’s governing board may transfer ownership of any intellectual property in which it claims an interest.

The governor's prior written approval is required for transfers of title to patents and copyrights that were:

- A. developed wholly or significantly through the use of state general funds, by an employee of the University acting within the scope of his or her assigned duties; or
- B. developed wholly or significantly through the use of state general funds, and are to be transferred to an entity other than the following:
  - The Innovative Technology Authority; or
  - an entity whose purpose is to manage intellectual properties on behalf of nonprofit institutions; or
  - an entity whose purpose is to benefit the transferring institution.

When prior written approval is required, the University should send a description of the intellectual property and the proposed transaction to the State Council of Higher Education for Virginia. Within thirty (30) days, the Council will recommend action to the governor, including any conditions the Council thinks should be attached to the proposed transfer. The governor also may attach conditions to the transfer.

It should be noted that the governor's approval is not required for the granting of a license to use an intellectual property, but only when the actual title is to be transferred.

## X. DISPUTE RESOLUTION AND RIGHT TO APPEAL

Individuals covered by this policy shall have the right to appeal the application of this policy regarding ownership, equity, classification, sharing of revenues, disposition, management, or exploitation of any patent or copyright, or any procedure relating thereto, to the University Patent and Copyright Committee. A written request for appeal must be made to the Chair of the University Patent and Copyright Committee and a copy of the appeal forwarded to the University designated research officer. The request must contain a statement of the specific nature of the appeal, the grounds upon which the appeal is based, and a summary of the facts supporting the applicant's position, and any material the applicant believes is relevant.

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<sup>1</sup>This policy may be amended, from time to time, upon recommendation to the chair of the University Intellectual Property Policy Committee, subject to approval by the president of Old Dominion University.

<sup>2</sup>Old Dominion University Research Foundation