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POLICY ON PATENTS AND COPYRIGHTS

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, 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 Patent and Copyright policy was written.¹

I. PURPOSES

The purposes of this policy are to encourage research and scholarship by protecting the interests of creators and the university in inventions and original works of authorship; 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 patents and copyrights 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.

II. DEFINITIONS

A. Copyrighted Work - An original work of authorship fixed in a tangible medium of expression, including literary, dramatic, musical materials or works, computer software programs, sound, visual, audio-visual, and television films, disks, tapes, kinescopes, or other recordings or transcripts, published or unpublished, and which property rights are protected by common law and federal copyright law.

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. **Intellectual Property** - An invention or work of authorship developed by anyone covered under this policy.
- E. **Invention** - A potentially patentable machine, article of manufacture, composition of matter, process, or improvement of any of these.
- F. **Net Royalties** - Gross royalties less the costs of direct support of the materials subject to patent or copyright, and less the costs of patent or copyright administration, acquisition, commercialization and management.
- G. **Patent Management Agent** - An organization which specializes in review of inventions, patent administration and commercialization of intellectual property, such as the Virginia Center for Innovative Technology (CIT) or Research Corporation Technologies (RCT).
- H. **Royalties** - Any value received from the sale or other transfer of intellectual property. (NOTE: value includes non-cash as well as cash payments - for example, stocks, bonds)
- I. **Sponsored Research** - Research performed under the support of, and compensated by, an external sponsoring agency.
- J. **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 of \$1,000 or more.
- K. **Technology Based Materials (TBM)** - Instructional materials that require the creation of copyright protected work in a medium provided by the University, or as may be defined in the university policy on Copyright Ownership and Royalty Rights for Technology-Based Instruction. TBM include all instructional materials produced and stored, or reproduced in any form, including in any form of computer storage or in digital format, such as on CD-ROM, digital video disc, and server hard drives.
- L. **University** - Old Dominion University, its Board of Visitors, and any and all subagencies of the university.
- M. **University Designated Research Officer** - The associate vice president for research and graduate studies 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.

III. APPLICABILITY

This policy applies to all university employees and may also apply to any individuals who utilize facilities and equipment owned or otherwise made available by the university, as described in VA CODE § 23-4.3.

IV. OWNERSHIP

A. Inventions

An invention developed by a university employee shall be the exclusive property of the inventor unless the development or invention is a product of university or sponsored research, or was developed with the significant use of university facilities or funds, or employee time. Rights to inventions which are subject to the terms of an agreement approved by the university will be governed by the terms of the agreement. 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. In the absence of terms in an agreement governing the disposition of patents, or patent rights, this policy shall apply. Inventions by nonemployees shall be subject to this Policy pursuant to VA CODE § 23-4.3.

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

As a matter of policy the university does not seek ownership of such traditional academic and original works as lecture notes and outlines, papers, books, articles, computer software, and similar works intended to fulfill the normally expected teaching and research responsibilities of its employees, especially when such works are not expressly made for hire. 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. The university will exercise its rights as an employer under the concept of work-for-hire as described by university policy or when the materials subject to copyright represent work performed by an employee under the direction of, or assignment by, the university. Ownership of copyrights concerning works developed in the course of an agreement shall be determined in accordance with the agreement.

Notwithstanding the above, the university policy on Copyright Ownership and Royalty Rights for Technology-Based Instruction shall govern the ownership and management of copyrights in Technology Based Materials.

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 convey the copyrights to the original author.

Review for Obsolescence - Materials in which the university has a proprietary interest, but which are the result of the individual initiative of any employee, may be reviewed for obsolescence by the employee after five (5) years. If the employee considers the material to be obsolete, he or she has the right to refer the matter to the University Patent and Copyright Committee Chair, with a recommendation for disposal of the material.

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 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 associate vice president for research, economic development and graduate studies 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. Submit disclosures of inventions in which the university has a proprietary interest to a designated patent management agent² for purposes of review for patentability and commercialization;
5. Function as the liaison between the designated patent management agent and inventors;
6. 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;
7. Assist in increasing patent awareness among faculty and staff;
8. Provide annual reports of intellectual property in which the university has a proprietary interest to SCHEV in accordance with state law; and
9. 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 prior to any public release of the materials.

VII. PROTECTION AND COMMERCIALIZATION

A. Inventions

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. 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 be willing to 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. ROYALTY DISTRIBUTION

Where the university has a vested interest in a patent or copyright, the inventor or author and the university will share in any royalties received by or on behalf of the university after the deduction of expenses incurred to administer, protect, or develop the invention or copyright. Royalties in TBM are described in the university policy on Copyright Ownership and Royalty Rights for Technology-Based Instruction.

Payments received by the university for intellectual property that is not yet protected by patent or copyright shall be distributed in accordance with the royalty calculations in this policy.

The calculation of net royalty shares is

Inventor/Author - 50%

University - 50%

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;
- 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 royalties, 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.

-Approved by the Board of Visitors June 20, 1991

(Supercedes the Copyright Policy and Patent Policy approved April 10, 1975)

1 This policy may be amended, from time to time, upon recommendation to the Chair of the University Patent and Copyright Committee, subject to approval by the president of Old Dominion University.
2 Old Dominion University Research Foundation