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**TITLE:** Policy on Intellectual Property

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## 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. 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.
- B. Copyrighted Work - An original work of authorship fixed in any tangible medium of expression, including but not limited to literary, musical, dramatic, pantomimes and choreographic, pictorial, graphic and sculptural materials, sound and visual recordings, motion pictures, architectural works, computer software programs, and transcripts, published or unpublished, and which property rights are protected by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](#). This protection is available to both published and unpublished works and gives the copyright owner the exclusive right to reproduce, distribute, sell, perform, display, or prepare derivatives of the work, and to protect a copyright against infringement. Copyright protection does not extend to any idea, procedure, system, method of operation, concept, principle, or discovery, regardless of the form.

- C. Creator - Either an inventor in the context of an invention, or an author in the context of a copyrighted work.
- D. 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 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.
- E. Disclosure - A report of a development, invention, or creation of an original work of authorship.
- F. 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.
- G. 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.
- H. Intellectual Property - An invention, know-how, mark, or copyrighted work of authorship developed by anyone covered under this policy, regardless of whether formal protection is sought.
- I. Net Revenues - Gross revenue less all incurred or accrued development expenses and holdbacks for any known contingent liabilities.
- J. Patent Management Agent - Any organization which specializes in review of inventions, patent administration and commercialization of intellectual property.
- K. Proprietary Interest - Rights held by the owner of intellectual property that have not been waived or otherwise assigned by a separate written agreement.
- L. Sponsored Research - Research performed under the support of, and compensated by, a sponsoring agency.
- M. 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 [SCHEV's guidelines](#) for the development of patent and copyright policies and procedures by state-supported institutions for higher education. For example, utilization of university laboratories or special instrumentation, dedicated services provided by University employees, special financial assistance or extensive use of shared facilities constitutes significant use. In contrast, the use of a computer in a faculty office, other commonly used equipment for teaching and learning activities, use of incidental supplies, and nominal use of University personnel or shared facilities are not considered significant use.

- N. University - Old Dominion University, its Board of Visitors, and any and all sub-agencies of the University.
- O. University Designated Research Officer - The Vice President for Research and Economic Development or designee will serve as the University's authorized agent for matters regarding the application of this policy.
- P. University Research - Research and allied activities that are directly related to the normally expected or assigned duties and responsibilities of University employees.
- Q. 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 [§101 US Copyright Act](#).

### 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.

Pursuant to the Memorandum of Understanding between Old Dominion University and the Old Dominion University Research Foundation, employees of the Research Foundation are subject to this policy.

Matriculated Students who are not employed by the University own their Inventions and Copyrighted Works unless they are developed through significant use of University resources. The University does not make claim to inventions and copyrights made by students while satisfying regular course requirements. Faculty are not permitted to assert ownership of student inventions and copyrights as a condition of student participation in a course, nor are they permitted to claim personal ownership over or control of student inventions and copyrights created in courses they teach.

#### IV. OWNERSHIP

##### A. Inventions

An invention developed by any person to whom this policy is applicable as defined in Section III shall be the property of the University if the development or invention is a product of University employment, sponsored research, as part of an 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, which is by extension a proprietary interest by the Commonwealth of Virginia, as such, in accordance with [Virginia Code § 23.1-1301\(B\)\(9\)](#), rights to the invention may be released to the inventor. Upon receiving rights to the invention, the inventor may individually file for a patent subject only to restrictions which may be imposed by prior agreement or Federal requirements. If the invention was developed with Federal funds, the inventor must petition the Federal government for a release of invention rights.

Release of rights for inventions may be conditioned by the inventor(s) to all of the following:

1. To grant back to the University an irrevocable, perpetual, royalty-free, non-exclusive, worldwide right and license to use the intellectual property for its research and education purposes and a right to grant the same rights to other non-profit institutions.
2. To other terms or conditions reasonably requested by the University.

##### 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. 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 author's 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 ODU Online, 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 that 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, in accordance with [Virginia Code § 23.1-1301\(B\)\(9\)](#), that interest may be transferred to the original author. If the copyrighted work was developed with Federal funds, the original author must petition the Federal government for a release of rights.

Release of rights of copyrighted works may be conditioned upon agreement by the author(s) to all of the following:

1. To grant back to the University an irrevocable, perpetual, royalty-free, non-exclusive, worldwide right and license to use the intellectual property for its research and education purposes and a right to grant the same rights to other non-profit institutions.
2. To other terms or conditions reasonably requested by the University.

## V. ADMINISTRATION

### A. University Patent and Copyright Committee

The University Patent and Copyright Committee shall be appointed by the President of the University to serve staggered three-year terms. The Committee shall consist of no more than eleven (11) members that will include full-time teaching and research 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. Research Centers with more than \$5 million in annual research expenditures also will be entitled to one faculty member on the committee. A majority of members will be holders of U.S. patents. The University's designated research officer or designee and University 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 and make recommendations to the President concerning resolution of disputes involving University-owned intellectual property;
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 Economic Development and shall have the following responsibilities:

1. Ensure 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 and/or external resources, including but not limited to patent management agents, consultants, and lawyers;
5. Ensure 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, or any other act that might result in a loss of patent rights, so as to allow the University, Funder, or combination thereof, to protect any intellectual property deemed in need of protection. The University may delay the publication, without the consent of the authors, where such publication threatens to compromise the ability to procure intellectual property rights domestically or internationally. 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 or invention disclosure allocating the respective contribution share between the inventors/authors, the University will distribute such net revenue equally between the inventors/authors.

The first \$5M of the University's share of revenues will be distributed as follows, based on shares assigned each Inventor:

- Department or research center to which each Inventor's salary line was located at the time of disclosure: 25%



- College or Division in which the department or research center of each Inventor reported at the time of disclosure: 25%
- Technology Transfer Office (for a fund to pay for future patent and commercializations expenses): 50%

After the University's share of revenues exceeds \$5 million, the Vice President of Research and Economic Development will appoint a faculty committee to recommend a new distribution that will invest in the University research enterprise. The Vice President for Research and Economic Development will take that recommendation into account in advising the President, who will make the final decision as to the distribution of any future revenues above \$5 million.

#### IX. TRANSFER OF INTELLECTUAL PROPERTY

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 upon receipt of such approval.

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 Old Dominion University Research Foundation.

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

Any decisions that the Old Dominion University Research Foundation makes regarding protection and commercialization of intellectual property shall be in accordance with University policies and subject to prior University approval.

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 and University Patent and Copyright Committee