

## PREAMBLE

This document establishes policies for Virginia State University concerning intellectual property that may be created by members of the University community. As used herein, the term "intellectual property" includes inventions, processes, unique materials, copyrightable works, original data, and creative or artistic works. Intellectual property is anything developed by anyone covered by this policy that fits one or more of the following categories: (1) any patentable machine, article of manufacture, composition of matter, process or improvement of any of these that can be the subject of a patent under federal and international patent laws; (2) a legal right that inheres in a patent; (3) anything that is copyrightable, including original works of authorship, fixed in a tangible means of expression that can be the subject of a copyright under federal copyright laws; and (4) a legal right that inheres in a copyright. This policy is subject to modification at any time by the Board of Visitors.

## Copyright Policy

### I. Introduction

Va. Code § 23-4.3 provides that all employees of Virginia State University, as a condition of employment, shall be bound by the provisions of this policy of the Board of Visitors. This policy generally defines and establishes the respective rights and obligations of University faculty,<sup>1</sup> students, and staff regarding copyrightable works made by them.

### II. Ownership of Works

#### A. Authored by University Staff

In accordance with the Federal Copyright Act of 1976, works<sup>2</sup> developed by all University administrators and staff (including part-time employees), within the scope of their employment, are the property of the University.

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<sup>1</sup> Faculty has the same meaning as in the current Virginia State University Faculty Handbook. For the purpose of this policy, administrative faculty are considered "staff" when they are fulfilling their administrative roles and "faculty" when they are carrying out their duties as regular faculty members.

<sup>2</sup> Work or works are those products for which copyright protection is provided by the Federal Copyright Act of 1976. This statute covers "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced or otherwise communicated." Works may be literary, dramatic, musical, choreographic, artistic, scientific, and so forth. They may be fixed in the form of writing, drawing, maps, photographs, paintings, sculptures, motion pictures, sound recordings, and so forth.

## **B. Authored by University Faculty**

All copyrightable works developed by all faculty members (including part-time and adjunct faculty) on their own initiative and on their own time shall be the property of such faculty members, except as follows:

### **1. Works Developed in the Course of Assigned Duties or Conducted Significantly Through the Use of University Funds**

The University owns works developed in the course of assigned duties or developed wholly or significantly through the use of University funds and grants held by the University, regardless of the source of such funds.

### **2. Specific Assignments**

The University owns the copyright and works produced pursuant to specific assignments or specific duties that are not connected with normal teaching, scholarship, research or artistic endeavors. The authoring of catalogue or promotional materials is an example of such an assignment.

### **3. Special Projects**

The University owns the copyright for works created as special projects.<sup>3</sup>

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<sup>3</sup> Special Projects are activities to which the University makes a substantial contribution of funds, personnel, facilities, services, or reduction of workload to the author. What constitutes a "substantial contribution" for purposes of this definition must be decided on a case by case basis by the President, in consultation with the Faculty Senate and University Counsel. Special projects include projects supported by outside sponsors, who from time to time include in their grants or contracts, terms that claim ownership of the copyright by the sponsor or require publication without copyright. The University will retain an interest in any copyrightable work produced by a Faculty member, staff member or student under contract with a third party if the University makes a substantial contribution notwithstanding any contract terms to the contrary. Funds and facilities provided by outside sponsors which are administered and controlled by the University shall be considered to be "funds" and "facilities" contributed by the University for the purposes of this definition. Special projects will be frequently, but not always, characterized by released time to the author or authors, by the substantial use of University facilities, and/or by the contribution of University employees other than clerk and secretarial employees. Examples of such substantial University contributions are the use of one or several University employees in the preparation or validation of teaching or testing materials, the participation of University employees as researchers on a project, and a University-sponsored conference which is funded by the University with the participants being paid for or contributing their papers or presentations and a faculty member compiling and editing the proceedings.

### **C. Certification by Faculty**

The faculty author of a work, the ownership of which is retained by the University, shall certify and affirm to the University that the work is original and that to the best of his or her knowledge, the work does not infringe on any copyrights of others, does not contain libelous matter, and does not contain any material improperly invading the privacy of others.

### **D. Authored by Students**

Copyrightable works, including dissertations, developed in connection with course work by students who are not University employees are deemed to belong to the student. However, the University may claim copyright ownership of a work when extraordinary use of University facilities, personnel, or resources is made in the development of the materials, especially when unrelated to coursework.

## **III. Royalty Allocation**

When the University retains ownership of a work authored by a faculty member, the University may execute an agreement with the faculty member providing for a sharing of net proceeds from the commercialization of the work.

In the usual case where a copyright is owned by the University and net proceeds from royalties are to be shared with the author(s), an appropriate sharing of these proceeds shall be as follows:

1. The first \$1,000 of proceeds to the author;
2. Half of the proceeds above \$1,000 to the author and the other half to the University.

If more than one faculty member is an author of a work or a part thereof, the share of proceeds which this paragraph allocates to the author will be shared among such co-authors as they shall determine.

In cases where the University incurs litigation costs in defending the copyright against infringement, such costs shall be deducted from income before any royalties are distributed.

## **IV. Administrative Procedures**

As a condition of employment, all employees shall disclose potential or actual intellectual property on an Intellectual Property Disclosure Form that substantially conforms to the attached disclosure form (Attachment A). The President, in consultation with the Faculty Senate and the University's Counsel, shall develop administrative procedures to implement this policy.

## Patent Policy

### I. Introduction

Va. Code § 23-4.3 provides that all employees of Virginia State University, as a condition of employment, shall be bound by the provisions of this policy of the Board of Visitors. This policy generally defines and establishes the respective rights and obligations of University faculty<sup>4</sup> and staff regarding patents and inventions developed by them.

### II. Ownership of Patents

#### A. Patents Developed by University Staff

Patents<sup>5</sup> and inventions developed by University staff within the scope of their employment are the property of the University.

#### B. Patents Created by University Faculty

Patents and inventions developed by faculty members on their own initiative and on their own time shall be the property of such faculty members, except as follows:

##### 1. Sponsored Research

Patents and inventions arising in the course of sponsored research shall belong to the University.

##### 2. Research Financed Wholly or in Part by Federal Government Funds

Patents and inventions which result from research financed wholly or in part by Federal Government funds will be treated in accordance with the provisions of Public Law 96-517, "The Patent and Trademark Amendments of 1980," and will be owned by the University.

##### 3. Research Financed Wholly or in Part by Industrial, Philanthropic or Other Organizations, Including Non-Federal Government Agencies or by Individuals, Under Contracts or Written Agreements with the University

Rights with respect to patents and inventions in this category will be governed by the agreement between the University and funding source.

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<sup>4</sup> Faculty has the same meaning as in the current Virginia State University Faculty Handbook. For the purpose of this policy, administrative faculty are considered "staff" when they are fulfilling their administrative roles and "faculty" when they are carrying out their duties as regular faculty members.

<sup>5</sup> Patents are those works for which protection is provided by the Federal Patent Act. This law covers "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement there."

#### **4. Research in the Course of Assigned Duties or Conducted Significantly Through the Use of University Funds**

Patents and inventions developed in the course of assigned duties or developed wholly or significantly through the use of University funds shall belong to the University.

#### **5. Foreign Patents**

All rights to foreign patents and inventions shall be retained by the inventor, unless these rights are specifically claimed by the University.

#### **6. Special Projects**

The University owns the rights to patents and inventions for works created as special projects.<sup>6</sup> Special projects are activities to which the University makes a substantial contribution of funds, personnel, facilities, services, or reduction of workload. What constitutes a "substantial contribution" for purposes of this definition must be decided on a case by case basis by the President. Special projects will frequently, but not always, be characterized by release time to the inventor or inventors, by the substantial use of University facilities, and/or by the contribution of University employees other than clerical and secretarial employees.

#### **C. Research Financed Under Terms of Consulting Contracts**

Patents and inventions developed under terms of consulting contracts are governed by Section III of this policy. University personnel may not use University facilities for work related to consulting agreements without prior written approval of the President. It is the responsibility of University personnel to advise potential consulting clients of their University obligations prior to entering into consulting agreements.

#### **D. Certification by Faculty**

The faculty inventor or creator of a work, the ownership of which is retained by the University, shall certify and affirm to the University that the work is original and that to the best of his or her knowledge, the work does not infringe on any patent or patentable rights of others.

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<sup>6</sup> Special Projects are activities to which the University makes a substantial contribution of funds, personnel, facilities, services, or reduction of workload to the author. What constitutes a "substantial contribution" for purposes of this definition must be decided on a case by case basis by the President, in consultation with the Faculty Senate and University Counsel. Special projects include projects supported by outside sponsors, who from time to time include in their grants or contracts, terms that claim ownership of patentable inventions by the sponsor. The University will retain an interest in any patentable work produced by a Faculty member or staff member under contract with a third party if the University makes a substantial contribution notwithstanding any contract terms to the contrary. Funds and facilities provided by outside sponsors which are administered and controlled by the University shall be considered to be "funds" and "facilities" contributed by the University for the purposes of this definition. Special projects will be frequently, but not always, characterized by released time to the author or authors, by the substantial use of University facilities, and/or by the contribution of University employees other than clerk and secretarial employees.

### E. Student Developed Patents and Inventions

Patentable works developed in connection with coursework by students who are not University employees are deemed to belong to the student. However, the University may claim ownership of a work when extraordinary use of University facilities, personnel, or resources is made in the development of the invention, especially when unrelated to course work.

### III. Royalty Allocation

When the University retains ownership of a work invented or created by a faculty member, the University may execute an agreement with the faculty member providing for a sharing of net proceeds from the commercialization of the work.

In the usual case where a patentable work is owned by the University and net proceeds from royalties are to be shared with the inventor or creator, an appropriate sharing of these proceeds shall be as follows:

1. The first \$1,000 of proceeds to the inventor or creator;
2. Half of the proceeds above \$1,000 to the inventor or creator and the other half to the University.

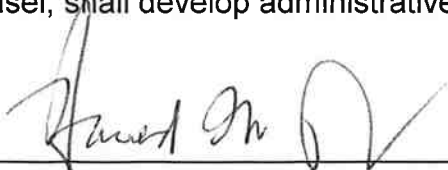
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In cases where the University incurs litigation costs in defending the patent against infringement, such costs shall be deducted from income before any royalties are distributed.

### IV. Administrative Procedures

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Approval By: \_\_\_\_\_



Rector

Date: \_\_\_\_\_

11/9/07