



[DRAFT] Intellectual Property

Policy Type: Board of Visitors

Responsible Office: Office of Research and Innovation

Initial Policy Approved: 05/15/2009

Current Revision Approved: MM/DD/YYYY

Policy Statement and Purpose

Virginia Commonwealth University is committed to supporting its faculty, staff and students in their creation of new discoveries, original works of Authorship and art, and the application and dissemination of those discoveries and works to benefit the public. This policy defines the ownership, distribution, and commercialization of rights associated with Intellectual Property developed at the university. The purpose of this policy is to

- Support the discovery of new knowledge
- Foster creative expression and innovation at the university
- Provide a framework for ownership of rights in Intellectual Property developed at the university or through the use of university resources that respects both individual rights and the university's reasonable interests
- Protect the integrity of the research emanating from the university
- Facilitate appropriate commercial development of Intellectual Property owned by the university
- Encourage and support research and teaching activities of faculty, staff, and students

For the purposes of this policy, Intellectual Property is any new and useful process, machine, composition of matter, article of manufacture, software, or any original work of Authorship subject to Copyright protection. The rights of ownership in Intellectual Property are protected and defined by law. Typically, Inventions are protected under U.S. patent law and original/creative works of Authorship are protected under U.S. Copyright law. However, some forms of Intellectual Property such as computer software, may be subject to protection under both patent and Copyright laws. In their management and use of Intellectual Property subject to this policy, university members are required to comply with applicable federal and state laws and university policies and procedures, including those governing conflicts of interest.

I. INVENTIONS

University Ownership of Inventions

The university owns all right, title and interest in and to Inventions developed by any person through Significant Use of University Resources, and by its employees acting within the scope of their employment. Pursuant to this policy and as a condition of accepting employment with the university or using Significant University Resources, employees as well as non-employees who develop Inventions, are required to assign and are deemed to assign to the university all of their rights, title and interest in and to Inventions developed within the scope of their employment or through the Significant Use of University Resources. Employees and those using Significant University Resources must also agree to memorialize this assignment by executing any and all documents deemed necessary by the university to perfect the university's ownership rights in the Inventions. However, the university's ownership of these rights does not mean the university solely benefits from commercialization of Inventions. To the contrary, the university shares revenues with Inventors as set forth in the university's royalty-sharing formula described in Section VI.C. below. Whether use of university resources is "significant" is determined by the Office of the Vice President for Research and Innovation. Faculty, staff, or students with questions or concerns about whether their use of university resources might be deemed "significant" are expected to contact that Office for guidance in advance

Inventions discovered pursuant to sponsored research agreements, grant funding or through Significant Use of University Resources, may be subject to different terms of ownership if such terms have been detailed in an agreement approved by the Office of Research and Innovation.

The university owns Inventions made by a former university employee if the Invention was made both (1) with Significant Use of University Resources and (2) while engaging in activity directly arising out of and closely following a period of employment with the university.

Students own their Inventions unless they are developed through Significant Use of University Resources, in the student's (or trainee's) capacity as an employee (whether part-time or full-time) of the university, or where the student transferred ownership rights in writing to the university or to another entity. The university does not make claim to Inventions made by students while satisfying regular course requirements. With the growing importance of externally sponsored capstone and related projects, student assignment of ownership rights in Inventions may, however, be a condition for participation in a course project or capstone, especially where sponsors are sharing confidential data or information needed for completion of the project. In such situations, responsible faculty must ensure that there are one or more comparable projects available for student selection that do not require such assignment and will satisfy the course requirement. Faculty are not permitted to assert ownership of student Inventions as a condition of student participation in a course, nor are they permitted to claim personal ownership over or control of student Inventions created in courses they teach.

Students, faculty and staff of the university have a duty to avoid entering into agreements with other entities that might interfere with the university's ownership rights as set forth herein. If students, faculty, or staff enter into contractual relationships with a third party that require them to cede or assign rights in Inventions, these obligations might conflict with their obligations under university policies. It is each individual's responsibility to raise and address such conflicts with the Office of Research and Innovation before entering

into such contractual relationships and before commencing any university project that may pose such conflicts.

Research data ownership is addressed in the *Research Data Ownership, Retention, and Access* policy.

II. COPYRIGHTS

For the purposes of this policy, a copyrightable work is anything so defined under the U.S. Copyright Statute, 17 U.S.C. Section 101. A summary definition is also found in this policy.

Ownership of Copyrightable Works

A. Faculty

Under U.S. Copyright law, the university holds the Copyright in works authored by employees (including faculty) who create the works within the scope of their employment. Despite this legal default, consistent with academic traditions and in deference to the rights of its teaching and research faculty, the university has generally elected to return ownership to faculty Authors of copyrightable works. Further, the university recognizes that Copyright interests need not be exclusive, and that the goals inherent in Copyright protection afford opportunities for collaborative sharing of Copyright interests as well as enabling open access in support of the public good. The university encourages its faculty to explore open access and similar initiatives aimed at broadening public access to research, scholarship, and the arts.

As used in this section addressing faculty rights in the above-defined copyrightable works, the following terms/concepts are important:

- **Artistic Works:** Creative works such as works of fiction, novels, lyrics, musical compositions/arrangements and recordings, poems, architectural drawings, visual works of art or design, and sculpture.
- **Course and Teaching Materials:** Works authored as part of or in connection with university teaching. Common examples include syllabi, lecture notes, case examples, examinations, audio or visual recordings, and similar instructional or testing materials.
- **Scholarly and Academic Works:** Works authored in conjunction with academic or intellectual specialties, such as journal articles, scholarly papers, textbooks, conference presentations, and books.

The university transfers its rights in the above-defined copyrightable works to the teaching and research faculty who Author those works, with the following exceptions and conditions:

Exceptions

1. When a copyrightable work is specifically commissioned by the university or is subject to a development agreement with the university, the university retains ownership of the Copyright. For example, if the university asks (and a faculty member agrees) to Author a specific work needed by the university, write an exhibition catalogue, or create an online

course, the university will own the Copyright. Such projects must be commemorated in a written exchange or formal agreement between the faculty member and the commissioning department, school or other university entity.

2. When a copyrightable work results from Significant Use of University Resources, the university retains ownership of the Copyright. For example, where faculty members create digital projects that require significant university technology and staff resources, the university will typically own or at least share in, the Copyright. Such projects must be commemorated in a written exchange or formal agreement between the faculty member and the commissioning department, school or other university.
3. When sponsored research, services, or other activities are subject to an agreement between the university and a third party that contains obligations or restrictions concerning Copyright or the use of copyrightable materials, resulting works must be handled in accordance with the agreement.

Conditions

1. Unless otherwise agreed to in writing, where the university owns the Copyright in a work as outlined above, the faculty member retains permanent rights of acknowledgement and attribution thereto, and retains a non-exclusive, perpetual, royalty-free right to use the underlying intellectual content in other teaching and scholarly activities at their discretion.
2. Although the university transfers Copyright in Course and Teaching Materials to faculty under this policy, it reserves a perpetual, royalty-free, non-exclusive right to use such works for non-commercial educational purposes on campus and for institutional purposes such as accreditation.
3. Although the university generally transfers Copyright of artistic, scholarly, and academic works to faculty under this policy, it strongly encourages faculty to deposit copies of such works in the university's institutional repository(ies) for preservation, archiving, and public access as may be approved by the individual faculty member.

B. Joint Works

When university members collaborate to author a copyrighted work, the result can be joint ownership or nonexclusive rights in the work. Collaborators are encouraged to discuss and describe (ideally in writing), the intended disposition of Copyright prior to engaging in collaboration that will result in joint works. Disputes regarding joint ownership are resolved by the university's Vice President for Research and Innovation according to the procedures established by that office.

C. Students

Students hold the Copyrights in original works they author unless they have authored such works in their scope of employment as university employees, through Significant Use of University Resources, or have transferred their ownership rights in writing to the university or to another entity. With the growing importance of externally sponsored capstone and related projects, student assignment of Copyrights may, however, be a condition for participation in a course project or capstone, especially where sponsors are sharing confidential data or information needed for completion of the project. In such situations, responsible faculty must ensure that there are one or more comparable projects available for student selection that do not require such assignment and will satisfy the course requirement. Faculty are not permitted to assert

ownership of student Copyrights as a condition of student participation in a course, nor are they permitted to claim personal ownership over or control of student Copyrights created in courses they teach.

D. Works of University Employees Who are Not Teaching or Research Faculty

Copyrightable works created within the scope of university employment by individuals who are not teaching or research faculty are considered works “made-for-hire” under the Copyright Act, and the university owns the Copyright. In cases where university employees, within the course and scope of their employment, create Artistic Works, Course and Teaching Materials, or Scholarly and Academic Works as defined in the section on Faculty, the university will work collaboratively with the individual to ensure that fair and equitable treatment of rights to attribution and reuse are reasonably addressed.

III. COMPUTER SOFTWARE

The university owns all patents, Copyrights and other Intellectual Property rights in Computer Software that is developed by university faculty, staff or students (1) subject to a sponsored research agreement between the university and a third party; (2) authored by or invented by individuals while acting within the scope of their university employment, or (3) authored or invented with Significant Use of University Resources. In such circumstances, Computer Software must be disclosed through submittal of an Invention Disclosure pursuant to this policy, regardless of whether the Computer Software is subject to patent protection, Copyright protection or another form of Intellectual Property protection.

Open source software is Computer Software that is available in source code form, for which the rights normally reserved for Copyright owners have been granted to others to encourage open development and improvement. Faculty, staff and students are responsible for knowing and complying with the terms and conditions of applicable software licenses prior to using open source software. The university supports the use and development of open source software and the contribution of such software to the open source community. However, before undertaking such contributions, university members are expected to ensure they have the rights to share the software, and that the sharing of the software complies with university policies, laws, and any licenses for underlying software. Prior to utilizing open source software as part of a sponsored program or research project, university members must consult with the Office of Sponsored Programs to ensure compliance with sponsored project agreements.

IV. OWNERSHIP DISPUTE RESOLUTION

When there is a dispute between the university and Inventor(s) over ownership of Intellectual Property, the Author or Inventor may request that the dispute be resolved by the Vice President for Research and Innovation according to the procedures established by that office.

V. RESPECT FOR THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS

The university expects students, faculty and staff to respect the Intellectual Property rights of others and comply with applicable laws in their teaching, learning, research, creative, and other university activities. “Use” of a work includes using, adapting, copying, distributing, displaying, or performing a work, including making a work available to others through online or other media. The university also supports principles of Fair Use in teaching, learning, research and creative activities consistent with U.S. laws regulating Intellectual Property and judicial interpretations thereof. University community members are expected to

seek guidance from VCU Libraries and/or the Office of University Counsel when questions regarding Copyright compliance and Fair Use arise.

VI. UNIVERSITY MANAGEMENT OF INTELLECTUAL PROPERTY

A. Invention or Authorship Reporting

University members who have created an Invention or original work of Authorship in which the university may claim an interest, must disclose the Invention or work to VCU Innovation Gateway **prior to disclosure to the public**. Failure to disclose an Invention in a timely manner may result in loss of value of the Invention.

Employees who believe that they have created Intellectual Property not owned by the university (because, for example, they believe the work was not created within the scope of employment or using Significant University Resources), are not permitted to commercialize such Inventions or file (or assist others to file) patent applications for such works, without providing at least 30 days' notice and a brief written summary of the Inventions and the circumstances of the Inventions to VCU Innovation Gateway. Such disclosures are not be required in situations where an Employee has a reasonable belief that the Intellectual Property is a work of authorship (Copyrightable Work) as defined herein.

B. Protection and Commercialization

To provide maximum benefit to the university, the public, and the Inventors or Authors, the university will evaluate each work of authorship and Invention disclosed to VCU Innovation Gateway for potential commercial value. In consultation with the Inventors and where it is deemed appropriate, the university will seek to protect and commercialize that work or Invention. The university is permitted to license or assign the university's rights and select and use outside resources for commercialization of Intellectual Property in the university's best interest. Any revenue arising from commercialization will be shared with the Authors and Inventors according to the Royalty Sharing provisions of this policy.

C. Royalty Sharing Formula

The university employs and publishes a royalty-sharing formula to distribute revenues from licensing or other distribution of its Intellectual Property covered by this policy. Net revenues generated from commercialization of Intellectual Property are to be distributed according to the formula below:

The university is to pay semi-annually forty percent (40%) to the Contributor(s), or their heirs, successors, or assignees, ten percent (10%) to the Contributor's department(s), and ten (10%) percent to the Contributor's school(s) of the net revenues received by the university.

Net revenue is calculated as follows:

Sixty-seven percent (67%) of the gross revenues received is to be applied to the reimbursement of non-reimbursed direct costs and expenses incurred by the university or its designated licensing entity. The remaining thirty three percent (33%) is to be treated as net revenues and distributed as specified above. After the direct costs and expenses incurred by the university or its designated licensing entity have been fully reimbursed, all subsequent income from that Intellectual Property is to be treated as net revenues, and distributed as above.

Individual Contributors are to receive their portion of the Contributor share as indicated and agreed in writing by all Contributors listed on the Invention Disclosure. In the absence of an agreement between the Contributors, and unless a dispute has been filed with Office of the Vice President for Research and Innovation prior to acceptance of the Invention Disclosure, revenues will be distributed equally among all listed Contributors.

D. Release of Intellectual Property

When the university determines that it will not commercialize university-owned Intellectual Property, that releasing the Intellectual Property to the Inventor(s) or Author(s) will not violate the terms of an external funding agreement, and that it is in the best interests of the university and the public, the university will agree to a release and in such cases will assign all interest it holds or has the right to hold in the Work or Invention to the Author(s) or Inventor(s) in shares equivalent to the percentage of contribution listed on the Invention Disclosure, or such other shares as the Authors or Inventors agree in writing. The university is not required to market, protect or license any Intellectual Property released to the Authors or Inventors.

Release of works may be conditioned upon agreement by the Author(s) or Inventor(s) to the following:

1. To reimburse the university for costs incurred by the university if and when the Author(s) or Inventor(s) receive revenue from that Intellectual Property.
2. To grant back to the university an irrevocable, perpetual, royalty-free, nonexclusive, 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.
3. To share a percentage of future revenues received by the Author(s) or Inventor(s) for the work with the university.
4. To other terms or conditions reasonably requested by the university.

Assignments of Intellectual Property maybe subject to university conflict of interest and conflict of commitment policies, which may present limitations to the assignee, including limiting the assignee's use of the Invention at the university. Faculty and staff are responsible for ensuring their actions related to Invention, commercialization, or assignment of Intellectual Property, are not affected by personal financial interests or commitments in violation of law or university policy.

This policy addresses Inventions and original works of authorship. The University Trademarks and Licensing policy, the Outgoing Sponsorships, Advertising and Endorsement policy, as well as VCU's brand standards provided by the Office of University Relations address use of the university's trademarks.

Noncompliance with this policy may result in disciplinary action. VCU supports an environment free from retaliation. Retaliation against any employee who brings forth a good faith concern, asks a clarifying question, or participates in an investigation is prohibited.

Table of Contents

Who Should Know This Policy.....	8
----------------------------------	---

Definitions.....	8
Contacts.....	9
Policy Specifics and Procedures.....	9
Forms.....	10
Related Documents.....	10
Revision History.....	11
FAQ.....	11

Who Should Know This Policy

All university faculty, staff, and students are responsible for knowing this policy and familiarizing themselves with its contents and provisions.

Definitions

Author

A person who creates an original work of authorship qualifying for protection under U.S. Copyright law.

Computer Software

A computer program (including, without limitation, microcode, subroutines, and operating systems), regardless of form of expression or object in which it is embodied, together with any users' manuals and other accompanying explanatory materials and any computer database.

Copyright

A form of protection provided by the laws of the United States (U.S. Copyright Statute, 17 U.S.C. Section 101) to "original works of Authorship" including literary, dramatic, musical, artistic and certain other intellectual works, whereby Copyright owners may claim, for a limited time, certain exclusive rights to specified works. 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 an idea, procedure, process, slogan, principle or discovery.

Intellectual Property

Any new and useful process, machine, composition of matter, article of manufacture, software, or any original work of Authorship subject to Copyright protection.

Invention

Any new and useful process, machine, composition of matter, life form, article of manufacture, software, or tangible property.

Invention Disclosure

A document submitted to VCU Innovation Gateway by which an Author or Inventor reports creation of an original work of Authorship or Invention in which the university may claim ownership pursuant to this policy.

Inventor

A person covered by this policy who individually or jointly with others makes an Invention.

Outside Professional Activity

This term shall have the same definition as in the *Outside Professional Activity and Employment, Research, and Continuing Education* policy - Outside professional activity is understood to mean any service rendered by a faculty member to persons or organizations external to the university, without university sponsorship, for the purpose of advancing, applying, or transferring knowledge in a field of endeavor related to the faculty member's employment at the university. Such activity is beyond or in addition to the faculty member's university responsibilities; it generally occurs off-campus and requires only the time and special capabilities of the individual, without significant use of university facilities or supporting services.

Significant Use of University Resources

For the purpose of this policy, this means substantial and dedicated support of the university, including sponsored research, other grants received by the university, or materials subject to a material transfer agreement. 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.

University Resources

University resources include but are not limited to facilities, personnel, equipment, confidential information, supplies, and time designated to perform tasks and obligations in the scope of university employment. Funds and facilities provided by governmental, commercial, industrial, or other private organizations which are administered and controlled by the university shall be considered university resources for purposes of this policy.

VCU Innovation Gateway

The office tasked with commercializing University Inventions within the Office of Research and Innovation

Contacts

The Office of Research and Innovation and the Office of the Provost officially interpret this policy. The Office of Research and Innovation is responsible for obtaining approval for any revisions as required by the policy *Creating and Maintaining Policies and Procedures* through the appropriate governance structures. Please direct policy questions to the Office of Research and Innovation.

Policy Specifics and Procedures

- 1. Procedure for Disclosing Inventions and Original Works of Authorship:** In order to protect the rights of Inventor(s), Author(s) and the university, prior to public disclosure, Authors and Inventors are required to report all works of Authorship and Inventions in which the university may claim an interest to

the VCU Innovation Gateway in the Office of Research and Innovation. Special procedures relevant to these processes are posted on the website of the Office of Research and Innovation.

2. Cooperation with the University in Defending and Prosecuting Patents:

Upon request, Inventors must execute appropriate assignments conferring ownership rights to the university. Further, they must cooperate with the university in patent prosecution(s), and any defense against patent infringement. Special procedures relevant to these processes are posted on the website of the Office of Research and Innovation.

3. Dispute Resolution (Copyright): If a dispute arises regarding application of this policy related to works of Authorship that are not works owned by faculty, the Author may present the dispute to the Office of the Vice President for Research and Innovation for resolution according to policies or procedures established by that office. Special procedures relevant to these processes are posted on the website of the Office of Research and Innovation. The decision of the Vice President for Research and Innovation is final in resolving such disputes.

4. Dispute Resolution (Inventions): If a dispute arises regarding application of this policy relating to Inventions (including Computer Software) that cannot be resolved, the Inventor may present the dispute for resolution by the Office of the Vice President for Research and Innovation as described herein or according to policies or procedures established by that office. Special procedures relevant to these processes are posted on the website of the Office of Research and Innovation. The decision of the Vice President for Research and Innovation is final in resolving such disputes.

Forms

The following forms are associated with this policy and procedures:

1. [Invention Disclosure Form](#)

Related Documents

1. VCU Policy: [Research Data Ownership, Retention, and Access](#)
2. VCU Policy: [Conflict of Interests in Research](#)
3. VCU Policy: [University Trademarks & Licensing](#)
4. VCU Policy: [Outgoing Sponsorships, Advertising and Endorsement](#)
5. VCU Policy: [Outside Professional Activity and Employment, Research, and Continuing Education](#)

Revision History

This policy supersedes the following archived policies:

05/21/2010	<i>Intellectual Property</i>
05/15/2009	<i>Intellectual Property</i>

FAQ

1. I have made/discovered an Invention in connection with other individuals at VCU who have contributed to the Invention over time. Who owns this Invention?

If you have made the Invention within the scope of employment or using Significant University Resources, the university likely owns the Invention. Under this policy, Inventors must report to the university and must make an honest and good faith effort to properly credit all those who have significantly contributed to the Invention so that these individuals may also fairly share in any revenue obtained by the university.

2. I am a faculty member and have recorded my lectures. Who owns the Copyright in the recordings?

You own the recording. Rights to course and teaching materials are defined in this policy. Unless subject to an exception resulting from the university's special investment in development of a course, if you are a teaching or research member of the faculty, you own the Copyrights in your lectures, subject to the limited institutional rights reserved in this policy.

3. I authored a scholarly work arising out of research conducted under a sponsored project grant. Who owns the Copyright in the work?

Sponsorship agreements can include Intellectual Property clauses that stipulate alternative ownership arrangements from this policy in which case the grant terms govern. Absent such requirements, if you are a teaching or research faculty member, you own the copyright to any scholarly work you Author as defined in this policy.

4. I created an Invention while on sabbatical or during Outside Professional Activity. Who owns the rights in the Invention?

The university generally retains ownership of Inventions discovered or reduced to practice by employees while participating in sabbatical or other external activities if they receive salary from the university during or for such activity. Exceptions to this rule may be approved in advance by the Vice President for Research and Innovation. All employees must be careful when engaging in outside professional activity that may involve an external request for ownership of Inventions. If Inventions are solely produced and funded by a third party during approved outside professional activity, the university will not assert ownership. Prior consultation with the VP for Research and Innovation is strongly encouraged to avoid future conflicts or misunderstandings.

5. May I assign a course project that uses a social media platform, software or data that in turn requires students to assign their resulting Intellectual Property to the platform provider or a third party?

A course project may require assignment of student ownership rights. However, the university expects faculty to attempt to ensure that there are one or more comparable projects available for student selection that do not require such assignment and will allow the student to satisfy the course requirement.

6. Who owns a graduate student's thesis project undertaken under the guidance of a Principal Investigator ("PI") and whose research funding sponsored the research?

Graduate students own the Copyrights in their theses/dissertations as Authors of those works. The data and any Inventions created through the laboratory's funded research is owned by the university or as determined by relevant grant terms. Graduate students are expected to seek and accept appropriate guidance from their PI(s) with respect to the timing of theses or dissertation-related publications that involve laboratory research, joint research, or in cases where multiple Authors have rights to acknowledgement and attribution.

7. Are all works that result from VCU funding always subject to VCU ownership?

An exception to this policy's Intellectual Property terms for university ownership may be detailed in a writing approved by the Office of Research and Innovation. If the grant terms or related written terms do not specify ownership of resulting intellectual property, then Intellectual Property ownership is determined according to this policy.

8. What happens to Copyrights when a faculty member leaves the university?

Copyright ownership would remain the same as outlined in the policy; however, individuals leaving the university are expected to work with their department chair and/or the Office of Research and Innovation to take steps to ensure appropriate rights for all interested parties are retained and documented.