IP POLICY IMPLICATIONS FOR ARTS & HUMANITIES FACULTY

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What obligations/compliance rules apply to us?

- **THE BAYH-DOLE ACT**
  Governs rights in inventions made with U.S. Federal government funding. Among other requirements, the act imposes invention disclosure obligations on the funded researchers, permits the university to elect to retain title (subject to a worldwide, non-exclusive license to the U.S. Government), and requires the university to pursue patent protection and commercialization so long as it retains title.

- **2006 CODE OF VIRGINIA § 23-4.3- Adoption of intellectual property policies**
  Employees to be bound by such policies. B. All employees of state-supported institutions of higher education, including the Virginia community college system, as a condition of employment, shall be bound by the intellectual property policies of the institution employing them.

- **ODU’S POLICY ON INTELLECTUAL PROPERTY.**
**Language in ODU’s Hiring Contracts**

“I will assign and do hereby assign to Old Dominion University all of my ownership, right, title and interest in any discovery or invention that is the product of my employment, including without limitation any patent and other intellectual property rights arising under U.S. or any other law.”

**Who wants to see language above in hiring contracts, and why?**

*Federal government for national security purposes.*

**What does the language covers?**

<table>
<thead>
<tr>
<th>Patents</th>
<th>Copyrights</th>
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<tbody>
<tr>
<td>1) Machine</td>
<td>(1) literary works (and software);</td>
</tr>
<tr>
<td>2) Manufacture</td>
<td>(2) musical works, including any accompanying words;</td>
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<tr>
<td>3) Composition of matter</td>
<td>(3) dramatic works, including any accompanying music;</td>
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<tr>
<td>4) Method</td>
<td>(4) pantomimes and choreographic works;</td>
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<td>(5) pictorial, graphic, and sculptural works;</td>
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<td>(6) motion pictures and other audiovisual works;</td>
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<td>(7) sound recordings; and</td>
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<td>(8) architectural works.</td>
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*Federal Bayh-Dole Act does not require reporting of copyrights unless there is a patentable invention.*
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.
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.
Faculty and Staff Work. As a general rule, the University does not claim copyrights in journal articles, books, lectures, musical compositions, creative works, or other copyrightable works that are created through independent academic effort or creative activity and that are intended to disseminate the results of academic research and scholarship, and/or to exhibit forms of artistic expression on the part of faculty, staff, and students.

Exceptions to this general rule include works that are sponsored works, commissioned works, or works involving the use of substantial University resources or works made for hire. Curricular proposals are deemed to be works made for hire. The University does not claim copyrights to syllabi created by faculty in the employment of the University. However, the University retains the right to use and reproduce syllabi for educational purposes.
Independent Contractor Work. As a general rule, the University will only retain the copyright in a work that is created by an independent contractor if the University has specifically ordered or commissioned the work and if a written agreement designating the work as a “work made for hire” and/or requiring assignment of the copyright rights in the work has been executed and signed by both parties. Subject to this rule, all University employees will be considered independent contractors with respect to any work that bears no relation to their employment as defined by their regular employment contract, and/or if they do not receive additional compensation beyond that specified in their regular employment contract and/or do not use substantial University resources.
University Ownership Rights and Rights of Use

- The University retains the royalty-free right to archive, use and reproduce works that it does not own, including faculty and staff works, and the work of independent contractors using University facilities, not subject to “work made for hire” agreements. The University’s use is limited to non-commercial use, e.g., uses in support of education and scholarship, research, exhibition, archiving, accreditation, development, alumni relations, and promotion of the University and its activities generally.

- The University retains ownership of sponsored works, commissioned works, or works involving the use of substantial University resources or works made for hire. The University retains all such rights unless they are modified by the specific terms of a written agreement. The rights of the University to a non-exclusive, global license to use and reproduce copyrighted materials for educational, research, and promotional purposes must be included in any agreement with a non-University sponsor.
Significant Use

- Any substantial use of University equipment, facilities, time, personnel, and monetary expenditures is considered a use of “substantial University resources.” This use does not include resources commonly provided to University faculty and staff, such as offices, library facilities, basic artistic facilities, and everyday telephone, computer, and computer network support. However, substantial time spent in the use of these latter resources may constitute the use of “substantial University resources.” Resources not considered “commonly provided” include specially procured equipment or space, additional staffing or personnel, utilization beyond normal work hours of University personnel, and monetary expenditures that require a budget. Faculty may use the basic artistic facilities unless use infringes on student use of those facilities for coursework.

- What happens when a faculty has significant use and wants ownership or license?
  
  - For ownership; Release of Rights Agreement offered for reimbursement of cost of project,
  
  - For licensing: a Faculty License Agreement offered in return for sharing of royalties, or other systems of compensation back to the University (% of faculty’s company).
What happens when disputes arise?

It is acknowledged that use of University's resources may change over time, with changes in technology, physical infrastructure of the University, modes of employment, etc. Therefore, ODU’s IP Policy allows the Intellectual Property Review Committee (IPC) to review the definition of “substantial use” in a regular manner in order to establish an appropriate standard. At the same time, this Policy allows appeal by all parties to the IPC.
The IPC comprising members drawn from the faculty and administration of the University. The IPC will comprise 8 faculty members. Membership in the IPC will be determined on a 3 years basis before the end of the academic year by the President in consultation with the Research Officer. The IPC is responsible for reviewing appeals regarding ownership, questions arising out of the substantiality of the use of University resources, and related disputes. The IPC will make recommendations to the President on changes to this Policy, working from issues that have arisen that academic year, and based on recent changes in the general legal, technological, and academic environment. All changes to this policy will be made available to the University community.
THANK YOU!
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