

**The University of the Virgin Islands
Intellectual Property Policy**



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I. Introduction

The University of the Virgin Islands (hereinafter referred to as the University) seeks, as its primary mission, the intellectual development of its faculty, staff and students (hereinafter collectively referred to as university personnel.¹) To maintain its viability and sustainability as an ever stronger institution, the University engages in entrepreneurial and revenue generating activities that meet its primary mission while providing investment potential for long-term sustenance of that mission. Entrepreneurial activities are non-traditional, risk-bearing activities operated under the auspices of the University and driven by market demand and profit motive. Those activities are to be consistent with the mission and Strategic Plan of the University, as the University seeks to maintain a balance between its entrepreneurial thrusts and its basic academic missions of teaching, research and public service.

A. Goals of the Policy

This University policy regarding entrepreneurship and other revenue generating initiatives is established with the goal of enabling and guiding these initiatives. It is in the University's interest to ensure that its policy permits agility and rapid decision-making in order to respond quickly to market demands, community needs and emerging opportunities. The University invites and encourages entrepreneurs to consider ways by which they might contribute to the business of the University through ideas and activities. This policy is designed to provide the authority and guidelines for intra-university action to further extra-university entrepreneurial development. The policy also articulates the locus of authority and responsibility for each aspect of the conduct of the University business.

Entrepreneurship policy applies to entrepreneurial activities endorsed, sponsored and/or supported by the University. These activities can be conducted under the auspices of the University or in partnership with entities outside the University. The policy applies not only to new business ideas and revenue generating opportunities, but also to current and ongoing University initiatives which are entrepreneurial and revenue generating. The policy also applies to University personnel who engage in these activities.

B. Risk

This policy is intended to provide institutional direction for those non-traditional risk-bearing activities with which the University will augment its traditional academic missions of teaching, research and service. In its entrepreneurial endeavors, the University seeks maximum benefit to the University while exposing the University to reasonable levels of risk. Risk is,

¹ The term university personnel is used to collectively describe all categories of faculty, including research faculty, all categories of staff, including administrative and executive staff, and all registered students who participate in activities governed by this policy. Individual members of this class are referred to separately as appropriate in the document.

naturally, inherent in any entrepreneurial endeavor and should be recognized and managed. Whenever possible, the University seeks to mitigate its exposure to risk from entrepreneurial activities, and to share risk with its partners.

II. Intellectual Property Policy

The University strives for the highest standards of excellence in all of the creative endeavors of its various members. The University seeks to foster a climate favorable to the creative expression of university personnel. In the motivation of creativity, the University builds a spirit of collaboration among its unique, creative communities, balancing its own institutional interests with those of the many stakeholders in the University community. As such, the University here establishes intellectual property policy and procedures that protect the branded value and investments of the University as well as the personal and professional intellectual property rights of university personnel. The intellectual property policy is designed to provide equity, fairness and consistency in the negotiations of property rights.

The University has an interest in encouraging entrepreneurial activities that maximize the University's self-sustainability. The University seeks to nurture entrepreneurial creativity that might provide the University with a return on any investment it makes in the business developments of university personnel. At the same time, the University hopes to balance the provision of incentives for creativity with the interest in cost recovery and net income development that rewards a return on the University's risk.

A. Definition

Intellectual property (1) Any invention, creation, innovation, discovery, or improvement other than traditional works of scholarship and creativity or instructional materials, (2) institutional works for which assignment to the University is required by law or by a written contract to which the creator has previously agreed, and (3) any other work for which the creator seeks the assistance of the University in developing commercially, including protecting, marketing, assigning ownership or licensing.

B. Alignment

The University maintains a strategic planning process, and the intellectual property policy shall be aligned with the current strategic plan and its implementation process. To that end, the University policy will be subjected to periodic review and, as needed, revision. Similarly, the University's intellectual property policy shall be aligned with existing federal and territorial codes on intellectual property protection. In particular, University policy will reflect current copyright, patent, and trademark laws including the Dole Bayh Act and the TEACH Act, as well as current regulation governing intellectual property development under federal and territorial grants.

C. Commercialization

It is the University's desire to advance commercially viable products and ideas created by university personnel. The University will determine its interest in advancing products or ideas and will articulate criteria by which an

idea or product will be advanced. If the University decides to exercise its resources in the pursuit of patents, the licensing or development of products, or the commercialization and marketing of a particular product or idea, it does so with the expectation of a return on that investment. Such return in profits, royalties, or shares is to be determined by contract with individual university personnel who create the idea or product. Also, if the University, by agreement with any individual in the class of university personnel, holds patents for licensing or development or holds copyrights for publication and distribution, then the University accepts product liability and the responsibility to protect such intellectual property against infringement. If, however, the University declines to pursue the commercialization of any idea or product created by an individual, then the copyright or patent reverts to that individual, and nothing shall preclude that individual from the pursuit of commercialization of that idea or product. That individual would also accept all benefits and profits, as well as liability and responsibility, for all administrative, development, and marketing costs.

The responsibilities of the University to advance the commercialization of a product or idea shall be time-defined by contract. The contract shall also specify the proportion of royalties, after expenses are paid, to be distributed to the creator, the University, and the other participants. Terms of distribution shall also be determined by contract. If appropriate, the University and the creator will enter into a negotiated non-disclosure agreement (NDA) to provide confidentiality over the idea in order to permit the University to develop the idea further or for the creator to protect the intellectual property in the event the University declines to invest in development.

The University shall create an appeal process which defines the steps an individual may take in cases where he or she feels that he or she has been treated unfairly.

D Work for Hire

Intellectual property developed by University personnel, other than teaching and research faculty, within the scope of their regular employment is considered a Work for Hire as defined in the 1976 Copyright Act, and as such will be the property of the University.

Intellectual property stemming from the activities of teaching and research faculty under the course of their regular employment and through the use of customary resources will not be considered a "Work for Hire" as defined in the 1976 Copyright Act, and as such will be the property of the faculty member. Certain instructional activities, however, particularly those that require extraordinary University resources, may be defined by contract as "Work for Hire."

UVI equipment and other resources available to the general public, or that are usually and frequently used by university personnel in the course of their employment are not considered "extraordinary" for the purposes of classifying an activity as Work for Hire. *These may include telephones, audio and video conferencing, email, web access and distance learning delivery systems.* Equipment procured by the University for the specific purpose of an initiative and not ordinarily available to university personnel in the course of their employment are extraordinary resources for the purposes of identification of potential Works for Hire.

E. Employee Contracts

The University, in accordance with applicable laws, may enter into separate contractual arrangement with teaching and research faculty, administrators, staff, students, or non-employees, under which the intellectual property rights may be negotiated.

F. Ownership

Intellectual property which is developed with the investment of University resources, funds, space, or facilities will be the property, in its entirety, of the University, unless otherwise governed by a specific contract, or as provided in Section D above. When intellectual property rights have not been addressed in the contract, they will be negotiated.

Creative works and the intellectual property arising from the investment of University resources, funds, spaces or facilities, will be the property, in its entirety, of the University in the following circumstances:

1. When applicable law or policy regarding grants, or stipulations of any other externally funded effort require assignment of rights to the University, or
2. When the creator is an employee of the University other than a member of the teaching and research faculty, and the creation falls within the area of responsibility or expertise for which the employee is paid, or
3. When the works or properties are reports or other documents produced as a result of a special assignment accepted by a member of faculty and recorded on Faculty Utilization Reports, except that the University shall not have the right to circulate or publish such documents without citing the author, nor the right to modify such documents, unless the author gives written permission to do so.

Creative works and the intellectual property arising from the investment of University resources, funds, spaces or facilities, will be the property of the creator in the following circumstances:

1. When the work is a product of traditional scholarship or instruction developed by a member of the teaching or research faculty.

2. When the work was produced by a member of the teaching or research faculty without the use of any university resources and on their own time.

Creative works and the intellectual property arising from the investment of University resources, funds, spaces or facilities, will be the property of the creator and/or the University as stipulated by contract in the following circumstances:

1. When, the University has entered into a contract with the creator to develop the works and their commercial application.
2. When, the properties are the result of a contract for Work for Hire defining intellectual property rights and usually involving the use of extraordinary university resources.

Ownership of creative works and the intellectual properties arising from the investment of University resources, funds, spaces or facilities, in circumstances other than those cited above will be negotiated between the creator and the University,

Intellectual property developed through grants or contracts will be governed by the terms of those agreements. Federally sponsored activities will be governed by the applicable federal rules and regulations.

All contracts governing externally sponsored activities must address intellectual property issues. All intellectual property provisions must be in keeping with the principles outlined in this policy and codified in template contract language reviewed and approved in advance by legal counsel. Any contract that does not include such template intellectual property language must be reviewed separately by legal counsel.

All contracts must be signed by the President or the President's designee.

G. Codes of Ethics

It is in the University's interest to maintain and enforce codes of ethics, as well as to ensure legal compliance regarding the commercialization of products, particularly where university personnel divide their time between responsibilities to the University and to external business interests. Rules regarding disclosure of income and conflicts of interest and rules limiting conflict of time spent on grant or commercial projects shall be monitored and enforced by the University.

H. Students

A primary role of a university is to encourage the intellectual and creative development of its students. The University encourages student development of ideas, services and products that can be commercialized for the benefit of the broader community. To that extent, the University recognizes the

autonomy of its students in the creation and commercialization of their ideas. Through its student handbook, the University promotes student compliance with federal laws regarding copyright, patents and University policy on plagiarism, as well as respect for other students' ideas and intellectual property. Through its faculty handbook², the University also promotes faculty respect for student intellectual property. Through faculty, staff and student handbooks, the University articulates methods of internal appeal in cases of perceived infringement.

H 1 Ownership of Copyrights in Student Theses

The ownership of copyrights in student theses is governed by the following:

a) Copyright ownership of theses generated by research that is performed in whole or in part by the student with financial support in the form of wages, salaries, stipend, or grant from funds administered by the University shall be determined in accordance with the terms of the support agreement, or in the absence of such terms, shall become the property of the University.

b) Copyright ownership of theses generated by research performed in whole or in part utilizing equipment or facilities provided to the University under conditions that impose copyright restrictions shall be determined in accordance with such restrictions. Questions regarding restrictions imposed on any of the University's facilities or equipment may be addressed to the Office of Sponsored Programs.

c) Students will own the copyrights to theses not within the provisions of a) and b) above. However, a student must, as a condition to a degree award, grant royalty-free permission to the University to reproduce and publicly distribute copies of his/her thesis *for educational purposes only*. (amended at the June 23, 2005 BOT Meeting).

d) Where significant use is made of University facilities or equipment provided to the University without copyright restrictions, students own copyrights in theses per c) above. However, software code, patentable subject matter, and other Intellectual Property contained or disclosed in the theses are subject to the extraordinary resources use policy outlined below.

UVI equipment and other resources available to and frequently provided to university personnel and the general public are not considered "extraordinary". *These may include telephones, audio and video conferencing, email and web access*. Equipment procured by the University for the specific purpose of an initiative and not ordinarily available to university personnel are considered extraordinary resources.

² The faculty handbook is the Faculty Policy Manual

I. Grants and Contracts

In all of its grant applications and contract preparations, the University shall strive to ensure that intellectual property ownership issues are addressed. The University shall prepare contract templates, which will include all essential contract terms, as well as an array of alternative terms to be selected. All contracts shall include technical reporting requirements, performance requirements, payment terms and intervals, liability and indemnification forms, schedule of performance, term of contract, scope of work, whether the project is a work for hire, employment status of contractor, and terms of conflict of interest. All grant applications are reviewed for intellectual property issues by the Office of Sponsored Programs.

J. Definition of Royalties and Profits

Royalties and profits deriving from the publication and commercialization of ideas and products created under contract between the University and university personnel shall be divided equitably. First, the University and the creators of the products shall share in the recovery of reasonable direct expenses in the process of publication or commercialization in proportion to their investments, including both financial and sweat capital investments, as determined by the provisions of the negotiated contract governing ownership and distribution of revenues under which the product is created. Thereafter, shareable net revenue and royalties shall be negotiated between the University and university personnel.

K. Copyright

The University shall disseminate pertinent rules of copyright and fair use of copyrighted material to university personnel. The University and its employees and students shall ensure the protection of artistic property rights in employment and performance contracts and in releases.