Hampton University

Intellectual Property Rights Policy

February 5, 1999
STATEMENT OF PURPOSE

INTRODUCTION

The concern for excellence in education and in research for the public interest has resulted in patentable new products and processes from discoveries or inventions made by members of Hampton University. This has raised new and complex questions relating to ownership and the proper and equitable distribution of rewards and obligations, engendered by the production of such materials, among the inventors, authors, the University and outside sponsors. Evolving Federal policy and legislation in the areas of both patents and copyrights may further complicate the situation. All of these considerations have made the Office of the Vice President for Research (OVPR) review the existing policy to bring it more in line with today's circumstances. The result has been a new and more comprehensive intellectual property rights policy. The intent of the new policy is to provide the basis for equitable adjudication between the various interests involved and maintain sensitivity to the potential commercial utility for the economic benefits of society.

Therefore, the following principles are the underlying intent for the development of the policy and its application relative to intellectual property rights.

NB: Hampton University will interchangeably be referred to as "Hampton", "University", or "university" in this document.

First: The policy will encourage the notion that ideas or creative works produced at Hampton University are to be used for the greatest possible public benefit. This will occur through the widest possible dissemination and use of these ideas or materials. Thus every reasonable incentive will be initiated for the dissemination into use of ideas, and the production and introduction into use of creative works or educational materials generated within the Hampton University community. The policy will be favorable to the concept that public benefit will take precedence over profitmaking, either by the University or the individual scholar.

Second: The policy will protect rights of scholars with respect to the products of their intellectual endeavors. For example, the policy will not interfere with the right of a scholar to decide to publish a book or an article and, if so, when and under what circumstances.

Third: When University support makes the enterprise possible or when it provides extra or special support, either with funds, facilities, or equipment, for the development of ideas, or the production of works, it is reasonable for the University to participate in the fruits of the enterprise, or to be reimbursed for the University's extra or special costs, name, and logo, if and when works are introduced for commercial purposes.

Fourth: The policy will cover the university distribution, and commercial development of technology developed by Hampton's faculty, staff and students and others participating in Hampton's programs. The term "technology" is broadly defined to include technical innovations, inventions, and discoveries, as well as writings and other information in various forms, including computer software.

Fifth: The principal rights governing ownership and disposition of technology are known as "intellectual property rights" which are derived primarily from legislation granting patents, copyright, trademarks and integrated circuit mask work protection.
In some instances, distribution and commercialization of technology may be accomplished by the transfer or licensing of the intellectual property rights, such as patents and copyrights. In other instances, distribution and commercialization of technology may be aided by or depend upon access to the physical or tangible embodiment of the technology, as in the case of computer software.

Therefore, this policy will define the ownership, distribution, and commercialization rights associated with the technology in the form of intellectual property. Further, it will define policies and procedures that govern use and distribution of the technology in its tangible form.

**INTELLECTUAL PROPERTY AND RELATED RIGHTS**

**INTRODUCTION**

Intellectual Property is defined as any new and useful process, machine, composition of matter, life form, article of manufacture, software, copyrighted work or tangible property. It includes such things as new or improved devices, circuits, chemical compounds, drugs, genetically engineered organisms, data sets, software, musical processes or unique and innovative uses of existing Inventions. Intellectual Property may or may not be patentable or copyrightable. It is created when something new and useful has been conceived or developed, or when unusual, unexpected or non-obvious results, obtained with an existing Invention, can be practiced for some useful purpose. One or more individuals, each of whom to be an Inventor must have conceived of an essential element or have contributed substantially to its conceptual development, can create intellectual Property.

**PATENTS AND PATENT RIGHTS**

A patent is a grant issued by the United States Patent and Trademark Office giving an inventor the right to exclude all others from making, using, or selling the invention within the United States, its territories and possessions, for a period of 20 years from the patent application date. The period of 20 years is exclusive of certain regulatory delays such as those sometimes imposed by the Food and Drug Administration. Patents may also be granted in foreign countries; procedures for filing, regulations for patentability, and term of patent grant vary considerably from country to country.

To be patentable in most countries, an invention must be new, useful and nonobvious. In the United States, a grace period 12 months from the first written public disclosure of an invention is allowed to file a patent application. In most foreign countries, an invention is unpatentable unless the application is filed before public disclosure (written or oral). However, if one has been filed in the United States prior to disclosure, the applicant has 12 months to file in most foreign countries without losing filing rights.

**COPYRIGHTS**

As provided in copyright law, a copyright owner has the exclusive right to reproduce the work, prepare derivative works, distribute by sale or otherwise, and display or perform the work publicly.

Under federal copyright law, copyright subsists in "original works of authorship" which have been fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
For an individual author, copyright protection of a work extends for the author’s life plus 50 years. For employers, copyright protection of a work extends for 75 years from the date of publication.

In contrast to a patent which protects the “idea”, copyright covers the “artistic expression” in the particular literary work, musical work, computer program, video or motion picture or sound recording, photograph, sculpture, and so forth, in which the “expression” is embodied, illustrated, or explained, but does not protect the “idea”.

**TRADE AND SERVICE MARKS**

A trade or service mark is a word, name, symbol or device (or any combination) adopted by an organization to identify its goods or services and distinguish them from the goods and services of others. In the United States, trademark ownership is generally acquired through use of a term to identify origin of goods or services, although effective November, 1989, legislation enables organizations to file for trademark protection based on intent to use a particular term. Trade or service mark ownership is not dependent upon federal or state registration, but upon use of the mark. Registration of trade and service marks may be obtained on both the state and federal levels. However, to apply for a federal registration of a mark, it must be used in interstate commerce.

**MASK WORKS**

A mask work is defined as a series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product. Under the Semiconductor Chip Act of 1984, mask work protection extends for 10 years and gives the owner of the qualifying mask work exclusive rights to its exploitation. Mask works are registered with the United States Copyright Office. Failure to apply within 2 years of the initial commercial exploitation results in the termination of the exclusive rights.

**TANGIBLE RESEARCH PROPERTY**

The term “tangible research property” refers to those research results which are in a tangible form as distinct from intangible (or intellectual) property. Examples of tangible property include integrated circuit chips, computer software, biological organisms, engineering prototypes, engineering drawings, and other property which can be physically distributed.

Although tangible research property may often have intangible property rights associated with it, such as biological organisms which may be patented or computer software which may be either patented or copyrighted, where appropriate, tangible research property may be distributed without securing intellectual property protection by using some form of contractual agreement, such as formal contract, loan agreement, letter agreement, or user license as further set forth in this document.

**TRADE SECRET**

The law of trade secret may be applied to any secret which is used in business and gives the owner of the trade secret a competitive edge over others. It is used to protect valuable proprietary information and is a commonly used form of protection for software. Unlike copyrights, there is no federal trade secret statute. Trade secret laws are determined by the individual states but generally adhere to similar principles. The most important aspect of this type of protection is that of secrecy. The protection will remain legally valid only as long as a trade secret is maintained. In order to maintain protection when a trade secret is being used, it is necessary to bind those individuals having access to the secret by a contractual agreement not to disclose it.
ADMINISTRATION

VICE PRESIDENT FOR RESEARCH
The Vice President for Research is the final arbiter of any disputed issues related to intellectual property, or the interpretation of this policy. Any such disputed issues should be referred to the Vice President for Research, whose decisions regarding such disputes shall be considered. In event circumstances arise not covered by the policy, the Vice President for Research may authorize exceptions to the normal procedure. The vision for the Hampton University technology licensing is two-fold. The first is to facilitate the transfer of technology at Hampton for public use. The second, where consistent with the first, is to provide an additional source of unrestricted income to support research at Hampton. The OVPR will work with the Hampton developers of technology and with industry. However, it will do so in a manner that does not interfere with the normal flow of technical and academic information through publications, conferences and consulting.

The OVPR is responsible for the negotiation, execution and administration of all Hampton agreements with external sponsors of research grants and contracts and for ensuring that the rights of the sponsors in technology developed under external grants and contracts are protected. OVPR personnel are available to assist all principal investigators and sponsored program administrators in the negotiation and interpretation of intellectual property terms of grants and contracts. Research priorities will have precedence over technology development priorities. Thus, no grant or contract terms are to be accepted which inhibit the utilization by the public of the results of the research at Hampton. In unclear situations or where there appears to be a conflict between the priorities, the Vice President for Research will be the final arbiter.

TECHNOLOGY LICENSING GOALS
- To optimize the generation of invention disclosures, the cost-effectiveness of domestic and international patenting and other legal protection, and the commercial utilization of protected intellectual properties;
- To foster the economic development activities of the region by making appropriate intellectual properties available to entrepreneurs desiring to new start-up companies on fair and accommodating terms;
- To enhance the flows of research funding to Hampton University as an outgrowth of intellectual property licensing and capabilities marketing;
- To generate revenues and revenue growth adequate to cover the costs of a growing operation and to provide funding to related university and economic development activities;
- To coordinate and assist in the definition, packaging and marketing of the university’s resources and capabilities which can lead to transfer of technology mutually advantageous to various stakeholders; and
- To support the overall mission of the university by enhancing its stature and reputation as a research university as well as the reputation of Hampton University faculty and students.
POLICY STATEMENTS

GENERAL POLICY STATEMENT
The prompt and open dissemination of the results of Hampton’s research and the free exchange of information among scholars are essential to the fulfillment of Hampton’s obligations as an institution committed to excellence in education and research. Matters of ownership, distribution, and commercial development, nonetheless, arise in the context of technology transfer, which is an important aspect of Hampton’s commitment to public service. Technology transfer is, however, subordinate to education and research; and the dissemination of information must, therefore, not be delayed beyond the minimal period necessary to define and protect the rights of the parties.

PATENT AND COPYRIGHT POLICY STATEMENT
Rights in inventions, mask works, tangible research property and copyright ownership of materials, including software, made or created by Hampton faculty, students, staff, and others participating in Hampton programs, including visitors are as follows:

INVENTOR/AUTHOR OWNED
Inventors/Authors will own inventions/materials that are:

(a) not developed in the course of or pursuant to a sponsored research or other agreement; and
(b) not created as a “work-for-hire” by operation of copyright law and not created pursuant to a written agreement with Hampton providing for a transfer of copyright or ownership to Hampton; and
(c) not developed with the significant use of funds or facilities administered by Hampton.

THIRD PARTY OWNED
Ownership of all other Intellectual Property (including patents, copyrights, mask works, tangible research property, and trademarks) will be as follows:

(a) Ownership of Intellectual Property developed in the course of or pursuant to a sponsored research or other agreement will be determined according to the terms of such agreement.
(b) Ownership of Intellectual Property created as a “work-for-hire” by operation of the copyright law, or created pursuant to a written agreement with Hampton providing for transfer of copyright or ownership to Hampton will vest with Hampton.
(c) Ownership of Intellectual Property developed by faculty, students, staff and others participating in Hampton programs, including visitors, with the significant use of funds or facilities administered by Hampton will vest with Hampton.

SPONSORED RESEARCH AND OTHER AGREEMENTS

PATENTS: Research contracts sponsored by the Federal Government are subject to statutes and regulations under which Hampton acquires title to inventions conceived or first reduced to practice in the performance of research. Hampton’s ownership is subject to a nonexclusive license to the government and the requirements that Hampton retains title and takes effective steps to develop the practical applications of the invention by licensing and other means.

With rare exceptions, contracts with industrial sponsors provide that Hampton retain ownership of patents while the sponsor is granted an option to acquire license rights.
COPYRIGHT: Normally, research contracts sponsored by the Federal Government provide the government with specified rights in copyrightable material developed in the performance of the research. These rights may consist of title to such material resting solely in the government, but more often consist of a royalty-free license to the government with title vesting in Hampton.

When a work is created under the terms of a sponsored research agreement, authors of copyrightable works should be aware that there may be contractual terms relating to the form of the report, advance notice to the sponsor before publication and the like.

GENERAL: Hampton personnel and visitors should contact the OVPR for information or assistance regarding interpretation of research contract terms. The terms of such sponsored research agreements apply not only to inventions made by faculty and staff, but also to those made by students and visitors, whether or not paid by Hampton who participate in performing research supported by Such agreements. It is essential, therefore, that all individuals participating in the research be made aware of their obligation to assign rights to Hampton and sign Invention and Copyright Agreements.

SIGNIFICANT USE OF HAMPTON-ADMINISTERED RESOURCES

When an invention, software, or other copyrightable material, mask work, or tangible research property is developed by Hampton faculty, students, staff, visitors or others participating in Hampton programs using significant funds or facilities, Hampton will own the patent, copyright or other tangible or intellectual property. If the material is not subject to a sponsored research or other agreement giving a third party rights, the issue of whether or not a significant use was made of Hampton funds or facilities will be reviewed by the inventor/author's laboratory director, department head, chairs or deans, and a recommendation forwarded to the OVPR.

Hampton does not construe the provision of office, library, machine shop facilities or traditional desktop personal computers and the Academic Technology Mall (ATM) as constituting significant use of Hampton space or facilities, nor construe the payment of salary from unrestricted accounts as constituting significant use of Hampton funds, except in those situations where the funds were paid to support the development of certain materials.

Textbooks developed in conjunction with class teaching are also excluded from the "significant use" category, unless such textbooks were developed using Hampton administered funds paid specifically to support textbook development.

Generally, an invention, software, or other copyrightable material, mask work, or tangible research property will not be considered to have been developed using Hampton funds or facilities if:

1. only a minimal amount of unrestricted funds have been used; and
2. the invention, software, or other copyrightable material, mask work, or tangible research property has been developed outside of the assigned area of research of the inventor/author under a Research Assistantship or sponsored project; and
3. only a minimal amount of time has been spent using significant Hampton facilities or only insignificant facilities and equipment have been utilized. Use of office, Library, machine shop facilities, and of traditional desktop personal computers and ATM are examples of facilities and equipment that are not considered significant; and
4. the development has been made on the personal, unpaid time of the inventor/author.
When an invention, software, or other copyrightable material, mask work or tangible research property is not subject to a sponsored research or other agreement (such as an equipment agreement), but has been developed using significant Hampton funds or facilities, the OVPR may in its discretion and consistent with the public interest, license the inventor(s)/author(s) exclusively or nonexclusively on a royalty basis. The inventor(s)/author(s) must demonstrate technical and financial capability to commercialize the intellectual property, and Hampton will have the right to terminate such license if the inventor(s)/author(s) has/have not achieved effective dissemination within 3 years. The license is also subject to the inventor(s)/author(s) waiving their rights to royalty sharing under this Policy Guide. Where such a license is issued, the inventor(s)/author(s) may be required to assume the costs of filing, prosecuting and maintaining any patent rights.

WORKS FOR HIRE

EMPLOYEES: A "work for hire", as defined by law, is a work product created in the course of the author's employment. Copyright of the work product in these situations belongs to the employer. For example, results of work created by writers of university publications, including courseware developed for distribution via electronic media for the purposes of on-site or distance education, are considered to have been created in the course of the author's employment and are the property of Hampton. It is the policy of Hampton that it shall own all works for hire.

NON-EMPLOYEES: Under the Copyright Act, copyright of commissioned works of non-employees is owned by the author and not by the commissioning party unless there is a written agreement to the contrary. The University will ensure that independent contractors agree in writing that ownership of the commissioned works is assigned to Hampton. Where special circumstances apply, Hampton University may engage in contracts of mutual agreement relative to ownership.

INDEPENDENT WORKS

Hampton will not claim ownership of books, articles and other scholarly publications, or to popular novels, poems, musical compositions, or other works of artistic imagination which are created by the personal effort of faculty, staff and students outside of their assigned area and which do not make significant use of Hampton-administered resources.

Furthermore, in those situations where copyright to such scholarly or artistic work does reside with Hampton, under the terms of a sponsored research or other agreement, or by operation of the copyright law or otherwise as a result of Hampton policy, may upon the author's request and to the extent consistent with the intent of the sponsor and the laboratory director, department head, chairs or deans, convey copyright to the author of such work.
THESES
Students will own copyright in theses that do not:

(i) involve research for which the student received financial support in the form of wages, salary, stipend or grant from funds administered by Hampton, and/or

(ii) involve research performed in whole or in part utilizing equipment or facilities provided to Hampton under conditions which impose copyright restrictions.

Where copyright ownership is retained by the student, however, the student must grant to Hampton royalty-free permission to reproduce and publicly distribute copies of the theses.

NOTE: Where significant use is made of Hampton equipment or facilities provided to Hampton without copyright restrictions, students own copyright in theses, per (ii) above; however, software code, patentable subject matter and other intellectual property contained in the theses are subject to the significant use of Hampton-Administered Resources section.

TRADE AND SERVICE MARKS
Trade and service marks relating to goods and services developed at Hampton will be owned by Hampton.

SOFTWARE ACQUISITION
Hampton will make every effort to avoid the acquisition of software programs, either commercial or otherwise, which by their license rights constrain the use of the software by the Hampton community or impair Hampton’s right to develop and distribute software which is dependent upon the acquired software. Whether the software and databases used at Hampton are owned by users or third parties and are protected by copyright and/or other laws, or subject to license or other contractual arrangement, it is the policy of Hampton that users abide by any legal restrictions imposed by the owner of the software or database. It is the responsibility of the owner of the protected software or database to make the nature of the restrictions known to the user.

TECHNOLOGY AND EVALUATION, PROTECTION AND DISSEMINATION

RESPONSIBILITY
The Office of the Vice President for Research is responsible for facilitating the transfer of Hampton technology for public use and benefit. The OVPR evaluates, obtains proprietary protection for, and assists in the distribution of technology for research purposes. The OVPR assists in the commercial development of selected technology by identifying potential markets and negotiating license agreements.

DISCLOSURE
The initial step in establishing contact with the OVPR will be the submission of an OVPR Technology Disclosure Form. The disclosure form can be obtained from the OVPR. When submitted, the Technology Disclosure Form will initiate action by the OVPR to investigate the patenting (or other methods of protection) and marketing of the technology unless accompanied by a letter requesting other action by Hampton such as a waiver of Hampton’s ownership rights in the technology.
SPONSORED PROGRAMS: The terms of sponsored research and other agreements normally create obligations with respect to the reporting of inventions, technical data, and copyrightable works such as software. In particular, inventions and copyrightable works developed under sponsored research should be promptly reported to the OVPR by submitting a Technology Disclosure Form. The OVPR is responsible for discharging Hampton’s obligations to research sponsors.

OTHER PROGRAMS: Inventions or technology developed under Hampton-administered programs, either as work-for-hire or with significant use of funds or facilities, should also be submitted to the OVPR using a Technology Disclosure Form. Independently owned technology need not be disclosed to the OVPR unless the owner of the technology desires the OVPR to commercialize the technology. In such cases, the technology should be submitted to the OVPR using the Technology Disclosure Form.

The Technology Disclosure Form serves to report technology to the OVPR. A case number will be given to the technology reported and the case will be assigned to an OVPR Licensing Office for evaluation.

PATENTS: PROTECTION
Although patent protection is sometimes sought for various noncommercial reasons, such as professional status, Hampton will not seek protection for inventions which are not commercially attractive, even if the invention is intellectually meritorious, unless otherwise requested by the sponsor. Hampton will normally seek patent protection on inventions in order to pursue commercial licensing and to comply with the terms of sponsored research agreements. It is important, however, to understand at the outset that any publication which describes an invention even in minimal detail prior to filing for a patent may preclude patenting in foreign countries and may also preclude protection in the United States unless a patent is filed within one year from publication. The implications of publication upon patent rights should be discussed with the OVPR and a decision on patent filing reached promptly so that publication will not be delayed.

COPYRIGHTS: ASSERTING AND REGISTERING
Copyright protection of books, articles and publications is sought in order to recognize authorship and protect the integrity of the work. It is also essential in order for Hampton to license copyrightable materials to commercial book publishers and others and to comply with the terms of sponsored research agreements. A copyright is established at the time expression is fixed in a tangible medium. In order to maintain the copyright for the period prescribed under the copyright statute, notice of copyright must be affixed to the copyrightable material. Failure to affix the proper notice will cause the copyright to be lost after a certain period of time has elapsed from the first publication of the work. Further, for added copyright protection, certain works should be registered with the United States Copyright Office using its official forms. All questions regarding copyright regulation will be answered by the OVPR.

TRADE AND SERVICE MARKS: ASSERTING AND REGISTERING
A trade or service mark may be used to protect those names and symbols associated with certain technology developments such as computer programs. Prior to registration for trademark protection, the designation “TM” after a trademark or “SM” after a service mark will give adequate notice of a claim of ownership. The designation “®” for a trademark may only be used after Federal registration. The use of trade and service marks to protect Hampton-owned technology or to designate Hampton as the origin of a product, event, activity, service, or the like, may be instituted only at the direction of the OVPR. It is
Important to note that trademark protection carries with it a certain obligation on the part of the holder of the mark. Therefore, requests for use and registration of trade or service marks on behalf of Hampton must be referred to the OVPR.

**MASK WORKS: ASSERTING AND REGISTERING**
Protection of a mask work commences with the registration of its initial commercial exploitation. If registration for protection has not been made within two years of the initial commercial exploitation, mask work protection may be lost and the work entered into the public domain. Questions concerning mask work notices and registration should be brought to the OVPR.

**TANGIBLE RESEARCH PROPERTY**
Tangible research property (TRP) such as biological materials and computer software are frequently patented or copyrighted as appropriate and then licensed for commercial purposes. However, these and other forms of TRP, including those under commercial license, generally are simultaneously distributed solely for research purposes either under simple letters of understanding or more formal licenses.

**DISTRIBUTION FOR SCIENTIFIC RESEARCH**
In keeping with the traditions of academic science and its basic objectives, it is the policy of Hampton that results of scientific research are to be promptly and openly made available to others. Since the traditional modes of dissemination through scholarly exchange and publication are not fully effective for most TRP, it is Hampton's policy that those research results which have tangible form should also be promptly and openly made available to other scientists for their scientific research, unless such distribution is inappropriate due to factors such as safety, the need to more fully characterize or develop the TRP prior to distribution, or unless such distribution is incompatible with other obligations.

**CONTROL OF TRP**
Where TRP is developed in the course of research that is subject to the terms of a sponsored research or other agreement, control over its development, storage, distribution and use is the responsibility of the principal investigator, who will consult with the OVPR. In other cases, significant use of university resources will be presumed, so control over TRP rests jointly with the laboratory director or department head and with the OVPR. The responsibility for control includes determining if and when distribution of the TRP is to be made beyond the laboratory for scientific use by others in accordance with the terms of this policy. The normal mechanism for commercialization of TRP is through licensing agreements.

**TRP IDENTIFICATION**
Each item of TRP should have an unambiguous identification code and name sufficient to distinguish it from other similar items developed at Hampton or elsewhere. The OVPR should be consulted for assistance in developing appropriate identification systems.

**DISTRIBUTION OF BIOLOGICAL TRP TO RESEARCH COLLEAGUES**
Biological materials are in many cases patentable and licensed for commercial purposes under various types of patent licenses. They are also a form of tangible research property that can be distributed for commercial and/or research purposes with or without patent protection.

Biological TRP owned by Hampton may usually be distributed for research purposes only, with minimal conditions attached. Any such distribution is subject to an agreement by the recipient that commercial development or commercial use or further transfer of the biomaterial is not to be undertaken. In addition, the principal investigator may wish to control subsequent use, for example, by requiring recipients to follow a specific research protocol in the use of the biological materials.
When distributing biological TRP to research colleagues outside the laboratory, costs of the materials and handling may be recovered from the recipient, and returned to the account which funded those costs. When costs are charged for TRP distribution, adequate documentation must be maintained for audit purposes. If there is a possibility of biohazard or other risk associated with the transport, storage, or use of a particular biological TRP, or if the recipient is likely to use the TRP for clinical research, the OVPR should be contacted for advice on the appropriate form of disclaimers of liability and indemnities.

If the biological TRP was developed under a sponsored research agreement, the OVPR should be contacted to advise on possible contractual obligations with respect to the TRP prior to its distribution for noncommercial purposes. Distribution of biological TRP that is part of a patent or patent application should be coordinated through the OVPR.

**DISTRIBUTION OF COMPUTER SOFTWARE FOR RESEARCH PURPOSES**

The distribution of Hampton-owned computer software to colleagues for research purposes must be coordinated with the OVPR if the software has potential commercial value, if the principal investigator wishes to control subsequent use, or if it is subject to the terms of a sponsored research agreement. The OVPR will provide wording for the distribution agreement necessary to preserve commercial value and will arrange for trademark and copyright registration as appropriate. The OVPR provides the service of distribution of software for noncommercial research use, charging recipients only the costs associated with reproduction and distribution. In addition to the handling of administrative details, including mailing, the OVPR also makes arrangements for collecting departmental costs associated with providing software for noncommercial use and returning these costs to the department.

**OTHER TRP**

Distribution of TRP, other than biological TRP, should follow the procedures outlined in this policy for computer software.

**COMMERCIAL DEVELOPMENT**

**INTRODUCTION**

It can be acknowledged that the primary functions of a university are education, research and public service. It is in the context of public service that Hampton supports efforts directed toward bringing the fruits of Hampton research to public use and benefit. In many cases, mere publication of research results will be sufficient to transfer Hampton research to the public. In other cases, it is necessary to encourage industry, by the granting of license rights, to invest its resources to develop products and processes for use by the public.

**COMMERCIALIZATION - GENERAL**

The OVPR will pursue the licensing of technology by researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, developing a business plan, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties to the inventors/authors in accordance with Hampton’s royalty policy. When it is appropriate to do so, Hampton may accept an equity position in lieu of cash royalties.

**INVENTOR/AUTHOR ASSISTANCE**

With few exceptions, the support and cooperation of the inventor/author is critical to licensing success.
INVENTOR/AUTHOR OWNED TECHNOLOGY

Hampton faculty, staff or students who wish to pursue the development of their independently owned technology through the OVPR may offer such technology for evaluation by submitting a Technology Disclosure Form. The OVPR will evaluate the commercial potential and determine whether or not the technology will be accepted for licensing by the OVPR.

Faculty, staff and students are equally free to choose some other mechanism for commercializing their independently-owned technology, but prior to such commercialization should make sure that the technology is not subject to a sponsored research or other agreement, constitute a work-for-hire, or result from significant use of funds or facilities administered by Hampton. If any of these conditions might apply, the inventor/author should request from the OVPR an appropriate license to exercise such rights or a waiver of Hampton’s rights.

COMMITMENT OF FUTURE INVENTIONS

It will be the policy of Hampton not to commit future inventions to licensees even where improvements to technology are anticipated. Some very narrowly drawn exceptions may occasionally be appropriate to handle subordinate patents and well-defined derivative works for licensed software.

CONSULTING CONTRACTS

The OVPR will not negotiate consulting contracts for individual inventors/authors as part of a license arrangement.

PATENTS

EVALUATION

Once a Technology Disclosure Form disclosing an invention is submitted to the OVPR, a representative will meet with the inventor(s) as a first step in evaluation. In many cases, contact with industry will be made as a part of the evaluation process.

SPONSORED PROGRAMS

If the invention arose from a sponsored research project, the OVPR will file for a patent and negotiate an appropriate license consistent with the terms of the contract provided that the royalty terms justify the expense, or that funds for filing have been provided under the research agreement. The OVPR may be contacted for information about the specific patent terms of individual research agreements.

WAIVER OF HAMPTON RIGHTS

When it has the right to do so, Hampton may, if requested by the inventor, and at Hampton’s discretion, “stand aside” in those situations where Hampton believes that it would enhance the transfer of technology to the public, is consistent with Hampton’s obligations to third parties, and does not involve a conflict of interest as set forth below. By “standing aside”, Hampton agrees not to exercise its contractual rights to the technology, clearing the way for the Hampton inventor to seek ownership. Inventors may request that Hampton “stand aside” by submitting a letter of request.

In case of Federal agency sponsorship, the inventor may directly petition the agency for a release of rights to himself or herself. However, Federal research agreements are generally subject to a uniform patent law which provides that universities take title to resulting inventions subject to certain obligations concerning the exploitation in the public interest. Federal approval of any assignment of ownership, preferences for licensing, the retention by the Federal government of certain license rights, and march-in
rights. Decisions by the Federal sponsors to permit individual inventors to acquire ownership are generally made on a case-by-case basis with the Federal Government retaining for it those rights previously discussed.

In the case of industrial sponsorship, Hampton will seek approval of the sponsor prior to releasing its ownership rights in favor of the inventor.

**LICENSING OF HAMPTON RIGHTS TO INVENTORS**

Hampton faculty, staff or student inventors may also request a license to commercially develop their Hampton-owned inventions where such licensing would enhance the transfer of the technology, is consistent with Hampton’s obligations to third parties, and does not involve a conflict of interest.

**CONFLICT OF INTEREST OR COMMITMENT**

Any of the following factors may signify a conflict of interest that will be taken into account prior to waiving or licensing Hampton’s rights to inventors or to authors.

1. an adverse impact on Hampton’s educational responsibility to its students
2. an undue influence on the employment commitment of the inventor/author to Hampton in terms of time or direction of effort;
3. a detrimental effect on Hampton’s obligation to serve the needs of the general public;
4. potential conflict of interest as defined in Hampton’s Policies and Procedures.

If the inventor/author holds or will shortly acquire equity or founder’s stock and/or option position in a small, tightly controlled company, Hampton may accept equity in lieu of royalty only with the prior approval of the Vice President for Research. The inventor/author will be required to sign a Conflict Avoidance Statement if a license is granted to the company in which the inventor/author has an equity position. If Hampton does acquire equity in lieu or partial lieu of royalties for intellectual property, it will expect the company to grant the inventor/author holding or acquiring the equity position a total equity and/or option share reflective of the inventor/author’s contribution both to the intellectual property and to the company operations. Hampton will take this factor into account in its license negotiations with the company. For all other inventors/authors, Hampton will require that the company distribute to those inventors/authors the percentages of equity that would have otherwise been distributed to them under the Hampton Policy if the payment had been made in cash.

**RESEARCH FUNDING/EQUITY**

Hampton will not accept research funding from a licensee in which Hampton, through the OVPR or a Hampton inventor, has an equity interest (including stocks, options, warrants or other financial instruments convertible into equity) unless:

(i) the research is not likely to result in inventions dominated by the claims of the licensed patent or in software that is a derivative work of the licensed software; and
(ii) the research will not be conducted in the inventor’s laboratory group; and
(iii) the inventor’s students will not participate in any project funded by the licensee.

When an inventor/author desires to avoid equity in order to obtain research funding from a small company, Hampton will also avoid taking equity through a license agreement so as to allow the sponsored research. In such cases, the OVPR will require in its license agreements that the inventor not make any arrangements to obtain equity at a later date and avoid negotiating for equity until at least two years following the termination of the research agreement.
COPYRIGHTS

COMMERCIALIZATION BY THE OVPR
Copyrightable works owned by Hampton are normally licensed through the OVPR except where other arrangements are made in accordance with this policy. Copyrightable material not owned by Hampton also may be licensed through the OVPR when submitted under a Technology Disclosure Form to the OVPR by its author and accepted for licensing by the OVPR.

SOFTWARE: Computer software in which Hampton acquires rights may be either patented or copyrighted and made available by Hampton for commercial purposes through the OVPR under various forms of patent or copyright licenses. Authors and their departments/laboratories will share in royalties earned from licensing as further set forth in this policy. In those instances where the authors desire to distribute commercially licensed software for research purposes or as TRP, such licensing must be coordinated with the OVPR.

VIDEO WORKS: This policy does not confine commercialization and ownership rights to video works produced through use of OVPR facilities or those which may be specifically commissioned by a department or laboratory within Hampton. Video works developed pursuant to an agreement will be subject to the terms of that agreement. The disposition of rights with respect to other Hampton-owned video works will be made on a case-by-case basis until such time as a policy has been defined.

WAIVER OF RIGHTS TO HAMPTON AUTHORS
When it has the right to do so, Hampton may, if requested by the author(s) and at Hampton’s discretion, “stand aside” in those situations where Hampton believes that it would enhance the transfer of technology to the public, is consistent with Hampton’s obligations to third parties, and does not involve a conflict of interest as set forth below. By “standing aside”, Hampton agrees not to exercise its contractual rights to the technology, clearing the way for the Hampton author(s) to seek ownership. Authors may request that Hampton “stand aside” by submitting a letter requesting that they do so.

Federal research agreements presently vary widely with respect to rights in copyrightable technical data and computer software, but in general, universities have the right to copyright and to control distribution of most materials. Several major agencies retain a large degree of control over computer software and will relinquish control only under limited circumstances.

In the case of industrial sponsorship, where the sponsor acquires license rights, Hampton will seek approval of the sponsor prior to releasing its ownership rights in favor of the author.
OTHER FORMS OF AUTHOR CONTROL
Where consistent with Hampton's obligations to third parties, Hampton faculty, staff or student authors, with agreement of their laboratory director, department head, chairs and deans, and all of their co-authors, may request a license from the OVPR to commercially develop their Hampton-owned works, may request to have the works openly distributed through royalty-free licenses, or may request that the works be placed in the public domain.

LICENSEING
TO AUTHORS: Authors may request control of the copyrighted material through a grant of commercial license rights.

Consistent with the public interest, Hampton may grant the request for author control but Hampton will retain title to the work, with the right to use it for internal purposes, the right to the payment of appropriate royalties, and the right to withdraw such licensing rights in three (3) years if the authors have not achieved effective dissemination as agreed. In addition, such arrangements will be subject to Hampton's Conflict of Interest and Commitment policies.

Where such requests related to major projects that typically involves multiple authors and long development periods, determining the most effective course for dissemination will require discussion and special negotiation with the OVPR.

Hampton will respond to author requests made under this policy within ninety (90) days. However, in those cases where the work, generally software, is not sufficiently developed to allow proper assessment, Hampton may require additional development prior to responding to an author request.

PUBLIC DOMAIN:
Authors may request that otherwise copyrightable material, including computer software, be placed in the public domain if such action will promote widespread use, for example by providing a means to establish a new standard such as a computer operating system. In responding to a request for public domaining, Hampton will weigh the advantages of improved access, the complexity of the work and whether or not it is ready for effective public use, whether its quality can be maintained, and the author's reasons for seeking this mode of dissemination.

TRADE AND SERVICE MARKS
Trade and Service Marks owned by Hampton are to be licensed through the OVPR. Any exceptions to this procedure must be approved in advance by the Vice President for Research.

MASK WORKS
Mask works owned by Hampton are to be licensed through the OVPR. Any exceptions to this procedure must be approved in advance by the Vice President for Research. Mask works not owned by Hampton also may be licensed through the OVPR when offered for licensing by the developer of such mask work and accepted by the OVPR.
TANGIBLE RESEARCH PROPERTY

It will be Hampton policy that any commercial distribution of Hampton-owned TRP be handled only through the OVPR unless arrangements are made for independent development by the inventors/authors. Software should be submitted to the OVPR in the same fashion as a patentable invention, for which the first step is preparation and submission of a Technology Disclosure Form.

If TRP developed by Hampton as a result of research activities is to be distributed to outside users for commercial purposes, the distribution agreement must contain provisions negotiated by the OVPR covering the terms under which the property may be used, limits on Hampton’s liability for the TRP or products derived therefrom, and other conventional license agreement terms including those relating to any intangible property rights (such as patents) which also may be associated with the use of the tangible property.

ROYALTY DISTRIBUTION - GENERAL

Royalty income received during the preceding Hampton fiscal year for a technology license shall be distributed once annually as follows:

STEP 1: Deduct out-of-pocket costs to arrive at Adjusted Royalty Income.
Out-of-pocket costs are direct assignable expenses to a specific case such as patent filing, prosecution and maintenance fees and specific marketing costs.

Step 2: Distribute adjusted royalty income as _____ to the inventors/authors and _____ to the Hampton General Fund.

NOTE 1: Certain patenting costs are an element of Hampton’s indirect cost rate and are therefore borne by all research sponsors. In order to avoid complexity, this consideration is purposefully omitted from the above calculations.

NOTE 2: If an inventor/author waives participation in royalties, those waived royalties may be shared equally by the Department and the Hampton General Fund if approved by the President.

ROYALTIES - SPECIAL CASES

In some cases distribution of royalties to individuals will be impractical or inappropriate; for example, where the material was developed as a laboratory project or where the authors/inventors are not easily identifiable. The OVPR in consultation with the principal investigator (or laboratory director/department head if not under a sponsored agreement) will review the circumstances of development when such situations have been identified. Generally, in such cases, royalties will be split equally between the department or laboratory and the Hampton General Fund, under approval of the President. In any situation, when royalty distribution to individuals is not recommended, distribution of income is subject to the approval of the President.

COMMITTEE ON COPYRIGHTS AND PATENTS

A standing committee appointed by the President would assist OVPR in determining patentable inventions submitted by inventor(s). This committee will be comprised of experts from industry, government and academia in a specific technology.
FACULTY, STUDENT, STAFF AND VISITOR OBLIGATIONS

GENERAL POLICY
It is the policy of Hampton that individuals, through their employment by Hampton or by participating in a sponsored research project, or using Hampton-administered funds or facilities, thereby accept the principles of ownership of technology as stated under this policy. In furthering such undertaking, all participants will sign Invention and Copyright Agreements in accordance with the following policy.

PERSONNEL INVENTION AND COPYRIGHT AGREEMENTS

WHO IS COVERED BY THIS POLICY
All administrators, faculty, staff, students, and visitors employed by Hampton University are subject to this policy on intellectual property rights.

ADMINISTRATION
Each Hampton school and department through its Dean, Chair and/or Director is responsible for ensuring that Invention and Copyright Agreements are signed by all faculty, students, staff and visitors, who may be or are involved with sponsored projects or who may have opportunities to use significant Hampton funds or facilities administered by that laboratory or department. The OVPR and the Human Resource (HR) Department will monitor schools and departments' compliance with this requirement. All Invention and Copyright Agreements should be signed in quadruplicate with one copy retained by the signatory, one copy retained in the laboratory/department files, one copy retained by HR, and one copy sent to the OVPR.
Hampton University
Invention and Copyright Agreement

Name (Please print or type.): __________________________________________

Social Security No.: _____________________________________________

In consideration of 1) my present or future employment at Hampton University; and/or 2) my participation in research at Hampton University; and/or 3) opportunities made or to be made available to me to make significant use of Hampton University funds or facilities; and/or 4) opportunities to share in royalties and other inventor/author rights outlined in the “Intellectual Property Rights Policy” dated February 5, 1999, I agree:

A. to disclose promptly and assign to Hampton University all inventions, copyrightable materials, computer software, semiconductor maskworks, tangible research property and trademarks (“Intellectual Property”) conceived, invented, authored, or reduced to practice by me, either solely or jointly with others which:

(i) are developed in the course of or pursuant to a sponsored research or other agreement in which I am a participant as defined in the Policy Statement of the Intellectual Property Rights Policy; or

(ii) result from the significant use of Hampton University funds or facilities as “significant use” is defined in the Intellectual Property Rights Policy; or

(iii) result from a work-for-hire funded by Hampton University as defined in the Works for Hire Section of the Intellectual Property Rights Policy; and

B. to execute all necessary papers and otherwise provide proper assistance, at Hampton University’s expense, during and subsequent to, the period of my Hampton University affiliation, to enable Hampton University to obtain, maintain or enforce for itself or its nominees, patents, copyrights other legal protection for such Intellectual Property; and

C. to prepare and maintain for Hampton University adequate and current written records of all such Hampton University Intellectual Property; and

D. to deliver promptly to Hampton University when I leave Hampton University for whatever reason, and at any other time as Hampton University may request, copies of all written records referred to in Paragraph C above as well as all related memoranda, notes, records, schedules, plans or other documents, made by, compiled by, delivered to, or manufactured, used, developed or investigated by Hampton University which at all times is the property of Hampton University; and
E. not to disclose to Hampton University or use in my work at Hampton University (unless otherwise agreed in writing with Hampton University);

(i) any proprietary information of any of my prior employers or of any third party, such information to include, without limitation, any trade secrets or confidential information with respect to the business, work or investigations of such prior employer or other third party; or

(ii) any ideas, writings, or Intellectual Property of my own which are not included in Paragraph A above within the scope of this Agreement. (Please note that inventions previously conceived, even though a patent application has been filed or a patent issued, are subject to this Agreement if they are actually first reduced to practice under the circumstances included in Paragraph A above.)

This Agreement supercedes all previous agreements relating in whole or in part to the same or similar matters that I may have entered into with Hampton University. It may not be modified or terminated, in whole or in part, except in writing signed by an authorized representative of Hampton University. Discharge of my undertakings in the Agreement will be an obligation of my executors, administrators or other legal representatives or assignees.

I represent that, except as identified on the reverse side hereof, I have no agreements with or obligations to others in conflict with the foregoing.

_______________________________              __________________________________
Witness                                                   Signature (to include first name in full)

______________________
Date

(To be made out and signed in quadruplicate. Distribution: original copy to the signatory’s personnel file; second copy to the signatory; third copy to the department/laboratory; and fourth copy to the OVPR.)
ACKNOWLEDGEMENT

I certify that I have received and reviewed the Hampton University Intellectual Property Rights Policy and understand that this policy will become a contractual agreement between Hampton University and each employee at the signing of my current contract.

Moreover, all administrators, faculty, staff, students and visitors employed by Hampton University will be bound by this policy on intellectual property rights.

_____________________________  ______________________________
Name                                      Date