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SECTION II Board of Visitors

This section describes the legal basis for the operation of the University, which is contained in the By-Laws of the Board of Visitors, the governing body of the University by the provisions thereof and referenced therein. This section is authorized by the Board of Visitors and changes in this section are effected only with the approval of the Board.

1. By-Laws, Board of Visitors, Christopher Newport University

a. Article I. Corporate Name and Governing Body

Christopher Newport University is a public corporation created by an Act approved by the General Assembly of Virginia on March fifth, nineteen hundred seventy-six, to amend the Code of Virginia by adding Title 23, Chapter 5.3, sections 23-49.23 through 23-49.33. The method of appointment of members of the Board of Visitors of Christopher Newport University, their eligibility for service, and their powers and duties are set forth therein.

b. Article II. Composition, Appointment, Removal

- 1) The Board of Visitors shall consist of fourteen members appointed by the Governor, subject to confirmation by the General Assembly of Virginia, for terms of four years. Members may be reappointed for one additional four-year term. No more than two of such members may be nonresidents of Virginia. Visitors shall continue to serve until their successors have been appointed and have qualified.
- 2) A vacancy on the Board is filled by appointment by the Governor for the unexpired term. A person filling an unexpired term may be reappointed by the Governor, subject to confirmation by the General Assembly, for two additional four-year terms.
- 3) Removal of Visitors shall be made pursuant to statute.

c. Article III. Powers and Duties

The Board shall control and expend the funds of the University and any appropriation hereafter provided; control all real estate and personal property of the University; make all needful rules and regulations concerning the University, appoint the president who shall be its chief executive officer, and all members of the faculty; fix their salaries; provide for the employment of other personnel as required; and generally direct the affairs of the University.

d. Article IV. Meetings

Meetings of the Board of Visitors are of three kinds: the Annual meeting, regular meetings and special meetings. There will be four meetings held per year.

- 1) Section 1. The Annual Meeting - The annual meeting of the Board is the first meeting in the new academic year. Board officers are elected at the annual meeting.
- 2) Section 2. Regular Meetings - The Board shall meet in addition to the Annual meeting, **three other times during the year in September, December, March,** and at other such times as it may designate. The days, times and places of the meetings shall be fixed by the Board.
- 3) Section 3. Special Meetings - Special meetings of the Board may be called by the Rector or any three members of the Board. Notice of such meetings shall be given by the Secretary to every member and

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shall include the date, time, and place of the meeting. No matter may be considered which was not specified in the call except by a two-thirds vote of the members of the Board present at the meeting.

- 4) Section 4. Due notice, in writing, of the Annual Meeting, all regular meetings, and any changes in the dates, times, or places of regular meetings shall be given by the Secretary of the Board. Such notice shall be sent at least seven days prior to the meeting. Notice of all Special Meetings shall be sent at least five days prior to the meeting and shall specify the item or items of business to be considered.
- 5) Section 5. An agenda shall be prepared by the Secretary, under the supervision of the President. Such agenda shall be distributed to the Visitors at least seven days prior to the meeting for which it is prepared. Matters which arise between the distribution of the Agenda and the convening of the Board shall be presented to the Board as a Supplementary Agenda, which is to be prepared by the Secretary under the supervision of the President. The written notice of a Special Meeting specifying the item to be considered at the Special Meeting shall take the place of the Agenda at the special meeting.
- 6) Section 6. A quorum for the conduct of business shall consist of seven members of the Board (as required by statute) except in those instances where other statutory provisions require a larger number for the transaction of particular items of business.
- 7) Section 7. Attendance at any meeting or a waiver of notice signed by a member shall be the equivalent to the giving of proper notice of the meeting.
- 8) Section 8. Minutes of all meetings of the Board shall be maintained by the Secretary and shall be available to the members of the Board, the President, and such others as required by law.
- 9) Section 9. Faculty or student committee representatives and others may be invited by the Rector to attend any meeting of the Board for the purpose of presenting matters to the Board. All meetings of the Board of Visitors shall be open to the public.
- 10) Section 10. All meetings of the Board shall be conducted in accordance with the principles of procedure prescribed in *Robert's Rules of Order*, Newly Revised.

e. Article V. Officers

- 1) Section 1. The Board of Visitors shall at the Annual Meeting in even numbered years elect from its membership a Rector, a Vice-Rector and a Secretary. Said officers shall serve for a two-year term. The elections shall be by secret ballot, unless waived unanimously by consent. The Secretary shall serve as the presiding officer until an election is accomplished or the Board appoints another presiding officer. Election of officers shall be by a majority vote of the members present.
- 2) Section 2. Powers and Duties of the Rector - The Rector shall be the presiding officer of the Board at all of its meetings and as such shall have the power, unless otherwise directed by the Board, to fix the order of business, appoint all standing and special committees (except the Executive Committee), and require the proper preservation of a record of the Board's proceedings by the Secretary. Upon the request of the Board, the Rector shall act as its spokesperson or representative.

The Rector shall perform such additional duties as may be imposed on the office by statute or by the direction of the Board. Whenever the Office of the President becomes vacant or a vacancy is impending, the Rector shall appoint a Special Committee on the Nomination of a President from among the membership of the Board to seek and recommend to the Board a person to fill the vacancy. This special committee shall be chaired by the Rector, and the committee shall consist of no fewer than five members.

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- 3) Section 3. Vacancies - A vacancy in the office of Rector shall be filled by the Board for the unexpired term, following the procedure set forth in Article V, Section 1. If the cause of the vacancy is the expiration of the Rector's term as a member of the Board, the vacancy shall be filled at the first regular meeting following such expiration. If the vacancy occurs from any other cause, the vacancy shall be filled at the first regular meeting after such vacancy occurs or at a special meeting called for that purpose, at which meeting a quorum shall consist of nine Visitors.
- 4) Section 4. Powers and Duties of the Vice-Rector - In the absence of the Rector at any meeting or in the event of the Rector's disability or of a vacancy in office, all the powers and duties of the office of Rector shall devolve upon and be executed by the Vice-Rector. The Vice-Rector shall perform such other duties as may be imposed on the Vice-Rector by direction of the Board. In the absence of the Rector, the Vice Rector shall preside at all meetings.
- 5) Section 5. Powers and Duties of the Secretary - The Secretary of the Board shall be responsible for the notices to every member of all meetings of the Board, for recording, maintaining and distributing minutes of all meetings of the Board, and for such correspondence and communications as the business of the Board may require. In the absence of the Rector and Vice-Rector, the Secretary shall preside.
- 6) Section 6. In the absence of the Rector, Vice-Rector and Secretary, the Board shall appoint a pro tempore officer to preside.
- 7) Section 7. Vacancies in the offices of Vice-Rector or Secretary shall be filled by the Board at the next regularly scheduled meeting or at a Special Meeting, called for such purpose, for the unexpired term.

f. Article VI. The Executive Committee

- 1) Section 1. The members of the Executive Committee shall be the Rector, who shall serve as Chair, Vice-Rector, Secretary, and two members-at-large, all of whom shall be elected as required by Article V, Section 1 above, and chairs of the Standing Committees, who shall be appointed by the Rector. Any member of the Board of Visitors who wishes to do so may attend an Executive Committee meeting with full voting privileges.
- 2) Section 2. The *ex officio* and appointed members of the Executive Committee shall be designated at the Annual Meeting and may be designated at each Annual Meeting.
- 3) Section 3. The Executive committee shall meet upon the call of the Rector. It shall transact the business of the Board in its recess. All actions taken by the Executive Committee during the recess of the Board shall be reported to the Board at the next regular meeting by the Chair.
- 4) Section 4. A simple majority of the Rector, Vice Rector, Secretary, two members-at-large and chair of the standing committees shall constitute a quorum.
- 5) Section 5. The Executive Committee may make rules and set the agenda for the conduct of its meetings and the notice given thereof.
- 6) Section 6. Vacancies on the Executive Committee shall be filled at the next regularly scheduled meeting of the Board and by the same method as set forth in Article VI, Section 1.

g. Article VII. Standing Committees

- 1) The Standing Committees of the Board of Visitors shall be the Committee on Finance and Audit; the Committee on Academic Affairs; the Committee on Student Life; and the Committee on Development.

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2) The Rector shall appoint the chair and members of the committees. Each committee shall have a minimum of four members who shall serve for a period of two years. Three members shall constitute a quorum.

3) The duties of the committees shall be as follows:

a) The Committee on Finance and Audit

Finance. It shall be the duty of this committee to consider and make recommendations to the Board concerning fiscal policy and the financial and economic operations of the university. It shall be the duty of this committee to consider and make recommendations to the Board on matters relating to the buildings and grounds of the university. It shall be the duty of this committee to ascertain the existence of an effective accounting and internal control system. The Committee shall, through regular reporting to the Board, aid it in meeting its fiduciary responsibilities to the Commonwealth of Virginia.

Audit. It shall be the duty of this committee to oversee the entire audit function, both independent and internal. It is of primary importance that this committee provides good communication between the auditors and the Board of Visitors. The committee shall examine and approve the annual financial statement of the University to the Board of Visitors that the President. submits by November 1 of each year and to conduct other such audits as deemed necessary for the good order of the University's finances. The committee shall meet at least once each year and as needed at other times.

b) The Committee on Academic Affairs. It shall be the duty of this committee to consider and make recommendations to the Board on matters of faculty appointments and the academic organization of the university.

c) The Committee on Student Life. It shall be the duty of this committee to consider and make recommendations to the Board on policies affecting the students of the university.

d) The Committee on Development. It shall be the duty of this committee to consider and make recommendations concerning the ways and means of fostering the relationship between the university and its alumni and the general development and fund-raising efforts of the university. The committee shall oversee the management by the University of its investment policy.

h. Article VIII. Ad Hoc Committees

1) The Rector may from time to time appoint ad hoc committees of the Board as the Rector deems necessary for the good conduct of Board and University affairs. Each such committee shall have a minimum of four members, including a chair appointed by the Rector. Three members shall constitute a quorum.

2) The duties of all ad hoc committees shall be specified by the Rector at the time of their appointment.

i. Article IX

1) The President of the University shall be the chief executive and academic officer of the University. The President shall be appointed by the Board and shall serve at its pleasure.

2) Duties of the President — The President shall

a) attend all meetings of the Board and shall have notice of and the privilege of attending all meetings of its committees;

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- b) have responsibility for the operation of the University in conformity with the purposes and policies determined by the Board;
 - c) act as adviser to the Board and shall have responsibility for recommending to it for consideration those policies and programs which in the President's opinion will best promote the interests of the University;
 - d) recommend to the Board long-range educational goals and programs and the new degrees which may be best suited to attain those goals and programs;
 - e) recommend to the Board the election, compensation, promotion, and leaves of absence of the faculty except as otherwise provided;
 - f) have primary responsibility for the establishment and maintenance of proper relationships with the graduates of the University;
 - g) at all times maintain cordial relationships with the students, guarding and protecting their best interests;
 - h) submit to the Board at the June meeting each year an annual budget for the operation of the University for the following fiscal year, and shall prepare and submit to the Governor, after approval by the Board, a biennial budget request as required by law or regulation;
 - i) promote the development of the endowment funds of the University and be authorized to accept any gift or grant subject to the approval of the Governor as required, making a report thereon to the Board of such gifts or grants;
 - j) present by November 1 of each year the annual financial statements of the University to the Board of Visitors, the Secretary of Education, and, under oath, to the Auditor of Public Accounts as required by Section 2.1-160 of the Code of Virginia (1950), as amended; [report of the President to the Board at its January meeting] and to give the Board an update of University matters at each meeting of the Board.
 - k) perform such other duties as may be required by the Board.
- j. Article X. Hearings
The Board at its discretion shall hear such appeals, as are provided for in the University regulations.
- k. Article XI. Amendment of By-Laws
The By-Laws may be amended at a regular meeting of the Christopher Newport University Board of Visitors provided that the amendment has been submitted in writing at the previous meeting and shall receive not less than eight affirmative votes.
- l. Article XII. Construction of By-Laws
These By-Laws and any amendments shall be construed consistently with the provisions of the laws of the Commonwealth of Virginia.
- m. Article XIII. Date of Implementation
The effective date of the provisions of these By-Laws shall be ~~April 29, 2008~~, **June 14, 2009** and as of that date shall supersede all prior actions of the Board which are inconsistent with them.

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2. Policies of the Board of Visitors of Christopher Newport University

a. General Policies

The Board authorizes the establishment of a *University Handbook*, which shall be a collection of documents which fall into three categories.

The first category is Board Bylaws and Policies. The contents of the documents in this category are contractual in nature and authorized by the Board.

The second category is University Regulations. The contents of the documents in this category are subordinate to, and derived from the Board Bylaws and Policies, and are authorized by the President under delegated authority from the Board, with right of review. They are contractual in nature.

The third category is University Information, the contents of which documents are authorized by the Vice Presidents under the delegated authority from the President, and are not contractual in nature, and may be changed at any time.

A *University Handbook* Committee, appointed by the President, reviews all proposed changes to the University Regulations and Information categories of the *Handbook*, and makes its recommendations to the President.

The maintenance of the *Handbook* is the responsibility of the President or the President's delegate.

Should the occasion arise for an official interpretation of the contents of the *Handbook*, that interpretation is vested in the President, subject to review of the Board. The Board reserves the right from time to time to clarify and/or change, consistent with applicable law, the contractual conditions and contents of the documents contained in the *Handbook*.

Consistency

All by-laws, handbooks, policies, regulations, and procedures of the faculty, students, administration, alumni, and other organizations of the University must be consistent with, or subordinate to the By-laws and Policies of the Board of Visitors (hereinafter referred to as the "Board").

Construction

These policies shall be construed consistently with the laws of the Commonwealth of Virginia; and nothing contained herein shall affect or diminish the rights and powers thereby vested in the Board.

Independence

Although certain policies and procedures contained in the documents in the *Handbook* and in other places may be similar to those of the American Council on Education, the American Association of State Colleges and Universities, the Southern Association of Academics and Schools, the American Association of University Professors, and other organizations, the Board hereby declares that its policies and procedures are independent of those or any other organizations: it shall not be bound by interpretations of its policies by any organizations. Moreover, the University does not consider membership in any organizations as binding to follow recommendations, policies, procedures, interpretations, guidelines, or any other statements by any organizations of which it is a member.

Emergency Provisions

The Board by vote of two-thirds majority of a quorum at any regular or specially called meeting may declare a "State of Emergency" and thereafter take whatever actions by a simple majority it deems necessary toward resolution of the emergency state.

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Financial Exigency

The Board by vote of two-thirds majority of a quorum at any regular or specially called meeting may declare a “State of Financial Exigency.” The condition of financial exigency is defined as a circumstance in which the University will clearly violate its primary financial policy of liquidity, which is herein stated. It is a circumstance in which recorded or anticipated expenditures are expected to exceed anticipated revenues and fund balances by material amounts, requiring substantive budgetary reductions to achieve a balanced state in the institutional budgets. The state of financial exigency may exist in the institution as a whole or within financial account groups as defined by numbered items in the Commonwealth Appropriations Act.

Upon declaration of a state of financial exigency, the Board shall direct the President to prepare revised budget plans. Such plans shall be based on general guidelines as may be provided to the President at the discretion of the Board, including program reduction, and other actions as may be necessary to reduce anticipated expenditures. The revised plan shall be subject to the final approval of the Board.

Control of Content

The Board reserves the right to withdraw, add to, or change the content of publications, handbooks, or other Christopher Newport University materials.

b. Academic Policies

1) Admission

The Board shall determine the general policies for admission of students to the University.

2) Curriculum

Courses of study shall be developed under the direction of the President, consistent with the mission of the University and applicable laws of the Commonwealth.

3) Instruction

Subject to the legal obligations of the University and to the approval of the Board, and except as otherwise provided, actual instruction shall be discharged by the faculty of the University under the direction of the President.

4) Academic Credit

The University shall operate on the semester credit unit system.

5) Academic Freedom

The Board recognizes “academic freedom” as:

- a) the right to full freedom in the classroom in presenting and discussing subjects within one’s own recognized area of academic expertise germane to the course. The Board does not construe academic freedom in the classroom as constituting license on the part of the faculty members to deviate from legitimately established definitions of course content or conduct;
- b) the right to full freedom in scholarly research and publication within the time and resource limits imposed by teaching as a faculty member’s primary obligation to the University;
- c) the right of a faculty member, when speaking or writing as a private citizen, to be free from institutional censorship or discipline; provided, the faculty member, consistent with one’s obligation as a member of a learned profession and employee of the University, should endeavor to be accurate, to exercise appropriate restraint, to show respect for the opinions of others, and to make every reasonable effort to indicate that the faculty member is not an institutional spokesperson.

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6) Degrees

Degrees authorized by the Board will be conferred upon students who have completed satisfactorily the prescribed courses of study for such degrees as approved by the President.

7) Graduation

The University shall conduct at least one formal graduation exercise in each calendar year.

8) Awards

The Board of Visitors may confer the following:

a) Honorary Degrees

- (1) Doctor of Science, for scholarship in science
- (2) Doctor of Letters, for scholarship other than in science or the humanities
- (3) Doctor of Humane Letters, for scholarship in the humanities
- (4) Doctor of Laws, (generally) for distinguished service to the Commonwealth and to learning

b) Other Awards

- (1) Distinguished Service Award
- (2) Mace Award
- (3) Plaque of Recognition

9) Accreditation

The University shall maintain its accreditation by the Southern Association of Colleges and Schools.

c. Personnel Policies

1) Affirmative Action and Equal Opportunity

Christopher Newport University is an Affirmative Action and Equal Opportunity Employer.

2) Appointments

- a) The Board exclusively is empowered to make all full-time faculty appointments, administrative/professional or instructional, upon recommendation by the President. All Instructional Faculty appointments shall be for the term as specified in the appointment contract.
- b) In accordance with Resolution 1, dated December 14, 1993, the Board of Visitors delegates to the President of the University the authority to act on its behalf, in any instance in which he deems such action appropriate, as the final authority on the appointment of full-time, salaried members of the teaching/research and/or administrative/professional faculty of the University, regardless of type of appointment status. The President shall report the substance of all actions taken under the authority of this resolution to the Board of Visitors at the first regular meeting of the Board following any exercise of the authority hereby delegated.

3) Completeness of Contracts

- a) Individual contracts constitute the complete agreements of employment between Christopher Newport University and its employees. No covenants or promises other than those expressly set forth in such contracts are made by the University.
- b) Incorporation by reference into such contracts of documents and materials beyond those referred to in the contract is explicitly disclaimed.

4) Leaves

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It is the policy of the Board to grant to its personnel leaves of absence which benefit the University. Leaves may be given with or without pay and with or without fringe benefits.

5) Academic Rank

The Board authorizes the following academic ranks, in hierarchical order:

- a) Distinguished Professor
- b) Professor
- c) Associate Professor
- d) Assistant Professor
- e) Instructor

Teaching Loads

The workload of full-time Instructional faculty requires teaching, an ongoing program of professional—development, student advising, and service to the Department, College, University, and professional and civic—communities. The full-time teaching load for probationary **and tenured** faculty may consist of twelve (12) lecture hours or the equivalent per week in either the Fall or Spring term, and nine (9) lecture hours or the equivalent per week in the remaining semester, for a total of twenty-one (21) lecture hours per academic year. For **tenured-and** restricted faculty, the full-time teaching load may consist of twelve (12) lecture hours or the equivalent per week, for a total of twenty-four (24) lecture hours per academic year. **The full-time teaching load for tenured faculty shall adjust to match that of probationary faculty in Fall 2010.** Teaching loads **are may be** adjusted, however, when circumstances warrant, **including during the retirement year.**

7) Uniform Faculty Evaluation

There shall be uniform plans for the evaluation of Instructional and Administrative faculty.

8) Promotion of Faculty

All faculty promotions are elevations in academic rank only and are made by the Board, upon non-binding recommendation of the President.

9) Tenure

The Board recognizes the concept of tenure as the right of a faculty member having been conferred such status by the Board, to be offered **at the end of an each**-academic year, employment for **each the** succeeding academic year at an **academic year salary and** academic rank no less than the **stipulated academic year salary and** academic rank of the preceding academic year. **If, in the sole judgment of the Board, appropriations from the Virginia General Assembly are sufficient to do so, the offer of employment will include an academic year salary that is at least equal to the stipulated academic year salary of the preceding academic year,** subject to the contractual terms and conditions of employment which exist from period to period. Only the Board confers tenure and all rights incident thereto end with termination of employment. Only faculty whose appointment is with rank in an academic department are eligible for tenure. Tenure cannot be earned *de facto*, regardless of years in service. Administrative faculty cannot be tenured in their administrative positions. A tenure appointment may be terminated as provided in Section II.2.c.12) of this *Handbook*.

10) Hearings

a) Mandatory

The Board shall provide a hearing for any full-time faculty member who has been dismissed for cause, if requested in writing by the employee within 30 days of notification of the dismissal.

b) Discretionary

The Board may hear appeals, of full-time faculty on decisions of the President on matters of initial employment, promotions, tenure, or terminations other than dismissal, at its discretion.

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11) Retirement

The age 70 mandatory retirement provisions have been removed from the Virginia Supplemental Retirement Act for state employees and teachers, as well as for employees serving under contracts of unlimited tenure at institutions of higher education.

12) Termination of Tenure Appointments

Employment of a tenured faculty member may be terminated at any time as a consequence of:

- a) Retirement
- b) Resignation
- c) Failure of the faculty member to execute and return a new employment contract within the time period specified by the University, such failure to be deemed a voluntary resignation
- d) Physical or mental incapacity
- e) Financial exigency as declared by the Board of Visitors
- f) Noncontinuance of positions compensated by wages
- g) Elimination or reduction of a program, department, or college/school
- h) Declaration of an emergency, as made by specified Board resolution
- i) Dismissal for one or more of the following causes:
 - (1) Incompetence in one or more areas of assigned job responsibilities
 - (2) Continuing neglect of duty in one or more areas of assigned job responsibilities
 - (3) Academic misconduct in one or more areas of teaching, research, public service, or administration
 - (4) Physical or mental incapacity in one or more areas of assigned job responsibilities
 - (5) Fraud or falsification of official documents, credentials, or experience
 - (6) Violation of Board policies
 - (7) Violation of the terms of the employment contract
 - (8) Violation of the rights and freedom of students, Board members, or employees of the University
 - (9) Conviction of a felony after initial employment

13) Termination of Nontenure Appointments

All appointments for faculty not on tenure shall be for the period specified in the employment contract and shall terminate automatically at their expiration date. A new appointment may be made for nontenured faculty in writing by the University at its discretion. The University is not obligated to show cause when no new appointment is made. Nontenured faculty shall be given reasonable notice of the University's intention not to offer a new appointment.

Employment of nontenured faculty also may be terminated at any time as a consequence of one or more of the circumstances under which the employment of a tenured faculty may be terminated (Section II.2.c.12)).

14) Termination of Employees Other Than Faculty

Employment of persons other than faculty shall be terminated in accordance with the provisions of the Virginia Personnel Act and applicable directives of the Department of Personnel and Training of the Commonwealth.

15) Sexual Harassment

- a) Rationale

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The Board of Visitors has a substantial and compelling responsibility to prohibit conduct by members of the University community which adversely affects the learning process, the unique academic working environment, or the University's academic image and reputation. Sexual harassment by any member of the campus community subverts the educational mission of the University and endangers the educational experiences, the careers, and the mental, physical, and/or financial well-being of faculty, students, and staff. The Board of Visitors expects the highest standards of personal behavior from its faculty, staff and students.

b) Prohibited Acts

The Board of Visitors defines sexual harassment as being any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature that meets one or more of the following three conditions:

- (1) Such conduct requires submission/acceptance explicitly or implicitly as a term or condition of an individual's employment or educational pursuit.
- (2) Agreement to submit/accept or the rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual.
- (3) Such conduct has the purpose or effect of substantially and unreasonably interfering with any individual's performance or of creating an intimidating, hostile or offensive working or learning environment for any individual.

Sexual harassment by any member of the University community is a violation of both law and University policy and will not be tolerated.

c) Sanctions

Violations of this policy by faculty, staff, or students shall be sanctioned under the appropriate disciplinary procedures for faculty, staff, or students. In cases involving sanctions for the conduct of faculty, sanctions include dismissal pursuant to section II.2.c.12) or II.2.c.13), as appropriate, of the *University Handbook*, including:

- (1) academic misconduct in one or more areas of teaching, research, public service, or administration; b) violation of Board policies; c) violation of the terms of the employment contract; or d) violation of the rights and freedom of students, Board members, or employees of the University. In cases involving sanctions for the conduct of students, the *Code of Student Rights, Responsibilities, and Conduct* shall apply. In cases involving sanctions for the conduct of classified employees, the applicable standards of conduct established by the Department of Personnel and Training, promulgated pursuant to the Virginia Personnel Act, shall apply.

d) Complaints

Complaints of sexual harassment shall be directed to the Director of Equal Opportunity for investigation.

e) False or Malicious Charges

This policy shall not be used to bring false or malicious charges against fellow students, faculty members, or employees. Disciplinary action under University personnel policies or the *Code of Student Rights, Responsibilities, and Conduct*, as appropriate, shall apply.

16) Faculty-Student Relationships

a) Rationale

The Board of Visitors has a substantial and compelling responsibility to prohibit conduct by members of the University community which adversely affects the learning process, the unique

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academic working environment, or the University's academic image and reputation. The University's educational mission requires that the relationship between the faculty of the University and the students of the University be professional in nature. To this end, the Board deems it necessary and appropriate that *every* instructional faculty member and *every* administrative/professional faculty member have a *professional* relationship to and responsibility toward *every* student of the University. The Board deems such professional relationships to be incompatible with intimate relationships. The Board deems such intimate instructional faculty-student and administrative/professional faculty-student relationships to have the potential to subvert the educational mission of the University; to have the potential to affect adversely the educational experiences of students; to have the potential to affect adversely the effectiveness of both instructional and administrative/professional faculty in the discharge of their professional responsibilities; and to have the potential to affect adversely the mental, physical and/or financial well-being of faculty, staff, and students — including in all instances instructional and administrative/professional faculty, staff, and students who may not be direct parties to the relationship itself.

b) Prohibited Acts

No instructional or administrative/professional faculty member shall have an amorous relationship (consensual or otherwise) with a student. However, nothing in this policy shall be construed as prohibiting the spouse of an instructional or administrative/professional faculty member from enrolling as a student. Moreover, nothing in this policy shall be construed as prohibiting the spouse of a student from accepting employment as an instructional or administrative/professional faculty member.

c) Sanctions

Violations of this policy by instructional or administrative/professional faculty members shall be considered cause for dismissal. In dismissing instructional faculty, the University will follow the Due Process procedures set forth in the *University Handbook*. However, the University may place the instructional faculty member on administrative leave with pay pending the completion of the dismissal process.

d) Complaints

Complaints involving violations of this policy shall be directed to the Director of Equal Opportunity for investigation.

e) False Charges

A student who knowingly brings false charges under this policy against an instructional or administrative/professional faculty member shall be considered in violation of the Honor Code and, upon conviction of the offense, shall be expelled. An instructional or administrative/professional faculty member who knowingly brings false charges under this policy against another instructional or administrative/professional faculty member shall be considered guilty of violating the “rights and freedoms of students, Board Members, or employees of the University.” Under these by-laws, violation of the “rights and freedoms of students, Board Members, or employees of the University” constitutes cause for termination of employment. A classified employee who knowingly brings false charges under this policy against an instructional or administrative/professional faculty member shall be considered to have lied to their employer and shall be subjected to appropriate discipline under the Commonwealth of Virginia State Classified Employee system.

d. Financial Policies

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1) The primary principle which shall govern financial management of the University is liquidity, which is that the Board shall authorize only expenditures of those funds which the University has received. Budgeted expenditures will be developed on reasonable expectations of revenues; however, irrevocable commitments to expend, or actual expenditures will not occur until the University is in receipt of revenues, gifts, transfers, and appropriations adequate to support such commitment or expenditure.

2) Reporting Principles

Revenues shall be collected, expenditures made, and transactions recorded and reported in accordance with established principles, regulations, and law. A listing of applicable statements of standards and governing directives shall be presented by the President to the Board and annually reviewed by the Board.

3) Tuition and Fees

The Board shall establish mandatory tuition and fee schedules. Non-mandatory fees and user rates shall be established by the President or the President's designee. The underlying principle governing establishment of fees, tuition, and user rates is that sufficient funds be raised to support planned operations and capital development with due consideration to requirements of law, market conditions, and fund balances which may otherwise be available from appropriations and gifts.

4) Tuition Waiver

The Board shall establish appropriate tuition waiver plans.

5) Internal Audit

There shall be an Office of Internal Audit which shall report to the Board.

6) Compensation Plan

The Board shall annually approve a plan of compensation for faculty.

7) Budget

The Board shall annually approve a budget.

e. Policy Concerning Student Conduct

The University shall establish and maintain standards of student conduct in order to preserve the rights and enforce the responsibilities of students as members of the University community.

f. Operational Policy

The President of the University shall be the chief executive and academic officer of the University. The President shall have responsibility for the operation of the University in conformity with the purpose and policies determined by the Board.

g. Policy Concerning Indemnification

The following policy of indemnification includes all prior occurrences brought to action or which may be brought to action.

Christopher Newport University shall, to the extent permitted by law, indemnify each of its Board members, officers or employees (including persons who serve at its request as trustees, directors, officers, employees, or agents of other organizations in which it has an interest) against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise or settlement, as fines and penalties, and for attorneys' fees, reasonably incurred in connection with the defense or disposition of any action, suit or proceeding, whether civil, criminal, administrative, arbitral, or investigative and whether derivative or nonderivative, in which such person may be involved or with which such person may be threatened, while in office or thereafter, by reason of being a Board member, officer, or employee of the University, except

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with respect to any matter as to which such person shall have been adjudicated in any such action, suit, or proceeding not to have acted in good faith in the reasonable belief that the action was in or not opposed to the best interests of the University; provided, however, that as to any matter disposed of by a payment in compromise or settlement made by such Board member, officer, or employee, pursuant to a consent decree or otherwise, no indemnification shall be provided unless such compromise or settlement shall be approved as in the best interests of the University, after notice that it involves indemnification, (a) by a majority vote of a quorum of disinterested Board members of the University or (b) if such a quorum is not obtainable, by a majority of the disinterested Board members, provided that, in the case of a Board member, there has been obtained a written opinion of the Attorney General of Virginia, or the Attorney General's designee, other than the University's legal counsel, to the effect that such Board member appears to have acted in good faith in the reasonable belief that the Board member's action was in or not opposed to the best interests of the University or (c) if there be no disinterested Board members, by a majority vote of a quorum of Board members of the University provided that, in the case of a Board member, there has been obtained a written opinion of the Attorney General of Virginia, or the Attorney General's designee, other than the University's legal counsel, to the effect that such Board member appears to have acted in good faith in the reasonable belief that the Board member's action was in or not opposed to the best interests of the University.

Indemnification shall include payment by the University of expenses, including attorney's fees, incurred in defending an action, suit or proceeding in advance of the final disposition of such action, suit or proceeding, upon receipt of an undertaking by or on behalf of the Board member, officer, or employee indemnified to repay the amount so paid, even though such person shall be adjudicated to be not entitled to indemnification.

h. Policy on Ownership of Intellectual Property

1) Introduction

- a) The results of scholarly activities may take many forms, including research papers, books, inventions, computer software, musical scores, articles for magazines and journals, and new technologies. Many of these intellectual properties have value for the owner(s) and should be protected under the appropriate patent or copyright laws.
- b) This policy is designed to:
 - (1) protect the equities of the authors and the inventors, as well as the University,
 - (2) define the responsibilities, rights and privileges of those involved, and
 - (3) establish basic guidelines to be included in the administration of this policy.

2) Definitions

Most of the following definitions explain words or phrases that are used in particular ways in these guidelines. Two terms, "assigned duty" and "significant use of general funds," are defined because state law requires that they be defined. Throughout these guidelines, where it is appropriate, the singular form of a noun also includes the plural: "creator" also means "creators" if there are more than one, etc.

- a) Assigned duty (Required by legislation for determining when transfers of intellectual property must be approved by the Governor.)

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"Assigned duty" is narrower than "scope of employment," and is an undertaking of a task or project as a result of a specific request or direction. A general obligation to do research, even if it results in a specific end product such as a vaccine, a published article, or a computer program, or to produce scholarly publications, is not a specific request or direction and hence is not an assigned duty. In contrast, an obligation to develop a particular vaccine or write a particular article or produce a particular computer program is a specific request or direction and is therefore an assigned duty.

b) Claims an interest

The University "claims an interest" in intellectual property when it asserts a right in the property under its intellectual property policy. The University may choose not to "claim an interest" in some forms of intellectual property that it does not want to own, even though it might legally be able to assert ownership.

c) Council or State Council

The State Council of Higher Education for Virginia.

d) Creator

Either an inventor in the context of patentable inventions, or an author in the context of copyrightable works of authorship.

e) Employees

Full and part-time faculty; classified employees; administrative staff; and students who are paid for specific work by the University. Students may be employees for some purposes and not for others. If they are paid as student assistants, for example, or given grants to do specific research, they will be employees. Students receiving general scholarship or stipend funds would not normally be considered employees.

f) Intellectual Property

Anything developed by anyone covered by the University's intellectual property policy that fits one or more of the following categories:

- (1) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of these; or
- (2) an issued patent; or
- (3) a legal right that inheres in a patent; or
- (4) anything that is copyrightable (in legal terms, this means anything that is an original work of authorship, fixed in a tangible medium of expression).

g) Reporting Period

The period from July 1 of one year through June 30 of the following year.

h) Royalties Received

Any value received during the reporting period, including cash payments as well as the market value of any property or services received, in consideration for a transfer of any intellectual property in which the University claims an interest.

i) Significant Use of General Funds (Required by legislation for determining when transfers of intellectual property must be approved by the Governor.)

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This phrase, and the phrase "developed wholly or significantly through the use of general funds," mean that general funds provided \$10,000 or more of the identifiable resources used to develop a particular intellectual property. A reasonable cost should be assigned to those resources for which a cost figure is not readily available, such as salary, support staff, and other equipment and resources dedicated to the creator's efforts. Resources such as libraries that are available to employees generally should not be counted in the assessment of the use of general funds.

- j) State Council
See "Council."

- k) Work-Made-for-Hire
Intellectual property, either an invention or copyrightable material, which has been produced by an individual or group acting as an employee of the University with the use of University resources.

3) Applicability of the Policy

The Intellectual Property policy of Christopher Newport University applies to employees; visiting faculty and researchers; and those employees and visitors covered by sponsored program agreements or other contractual arrangements, as well as employed students.

4) Ownership of Intellectual Property

Unless otherwise required by agreement, law, or this policy, Christopher Newport University assumes the creator of intellectual property retains the proprietary interest.

a) Patentable Discoveries and Inventions

Any employee of the University who has made a discovery or invention which in the employee's judgment appears to be patentable, or upon which the employee plans to seek to obtain a patent, shall bring such discovery or invention to the attention of the Chair of the Patents Subcommittee. The purpose of this disclosure is to determine whether and to what extent the University has a proprietary interest in the discovery or invention. All such discoveries should be disclosed as promptly as possible. Upon receipt, a disclosure shall be reviewed by the Subcommittee on Patents. Each discovery or invention should be disclosed regardless of whether or not the inventor(s) plan to exploit the discovery or invention for financial gain. Failure to make the required disclosure may result in a forfeiture of any proceeds or profits which the University would otherwise be obligated to pay pursuant to this policy.

b) Ownership of Discoveries and Inventions

(1) Outside Ownership

Certain research projects sponsored by governmental agencies, industrial organizations, or others may entitle the sponsors to ownership of a discovery or invention made by a faculty or staff member of the University without payment of any royalty. This ownership may occur when the sponsor provides funds for the entire project and in research involving the testing of a product or products developed by the sponsor. The Chair of the Patents Subcommittee is authorized to ratify such agreement on patent matters where it is necessary to do so as a prerequisite to University participation in the project or receipt of a grant or contract. The determination of the Chair may be subject to review by the Subcommittee on Patents.

(2) Faculty or Staff Ownership

A discovery or invention developed by a faculty or staff member shall be the exclusive property of the inventor(s), if: (i) the University has contributed no funds, facilities, or time of the inventor(s) and (ii) the discovery or invention is not along lines related to any University research program then in progress or completed within the past twelve (12) months with which the inventor(s) may have a connection.

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(3) Review and Disposition of New Discoveries and Inventions

Where the University has a proprietary interest, the discovery or invention shall be reviewed by the Chair of the Patents Subcommittee. A recommendation may be made to seek patent protection. In the absence of interest on the part of commercial or University-related entities to license and/or develop the invention or new technology, the invention will be reviewed by the Patents Subcommittee prior to releasing any interest to the inventor(s). Upon concurrence of the Subcommittee on Patents the invention may be pursued by the inventor's own patent agent, subject to the remaining provisions of this document. Expenses incurred by the inventor pursuing this option may be recoverable from subsequent royalty income received by the University. The University shall have the right to review the patent documents prior to submission of an application for patent.

Such determination shall be made within 90 days from the date of receipt of the disclosure, unless it is mutually agreed by the Subcommittee and the inventor(s) that additional time is needed and an alternative deadline is established. The inventor(s) shall have the right to make recommendations pertaining to such determinations.

If the discovery or invention in which the University has a proprietary interest is submitted to an organization for invention development, and the organization decides not to file or abandons an application for a patent, the invention may be submitted to other organizations for the same purpose. If all potentially interested organizations have been queried, the application is abandoned, or no action is taken within the 60 days after receipt of the notice of declination, the University's rights to the invention shall be assigned to the inventors at the inventor's request. At the time of assignment, the University may elect to continue to maintain its proprietary interest.

c) Determining Copyright Ownership

All materials in which the University may have a proprietary interest under the provisions of this policy shall be promptly reported in writing by University personnel concerned, through their department head, to the Copyright Subcommittee. The purpose of this disclosure is to determine whether, and to what extent, the University has a proprietary interest in the materials. This report shall include a full and complete disclosure of the subject matter of the materials concerned and identity of all persons participating in the development.

The Copyright Act (P. L. 94-553) provides that, when a copyrightable work is produced by one person who has been employed by another for that purpose, it is the employer and not the actual producer that is the copyright proprietor. In the academic setting, complex issues can arise as to whether the faculty or staff person produced the copyrightable work in the course of the employee's employment. Generally, the courts have placed a heavy burden of proof on the employee to prove the copyright was not a product of the employee's employment.

(1) Outside Ownership

Funds and facilities provided by governmental, commercial, industrial or other private organizations, which however are administered and controlled by the University, shall be considered to be funds and facilities provided by or through the University for the purpose of this policy statement. Agreement between the University and the sponsor pertaining to sharing royalties and title to copyrightable materials shall be addressed in the contract between the University and the sponsor. University personnel who contract with third parties for the development of copyrightable materials can relinquish no greater interests in the materials than they legally possess. Therefore, if substantial University resources are employed in the development of materials subject to copyright, the University retains

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interests in the materials, regardless of the terms of a contract between the third party and the University employee, unless the University specifically has waived its rights.

(2) Faculty or Staff Ownership

Copyrightable materials developed by University employees shall usually be the property of the employee. The University will exercise ownership under the work-made-for-hire rationale only when the employee was assigned to create the specific product whose ownership is in question. A faculty member's general obligation to produce scholarly works (for example, textbooks and related instructional materials) does not constitute an assigned duty for purposes of determining copyright ownership. If a copyright work, produced as an assigned duty of an employee, is marketed, the employee ordinarily will not share in any royalties from sales of the work.

(3) Audio and Video Recordings

When a faculty member has been assigned to teach a specific class, and that class is transmitted electronically to another site, on or off campus, and in the performance of those duties, a recording is made simultaneously with such transmission, the resulting fixed work shall be considered University property. The retention and/or marketing of recordings for subsequent instructional use, on or off campus, will be undertaken only with the consent of the faculty member. Retention of such materials will normally be only for the academic term in which they are created.

(4) Return to Ownership

If, within a period of twelve (12) consecutive months, the University or its assignee fails to make progress toward exploiting copyrighted materials in which the employee has a share, the employee may make a written request to the Subcommittee on Copyrights that the ownership of the materials pass to the employee.

(5) Review for Obsolescence

Materials in which the University has a proprietary interest, but which are the result of the individual initiative of an employee, may be reviewed for obsolescence by the employee after five (5) years. If the employee considers the material to be obsolete, the employee has the right to refer the matter to the University Committee on Intellectual Property, with a recommendation for disposal of the material.

(6) Student Ownership

Ownership of intellectual properties developed by students who are also employees of the University will be determined by the rules which apply to all University employees. Copyrightable works developed in connection with course work assignments may be deemed to belong to the student. However, in cases of significant use of University personnel and facilities in the development of the intellectual property, the University may exercise its right to ownership.

(7) Individuals External to the University

Individuals outside the University, who may hold intellectual properties that they wish to exploit, may request inclusion under the University's Intellectual Property Policy. If it is in the University's interest to accept such a request, the University and the individual shall execute a legally binding contract, clearly stating the terms and conditions of the arrangement. The sharing of royalties will be explicitly stated.

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5) Administrative Organization

a) Committee on Intellectual Property

The Committee on Intellectual Property is responsible for making policy recommendations to the President for dealing with patents, copyrights, and related mechanisms for the protection/exploitation of intellectual properties in which the University may have proprietary interest. The Provost shall serve as Chair of the Committee.

Two subcommittees shall be organized under the Committee on Intellectual Property. One subcommittee shall be responsible for various matters concerning University-originated inventions and new technology. The other subcommittee shall be responsible for matters relating to copyrightable materials. The full Committee on Intellectual Property shall comprise the subcommittee members and the *ex officio* members listed below. Each subcommittee shall be composed of three faculty members, having experience with patent or copyright matters, depending on the subcommittee appointment. The Subcommittee on Patents shall be chaired by the Chair of the Physics and Computer Science Dept. The Subcommittee on Copyrights shall be chaired by the Dean of the College of Liberal Arts and Sciences. ~~The Assistant to the President~~ **University Counsel** shall serve as *ex officio* member of the Committee and shall sit on both Subcommittees.

The President shall receive faculty nominations from the Faculty Senate and shall make all appointments. All terms are for three years. Members may be reappointed.

The Committee on Intellectual Property is composed of the members of the Subcommittee on Patents and the Subcommittee on Copyrights, the *ex officio* members, and the Chair. The President shall make all appointments. All terms are for three years. Members may be reappointed. The Committee shall have the following authority and responsibility with respect to intellectual property.

- (1) To develop and recommend University policy to the President dealing with intellectual property.
- (2) To review discoveries, inventions and copyrightable materials to determine whether or not the University has proprietary interest.
- (3) To hear and make recommendations to the President on disputed ownership of discoveries, inventions and copyrightable materials.
- (4) To hear and make recommendations to the President on disputed equities of the University, the inventors or authors and other parties associated with the intellectual property concerned.
- (5) To make recommendations to the President for the sharing of royalties between the University and the authors or inventor(s) of the intellectual property in which the University has a proprietary interest.
- (6) To promulgate such guidelines and procedures as may be necessary for the implementation of this policy, subject to review and approval of the President.

b) Subcommittee on Patents

The Subcommittee on Patents shall:

- (1) Review all invention disclosures. Such review, when possible, should occur prior to submission of disclosures to any other party. Exceptions to this practice must be approved by the Subcommittee Chair or Committee Chair and by the Inventor.

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- (2) Review, as appropriate, agreements on patent matters that may be entered into as a prerequisite to University participation in a sponsored project or receipt of a grant or contract.
- (3) Establish deadlines for the disposition of inventions and discoveries, as provided for in the section Ownership of Discoveries and Inventions (*See h.4)b*)).
- (4) If a decision is made by the University not to pursue a potential patent or other forms of protection or exploitation, advise the appropriate individuals on the assignment of the University's rights to an invention or discovery.

c) Subcommittee On Copyrights

The Subcommittee on Copyrights shall:

- (1) Review all disclosures of copyrightable materials. Such review, when possible, should occur prior to submission of such information to any other party. Exceptions to this practice must be approved by the Subcommittee Chair or by the Committee Chair and by the author of the copyrightable materials.
- (2) Review, as appropriate, agreements on copyright matters that may be entered into as a prerequisite to University participation in a sponsored project or receipt of a grant or contract.
- (3) Establish deadlines for the disposition of copyrightable materials as provided for in the Section determining Copyright Ownership (*See h.4)c*)).
- (4) If a decision is made by the University not to pursue publication or marketing of these materials, advise the appropriate administrators on the assignment of the University's rights to copyrightable materials.

6) Procedures for Notification

Each Subcommittee shall establish, maintain, and distribute procedures and forms for the reporting of University-originated inventions, new technology, and copyrightable materials. The notification must describe the intellectual property, identify all creators, and identify the source of funding that has supported creation of the intellectual property. When more than one person created the intellectual property, the notification must specify the percentage that each claims in any royalties accruing to them resulting from the property. Notification should be made as promptly as possible. If Christopher Newport University does not claim an interest in an intellectual property about which it is notified, it will so advise the creator in writing.

7) Protection and Commercialization

Christopher Newport University will decide which patent and copyright properties if any, they will commercialize on a case-by-case basis.

a) Patents

Because patent review is highly technical, few institutions can maintain the entire operation in-house. In order to evaluate a possible patent Christopher Newport University will submit each employee's invention to an external agency specializing in patent review and commercialization, such as the Center for Innovative Technology, Research Corporation, University Patents, or similar organizations. Agencies like these can evaluate inventions for patentability and commercial potential, and obtain patents, license them, manage the royalties, and protect the patents from infringement.

b) Copyrights

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Copyright protection applies to any work of authorship as soon as it is written or otherwise recorded. When a work is published, it should contain a copyright notice: a small "c" in a circle or the word "copyright" or the abbreviation "copr.", the year of publication, and the name of the copyright owner. Registration of copyright is not generally a condition of copyright protection, but is a prerequisite to an infringement suit. Registration does offer the advantages of public record of the copyright claim, *prima facie* evidence of the validity of the copyright, and availability of a broader range of remedies in infringement suits.

Registration can occur at any time, but requires a small fee (currently \$10 for each work registered) and administrative time. Thus the decision of whether, and when, to register copyrights is a cost-benefit decision. As a practice, Christopher Newport University will seldom register a copyright until a high commercial value is perceived for a work. For example, a major computer program or a semiconductor chip design would be registered immediately, though a newsletter might never be registered.

8) Work-Made-For-Hire

a) Patents

Except as herein provided, the University shall obtain the entire right, title, and interest in and to any invention made by any faculty or staff member of the University: (a) while at work for the University or during working hours, as applicable, or (b) with a substantial contribution by the University of facilities, equipment, materials, funds, or information, or of time or services of other University employees during working hours, or (c) which is made in consequence of the official assigned duties of the inventor. For purposes of this policy, it shall be deemed that an invention has been "made-for-hire" if the employee is employed or assigned to: (a) invent, improve, or perfect any art, machine, design, manufacture, or composition of matter, (b) conduct or perform research, development work, or both, (c) supervise, direct, coordinate, or review University-financed or conducted research or development work, or both, or (d) act in a liaison capacity with agencies or individuals engaged in such research or development. This assignment, however, does not preclude the sharing of royalties or other payments with the employee in accordance with this policy.

In any case where the contribution of the University, as measured by the foregoing criteria, is *de minimis* and is insufficient to justify equitably the requirement of assignment to the University of the entire right, title, and interest, the University shall reserve an exclusive, irrevocable, royalty-free license in the invention with power to grant licenses for all University purposes.

The University claims no interest in the invention if University facilities, services, funds, or time have not been used. An example would be inventions resulting from pursuance of a hobby, not related to the employee's University activities, and conducted off campus.

b) Copyrights

In order to encourage creative efforts by the faculty and staff, the University will exercise its rights as an employer under the concept of "work-made-for-hire" only when: (1) the materials subject to copyright represents an assigned duty of a member of the faculty or staff of the University, and/or (2) substantial use of University facilities and resources is made in the production of the materials.

In any case where the contribution of the University, as measured by the foregoing criteria, is *de minimis* and is insufficient to justify equitably the requirement of assignment to the University of the entire right, title, and interest, the University shall reserve an exclusive, irrevocable, royalty-free license in the copyrightable work with the power to grant licenses for all University purposes.

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9) Management and Exploitation of University Intellectual Property

If the University possesses a proprietary interest, the President shall determine the manner in which the intellectual property shall be managed and exploited. With the Board of Visitors' approval the rights to patentable or copyrightable materials may be assigned to the Christopher Newport University Foundation. Upon such assignment, the Foundation shall have all rights to use, promote, manage, market, sell, or in any other way dispose of such material, on such terms and conditions, or for such consideration, if any, as the Foundation shall determine. However, the inventor(s) or author(s) shall have the right to make recommendations to the President on such matters through the appropriate administrative channels.

10) Substantial Use of University Facilities

What constitutes "substantial use" of University facilities and resources must be answered on the basis of the facts and circumstances of each case. The University will not ordinarily construe the provision of office or laboratory space, access to the library, or the payment of employees' salary as significant use of University facilities and resources.

As a general guideline, the use of University resources (other than the library, the employee's office or laboratory, and salary) will be considered substantial if the value of those other resources used exceeds \$5,000 in any twelve consecutive month period. Examples of resources subject to the \$5,000 limitation include computer charges, laboratory assistant or technician salaries and wages, laboratory materials, and secretarial salary.

11) Royalty Provisions

Where the University has an equity position in an intellectual property, the inventor(s) or author(s) and the University will share equally in any income received by or on behalf of the University from royalties, front-end payments, or incentives, after any expenses incurred by or on behalf of the University to protect, market, or develop the intellectual property have been repaid to the University. In this context the "University" shall be understood to include all those units (departments, centers, etc.) which have contributed materially towards development of the intellectual property. The University's share of royalties or other income shall be divided commensurate with involvement of the University units during development. In usual practice, division of the University share shall follow recommendations of the Committee to the President and shall typically include an assignment to the employee's primary unit (e.g., departments, centers, etc.) equal to at least 25% of the total income as defined above. The remaining portion of the University share shall be used to maintain an environment supportive of employee activities in development of intellectual properties.

Payments received by the University or its agents for an intellectual property that is not yet protected by patent or copyright shall also be distributed in accordance with this policy.

12) Dispute Resolution

Should any issues develop as to the ownership of the intellectual property involved, the Committee on Intellectual Property shall make a finding as to ownership and shall report such findings to the President for final resolution. The parties involved shall be entitled to appear before the Committee and to present evidence with respect to the disputed ownership. The Committee's determination shall be made in writing and shall contain a statement of the basis for its decision. The Committee shall also serve as an advisory body to assist University personnel in establishing the equitable and legal distribution of ownership.

The President, on his/her own motion or at the request of any interested party, may review any determination of the Committee. The President may affirm, modify or reject any determination of the Committee.

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13) Right Of Appeal

The inventor(s) or author(s) of an intellectual property covered by this policy shall have the right to appeal application of the policy regarding ownership, equity, classification, sharing of royalties, disposition, management, or exploitation of any patent or copyright, or any procedure relating thereto made by the appropriate subcommittee, to the Committee on Intellectual Properties.

The Committee will formulate recommendations relative to each such appeal, and will forward both the appeal and its recommendations to the President in a timely manner. The President will determine the University's response to each appeal, and will so notify the inventor(s) or author(s) and the Committee.

14) Transfers of Intellectual Property

Except when the Governor's prior written approval is required, the Board of Visitors may transfer any intellectual property in which the University claims an interest.

The Governor's prior written approval is required for transfers of title to patents and copyrights that were:

- a) developed wholly or significantly through the use of state general funds, by an employee of the University acting within the scope of the employee's assigned duties; or
- b) developed wholly or significantly through the use of state general funds, and are to be transferred to an entity other than the following:
 - (1) the Innovative Technology Authority; or
 - (2) an entity whose purpose is to manage intellectual properties on behalf of nonprofit institutions; or
 - (3) an entity whose purpose is to benefit the transferring institution.

When prior written approval is required, the President will send a description of the intellectual property and the proposed transaction to the State Council of Higher Education. Within thirty days, the Council will recommend action to the Governor, including any conditions the Council thinks should be attached to the proposed transfer. The Governor also may attach conditions to the transfer.

Note that approval is not required for the grant of a license to use an intellectual property, but only when actual title is to be transferred. The statute also requires the Council to define the conditions under which a "Significant use of general funds" occurs, and the circumstances constituting an "assigned duty," for the purpose of reporting transfers. These definitions appear in the Definitions section, under "significant use of general funds," and "assigned duty."

The University need not claim an interest in all intellectual properties in which they might legally be able to assert an interest. The requirements for approval of transfers of intellectual properties, and the following commentary, refer to intellectual properties in which the University does claim an interest.

Most intellectual properties will be developed by employees, but not all of those will be developed within the scope of assigned duties. When employees create intellectual property on their own initiative, or as part of their general obligation of scholarship, the University may transfer title to the property without approval if the transfer is to one of the entities noted as exception in this section.

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On the other hand, when the University specifically directs an employee to develop a particular intellectual property, the development becomes an assigned duty. If the development is done with significant use of state funds, the University must obtain the Governor's approval before transferring the property, whether or not the transferee is one of the entities listed as an exception in this section.

Note that an employment agreement (contract) allowing certain intellectual properties to be retained by an employee from the moment of their creation is not a "transfer" to the employee, and hence need not be reported. An intellectual property that is owned by the University and later transferred to an employee is a "transfer," however, and should be reported if it meets the requirement above. The requirement for approval of certain transfers refers to transfers by the University itself, not to later transfers made by anyone other than the institution.

15) Reporting Requirements

The General Assembly has directed the State Council of Higher Education, in cooperation with the Innovative Technology Authority, to collect and report certain information about intellectual property. So that the Council may comply with this requirement, each institution must annually collect and report the information for the preceding fiscal year. The Chair of the Committee on Intellectual Properties is designated as the person responsible for compiling and submitting the report.

The Council will annually set a date by which reports on intellectual property are to be received by the Council. Each annual report should include the following information:

- (a) The name of the University.
- (b) The name of the Chair of the Committee on Intellectual Property.
- (c) The number of intellectual properties in which the University claims an interest under its intellectual property policy. The number should be divided into patentable subject matter and copyrightable subject matter.
- (d) The name of all transferees to whom the institution has transferred any interests, including licenses, in intellectual properties. (The requirement to report the name of any transferee of intellectual property refers to transfers by the University itself, not to later transfers made by anyone other than the University.)
- (e) If the University is not able publicly to identify the transferee of any intellectual property, the University should identify the particulars of the transfer as well as the reasons why such information should not be reported. The Council will determine whether to report the information to the legislature.
- (f) The total royalties received by the University during the reporting period.

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