

## **Chapter 7 – Research**

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# Chapter 7 – Research

## {ESTABLISHMENT AND REVIEW OF CENTERS AND INSTITUTES (BOR IV-1.00)}

- Centers and institutes at Salisbury University facilitate teaching, research and service and are designed to activate and enhance the mission of the University. Unlike projects and grants which are more limited in nature, centers and institutes are generally created with a continuing mission.
- Centers and institutes are accountable to the University through the appropriate structures each serves. At the time of initiation, each enter

or institute provides a mission statement specifying goals, operational structure, financial provisions (budget, sources, management), space needs, and accountability/evaluation plans to appropriate deans or directors who seek the approval of the provost. A copy of the approve mission statement is filed with that provost.

- Regular center or institute reports are provided to the dean or director who conducts a periodic review of the center or institute.
- Each center and institute must comply with Salisbury University's policies related to operation, personnel and finances.

As of September 1998, the following centers and institutes are operating at Salisbury University.

Name	Mission	School
BEACON	Offering a variety of business, economic, enterprise and community development consulting services to a variety of clients.	School of Business
Center for Adolescent Health	Undertaking research that focuses on the development and evaluation of programs and policies that promote health and prevent diseases.	School of Science
Center for Applied Mathematical Sciences	Involving students in solving problems from business and industry.	School of Science
Center for Conflict Resolution, Inc.	Handling conflict resolution.	Academic Affairs
Center for Family and Community Life	Providing consultation and evaluation services to human service organizations	School of Education & Professional Studies
Eastern Shore Export Assistance Center	Providing companies in the eight eastern shore counties with international business, trade and investment assistance.	School of Business
Eastern Shore Small Business Development Center	Providing small business counseling and training for the eight counties of the Eastern Shore.	School of Business
Institute for Public Affairs and Civic Engagement (PACE)	Sponsors the Presidential Citizen Scholar Program, internships with local governments and non-profit organizations, projects that involve students in addressing local and regional governmental concerns, student-staff citizen opinion surveys for regional clients, the Paul S. Sarbanes Lecture Series and other lectures.	School of Liberal Arts
Lower Shore Child Care Resource and Referral Center	Providing referrals for child care and resources and training to child care provider.	School of Education & Professional Studies
Maryland Summer Center for the Arts	Providing an integrated arts enrichment program in the visual and performing arts for gifted and talented students in grades 7-11.	School of Liberal Arts
Edward H. Nabb Research Center for Delmarva History & Culture	Preserving the history and culture of the Maryland, Delaware, and Virginia region.	Library
Partnership for Adolescents on the Lower Shore	An AmeriCorps national service program, which delivers services to adolescents in a four-county region of Maryland's Lower Eastern Shore.	Student Affairs
Shore CAN Volunteer Center	Generating citizen action through volunteer service to address community needs on Maryland's Lower Eastern Shore.	Student Affairs Academic Affairs

Name	Mission	School
John B. and Florence Simoñds May Literacy Lab	Providing literacy tutoring for community members.	School of Education & Professional Studies
Technology Resource Center	Providing basic training in state-of-the-art technology applications in the classroom or any education setting.	School of Education & Professional Studies

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### {SOLICITATION AND ACCEPTANCE OF SPONSORED PROJECTS ([BOR IV-2.00](#))}

1. The Office of Grants and Sponsored Research has responsibility for grants administration and works with administrators and faculty interested in securing federal, state or private funds for projects requiring outside support.
2. Administrators and/or faculty initiate, conceive and develop proposals for prospective grants and awards. All proposals for specific sponsored projects shall be reviewed by institution personnel for consistency with all University System and institutional policies, for appropriateness to the mission of the institution, for liability assessment, and for program conduct and university support by relevant department chairs and deans and the provost. Where grant proposals require university financial or other support, proposal initiators need to secure necessary support from appropriate offices.
3. Grant applications must be submitted to the Office of Grants and Sponsored Research at least two (2) weeks before the day of final submission. The office recommends that all who are involved in proposal writing should submit preliminary budgets when they are first developed and well in advance of complete proposal submission and provide guidelines. This will ensure assistance from the office in necessary budget review and possible revision.
4. Each grant application and contract agreement must be accompanied by a completed Internal Review Form (see [Appendix K](#) for more details) available from the Office of Grants and Sponsored Research or at: [www.salisbury.edu/grants/Resources.html](http://www.salisbury.edu/grants/Resources.html). Provost's signature will be obtained by the Grants Office.
5. Once administrative review and the Internal Review Form for a proposal or contract are complete, the Grants Office will have the final proposal duplicated, distribute it to appropriate campus officials and submit it to the granting agency.

6. The Grants Office will work with grant and award recipients to help them fulfill administrative requirements and to ensure that the provisions of the grant are completed. The office also notifies the Office of Administration and Finance of grant approval so that accounting and fiscal records can be established, funds augmented to appropriate accounts or expended locally in accordance with current regulations, restrictions and grant agreements.
7. The Grants Office maintains files of guidelines, general information, application forms and other materials related to grant programs sponsored by many federal, state and local agencies.
8. The Grants Office submits annually to the chancellor a summary of sponsored project activity. The content and format of the report is determined by the University System of Maryland Office and includes, at a minimum, the number of awards and their dollar value.

**Note: See [Appendix J](#) in this handbook for information regarding Salisbury University's foundation grant.**

Amended August 2003 – BOR  
 Revised and Approved by Provost's Office on August 2003  
 Revised and Approved by Grant's Office on August 2003

### {HUMAN SUBJECTS RESEARCH ([BOR IV-2.10](#))}

The policy of the University of Maryland System is to respect and protect the rights and welfare of individuals. In the conduct of research, actions of the University of Maryland System and its constituent institutions will be guided, to the extent that they are applicable, by principles as set forth in such nationally accepted documents as the report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, Ethical Principles and Guidelines for the Protection of Human Subjects of Research (April 18, 1979). Actions of the University of Maryland System and its constituent institutions will also conform to applicable federal, state, and local laws and regulations.

In accordance with this policy, all University of Maryland System research activities which involve human subjects,

regardless of the level of risk foreseen, require review and approval, prior to the initiation of the activity. An Institutional Review Board (IRB) shall have jurisdiction over all reviews and approvals in accord with procedures set forth in recognized documents, e.g. Multiple Project Assurance document, and/or applicable regulations and policies including other policies adopted by the System or an institution. Those research activities in which human subjects may be exposed to more than minimal risk must be reviewed at a convened meeting of an IRB; other research activities may be reviewed in the manner determined by the IRB under its procedures. An individual is considered to be at more than minimal risk if exposed to the possibility of harm -- physical, psychological, social, legal, or other -- as a consequence of participation as a human subject in any research activity which departs from the performance of routine physical or psychological examinations and tests, or which departs from established and accepted procedures necessary to meet the individual's needs, or which increases the probability or magnitude of risks ordinarily encountered in daily life.

This policy applies to all research activities and to all development, training, and improvement or other related activities containing a research and development component. Furthermore, it applies to any such activity performed on the premises of the University of Maryland System or its constituent institutions and to any such activity performed elsewhere by faculty, students, or employees under University of Maryland System auspices.

To carry out this policy the University of Maryland System institutions will maintain a sufficient number of IRBs with appropriate membership to provide for adequate reviews. The IRBs will have the authority to approve, to require modification as a condition of approval, and to disapprove proposed activities that are covered by this policy. Furthermore, the IRBs will have the authority to determine whether or not any activity is covered by the policy and whether it requires review by an IRB.

. **Note:** Application for review and approval can be obtained in the University Research Services Office or at [www.salisbury.edu/grants/Committee%20on%20Human%20Research/CHR%20Home%20Page.html](http://www.salisbury.edu/grants/Committee%20on%20Human%20Research/CHR%20Home%20Page.html).

Approved by BOR April 25, 1991  
Revised June 2006

### **{CLASSIFIED AND PROPRIETARY WORK (BOR IV-2.20)}**

In the matter of classified and proprietary work, Salisbury University operates under **BOR IV - 2.20 UNIVERSITY SYSTEM OF MARYLAND POLICY ON CLASSIFIED AND PROPRIETARY WORK**, which is reproduced in full below.

The mission of the University System of Maryland is to generate and to disseminate knowledge. University System

interests and purposes are well served by the conduct of extramurally sponsored activities. Sponsors may operate within a proprietary or classified environment while the University functions on the principle of free inquiry and open expression. To serve the common interests of both the University System and the external sponsors, reasonable and workable guidelines for collaborative work which both facilitate beneficial arrangements with the sponsors and protect the basic tenets of the University are necessary.

### **Policy**

It is the policy of the University System of Maryland that instruction, research, and services will be accomplished openly and without prohibitions on the publication and dissemination of the results of academic and research activities. The following statements establish the basis, under this general policy, on which the University System institutions will enter into contractual agreements under governmental or private sponsorship. It also provides the basis for acceptance of graduate theses and dissertations.

1. It is the policy of the University System of Maryland that it neither conducts federal classified work nor permits the use of University facilities or resources for classified work on any of its campuses. When it is in both the University System and the national interest, it is appropriate to engage in classified work, such work must be conducted at off-campus sites.
2. The University System of Maryland enters into no contractual agreement that restrains it from disclosing the existence of the agreement, the nature of the work, and the identity of the sponsor.
3. University System institutions will enter into no agreement that bars investigator(s) from publishing or otherwise disclosing the findings publicly. However, with the concurrence of the investigator(s), the institution may agree to delay publication for a maximum of 90 days to allow sponsors to determine whether their proprietary information may be revealed, or whether they will exercise their rights under patent clauses in agreements with the institution. The institution with the concurrence of the investigator(s) may agree to an additional delay of up to 90 days.
4. The University System recognizes that some publishable work can best be accomplished if a University investigator(s) has access to a sponsor's proprietary information or materials. The University and investigator(s) may agree to use reasonable efforts to protect such information or materials from disclosure, but they cannot accept liability if such efforts fail.

5. University System institutions accept no graduate theses or dissertations that cannot be made public. The provisions stated in **item 3** for delaying public disclosure also apply to graduate theses and dissertations; therefore, the institution will not permit a student to defend any thesis or dissertation which contains proprietary information until the time period allowed by **item 3** has expired.
6. This policy does not apply to consulting or other activities conducted off-campus or without the use of University facilities or resources. Consulting activities must conform to the University's separate policy on consulting.
7. This policy does not require the disclosure of the identity of human-research subjects whose participation in research projects is secured through pledges of anonymity. Further, this policy does not require disclosure of confidential student, patient or employee records protected by federal, state or university policies or of information protected by professional ethics.
8. Under highly unusual circumstances, exceptions to **items 1-4** may be granted by the chancellor of the University System of Maryland on the recommendation of the appropriate president or director. The chancellor will make an annual report to the Board of Regents specifying exceptions granted under this provision.

## **Definitions**

For the purpose of this policy proprietary information or materials means unclassified information or materials that can be made public or that can be disseminated only with the approval of an individual or organization external to the University System of Maryland.

### **{INTELLECTUAL PROPERTY (SU/[BOR IV-3.20](#))}**

*(This policy replaces the Policies on Patents (IV – 3.00) and Copyrights (IV- 3.10).)*

#### **I. Introduction**

The primary mission of universities is to create, preserve, and disseminate knowledge. When that knowledge takes the form of intellectual property, a university must establish a clear and explicit policy that will protect the interests of both its creators and the university while ensuring that society benefits from the fair and full dissemination of that knowledge. The initial point of contact at Salisbury University is the Director of Undergraduate Research Services (URS).

#### **II. Effective Date**

This policy will be effective on July 1, 2002 (“Effective Date”). It will apply to all intellectual property disclosed to the University on or after July 1, 2002. Intellectual property disclosed to the University prior to the Effective Date will remain subject to the UMS Policy on Patents effective May 31, 1990 or the UMS Policy on Copyrights effective May 31, 1990, unless otherwise agreed by the University and all creators of the intellectual property (or the heir or assignee of any creator’s share of Revenue).

#### **III. Definitions**

The terms defined in this section are given special meanings in this policy and appear capitalized throughout.

- A. Personnel.** All University employees, full-time and part-time, including Student Employees acting within their Scope of Employment; non-employee consultants; visitors; and others using University resources.
- B. Resources Usually and Customarily Provided.** All resources provided unless specified otherwise, in advance and in writing, as a condition of using the resource.
- C. Revenue.** Consideration paid in cash or equity by a third party in exchange for specific intellectual property rights. Revenue does not include research support in any form (e.g., sponsored research agreements, restricted grants, unrestricted grants, or equity), tuition income, and contract income received by the University including contract income received in lieu of tuition.
- D. Scope of Employment.** All activities, related to the field or discipline of the faculty member’s appointment, including the general obligation of a faculty member to teach, to do creative work, and to conduct research, or related to the employment responsibilities of non-faculty Personnel, and for which Personnel receive compensation from the University, where compensation is any consideration, monetary or otherwise, including but not limited to, title and the ability to use University resources.
- E. Sponsored Research Agreements.** Grants, contracts, cooperative agreements, and other agreements under which research or development activities will be carried out, or other agreements administered by the University that relate to intellectual property created under the agreement.
- F. Students.** Persons enrolled in a University, acting within the course of their academic work, including, but not limited to, undergraduates, graduate and

professional students, non-degree students, and not-for-credit students.

- G. **Student Employee.** A Student who is also a University employee, acting within the Scope of Employment.
- H. **University.** One of the following: a constituent institution of the University System of Maryland, the University of Maryland Biotechnology Institute, the University of Maryland Center for Environmental Science, or the University System of Maryland Office.

#### IV. General Provisions

- A. **Purpose.** The purpose of this policy is to set forth the terms, conditions, and procedures whereby the University System of Maryland, Personnel and Students establish and maintain their interests in intellectual property created by or used at USM institutions, taking into account intellectual property laws governing patents, copyrights, trademarks, and other forms of intellectual property. This policy governs the ownership and protection of such property at the University.
- B. **Scope of Application.** All Personnel and Students shall comply with this policy, as amended from time to time. This policy shall be included in the faculty handbook, as directed in Board of Regents Policy II - 1.00, Section I. B.2.
- C. **Protecting University Interests.** Personnel and Students may not (1) sign agreements or take any action on behalf of the University unless they are authorized agents of the University, or (2) make unauthorized use of the name of the University. In cases where Personnel or Students take such actions, the University is not bound to honor those actions or agreements.
- D. **Acquisition.** The University may acquire ownership or use of intellectual property by assignment, license, gift, bequest, or any other legal means. The University shall administer such intellectual property in accordance with this policy unless otherwise required by the terms of the acquisition.
- E. **Administration of Intellectual Property which is not University-owned.** At the request of the owner, intellectual property not owned by the University may be administered by the University. In such cases this policy shall govern that administration unless the University agrees otherwise in writing.

#### F. Sponsored Research

- 1) **Ownership.** Sponsored research agreements shall provide that all intellectual property

developed by Personnel or Students under such agreements shall belong to the University; however, the University, on a case-by-case basis (as circumstances warrant, and consistent with applicable private use restrictions e.g., under bond covenants), may agree to assign ownership or licensing rights to the sponsor, subject to the University's right to use and reproduce the intellectual property for research and educational purposes. The University's president or designee shall approve any such agreement.

- 2) **Federal Sponsorship.** Any research project that is funded, in whole or in part, by a federal agency is subject to specific federal statutes and regulations. Those regulations generally allow the University to elect title to any invention that is conceived of or first actually reduced to practice in the performance of federally funded research with the purpose of commercializing the invention, subject to the government's rights which include reservation of a nonexclusive license to use the invention world-wide for government purposes.

- G. **Implementation Authority.** The Chancellor shall have the authority and responsibility for implementation and coordination of this policy. Each president shall have the authority and responsibility to implement and coordinate this policy within the president's University. Subject to the other provisions of this policy and applicable law, the presidents may enter into agreements with respect to ownership, licensure, disposition of intellectual property, disposition of royalty income, resolution of disputes, and other matters related to intellectual property in which that University has an interest under this policy, and may register intellectual property; seek protection under copyright, trademark, and/or patent laws; and enforce, defend, manage, and take any action relevant to the institution's intellectual property rights that is necessary for the proper administration of this policy.

#### V. {Copyrights}

- A. **Ownership by Creator.** Personnel and Students shall have all rights in copyrights of their work, subject to section V.B. below, with the following exceptions.
  - 1) **Scope of Employment.** The University owns all rights in copyright for work produced by non-faculty Personnel within the Scope of Employment.
  - 2) **Sponsored Research Agreements.** The University owns all rights in copyright for work

produced by Personnel or Students under Sponsored Research Agreements.

- 3) **Signed agreements.** The University owns all rights in copyright for all work as stated in written agreements.
- 4) **Computer Programs and Software.** Ownership of copyrighted software and computer programs is addressed in Section VII.
- 5) **Technology-mediated Instructional Materials.** Ownership and use of technology-mediated instructional materials is addressed in this Section (V) the policy.

#### ***B. Right of Use***

- 1) **University rights.** The University shall have the right to use and reproduce for research and educational purposes scholarly and original works, whether owned by the University, Personnel, or Students, for which it has provided resources. Faculty members retain all legal rights to protect against the exploitation of copyrighted material owned by the member.
- 2) **Additional Rights.** If the University wishes to secure additional rights in copyrighted work, it shall so specify in writing at the time it provides resources beyond Resources Usually and Customarily Provided or other consideration.

#### ***C. Responsibilities of Personnel and Students***

- 1) **Assignment.** For work to which the University has or had rights of ownership or use under this policy, Personnel and Students shall, upon request, execute all legal documents designed to assist the University, or its assignees, in proving or benefiting from such rights, as deemed appropriate by the University.
- 2) **External Collaborations.** See Section IV.C and the Policy on Professional Commitment of Faculty, BOR 41.0 II-3.10.
- 3) **Use of Copyrighted Materials.** All Personnel and Students are responsible for complying with University guidelines on the fair use of copyrighted material and for complying with the requirements of copyright law, including obtaining required permissions to use copyrighted material. Guidelines for the use of copyrighted material are published in the Faculty Handbook, Student Handbook, and in policies maintained in the University Office of Publications.

#### ***D. Responsibilities of the University***

- 1) **Agreement Regarding Use of Resources Beyond Resources Usually and Customarily Provided.** When the University authorizes or directs efforts to create a work or works using University resources beyond Resources Usually and Customarily Provided, it shall enter into a written agreement addressing the extent of use of resources, the schedule for the project (if appropriate), control over the work and its revisions, and ownership of the work. When the work done by Personnel routinely involves resources beyond Resources Usually and Customarily Provided, compliance with this section may be accomplished by including the required terms in an employment agreement.
- 2) **Sharing of Revenue.** The University shall remit to creators or their assignees or heirs, their share of Revenue from copyrights as specified in Section XI.A. of this policy.
- 3) **Use of Copyrighted Materials.** The University guidelines are published in the Faculty and Student Handbooks. (For purposes of clarification these guidelines can be found in the Policies on Obtaining Permissions for Use of Copyrighted Materials and Copyright for the Reproduction and Use of Non-Print Materials which are located in this chapter; and the policy on Duplicating Classroom Presentations Materials is located in Chapter 10.) Furthermore, the University library posts information on copyright law.

### ***VI. {PATENTS}***

#### ***A. Ownership***

##### **1) University Ownership**

- a) **Within Scope of Employment.** The University owns inventions created by Personnel within the Scope of Employment.
- b) **Use of University Resources.** The University owns inventions created by Personnel, Graduate Students, or Professional Students with the use of University resources.
- c) **Signed Agreements.** The University owns all inventions made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.

## 2) Creator Ownership

- a) Outside Scope of Employment. Personnel, Graduate Students, and Professional Students own patent rights to inventions conceived and first reduced to practice outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements
- b) Student Ownership. Undergraduate, non-degree, and not-for-credit Students own inventions they create unless the invention is subject to another provision of this section.

### B. Responsibilities of Personnel and Students

- 1) **Disclosure.** Personnel and Students shall disclose inventions which are subject to University ownership to the president or designee in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose.
- 2) **External Collaborations.** In accord with Section IV.C., Personnel and Students may not: (a) sign patent agreements or other documents (e.g., invention reports, licenses, assignments, Material Transfer Agreements, or Confidential Disclosure Agreements) which abrogate the University's rights; (b) make unauthorized use of the name of the University; or (c) transfer material relating to intellectual property outside the University, except pursuant to a properly authorized Material Transfer Agreement. See also the Policy on Professional Commitment of Faculty, BOR II-3.10.
- 3) **Assignment.** As to an invention in which the University has a right to ownership or use, the inventor, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the invention, including assignment of any patents or patent applications relating to the invention.

### C. Responsibilities of University

- 1) **Timely Evaluation.** The University shall evaluate inventions disclosed in accordance with Section VI.B.1 and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection; the scope of patent

protection; and whether and how to pursue, limit, or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any invention in which it has an interest.

- 2) **Timely Information.** The University shall inform inventors in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of inventions disclosed in accordance with Section VI.B.1). Terms of agreements which constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify inventors promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize an invention.
- 3) **Commercialization by Inventors.** The University, at its discretion and consistent with the public interest, may license intellectual property to the inventors on an exclusive or non-exclusive basis. Inventors must demonstrate technical and business capability to commercialize the intellectual property. Agreements with inventors shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.
- 4) **Assignment of Ownership.** The University may assign ownership to the inventors as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the inventors, the transfer to the inventors of the University's interest in any invention that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the invention before it can agree to negotiate the transfer of the University's interest in an invention to the inventors.

- 5) **Sharing of Revenue.** The University shall remit to the inventors or their assignees or heirs, their share of Revenue from inventions as specified in Section XI.B. of this policy.

## VII. COMPUTER PROGRAMS AND SOFTWARE

### A. *Ownership*

#### 1) **University Ownership**

- a) **Within the Scope of Employment.** The University owns computer programs and software created by Personnel within the Scope of Employment. However, faculty own computer programs and software created within the Scope of Employment, except when covered by a written agreement.
- b) **Use of University Resources.** The University owns computer programs and software created by Personnel, graduate Students, or professional Students with the use of University resources. However, faculty own computer programs and software created within the Scope of Employment, except when covered by a written agreement.
- c) **Signed Agreements.** The University owns all computer programs and software created or made by Personnel or Students under Sponsored Research Agreements and as stated in written agreements.

#### 2) **Personnel Ownership**

- a) **Outside Scope of Employment.** Personnel, graduate Students, and professional Students own software and computer programs conceived and first reduced to practice, and/or authored, outside the Scope of Employment and without the use of University resources and not subject to Sponsored Research Agreements or other written agreements.
- b) **Student Ownership.** Undergraduate, non-degree, and not-for-credit Students own computer programs and software they create unless the computer program or software is subject to another provision of this section.

### B. *Responsibilities of Personnel and Students*

- 1) **Disclosure.** Personnel and Students shall disclose computer programs and software that are subject to University ownership to the president or designee in a timely manner, fully, and in writing. When uncertain about the University's rights, Personnel and Students shall disclose. Disclosure may include deposit of a digital-time-stamped copy of the software program, with appropriate annotations.
- 2) **External Collaborations.** See Section IV.C. See also the Policy on Professional Commitment of Faculty, BOR II-3.10.
- 3) **Assignment.** As to a computer program or software in which the University has a right to ownership or use, the creator, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the University, or its assignees, any or all rights to the computer program or software, including assignment of any patents, copyrights, patent applications, or copyright applications, relating to the work.

### C. *Responsibilities of University*

- 1) **Timely Evaluation.** The University shall evaluate computer programs and software disclosed in accordance with Section VII.B.1 and shall do so with reasonable promptness and in good faith. The University shall decide whether to seek legal protection of its ownership rights, such as filing for patent protection, the scope of patent protection, and whether and how to pursue, limit, or abandon commercialization. The University may at any time decide not to pursue or to abandon the pursuit of patenting and/or commercialization of any computer program or software in which it has an interest.
- 2) **Timely Information.** The University shall inform creators in a timely manner about substantive decisions regarding protection, commercialization and/or disposition of computer programs or software disclosed in accordance with Section VII.B.1. Terms of agreements which constitute proprietary business information may be treated as confidential by the University in accordance with applicable law. The University shall notify creators promptly when it decides either not to pursue, or to abandon pursuit of, all efforts to commercialize computer programs or software.

- 3) **Commercialization by Creators.** The University, at its discretion and consistent with the public interest, may license intellectual property to the creators on an exclusive or non-exclusive basis. Creators must demonstrate technical and business capability to commercialize the intellectual property. Agreements with creators shall be subject to review and approval of conflict of interest issues in accordance with applicable University policy.
- 4) **Assignment of Ownership.** The University may assign ownership to the creators as allowed by law, subject to the rights of sponsors and to the retention by the University of a license which at a minimum shall grant the University the right to use intellectual property in its internally administered programs of teaching, research, and public service on a perpetual, royalty-free, non-exclusive basis. The University may retain more than the minimum license rights, and assignment or license may be subject to additional terms and conditions, such as Revenue sharing with the University or reimbursement of the costs of legal protection. The University shall negotiate promptly, upon written request by the creators, the transfer to the creators of the University's interest in any computer program or software that it has chosen not to protect or commercialize, subject to any legal obligation to offer its interest to a sponsor, licensee, or another institution with rights to the intellectual property before it can agree to negotiate the transfer of the University's interest in intellectual property to the creators.
- 5) **Sharing of Revenue.** The University shall remit to the creators or their assignees or heirs, their share of Revenue from computer programs or software as specified in Section XI.B. of this policy.

### **VIII. TECHNOLOGY-MEDIATED INSTRUCTIONAL MATERIAL**

Section V, Copyrights, shall apply to any materials that may be considered to be technology-mediated instructional materials. All Patents, Copyrights, Trademarks and/or Tangible Research Property disclosures and filings, and Technology Commercializations will be handled through the URS office.

### **IX. OTHER TYPES OF INTELLECTUAL PROPERTY**

- A. **Tangible Research Property.** The principles in Section VI. that apply to inventions and patents also apply to tangible research property.
- B. **Mask Works.** The principles in Section VI. that apply to inventions and patents also apply to mask works.
- C. **Plant Varieties.** The University owns and may protect or commercialize plant varieties according to the principles of Section VI.
- D. **Trademarks, Service Marks, and Trade Dress.** Trademarks, service marks, and trade dress may be created in association with an underlying license for another form of intellectual property, such as a patent or a plant variety ("associated with other intellectual property"), or independently, such as a university logo or symbol ("independently created").
  - 1) **Associated with Other Intellectual Property.** The University owns a trademark, service mark or trade dress if it is associated with other intellectual property owned by the University.
  - 2) **Independently Created.** The University owns trademarks, service marks, and trade dress that are independently created by Personnel within the Scope of Employment unless the University agrees otherwise in writing.
  - 3) **Commercialization.** The University may commercialize or license its trademarks, service marks, and trade dress.
  - 4) **Registration.** The president or designee shall approve registration of trademarks or service marks, at the state or federal level.

### **X. INTERINSTITUTIONAL AGREEMENTS**

- A. **Joint Appointments and Affiliations.** This section applies when an individual has an appointment in and receives support for research or creative work from two or more Universities and when a Student or Student Employee is earning a degree in one University but doing research or creative work in another.
  - 1) **Ownership.** When more than one University can claim ownership to intellectual property under this policy, they own it jointly.
  - 2) **Management Agreements.** Universities that are or may become joint owners of intellectual

property shall enter into agreements stating which University will be responsible for management of the intellectual property. Universities are encouraged to negotiate standard agreements whenever possible.

a) **Terms to be Addressed.** The agreements shall state which institution will be responsible for prosecution of patent applications or other forms of intellectual property protection, which institution will license the intellectual property, how expenses and deductions from Revenue will be allocated, and how institutional net revenue will be shared. The distribution of each University's share of Net Revenue, Project Specific Costs, and General Costs shall be addressed in the management agreement.

b) **Student Requirements.** With regard to Students and Student Employees, agreements shall specify whether the degree-granting University or the supporting University will be responsible for managing intellectual property they create when that property is subject to University ownership.

3) **Responsibilities of Managing University.** The University managing intellectual property under an agreement shall promptly inform the other University or Universities about steps taken with regard to ownership. Such information shall include at minimum copies of the invention disclosure form, documents associated with filing for statutory protection, assignment of rights, and license agreements. If the managing University decides not to proceed, the other owning University or Universities shall have the right to assume responsibility as the managing University.

4) **Distribution of Revenue.** The managing University shall distribute Revenue to the creators and share net revenue in all cases according to Section XI.

5) **Disputes.** A president may ask the Chancellor to intercede if the Universities are unable to reach agreement or differ in their interpretation of an agreement. The Chancellor's decision shall be final and binding on all parties.

**B Joint Creators.** This section applies when Personnel or Students from two or more Universities collaborate.

1) **Early Notification.** As soon as collaborators from different Universities recognize that their

efforts have resulted in, or are likely to result in, the creation of intellectual property subject to this policy, they shall inform their respective Universities that an agreement is needed.

2) **Agreements Govern.** Signed agreements between Universities shall determine ownership of intellectual property, responsibility for managing it, and distribution of expenses and Revenue resulting from its development. Universities whose Personnel or Students are engaged in frequent collaboration are encouraged to negotiate standard agreements within the framework of this policy.

3) **Disputes.** A president may ask the Chancellor to intercede if the Universities are unable to reach agreement or differ in their interpretation of the agreement. The Chancellor's decision shall be final and binding on all parties.

## ***XI. REVENUE SHARING***

Unless otherwise agreed to in writing by the creators of a work or inventors of an invention, each named creator or inventor shall receive equal shares of net Revenue.

A. **Copyrights.** The University shall share with creators Revenue it receives from copyrights of their work, subject to certain exceptions.

### **1) Exceptions**

a) **Scope of Employment.** Revenue generated from work produced by non-faculty Personnel within the Scope of Employment is excluded from sharing. However, the University may elect, by written agreement or University policy, to pay up to fifty percent of net Revenue to such non-faculty Personnel.

b) **Contract.** When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the contract govern.

c) **Equity.** Equity shall be distributed in accord with Section XI.G.

d) **Technology-mediated Instructional Materials.** University policy adopted to fulfill Section VIII may exclude some or all Revenue from sharing.

2) **Deductions from Revenue.** The University shall make the following deductions from

Revenue before distributing net Revenue (Section XI.A.3).

- a) **Creators' Share.** First, ten percent of Revenue shall be distributed among the creators of the work until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. (The limit in FY2004 was \$10,300 to be shared among the inventors.) The Chancellor shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100. Contact the URS office for current limit to be shared with the inventors.
  - b) **General Costs.** Second, the University will deduct 30% of Revenue to cover the general cost of developing, obtaining, managing, and defending creative works, unless otherwise agreed to by the University and creators, in writing.
  - c) **Project Specific Costs.** Third, the remaining 60% of the Revenue received from a work shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the copyright, and in developing, marketing, licensing, and defending the work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by creators on behalf of their own works but only if the University had authorized such expenses in advance in writing.
  - d) **Residual Creators' Share.** Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the creators until the threshold dollar amount has been paid, as specified above in Section XI.A.2(a).
- 3) Distribution of Net Revenue.** Net Revenue is the revenue remaining after deductions under XI.A.2.
- a) **Creators' Share.** The University shall distribute among the creators fifty percent (50%) of the net Revenue it receives from their creative work unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with creators provide otherwise.
  - b) **University's Share.** The University shall receive 50% of the net Revenue. The Provost maintains guidelines for the use of the University's share of the net Revenue. From time to time, and in consultation with faculty members or their representatives, the Provost may amend these guidelines. Net Revenue received on account of copyrighted work shall be dedicated to research, scholarship, creative work, and related academic activities.
- 4) Timely Distribution.** The University shall distribute accrued Revenue due creators under this policy at least annually. Distribution will be made along with a statement of related income and expenses.
- B. Patents and Computer Programs and Software.** The University shall share with inventors or creators Revenue it receives from their inventions or creations as provided in this section.
- 1) Exceptions**
- a) **Contract.** When a third party contract dictates apportionment of Revenue different from that specified in this policy, the terms of the agreement govern.
  - b) **Equity.** Equity shall be distributed in accord with Section XI.G.
- 2) Deductions from Revenue.** The University shall make the following deductions from Revenue before distributing net Revenue (Section XI.B.3).
- a) **Creators' or Inventors' Share.** First, ten percent of Revenue shall be distributed among the creators or inventors until the cumulative total reaches the limit set pursuant to this paragraph that was in effect during the fiscal year in which the University first received Revenue. (The limit in FY2004 was \$10,300 to be shared among the inventors.) The Chancellor shall establish a new limit for each succeeding fiscal year by adjusting the previous year's limit by an amount reflecting the change in the Consumer Price Index during the last calendar year completed, rounded to the nearest \$100. Contact the URS office for current limit to be shared with the inventors.
  - b) **General Costs.** Second, the University shall deduct 30% of Revenue to cover the

general cost of developing, obtaining, managing, and defending inventions or creative work, unless otherwise agreed to by inventors or creators and the University, in writing.

- c) **Project Specific Costs.** Third, the remaining 60% of Revenue received from a creative work, patent, or invention shall be applied to reimburse any specific, incremental expenses incurred by the University in obtaining and maintaining the patent and in developing, marketing, licensing, and defending the patent or licensable invention or creative work. After reimbursement of the University's expenses, Revenue may be used to reimburse costs incurred by inventors or creators on behalf of their own works but only if the University had authorized such expenses in advance in writing.
  - d) **Residual Creators' Share.** Fourth, after project specific costs have been paid in full, any remaining Revenue shall go to the creators until the threshold dollar amount has been paid, as specified above in Section XI.B.2(a).
- 3) Distribution of Net Revenue.** Net Revenue is the Revenue remaining after deductions under XI.B.2.
- a) **Creators' Share.** The University shall distribute among the inventors or creators fifty percent (50%) of the net Revenue it receives from their inventions or creations unless applicable laws, regulations, provisions of grants or contracts, or signed agreements with inventors or creators provide otherwise.
  - b) **University's Share.** The University shall receive 50% of the net Revenue. The Provost maintains guidelines for the use of the University's share of the net Revenue. From time to time, and in consultation with faculty members or their representatives, the Provost may amend these guidelines. Net Revenue received on account of an invention shall be dedicated to research and to the promotion of patenting and patents.
- 4) Timely Distribution.** The University shall distribute Revenue due creators under this policy at least annually. Distribution will be made along with a statement of related income and expenses.

**C. Tangible Research Property, Mask Works, and Plant Varieties.**

When tangible research property, mask works, or plant varieties are licensed, Revenue shall be distributed in the same manner that Revenue is distributed under Section XI.B.

**D. Trademarks, Service Marks, and Trade Dress**

**1) Creators' Share**

- a) Associated with Other Intellectual Property. Revenue received from commercialization of a trademark, service mark, or trade dress that is related to an intellectual property license shall be shared with creators of the trademark, service mark, or trade dress, as specified in Section XI.B.
- b) Independently-created trademark, service mark, or trade dress. Except as provided herein or unless subject to prior written agreement between the creators and the University, the University will not share the Revenue from commercialization of a trademark, service mark, or trade dress with the individuals who created the trademark, service mark, or trade dress.

- 2) **University Ownership.** Revenue received from commercialization of a trademark, service mark, or trade dress licensed independently and not directly related to another form of intellectual property license shall not be shared and shall belong to the University.

**E. Joint Appointment.** In situations covered by section X., the University's share of net Revenue shall be divided equally among the Universities or as otherwise provided by written agreement.

**F. Joint Creators.** If joint creators are from different Universities, the University's share of net Revenue shall be divided equally unless determined by signed agreements as provided in Section X.B.2.

**G. Equity**

- 1) **Issuance of Shares.** Equity may be issued separately to the University and the inventors or creators.
- 2) **Distribution of Shares.** Equity in a commercial venture received as consideration for intellectual property rights shall be shared equally between the University and the creators, unless a different distribution is

negotiated in an agreement signed by the University and the creators of the relevant intellectual property.

- 3) **Timely Distribution.** When the University receives all shares directly, as soon as practicable after the University receives equity, and subject to the creators receiving any conflict of interest exemptions that must be granted and complying with any conditions for those exemptions, the University shall transfer equity shares to the creators. The University and creators shall have independence in their exercise of equity holder privileges within the constraints of law, policy, specific exemption under Maryland law from the State Ethics Law, and contractual agreements.
- 4) **Unqualified Persons.** Personnel or Students not qualified to hold the equity under applicable law shall designate a qualified person to receive the equity. If no designee is named within thirty days of a written request by the University to do so, the right to a share of the equity shall be forfeited to the University.

## ***XII. ADMINISTRATION***

### ***A. University Implementation.***

The initial point of contact at Salisbury University is the Director of the URS Office. All Patents, Copyrights, Trademarks and/or Tangible Research Property disclosures and filings, and Technology Commercializations will be handled through this office.

- ### ***B. Authority to Subcontract.***
- The University may enter into contracts with third parties in connection with the development, administration, and protection of its intellectual property.

### ***C. Special Cases.***

- 1) **Issues not addressed.** The Board of Regents recognizes that special cases will arise that are not specifically covered by this policy. In such cases, Presidents may make a decision on how to proceed and report that decision to the Chancellor. Alternatively, the President may submit such cases to the Chancellor or designee for resolution. All decisions on such cases shall be reported to the Intellectual Property Committee, which will take them into account in its annual review of this policy.

- 2) **Policy waivers.** Only the Chancellor may waive any provision of the USM Policy or of any University's approved policy on intellectual property. All decisions concerning waiver shall be reported to the Intellectual Property Committee and to the Board of Regents.

## **D. USM Intellectual Property Committee**

- 1) **Membership.** The Chancellor shall appoint one representative from each institution from nominees submitted by the presidents. The Chancellor will assure that faculty members constitute a significant proportion of the membership and that representatives of technology transfer offices shall routinely meet with the Committee. Members shall serve a three-year term. No voting member may serve more than two consecutive terms. The Vice Chancellor for Academic Affairs shall chair the Committee, without a vote.
- 2) **Responsibilities.** The Committee shall advise the Chancellor on intellectual property matters. It shall convene at least once each academic year to review this policy and may recommend revisions to the policy. The Committee shall also meet at the call of the Chair. A University president or the Chancellor may refer to the Committee for its recommendations to the Chancellor matters relating to this policy, including relevant matters not addressed by the policy, and suggestions for revisions. The Chancellor may ask the Committee for advice on the resolution of disputes over intellectual property.
- 3) **Creator's Right to Participate.** Whenever the Committee considers this policy's application in order to advise the Chancellor about a specific work, Personnel or Students who created the work or their representative may make a written presentation and an oral presentation to the Committee.

## ***XIII. REPORTING***

The University president shall report annually to the Chancellor and the Board of Regents on intellectual property activity at the University. The report, in a format to be determined by the Chancellor, shall include data for the preceding year on disclosures, patent applications, patent awards, licenses, and start-up companies, distinguishing when appropriate between Maryland-based companies and those outside of the State. The report shall also include data on revenue and expenditures associated with the University's technology transfer function.

**Note:** The policies on Obtaining Permissions for Use of Copyrighted Materials and Copyright for the Reproduction and Use of Non-Print Materials immediately follow this chapter; and the policy on Duplicating Classroom Presentations Materials can be found in Chapter 10.

**Approved by the following committees and individuals:**

1. Faculty Senate – March 2002
2. Provost – July 2002
3. President – July 2002
4. Board of Regents – July 2002, Amended February 2009  
Revised May 2009 per Dr. Tardiff

**GLOSSARY** (This section is provided for information only. It is not part of the policy.)

Commercial venture - a start-up company, limited partnership, joint venture or any other entity that has obtained an option or a license to university technology.

Confidential Disclosure Agreement - An agreement or section of an agreement that prevents parties to the agreement from releasing knowledge or information without the other's permission.

Copyright - The intangible property right granted by statute for an original work fixed in a tangible means of expression. A copyright provides the owner with the following exclusive rights over a work: to reproduce, to prepare derivative works, to distribute, to perform publicly, and to display publicly. Copyright comes into existence immediately at the time the work is fixed in a tangible means of expression.

Creative works - "Original works of authorship" that are fixed in a tangible form of expression that may be protected by copyright. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device. Copyrightable works include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.

Creator - Refers to an individual or group of individuals who make, conceive, reduce to practice, or otherwise make a substantive intellectual contribution to the creation of intellectual property. "Creator" follows the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.

Disclose - Formally record the essence of a potentially patentable concept, the circumstances in which it was conceived, the persons participating in the invention, and the steps taken to reduce it to practice, if applicable, in accord with the requirements of U.S. patent law for establishing precedence.

Equity or equity shares - Shares of common or preferred stock, warrants, options, convertible instruments, units of a limited partnership, or any other instruments conveying

ownership interest in a commercial venture, or options or rights to purchase an ownership interest.

First sale - The principle that gives the purchaser of a copyrighted work the right, among other things, to lend it to others.

Intellectual property - The intangible value developed by human creativity that is protected by the legal mechanisms of patents, trademarks, copyrights, service marks, trade secrets, mask works, and plant variety protection certificates. Rights derived from legislation include ownership and disposition, including commercialization. Intellectual property encompasses inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data, and other creative or artistic works that have value. It also includes the physical embodiments of intellectual effort such as models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions or matter, plants, and records of research.

Invention - any discovery which is or may be patentable or which may be commercially licensable.

License - A contract in which an intellectual property owner grants permission to exercise one or more of the rights that an owner holds.

Mask work - A series of related images representing a predetermined, three-dimensional pattern of metallic, insulating, or semiconducting layers of a semiconductor chip product.

Material Transfer Agreement - A contract covering transfer of physical possession and use of tangible research property into or out of the university.

Patent (U.S. only) - The intangible property right to exclude others from making, using, offering for sale, or selling the invention in the United States or importing the invention into the United States. In order to obtain patent protection, an invention must be useful, novel and unobvious.

Plant variety protection certificate - Registration under the Plant Variety Act of 1970 that protects sexually propagated cultivars that are distinctive, uniform and true-breeding.

Royalty - Payment made to an owner of intellectual property for the privilege of practicing a right held by the owner of the intellectual property under applicable law.

Tangible research property - Includes the physical embodiments of intellectual effort such as models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research. Tangible research property is distinct from intangible properties such as patents, trademarks, copyrights, service marks, trade secrets, mask works, and plant variety protection certificates. Individual items of tangible research property may be associated with one or more intangible properties.

Trade dress - Distinctive and unique packaging, color combinations, building designs, product styles, and overall presentations identifying the source, product, producer, or distributor of goods and services where the appearance distinguishes the product or business from other similar products or businesses but is not distinctive or specific enough to be considered a trademark.

Trademarks and service marks - Distinctive words or graphic symbols identifying the source, product, producer, or distributor of goods and services.

## {OBTAINING PERMISSIONS FOR USE OF COPYRIGHTED MATERIALS (SU)}

(See Section V.D.3. of the Intellectual Property Policy)

### 1. Purpose

The purpose of the Salisbury University Policy on Obtaining Permissions for use of Copyrighted Materials is to comply with federal copyright law. The policy applies to all documents subject to federal copyright law including books, magazines, journals, newspapers, videotapes and computer software. The complete text of the Copyright Act of 1976 may be found in **Title 17, U.S. Code, Section 101, et. seq.** and accompanying explanatory documents on reserve in Blackwell Library. All employees should familiarize themselves with this law.

### 2. The Policy

Permission to copy copyrighted material not covered under the limits of legitimate classroom use as defined in the attached summary excerpted from a memo from the Maryland Attorney General's Office must be obtained whether the copies are to be given away, sold, or put on reserve. Written copyright permission must be presented to Duplication Services before multiple copying will be done, to the library before material will be put on reserve; and to the bookstore before the materials will be sold.

The following procedures have been established for obtaining and maintaining licenses and permissions for the use of copyrighted materials.

### 3. Procedures for Obtaining Permissions for Use of Copyrighted Materials in Internally Produced Manuals or Packets

- a. The deadline for applying for permissions to use copyrighted materials in course manuals/packets is the same date that adoption forms for class texts are due in the university book store. (Adoption forms for the fall semester are usually due early in

April and for the spring semester, early in November.) Book adoption forms sent to faculty from the book store will be accompanied by Academic Permissions Service (APS) forms.

- b. When faculty fill out adoption forms for course manuals/packets they develop, they must also complete for each, an APS form that contains all information necessary for obtaining permission to use the copyrighted material that will be included in the manual/packet. Additionally, faculty must provide a table of contents for each manual/packet that lists every item, including copyrighted materials that will be included in the manual/packet. The Book Rack will not be responsible for obtaining permissions if these materials are not submitted by the adoption-form deadline for the semester.
- c. The Book Rack will apply to either the Copyright Clearance Center or the National Association of College Stores to obtain permissions for use of copyrighted materials and will notify applicant faculty as soon as these permissions have been secured.

### 4. Procedures for Printing and Selling Manuals or Packets Containing Copyright Materials Approved for Use

- a. Once permissions to use copyright materials are obtained, faculty arrange for printing through Duplication Services or Blackwell Library.
- b. Faculty decide how many copies of the packet/manual to print, bearing in mind that unsold copies will be returned and charged back to their departments.
- c. Faculty estimate the cost of producing the packet/manual including fees for permissions, printing costs and binding costs. They inform the Book Rack of this estimate and the Book Rack applies an appropriate mark up and determines the final retail price at which the packet/manual will be sold.
- d. Faculty make arrangements for production of their packets/manuals and for delivering them to the bookstore at the appropriate time at the beginning of the semester in which they are to be used.

**5. Procedures for Placing Multiple Copies of Copyrighted Materials on Reserve in the Library**

- a. Copyright permissions for library reserves are handled by the Copyright Clearance Center through its Transactional Reporting Service (TRS) which provides instant authorization for all items listed in its *Catalog of Publisher Information (COPI)*. *COPI* has more than 1.5 million titles, including scholarly journals, books, and conference proceedings.
- b. Faculty members may ask the library to check *COPI* for the copyright fees on materials they are considering for reserves by telephone, in person, or by campus mail. Faculty members should follow the procedure their departments have established for using funds from the Reserve Account. The library must have authorization to pay copyright fees from a departmental allocation before it can process photocopies for reserves.
- c. For materials listed in *COPI*, faculty members should include a departmental charge authorization with the photocopies they wish to place on reserve. The library will then process these copies immediately. (Note: when multiple copies are placed on reserve, a copyright fee is charged for each copy.)
- d. For materials not listed in *COPI*, the faculty member must obtain permission directly from the publisher. The library's Reference Department can provide sample letter requesting permission from publishers and will assist in locating other information as needed. Any fees charged by the publisher are the responsibility of individual faculty members or their departments. The library must have a copy of the publisher's permission letter before placing the photocopied item on reserve.
- e. At the end of the reserve period, the library will return all photocopies to the faculty members who placed them on reserve. Copyright fees must be paid each time a photocopy is placed on reserve.

**6. Guidelines for Determining Free and "Fair Use" of Copyrighted Materials in the Classroom**

In January 1994, the Academic Affairs Division of the Maryland Attorney General's Office provided University System of Maryland Institutions with a summary of a document entitled *Agreement on Guidelines for Classroom Copying in Not-For-Profit Educational Institutions* which is incorporated in the legislative history of the 1976 Copyright Act. These guidelines were negotiated at the request of federal legislators, authors' representatives, publishers, and educators. Faculty should review the guidelines carefully and use them to determine when they may use copyrighted material without permission and when they must apply for permission to use such materials. The guidelines permit the making and classroom use of multiple copies of copyrighted materials under the following conditions listed below.

- a. Brevity - The work is a complete article, story, or essay of less than 2,500 words, or is an excerpt from any prose work of not more than 1,000 words, or 10 percent of the work, whichever is less.
- b. Spontaneity - The copying is at the instance and inspiration of the individual teacher, and the decision to use the work and the time of its use are so close together that it would be unreasonable to expect a timely reply to a request for permission to use the copyrighted work.
- c. Cumulative Effort - The copying of the material is for one course and consists of not more than one short work or two excerpts from the same author, nor more than three from the same collective work and there are no more than nine instances of multiple copying for the course during one class term.
- d. No Anthologies - Copying is not used to create, replace or substitute for anthologies, compilations or collective works. Also, copying does not substitute for the purchase of books or reports, or is not repeated with respect to the same item by the same teacher from term to term.
- e. No Profit - No charge is to be made to the student beyond the actual cost of the photocopying.

## **{COPYRIGHT FOR THE REPRODUCTION AND USE OF NON-PRINT MATERIALS (SU)}**

*(See Section V.D.3. of the Intellectual Property Policy)*

It is the intent of Salisbury University to adhere to the provisions of copyright laws. The following is intended as a guide to the appropriate reproduction and use of copyrighted non-print materials.

The Copyright Act of 1976 protects all original works of authorship fixed in any tangible medium of expression. It does not extend to any idea, procedure, process, system, or discovery.

Under the law, the copyright owner alone has the right to reproduce, perform, display, and distribute the work, and to prepare derivative works. Only the owner may grant these rights to others and copying without owner permission is an infringement. Lack of copyright labeling on a work does not constitute permission to copy.

### ***Fair Use***

The 1976 Copyright Act also discusses fair use, the conditions under which copying of any material is allowed without permission of the copyright owner. Four factors are used to determine fair use and all four must be met before copying is allowed.

1. The purpose and character of the use, including whether such use is of a commercial nature or for non-profit educational purposes. If the purpose for copying does not fall into the categories of criticism, comment, teaching, scholarship, research, or news reporting, it is not a fair use.
2. The nature of the copyrighted work. Greater license to copy is allowed when the work is factual than when it is creative.
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole. Wholesale copying can never be a fair use. Copying a large portion of a work or the essence of a work is an infringement.
4. The effect of the use upon the potential market for or value of the copyrighted work. A use that deprives the copyright owner of reward for his work is more likely to be considered an infringement.
5. Written permission should be obtained from the copyright holder with any specific limitations clearly defined.

## ***Off-Air Recording***

Non-profit educational institutions may record off-air and use copyrighted broadcast programming for educational purposes within the limits of fair use.

### **1. Television**

These guidelines reflect the consensus of the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice (1979) as to application of fair use to television broadcast programs. They do not have the force of law but are widely accepted by education organizations, copyright proprietors, and creative guilds and unions.

A broadcast program, transmitted by a television station for reception by the general public without charge, may be recorded off-air simultaneously with broadcast transmission. This includes simultaneous cable retransmission.

Off-air recordings may be made by an institution only at the request of an individual teacher and not in anticipation of a teacher request. The same teacher can request the program be recorded only once, regardless of how many times the program is broadcast. If several teachers request the same program be recorded, duplicate copies may be made. A teacher also may record a program off-air at home for use in the teacher's classroom.

Recordings may be shown to students only during the first 10 school days after the recording date and may be repeated only once for reinforcement. These uses must be in face-to-face situations in classrooms and similar places devoted to instruction. Recordings may be transmitted to one or more classrooms via closed circuit so long as the transmission is not from one building to another.

A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each additional copy is subject to all the provisions governing the original recording.

After the first 10 school days allowed for showing, recordings may be used only for evaluation purposes. The recordings must be erased no later than 45 calendar days after the date of recording unless rights to further use have been acquired from the copyright owner.

Off-air recordings need not be used in their entirety but the recordings may not be edited or combined with other recordings to create an

anthology or a new work. All copies of a recording must contain the notice of copyright as broadcast.

## **2. Radio**

Guidelines for off-air recording of radio broadcasts have not been developed by legislators but there is no indication that Congress intended the Copyright Act of 1976 to exclude radio. Teachers should follow the fair use guidelines above to comply with the spirit of the law.

### ***"Home Use Only" Videotapes***

Rented or purchased videotapes labeled "HOME USE ONLY" are not cleared for public performance. So long as such tapes meet an instructional goal and are not entertainment for students, it appears teachers have the right to display them in face-to-face teaching situations under the fair use conditions.

### ***Audiovisual Materials***

Copyrighted Audiovisual materials include films, videotapes, videodiscs, filmstrips, slides, audio recordings, and overhead transparencies. These materials may be used in a class under the following conditions:

Materials must be part of the instructional program, must be shown by students, teachers, or guest speakers, and must be shown in a classroom or similar place devoted to instruction.

Materials must be shown only to students or educators and in a face-to-face teaching situation.

Audiovisual materials may not be transmitted electronically from one building to another.

The copyright notice must be included and the materials must be legitimate copies.

Copying copyrighted Audiovisual materials owned by the teacher or educational institution is permitted when reproduction is not prohibited and under certain conditions:

A single copy of a portion of any non-consumable material may be copied for scholarly or research use, so long as reproduction does not exceed 10 percent of the original and does not excerpt the essence of the original. The entire material may not be copied.

No copying is permitted from works intended to be consumable in the course of study. These include workbooks, exercises, standardized tests, and like consumable material.

### ***Music***

A single copy of a recorded student performance of copyrighted music may be retained by a teacher for evaluation or rehearsal purposes.

A single copy of a sound recording of copyrighted music may be made and retained from recordings owned by the institution or teacher for the purpose of constructing aural exercises or examinations. This pertains only to the copyright of the music itself and not to any copyright which may exist in the sound recording.

**Adopted from Policy developed in 1987 by the Heartland AEA 11 Media Center, Johnston Iowa.**

