

**Virginia Polytechnic Institute and State University  
Intellectual Property Committee Meeting  
October 17, 2012, 12:00-1:00 p.m.  
325 Burruss Hall**

**FULL COMMITTEE**

The Intellectual Property Committee met October 17, 2012.

The following members were present: Bill Knocke (Chair), Robert Broadwater, Laurie Coble, Robert Harvey, Kay Heidbreder, John Jelesko, X.J. Meng, Ken Miller, Peggy Quesenberry, Steve Sheetz. Shelly Key attended and recorded the minutes.

Invited guest members present: Steve Capaldo, John Fenninger, Mike Miller, Masoud Safdari, Tomalei Vess. Guests Ruth Waalkes and Ben Knapp were in attendance.

Those members/guests not in attendance: John Burton (for Barbara Lockee), Mark Coburn, Joe Merola, Kristen Mittelman, and Robert Walters.

**Call to Order**

Bill Knocke called the meeting to order at 12:00 p.m. John Fenninger was introduced and welcomed as the SGA representative to the IPC. He is currently working as an intern at VTIP.

Dr. Knocke asked that the minutes for today's meeting reflect that Shelly Key will be leaving her position in the Office of the Vice President for Research. Her service to the committee was acknowledged and she was wished well in her new position in the Department of Civil and Environmental Engineering.

**Approval of Minutes**

On a motion made by Steve Sheetz and seconded by X.J. Meng, the minutes for the September 19, 2012 meeting were unanimously approved.

**New Business**

1. Ruth Waalkes (Executive Director, Center for the Arts at VT) and Ben Knapp (Director, Institute for Creativity, Arts, and Technology) attended the meeting to discuss with the committee the intellectual property aspects associated with commissioned works. A handout provided by Ruth Waalkes (attached) was distributed that outlines how some of our peer institutions address the IP issue.

The Center for the Arts is interested in a project next year in collaboration with Opera Roanoke and Virginia Tech's Department of Music with the idea being to have a new opera for young audiences created. It would incorporate our students in music, theater, local music and instrumental music as well as some folks from Opera Roanoke in a production next fall as part of the Center's grand opening event. A music faculty member did some research on different composers and librettists and came back with a wonderful combination. We drafted a contract with the composer and it was sent over to University Legal Counsel where they advised that something would need to be included in the contract where the University keeps the copyright. There would be a separate and different contract with the librettist. Ruth shared the information collected from different universities. In all cases, none of the universities maintain the rights to artists' work.

A concern was raised about treating an outside commissioned work differently than would be done for faculty here at the University. The faculty who are here probably own the copyright but the University has the right in perpetuity to use it. There may be other things the University could do that satisfy the needs of the University. If individuals won't give up the right to the work, perhaps they would be willing to give the University a license to use it for whatever purpose the University wants.

The Commissioning Party may negotiate rights such as (from Meet The Composer):

- Exclusive right to give premiere performances
- Exclusive performance rights for a limited period
- Exclusive right to give premieres in other cities
- Right to make the work's first commercial recording
- Right to be credited as the commissioner of the work in published editions, recordings, and programs of all future performances.

It was pointed out that it is in the University's best interest to have a standard on the expectations outlined in contracts regarding commissioned works. The committee discussed whether or not these issues should be addressed in a policy or in individual contracts. Kay Heidbreder stated that legally we do not need to have a statement in policy. The language in the policy should be clear and specific enough that those ultimately writing these contracts not be doing a lot of interpretation. It was suggested that there could be a standard contract with an understanding of what the parameters are. There was a concern about giving up more for these kinds of works than we would for our own faculty.

**Action Item:** Steve Capaldo will provide proposed modifications on the commissioned works issue at the next meeting. The general consensus is to

stay back from this as much as possible in terms of formal policy, but also have the relevant policy (Policy 13000) give some direction on the issue.

2. Tomalei Vess provided a draft of the proposed student/visiting scholar IP policy language (attached). After a discussion by the committee, the following changes were recommended:
  - Remove “other university affiliates” from the first sentence.
  - Further clarify item #1, by adding #1.5 that includes research funded by Virginia Tech.
  - Committee was not in favor of creating a specific Intellectual Property and Confidentiality Agreement form. It was suggested that the committee could put the right language into a form and as it goes into governance, raise this as a companion issue once the University has made a commitment that there will be something that students across the board are signing.
  - IP language to capture undergraduate students involved in research that are not employees could be included in the 4994 form that they complete when they enroll for undergraduate research credits.

Any comments, concerns or further suggestions from the committee concerning the proposed policy language should be sent to Tomalei.

3. At the next meeting the committee will look at a final draft of the revised Policy 13000.

### **Next Meeting Date**

Since the November meeting date falls during the Thanksgiving holiday, the next IPC meeting will be held December 19, 2012.

### **Adjournment**

There being no further new business, the meeting adjourned at 1:10 p.m.

Respectfully Submitted,

Shelly Key  
Administrative Support to the IP Committee

## Center for the Arts at Virginia Tech

### Commissioning Overview

I polled various colleagues, and heard back from several by email:

- University of Ohio, Wexner Center
- University of Illinois, Krannert Center
- Stanford University, Stanford Live
- Pennsylvania State University, Performing Arts Center
- University of Maryland, Clarice Smith Center
- University of North Carolina/Chapel Hill, Carolina Performing Arts

Each confirmed that their university does not retain the rights to works they commission, but that the rights remain with the artist. They noted that the arts field has standards and expectations that are distinct from other areas of campus research or business models, and that it is unlikely that any professional artist would sign over their rights/interest in their own work.

On many campuses, commissioning is viewed as a research endeavor, but one in which the ROI is not financial, but rather provides other benefits to the institution, such as:

- Leverage external support through grants and matching funds opportunities
- Create opportunities to open creative process and provide learning experiences through residency and work-in-progress efforts
- In some cases, students and/or faculty may be directly involved in the research, development, or presentation of the work
- Build national reputation through affiliation with recognized artists (commissioner name is associated with the work on tour, in publications, on recordings, etc.)
- Gain national recognition and credibility for serving as a catalyst to development of contemporary culture

While all have contract language that they are willing to share, no one had specific policy with regards to this issue. Only at UNC Chapel Hill had it been raised ever as an issue; in that case the executive director said the issue of IP came up when he first arrived, but he explained generally accepted practices in the field and the university agreed it was not the same as other IP situations.

## Background

The advent of the Center for the Arts at Virginia Tech (opening in October 2013) not only brings new facilities, but also establishes a new level of arts programming and presenting on our campus. Center programs in the performing and visual arts will be benchmarked against national peers:

Major University Presenters – National Peers for Center for the Arts at Virginia Tech				
Carnegie Research University RU/VH Very High Research Activity	Type	AAU Member	US News & World Report rankings Public and Private	Major University Presenter
Stanford	Private	Yes	5	Stanford Lively Arts
U of Penn	Private	Yes	5	Annenberg Center for the Performing Arts
Dartmouth	Private	( no )	9	Hopkins Center for the Arts
UC Berkeley	Public	Yes	22	Cal Performances
UCLA	Public	Yes	25	UCLA Live
U of Michigan	Public	Yes	29	University Musical Society
UNC Chapel Hill	Public	Yes	30	Carolina Performing Arts
UC Davis	Public	Yes	39	Mondavi Center for the Performing Arts
U of Washington	Public	Yes	41	UW World Series
U of Texas Austin	Public	Yes	45	Performing Arts Center
Penn State	Public	Yes	47	Penn State Center for the Performing Arts
U of Illinois	Public	Yes	47	Krannert Center for the Performing Arts
U of Florida	Public	Yes	53	University of Florida Performing Arts
Ohio State	Public	Yes	56	Wexner Center for the Arts
U of Maryland	Public	Yes	56	Clarence Smith Performing Arts Center
Virginia Tech	Public	( no )	69	Center for the Arts at Virginia Tech
U of Iowa	Public	Yes	72	Hancher Auditorium
U of Kansas	Public	Yes	104	Lied Center of Kansas
U of Nebraska	Public	( no )	104	Lied Center for Performing Arts
U of Arizona	Public	Yes	120	UA Presents
Arizona State	Public	( no )	143	ASU Gammage

These Major University Presenters (MUPs) are considered the leading programs in the U.S., bringing national and international artists to their campuses to serve academic and public engagement missions. With the new capacity which the center programs provide, it is Virginia Tech's desire to be among these leading institutions and to gain the national reputation that can elevate the institution, impact education, reputation, and leverage external support.

Commissioning new works from artists – composers, choreographers, playwrights, visual artists, and others – is one important way centers at institutions of higher education contribute to the field and build recognition for their work, and for their universities. In many cases, multiple presenters collaborate to co-commission a new work from an artist or company, sharing the commissioning credit.

**Contributions of Performing Arts Centers/Programs  
to the Missions of Major Research Universities**  
(Jerry Yoshitomi, MeaningMatters, LLC)

**From Presidents, Chancellors and Provosts**

- Cultivation of humanity through the intense study and practice of the arts
- Repository to hold/disseminate information + creator of new/expanded innovation
- Unifying diverse elements - bringing the full resources of the university in support of broadly popular public programs
- Front Porch to the University
- Encouraging Creativity across the Campus

**Education Mission**

- Supporting the work of performing arts department productions/classes – residencies, presenting, marketing and funding
- Collaboration/Alignment with numerous other academic departments/study centers
- University student participation programs
- K-12 Residency and Performance Programs (Methods/resources shared nationally)
- Broad Community Contextualization – increasing intercultural understanding, using strength of academic resources
- What happens off-stage is as important as the performances on stage

**Research Mission:**

- Interdisciplinary Research Projects
- Producing/presenting performances
- Commissioning artists to create new works, increase Participating in/observing the creative process
- Collaborations Across Campuses – Commissions, Booking, Workshops, Education Materials

**Recruitment/Retention of Faculty, Students and Donors**

- Faculty recruitment/retention, particularly in competing with universities in urban areas
- After athletics, attract highest numbers of visitors, an opportunity to promote a range of services/value
- Donors who don't otherwise contribute, broaden support for excellence in "Academics, the Arts and Athletics."
- Increases in student enrollment (quality of applicants) in arts departments
- Student, faculty and community programs provide environment for creativity; improving the quality of life; becoming more popular retirement areas.

**Public Engagement Mission:**

- For many communities/ethnic groups, becomes their only connection with the university
- *Flagship* of community relationship building – mitigate impact of other policies/actions
- Opportunities to promote a broad range of services/value
- Statewide tours + cooperating with other universities in the state, across the country
- Community residency activities, use of facilities/support to community groups

## An Introduction to Commissioning (from Meet The Composer)

*MTC was founded in 1974 as a project of the New York State Council on the Arts. Led by the visionary composer John Duffy, Meet The Composer soon became an independent organization dedicated to the idea of composers as active professionals with a central role in our country's musical culture. In the more than thirty years since, MTC has grown to become a truly national organization, serving in all fifty states composers and audiences of a broad range of new music.*

The composer owns the commissioned work and all rights to its use under U.S. and/or International Copyright Law. The composer derives income from the licensing fees paid for use of a work in performance, publication, and recording. Composers generally retain their original manuscripts (or digital files of electronic works), though they may give copies to commissioners. Instrumental parts belong to composers or their publishers, although commissioners may have exclusive use of them for a period of time. Possession of printed or recorded music does not confer rights to performance, publication, or recording.

All performances must be licensed, including the premiere. Most composers belong to a performing rights society—ASCAP, BMI, or SESAC in the U.S.—which license their music for public performance and broadcast. The societies collect blanket fees from producers and presenters of music to license entire repertoires. If neither the commissioner nor the performer has the appropriate license, an individual license must be obtained directly from the composer or the composer's performing rights society. Grand Rights cover theatrical or musico-dramatic performance, including opera and dance, and must be licensed directly from the composer or publisher.

The Commissioning Party may negotiate rights such as:

- exclusive right to give premiere performances
- exclusive performance rights for a limited period
- exclusive right to give premieres in other cities
- right to make the work's first commercial recording
- right to be credited as the commissioner of the work in published editions, recordings, and programs of all future performances

Permission and/or licenses must be obtained for the use of existing texts or samples (i.e. a portion of an existing recording) in the commissioned work. Commissions that will be adaptations of an existing work (film, play, novel, etc.) also require special permission from the copyright owner. Commissioning agreements should specify who will be responsible for obtaining necessary permissions, licenses, and associated costs. Composers and commissioners should determine (with the help of legal counsel if needed), what permissions and licenses are necessary, and obtain these before work on the composition begins. *This Business of Music* by M. William Krasilovsky and Sydney Shemel is a useful guide to legal aspects of the music industry for both composers and commissioners. It gives full detail on the above and additional topics.

Funding for commissions is available from many governmental, foundation and private sponsors, including Meet The Composer. Costs can be reduced when several organizations co-commission a work, which also ensures multiple performances. When large fees are involved, commissioning agreements are best negotiated with the help of an attorney. For smaller commissions, Meet The Composer or other organizations can provide sample agreements to use as a model.

**Student/Visiting Scholar IP Policy**  
**DRAFT**  
**October 7, 2012**

Students, visiting scholars, volunteers, and other university affiliates are required to sign an Intellectual Property and Confidentiality Agreement form, assigning rights to the University when:

- 1) working on a research project funded by an entity outside of Virginia Tech
- 2) employed or receiving payment from Virginia Tech
- 3) university resources not typically available to the public are used in the creation of the IP
- 4) required by the Office of the Vice President for Research at the request of the faculty member directing the research.

For courses specifically designed to promote entrepreneurship, innovation, and economic development, instructors may request advanced approval from the Office of the Vice President for Research or the Intellectual Property Committee, such that a change in ownership is not triggered by student's participation in this course activity.

Virginia Tech may ask students to agree to university ownership when there is access to or use of university or 3<sup>rd</sup> party proprietary information as a party of a project. If this project is part of a non-elective course, the student will be given the option to choose another course where this is not a condition.