### UNIVERSITY FACULTY SENATE

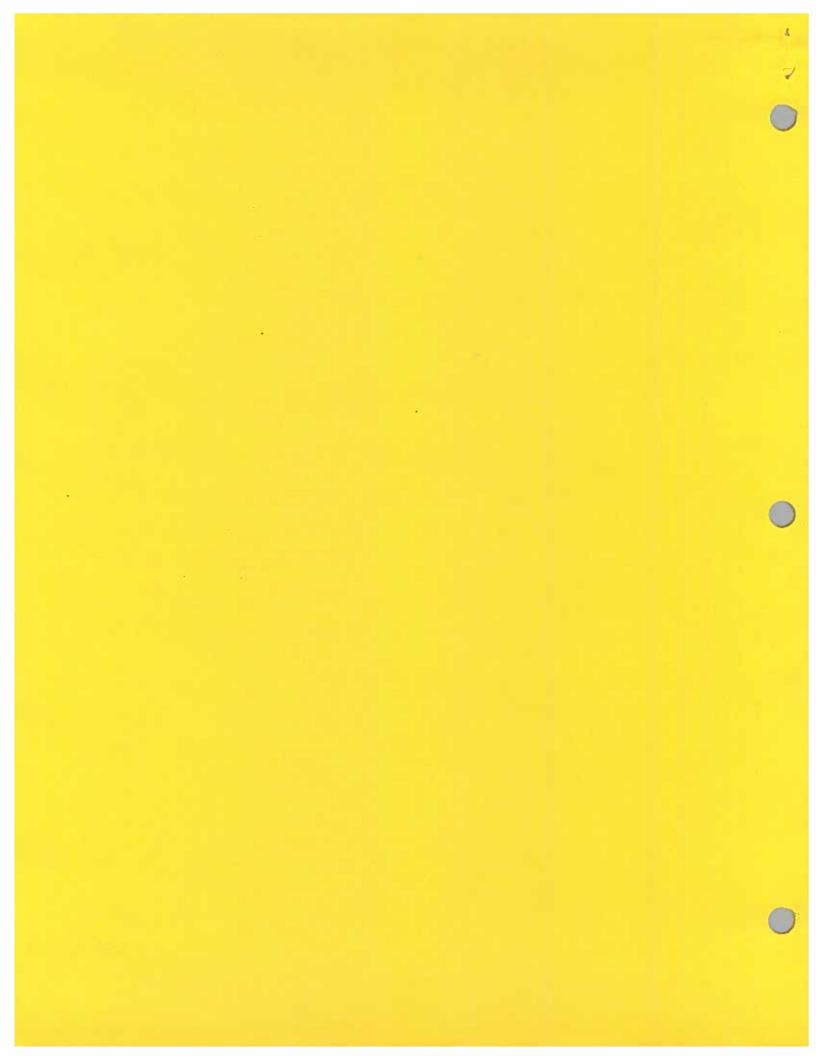
### SUMMARY OF AGENDA

March 7, 1988

- I. ADOPTION OF THE AGENDA
- II. APPROVAL OF THE MINUTES: February 1, 1988
- III. REMARKS BY PRESIDENT JONES and/or PROVOST CAMPBELL
- IV. ANNOUNCEMENTS
  - 1. Senate President Toensmeyer
- V. OLD BUSINESS
  - A. Resolution, introduced by Senator Frank Murray on a revision to the Student Guide to Policies

#### VI. NEW BUSINESS

- A. Request for approval of honorary degrees
- B. Approval for Senate recommendation to the Board of Trustees of an Audiovisual Works Policy
- C. Request for Senate endorsement of a change to the Constitution
- D. Introduction of new business



UNIVERSITY FACULTY SENATE 301 HULLIHEN HALL NEWARK, DELAWARE 19716 (302) 451-2921

February 25, 1988

TO:

All Faculty Members

FROM:

Carol Vukelich, Vice President C. Vukeuch

University Faculty Senate

SUBJECT:

Regular Faculty Senate Meeting, March 7, 1988

In accordance with Section IV, paragraph 6 of the Constitution, the regular meeting of the University Faculty Senate will be held on Monday, March 7, 1988 at 4:00 p.m. in room 110 Memorial Hall.

#### AGENDA

- I. Adoption of the agenda.
- II. Approval of the minutes of the Senate meeting of February 1, 1988.
- III. Remarks by President Jones and/or Provost Campbell.
- IV. Announcements
  - 1. Senate President Toensmeyer
  - V. Old Business
    - A. Resolution, introduced by Senator Frank Murray at the April 1987 Senate meeting, and returned to committee, on replacing Sections K.l and 2., page 9, of the <u>Student Guide to Policies</u>.
      - RESOLVED, that in the <u>Student Guide</u> to <u>Policies</u>, Sections K.1. and 2., page 9 be replaced with:
        - 1. A guilty finding for academic dishonesty will result in the following statement on the student's transcript:
          - "Found guilty of academic dishonesty on (date) in (course number) and (title)."
        - 2. The grade the student receives in the course will be determined by the instructor. The statement may be removed on petition to the Council on Student Judicial Affairs when the Council, in its judgment, so orders.

#### VI. New Business

A. Request from the Trustee/Faculty Committee on Honorary Degrees and Awards (A. Metzner, faculty member) for Senate approval of the following honorary degrees:

one Doctor of Humane Letters
one Doctor of Laws
two Doctor of Science Degrees

- B. Approval for Senate recommendation to the Board of Trustees of an Audiovisual Works Policy (Attachment 1), from the Committee on Research (P. Weil, Chairperson).
  - WHEREAS, the purpose of the University of Delaware Audiovisual Works
    Policy is to extend University educational and research
    opportunities outside and within the traditional campus
    setting through audiovisual means, and
  - WHEREAS, the interests of the University, participating faculty members, and the public are best served only with the highest quality audiovisual works possible, and
  - WHEREAS, this quality is dependent upon a high level of cooperation between originators and producers of audiovisual works to produce works representative of the most professional abilities of both, and
  - WHEREAS, it is recognized that the quality of the audiovisual works created by University faculty depends upon the attraction of and participation by instructors with professional qualifications most appropriate for each specific audiovisual works; therefore be it
  - RESOLVED, that the University Faculty Senate approves the University of Delaware Policy on Audiovisual Works as printed in Attachment 1 of the March 7, 1988 Faculty Senate Agenda and urges that it be adopted as University policy, to supercede all existing policies on audiovisual works, and be it further
  - RESOLVED, that, should the policy be approved by the University Faculty Senate and adopted by the Board of Trustees, the policy be included in the <a href="Faculty Handbook">Faculty Handbook</a>, Section II, paragraph 15c, replacing Section III-G, paragraphs 7 through 7f, and be it further
  - RESOLVED, that two years after approval by the Board of Trustees, the policy shall be reviewed by a University Faculty Senate Committee, designated by the Executive Committee, which shall make any recommendations it deems necessary for the revision

of the policy to the University Faculty Senate. The policy shall remain in force until such time as it may be revised by vote of the Faculty Senate.

- C. Motion from Robert Pennell, Undergraduate Senator, with the concurrence of the Committee on Student Life (B. Thompson, Chairperson), for Senate endorsement of the following change to the Constitution:
  - WHEREAS, the inclusion of two senators from the duly constituted student government is intended as a voice on the Senate, and
  - WHEREAS, the Delaware Undergraduate Student Congress (DUSC) is seeking a more equitable representation on the Senate, and
  - WHEREAS, the reapportionment of the Senate allows each Unit representation based on the ratio of the number of college faculty to the number of faculty in the University, yet the constituted undergraduate student government is not equitably apportioned as per other Units, therefore be it
  - RESOLVED, that the Senate endorses the following amendment to the Constitution of the Faculty of the University of Delaware and recommends to the Faculty of the University that it be adopted:

Section IV, paragraph 2, page I-2, be amended by inserting after the sentence "The duly constituted undergraduate ... student body," the following sentences: The undergraduate student government shall, in addition, arrange the election of one senator each by three groups representative of broad sections of the undergraduate student body, with the selection of each group contingent upon the approval of the Senate. One of these groups shall be representative of minorities.

[The paragraph will then read:]

Each Unit shall elect a number of senators equal to the whole number part of the ratio of fifty (50) times the number of voting faculty of that college to the number of voting faculty of the University, with the added proviso that each Unit shall be granted at least two (2) senators. The duly constituted undergraduate student government and the graduate student government will each elect two students from the full-time student body. The undergraduate student government shall, in addition, arrange the election of one senator each by three groups representative of broad sections of the undergraduate student body, with the selection of each group contingent upon the approval of the Senate. One of these groups shall be representative of minorities. In the absence of a duly constituted graduate student government the Committee on Graduate Studies shall have the responsibility of arranging the election of the graduate student senators.

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D. Such items as may come before the Senate. (No motion introduced at this time may be acted upon until the next meeting of the Senate.)

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Attachment: Committee Activities Report

1. Audiovisual Works Policy

#### COMMITTEE ACTIVITIES REPORT

### ACADEMIC APPEALS, COMMITTEE ON (Gordon DiRenzo)

Two hearings in process.

# ACADEMIC COMPLAINTS, UNIVERSITY REVIEW COMMITTEE FOR (Jack Gelb)

No items before the committee.

### ADJUNCT ACADEMIC AFFAIRS, COMMITTEE ON (Dewey Caron)

No items before the committee.

## BEVERAGE ALCOHOL, COMMITTEE TO REGULATE THE USE OF (James Fischer)

No items before the committee.

# COMMITTEES, COMMITTEE ON (Frank Dilley)

Filling committee vacancies.

#### COMPUTER COMMITTEE (David Usher)

No items before the committee.

### CULTURAL ACTIVITIES AND PUBLIC EVENTS, COMMITTEE ON (Frank Dilley)

No items before the committee.

# EDUCATIONAL INNOVATION AND PLANNING, COMMITTEE ON (Gary Laverty)

No items before the committee.

### FILM SUBCOMMITTEE (Kevin Kerrane)

No items before the committee.

# FINE ARTS AND EXHIBITIONS, SUBCOMMITTEE ON (Robert Bethke)

Scheduling spring 1988 art exhibits in Perkins Student Center Gallery.

# NOMINATING COMMITTEE (Michael F. Pohlen)

Reviewing possible change in the committee structure and charge.

### PERFORMING ARTS SUBCOMMITTEE (Allen M. Granda)

No items before the committee.

# PHYSICAL PLANNING AND UTILIZATION, COMMITTEE ON (Barbara Settles)

Committee will meet with Team 4 consultants this winter.

# RULES, COMMITTEE ON (James L. Morrison)

No items before the committee.

# UNDERGRADUATE ADMISSIONS AND STANDING, COMMITTEE ON (Anne W. Clark)

Approval of high school computer science as an academic elective credit in an applicant's high school record. (This was a motion approved by this committee and we do not think that it requires any further approval.)

# VISITING SCHOLARS AND SPEAKERS SUBCOMMITTEE (John MacKenzie)

Reviewing applications. Departments are encouraged to submit applications quickly.

/wc

**VERSION 2/19/88** 

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I.

#### UNIVERSITY OF DELAWARE

#### POLICY ON AUDIOVISUAL WORKS

### PRINCIPLES AND OBJECTIVES

The educational and research activities of the University of Delaware can be fulfilled more effectively by employing modern audiovisual technology. The goal will be to produce audiovisual works of the highest quality through the joint effort of University of Delaware faculty and technical specialists.

The objectives of this policy are as follows:

- A. to extend University educational and research opportunities outside and within the traditional campus setting through audiovisual means;
- B. to serve the best interests of the University, faculty members, and the public by producing, using, and distributing only audiovisual works of the highest possible quality;
- C. to foster a high level of cooperation between participating faculty members and the audiovisual works production staff;
- D. to encourage participation by instructors with professional qualifications most appropriate for each specific audiovisual work;
- E. to preserve traditional University practices and privileges with respect to the generation and publication of scholarly works and the right of faculty members to determine course content;
- F. to foster the free and creative expression and exchange of ideas and comments;
- G. to establish principles and procedures for equitably sharing income derived from audiovisual works produced at the University; and
- H. to protect the University's assets and imprimatur.

#### II. POLICY STATEMENT

It is the policy of the University to provide the necessary facilities and technical staff to create audiovisual works in cooperation with participating faculty members and to release and distribute such works in accordance with the foregoing objectives and the following provisions.

### 51 III. RELATION TO OTHER UNIVERSITY POLICIES

This policy shall be consistent with the fundamental educational and research missions of the University and with all policies related to those missions, including the policies governing academic professionalism and academic freedom.

#### IV. DEFINITIONS

The following definitions apply to terms used in these procedures:

"Audiovisual works" are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied. This definition shall not be construed as including software or audiovisual works that are substantially based upon software.

A "device," "machine," or "process" is one now known or later developed.

### 75 V. ADMINISTRATIVE RESPONSIBILITY

The administration of the policy set forth in this document is the responsibility of the Provost of the University. The Provost, however, may delegate day-to-day administration to an appropriate University official with the understanding that no departures from the stated principles of this policy will be made.

The Provost or her/his designee is responsible for application of the principles of this policy to all activities involving the making of audiovisual works, for making independent assessment of commercial potential of audiovisual works projects where appropriate, and for promptly reporting perceived potential to the Associate Provost for Research & Patents.

The Provost or her/his designee of the structure designated by the University to produce, distribute, and market audiovisual works shall be advised by the University Faculty Senate Committee on Instructional Resources (or its successor). The committee shall advise the Provost or her/his designee on a regular basis on the merit of proposed audiovisual works projects.

#### 97 VI. FACULTY PARTICIPATION

All participation by faculty in the creation of audiovisual works shall be fully voluntary, and participation by full-time faculty shall not be a condition of employment.

102 VII. USE OF AUDIOVISUAL WORKS IN FACULTY EVALUATION

A. On request, a copy of an audiovisual work shall be loaned by the
University to each faculty member who has been a primary participant
in the making of that work for her/his use in faculty evaluation
(e.g., promotion, tenure, and merit increase). Faculty members
wishing to purchase a copy of the work shall reimburse the
University for the direct costs of duplication of the work or parts

B. In no circumstance may an audiovisual work be used in faculty evaluation without the written permission of the faculty member who has participated in the making of that work.

#### VIII. OWNERSHIP OF INTELLECTUAL PROPERTY

thereof.

All intellectual property rights in audiovisual works, including rights to copy, use, and distribute, shall reside in the University. The University's administration of its intellectual property rights shall be governed by the following:

- A. In all circumstances, the faculty member participating in the making of an audiovisual work will determine the content of the production, and with respect to content shall have the right of approval prior to initial use or distribution and thereafter at the time of periodic reviews of the material. (See Section XVIII.)
- B. With respect to production standards and quality, these approvals shall be by mutual consent of the faculty member and the appropriate University administrative officer. When mutual consent is not reached a three-member panel of peers shall arbitrate the disputed issues. (See Section XXII.)
- C. The University shall seek approval before use or release of a credit course from the head administrator(s) or chair(s) of the relevant academic unit(s) or department(s) (1) for the employment of any outside instructional personnel for the making of audiovisual works and (2) for the works made using outside instructional personnel.
- D. Use of an audiovisual work for a substantial part of the content of a course giving academic credit at the University and taught by a faculty member other than the primary participant in the making of the work shall require approval by both the faculty creator of that work and by the administrator or chair of her/his unit or department (see also Section XIIA3 concerning compensation). No such approvals shall be required in instances of "fair use" of an audiovisual work, i.e., the use of the work for an insubstantial part of the course content.
- D. If the University employment of the participating instructor terminates, the University retains the right to distribute and use the audiovisual work for whatever part there may remain of a period of three years from the latest of the dates on which the work was

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released, reviewed, or revised. However, prior to the end of the three-year period, one of the following actions shall be initiated by the University:

- 1. Acting jointly, the University and the former faculty member or a person rightfully representing her/him or her/his estate shall undertake periodic reviews of the audiovisual work to determine if it should continue in release (as per procedures in Section XVIII) or
- 2. The University shall negotiate a contract with the participating (now former) instructor or with her/his estate stipulating the conditions for subsequent use of the audiovisual work and the procedures for its review or revision.

#### 170 IX. ASSIGNMENT AND WARRANTY

The participating faculty member agrees to execute all documents, including assignment of the works to the University or its designees, required for legal disposition of rights relative to such materials.

The participating faculty member shall warrant that the material she or he supplies in course content does not to the best of her/his knowledge in any way infringe the property rights of others.

#### 180 X. CONTRACT PROCEDURES

Each audiovisual works project shall be governed by a written agreement (contract) signed by the participating faculty member or off-campus personnel and the University. The terms of such an agreement shall be consistent with sections of this policy that are applicable to either University faculty members or to off-campus personnel.

#### 189 XI. COST RECOVERY

All costs of studio operation related to an audiovisual work shall be recovered by the University from the project income before income distribution provided for in Section XII, Faculty Compensation for Audiovisual Works Services. A schedule of costs based on the hourly use of University facilities and personnel shall be published and updated by a designated University administrator and the University Treasurer.

### 198 XII. FACULTY COMPENSATION FOR AUDIOVISUAL WORKS SERVICES

Compensation shall be paid as provided in Sections XII and XIII to a faculty member participating in the production of an audiovisual work in all instances in which the work results in income accruing to the University from the audiovisual work. "Income" for this purpose does not include that tuition paid to the University by students enrolled in a regularly scheduled credit course which is the subject of the audiovisual work in which the faculty member is participating as part of her/his workload. Compensation paid in accordance with Sections XII and XIII shall be in either one or both of the following forms: 1) The form and amount of the compensation shall be according to the current

published schedule upon completion of the work or, where applicable, at the time the University has received the corresponding tuition income; 2) Payment in increments based on income other than tuition received by the University from distribution of the work by live broadcast, delayed broadcast, rebroadcast, sale, lease, or use of the work in an instruction program managed by a public or private party other than the University. For purposes of this Section XII, an audiovisual work shall be deemed "complete" when the participating faculty and the production head agree it is ready for release, except that live broadcast works shall be deemed complete at the conclusion of the last broadcast session. "Release" means any method of distribution including but not limited to rebroadcast, sale, lease, or use of the work in an instruction program managed by a public or private party other than the University.

- A. Full Course Audiovisual Works Project: Compensation Paid in the Manner Customary for Overload Payments
  - 1. Regularly Scheduled Course Taught Also as Audiovisual Course

When a faculty member teaches a full course that is regularly scheduled as part of her/his workload, the course forms the primary basis of an audiovisual works project, and the University realizes tuition income from the broadcast or external use of the work, the faculty member shall be compensated in recognition of the additional work and special considerations required to make the course into an audiovisual course. The form and amount of the compensation shall be according to the current published schedule.

 Course Not Regularly Scheduled Taught Specifically for Audiovisual Works Project

When a faculty member teaches a full course that is beyond her/his regular teaching load, the faculty member shall be compensated. The form and amount of the compensation shall be according to the current published schedule.

3. Use of Audiovisual Work as Substantial Part of an Academic Credit Course at the University When Taught by an Instructor other than Original Instructor of Audiovisual Work

The use of an audiovisual work for the substantial content of a course that (a) results in income for the University through the payment of tuition or other fees and (b) is taught by an instructor other than the faculty member who was the primary participant in producing the work shall require compensation to the faculty member who participated in the making of the work. The form and amount of the compensation shall be according to the current published schedule. In no case shall the compensation be greater than the income realized by the University (see Section VILIC).

 B. Short Course Audiovisual Works Projects and Special Projects: Compensation Upon Date of Completion of the Project

When a faculty member is a primary participant in a short course, the faculty member shall be compensated. The form and amount of the compensation shall be according to the current published schedule.

XIII. DISTRIBUTION OF INCOME: COMPENSATION AFTER RELEASE OR USE OF AN AUDIOVISUAL WORK OF A NOT-FOR-CREDIT COURSE

Income received from use or distribution of audiovisual works of notfor-credit courses shall be distributed through one of two optional methods, one to be selected by the faculty member involved:

- Option 1: Income in excess of costs shall be distributed one—third to the instructor, one—third to the production facility, and one—third to the instructor's academic unit. If Option one is selected, one or more of the published schedules discussed in Section XIIA and B constitute(s) the basis of compensation of the faculty member in addition to the distribution defined in this option.
- Option 2: All compensation of the instructor shall be derived under this option; the instructor shall receive no compensation under the terms of Sections XIIA or B. Gross income received from use or distribution of audiovisual works until the production facility has recovered all costs shall be distributed in the following manner: one-sixth to the instructor and five-sixths to the University. The five-sixths shall be shared with the instructor's academic unit. Upon recovery of costs the instructor's academic unit's share shall not be less than one-third of the gross income.

Distribution of income is to continue under the terms of this section in the event the faculty member retires or leaves the employment of the University. Should the faculty member die, the income due her/him shall be distributed to her/his heirs.

#### 300 XIV. STUDENT STIPENDS

Normal rate stipends shall be paid to students for time spent developing or producing audiovisual works under faculty or University direction. Such payments shall be recoverable as costs.

#### 306 XV. OFF-CAMPUS PERSONNEL

Persons not University employees may be engaged to develop course materials, to provide instruction, or to provide other services related to the production of audiovisual materials.

A. Employment of Off-Campus Personnel as Instructors in Audiovisual Works

The employment of off-campus personnel under contract as instructors in the production of audiovisual works of credit courses shall be

317 subject to the approval of the unit administrator or department 318 chair concerned with the subject matter of the production. 319 Procedures similar to those used to employ off-campus personnel for 320 continuing education shall apply. 321 322 B. Compensation of Off-Campus Instructional Personnel 323 324 Compensation of off-campus instructional personnel shall be under 325 contract negotiated on merit. Royalty payments may be made under 326 such contracts but shall not exceed comparable payments to 327 University faculty participating in the making of audiovisual works. 328 329 C. Compensation of Non-Instructional Off-Campus Personnel 330 331 Compensation of non-instructional personnel shall be set by 332 negotiation but shall in no case include payments based on project 333 income (i.e., royalties). 334 PAYMENTS TO PROFESSIONAL STAFF AND OTHERS 335 XVI. 336 337 No studio employee, professional, or non-professional shall be eligible 338 to receive distributions of income. Their efforts shall be considered 339 "work made for hire." 340 341 XVII. INSTRUCTIONAL SUPPORT 342 343 At the time of contract preparation (see Section X, Contract Procedures) 344 the participating faculty may request 345 an instructional assistant (e.g., teaching assistant) at 346 the remote site of a broadcast credit course and/or within the 347 University campus. If the request is approved by the unit head, the 348 expense of the instructional assistant(s) shall be paid by the production 349 unit. The form and amount of compensation shall be according to the 350 current published schedule. 351 352 XVIII. POST-RELEASE REVIEW OF AUDIOVISUAL WORKS 353 354 A. Frequency of Periodic Reviews 355 356 Following the release of an audiovisual work, it shall be reviewed 357 at least once every three years. Reviews may take place annually at 358 the request of either the University or the participating faculty 359 member. 360 361 B. Participants in Reviews 362 Participants in reviews shall include the University's designated 363 364 representative and the faculty member who was the primary 365 participant in the making of the work or the designated 366 representative of her/his estate. (See Section VIIIA.)

367 C. Review Decisions

Decisions regarding continued use or revision of a work shall be made by the same procedure as in Section VIII, Ownership of Intellectual Property.

### XIX. PERSONAL RECORDING EQUIPMENT

Nothing in this policy shall be construed as limiting faculty or professional staff use of personal recording equipment (e.g., cameras, camcorders, tape decks) for non-profit applications as teaching aids, research tools, or educational purposes, or for personal use for hobbies, entertainment, documentation, or similar applications not related to University academic activities. Use of such personal equipment for production of audiovisual works having commercial potential shall require approval of the designated administrator. approval shall not be unreasonably withheld and shall be based on the relationship of the proposed work to the normal University activities and duties of the faculty or professional staff person seeking approval and on University's interest in the audiovisual work as measured by the extent of the University's prior material or staff support of the creation of the work. If the designated administrator determines that the University's interest in the work is substantial, the work shall be covered under sections VIII and XII of this policy.

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# CONTRACT PRODUCTION OF AUDIOVISUAL WORKS

A. Audiovisual Works Financed Wholly or in Part by Government Funds

The University is obligated to report to the appropriate government agency all audiovisual works derived from work which has had any financial support from the government of the United States, for determination of the government's rights and interests. This determination may result in

the government deciding that the public interest requires that the works be disclosed in the open literature; or

 the government acquiring and reserving to itself principal or exclusive rights, in which case exploitation of the audiovisual work rests with the government; or

3. the government releasing the audiovisual work to the University.

Irrespective of which of these alternatives is elected by the government, the government usually retains rights to a royalty free, nonexclusive, irrevocable license throughout the world under any copyright or patent which may be issued on the work, or to free use of the work for government purposes; and rights to the work granted by the University are subject to prior retained government rights.

 418 B. Audiovisual Works Financed by Contracts with other Organizations or 419 Individuals

Rights with respect to audiovisual works in this category are governed by the terms of the individual agreements. Section XXB shall be consistent with the basic underlying principles of this document.

#### 426 XXI. OTHER SITUATIONS

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Applications of audiovisual materials are steadily evolving and increasing. It is probable that not all situations which may arise are adequately covered in this policy. In such cases, the designated administrator, in consultation with the participating faculty member, the appropriate dean/director, and the designated Senate Committee, shall establish any required new or modified procedures. procedures shall become effective and shall be incorporated in this document upon approval by the Provost.

Some cases not clearly covered by this policy may require ad hoc treatment. (In these situations adding the procedures to this document may not be necessary.)

#### XXII. ARBITRATION OF DISPUTES

If the University and the participating faculty member cannot agree with respect to any of their respective rights or obligations hereunder, such dispute shall be submitted for determination to an arbitration panel of three members chosen from the University community and consisting of a member named by the participating faculty member, a member named for the University by the Provost, and a member selected by mutual agreement of these two nominees, who will serve as chair. The decision of a majority of this panel shall be final and binding upon both the participating faculty member and the University.

### 453 XXIII. EFFECTIVE DATE

455 This policy becomes effective upon approval by the Board of Trustees of 456 the University of Delaware. In the interim, audiovisual projects will be governed by agreements based on the merits of each case and the principles of this policy as accepted by the Faculty Senate.

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