

GOUCHER COLLEGE

INTELLECTUAL PROPERTY POLICY

Adapted from the “Tufts University Policy on Rights and Responsibilities with Respect to Intellectual Property” (www.tufts.edu/tccs/p-intellectual.html) with the permission of Tufts University, and from the “Catholic University of America Discussion Draft Intellectual Property Ownership Policy,” (<http://counsel.cua.edu/cuaspecific/ip/>) with the permission of the drafter, Margaret O’Donnell, Esq.

BACKGROUND

Goucher College seeks to encourage creativity and invention among its faculty, students, and staff. The college supports this endeavor by making available its own facilities, equipment, personnel, and information resources for the development of intellectual property. The college also actively seeks specific support for creative activity from external sources, both public and private.

Traditionally, institutions of higher education have not claimed ownership of works of scholarship created by faculty members and have treated such works as protected by copyright. However, it has also been the tradition for universities and colleges to claim ownership rights of inventions subject to patents. The growing application and use of communications media, educational technology, and computer programs in the work of the college have blurred the lines between copyrightable and patentable material and created an increasing diversity of works that may be subject to claims of ownership under both copyright and patent law. This situation is further complicated by evolving federal policy and legislation in the area of both copyrights and patents. Federal law is not clear, for example, whether the “work for hire” doctrine applies to traditional scholarly work created by faculty.

All of these considerations made it desirable for the college to develop a policy that will provide the basis for allocating rights and responsibilities relating to intellectual property created on campus. Therefore, the president appointed an Intellectual Property Task Force to develop an intellectual property policy that sets forth the mechanisms for determining ownership rights in intellectual property at Goucher College.

INTELLECTUAL PROPERTY POLICY

- I. **What is the purpose of the policy?**
- II. **Who is covered by the policy?**
- III. **What is covered by the policy?**
 - A. Copyrightable Intellectual Property
 - B. Patentable Intellectual Property
 - C. Agreements Regarding Intellectual Property
- IV. **What special rules apply to students?**
- V. **What is the process for formalizing ownership and allocation of rights/responsibilities?**
- VI. **How are royalties distributed?**
- VII. **How are conflicts resolved?**
- VIII. **What if there is a conflict of interest?**
- IX. **To whom should questions about this policy be directed?**
- X. **How can the policy be changed?**

I. What is the purpose of the policy?

The specific aims of the policy are to:

- Promote and encourage the advancement of knowledge and the social good;
- Protect the traditional rights of scholars with respect to scholarly works;
- Set forth mechanisms for determining rights of ownership in intellectual property and for resolving disputes with respect to such property;
- Set forth guidelines for how the college and members of the college community will participate in any net profits that result when intellectual property is introduced for commercial development;
- Protect the rights of a scholar to take his or her work and use the work elsewhere when leaving the institution;
- Retain for the college the right to use certain works developed by faculty and staff who may leave the institution;
- Protect the college's interest in work products developed for the college by outside consultants and independent contractors.

II. Who is covered by the policy?

The policy applies to all "covered individuals," who are:

- All persons employed by Goucher College, including full- and part-time faculty, adjunct faculty, administrative officers, and staff members;
- Independent contractors or consultants. Adjunct faculty that sign contracts designating them as independent contractors are treated as faculty for purposes of this policy and their contracts shall so specify;
- All college students, including undergraduates, graduate students, distance-learning program students and professional program students. For purposes of this policy, a "student" is any individual who registers for any course at the college through Student Administrative Services or the Welch Center for Graduate and Professional Studies;

- Anyone using college facilities or resources under the supervision or with the permission of college personnel, including, but not limited to, volunteers and students enrolled at the college or other institutions and/or performing internships at the college.

III. What is covered by the policy?

All “intellectual property” produced by covered individuals, acting individually or in groups, performing research or engaging in work or study at the college or in connection with a college program, is covered by this policy. For purposes of this policy, intellectual property is divided into two categories and defined as follows:

“Copyrightable intellectual property” shall include, without limitation, all creative works, electronic or paper documents, course materials and syllabi, software (including source code and object code), multimedia or audiovisual materials and photographs, and any other materials that may be copyrightable under U.S. law (whether or not produced in the U.S.). Copyrightable intellectual property shall include educational or research software, but shall not include software other than educational or research software.

Examples of copyrightable intellectual property include:

- A scholarly article contributed by a faculty member to a journal, book or other publication;
- A photograph taken by a student for a photography class;
- A musical composition created collaboratively by a faculty member and student;
- A course syllabus on a faculty web page;
- A CD-ROM simulated chemistry lab developed by a faculty member;
- A policy created by a college task force;
- Training materials for a seminar on sexual harassment law created by the Human Resources Department;
- A computer program that translates Spanish poetry to English;
- A video game created by a student, if created for educational purposes (otherwise it would be treated as patentable intellectual property).

“Patentable intellectual property” shall include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) and discoveries or other material that is potentially patentable under U.S. law (whether or not produced in the U.S.), as well as all software that is excluded from consideration as copyrightable intellectual property (whether or not patentable under U.S. law).

Examples of patentable intellectual property include:

- Compositions of matter, such as chemicals and cell lines;
- Processes, such as a method to detect levels of chemicals in substances;
- Machines, such as automobiles or factory equipment;
- Computer programs that perform manufacturing functions or processes;
- The novel, ornamental features of a useful or utilitarian object, such as the Nike “swoosh” or a computer CPU case.

A. Copyrightable Intellectual Property

Responsibility for Disclosure of Copyrightable Intellectual Property

The creator of copyrightable intellectual property is not obligated to disclose the creation of such property, even when the property might have commercial value, unless the property is owned by the college, as set forth below. In such case, the creator is responsible for timely disclosure to the college, *i.e.* when it can be reasonably concluded that copyrightable intellectual property has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator[s] and the college.

Covered individuals who are not required to disclose copyrightable intellectual property are nevertheless encouraged to consult with the chief academic officer regarding the disclosure of such property to the extent that they may wish assistance in copyright protection and marketing in exchange for profit sharing with the college.

Determination of Rights to Copyrightable Intellectual Property

Except as set forth below, the creator of copyrightable intellectual property shall retain his/her rights, and the college shall not have ownership rights.

1. The college owns copyrightable intellectual property developed under any of the following circumstances:
 - Development was funded as part of an externally sponsored research program or by any agreement that allocates rights to the college;
 - A covered individual was assigned, directed, or specifically funded by the college to develop the copyrightable intellectual property, and the college has negotiated a written understanding or formal contract with the creator;

- Copyrightable intellectual property was developed by administrators or other non-faculty employees, including student employees, in the course of employment duties and constitutes work for hire under U.S. law; or
- Copyrightable intellectual property was developed with “substantial use of college resources,” which means the use of college resources, including college funds, facilities, office and lab equipment, and administrative and technical support significantly in excess of those resources widely and ordinarily available to a class or category of college personnel, faculty, or students. The following examples of substantial use of college resources are provided for guidance, but these examples in no way limit or restrict the meaning of “substantial use”:
 - (a) extended use of time and energy by the creator(s) in the work that results in a reduction in the expected levels of teaching, scholarship or other academic activities, so that anticipated performance in these areas is at a level significantly less than normal;
 - (b) significant use of specialized computing resources;
 - (c) use of faculty or staff in the creation of the work in lieu of their regular assignments and duties to the college;
 - (d) use of funding from gifts to the college to support creation of the works involved.

2. The college has the right to use copyrightable intellectual property owned by covered individuals in the following circumstances:

- Faculty members will grant to the college a non-exclusive, royalty-free, perpetual license to make copies of copyrightable intellectual property that they own and to use such property in teaching, scholarship and research in support of the college’s educational mission, provided that faculty members shall have the right to approve proposed uses of their copyrightable intellectual property. Such approval shall not be unreasonably withheld or delayed. The college or a third party has no right under this paragraph to record or distribute the recording of a faculty member’s classroom lecture or performance for commercial purposes without the faculty member’s permission, which is in the sole discretion of the faculty member to give.

- In the event a faculty member leaves the college, the faculty member will grant to the college a license to create derivative works from copyrightable intellectual property that is course material created by the faculty member for use in the college curriculum, subject to the faculty member's approval, which shall be neither unreasonably withheld nor unreasonably delayed. The college will, when exercising its license, credit the faculty member unless the faculty member provides reasonable advance notice to the college that credit should not be given.
- It is suggested, but not required, that any covered individual, when publishing a scholarly work, request the publisher to place a note on the first page of the publication giving the college and other nonprofit organizations the right to make copies of all or any portion of the published work for educational purposes without written permission or payment of an additional fee. Suggested language follows:

"Copyright [date] [Publisher]. Permission is granted for nonprofit educational and library duplication and distribution of this [article].

- In the event that a covered individual or group of covered individuals has created copyrightable intellectual property prior to the initiation of employment or matriculation at the college, the college will not assert ownership or license rights to such property. To the extent the faculty or staff member or student creates derivative copyrightable intellectual property from such work while employed or matriculating at the college, the terms of this policy shall govern the rights to such derivative property.

B. Patentable Intellectual Property

Responsibility for Disclosure of Patentable Intellectual Property

Covered individuals who alone, or in association with others, create patentable intellectual property with any use of college resources are responsible for disclosing the patentable intellectual property to the college. Such disclosure shall be made when it can be reasonably concluded that patentable intellectual property has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the patentable intellectual property for the creator[s] and the college. Creators

are encouraged to seek the advice of the chief academic officer in determining whether the subject matter is patentable intellectual property within the meaning of this policy.

Determination of Rights to Patentable Intellectual Property

Except as set forth below, the creator of patentable intellectual property shall retain his/her rights, and the college shall not assert ownership rights.

1. The college owns patentable intellectual property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any agreement that allocates ownership rights to the college;
- The creator was assigned, directed, or specifically funded by the college to develop the patentable intellectual property and the college has negotiated a written understanding or formal contract with the creator that allocates ownership rights to the college;
- Patentable intellectual property was developed by administrators or other non-faculty employees, including student employees, in the course of employment duties; in such case, the creator shall assign all rights in the property to the college;
- Patentable intellectual property was developed by any individual with substantial use of college resources (as defined in Section III, paragraph A.1). In such case, the creator shall assign all rights in the property to the college.

2. The college has the right to use patentable intellectual property owned by others in the following circumstances:

- Faculty members will grant to the college a non-exclusive, royalty-free, perpetual license to use patentable intellectual property that they own in teaching, scholarship and research in support of the college's educational mission, provided that the faculty member shall have the right to approve proposed uses of the patentable intellectual property. Such approval shall not be unreasonably withheld or delayed.

C. Agreements Regarding Intellectual Property

1. Because the college aims to encourage creativity, it reserves the right to allow flexibility in applying this policy on a case-by-case basis. In such cases, ownership of copyrightable or patentable intellectual property developed pursuant to a special agreement between the college and the creator or creators will be governed by the provisions of any such agreement.

2. The Office of General Counsel shall review all contracts between the college and independent contractors so that the college's ownership interest in the work product may be protected. Examples include contracts for:

- Curriculum and course materials;
- Reports by consultants or subcontractors;
- Computer software;
- Architectural or engineering drawings, illustrations or designs prepared for the college;
- Artistic works commissioned by the college;
- Web pages and/or advertising material prepared for the college.

Contracts must contain work for hire language that provides that the college owns the work. Contracts with adjunct faculty may, but are not required to, include work for hire language, at the discretion of the individual department or program, but shall include language retaining all rights for the college set forth in Section III, paragraphs A.1 and 2.

IV. What special rules apply to students?

Intellectual property created by students is subject to the following additional rules:

A. The college makes no claim to copyright ownership of intellectual property created by students working on their own or doing class work, *i.e.*, not within the scope of an employment relationship with the college or with one of its employees, and not making substantial use of college resources (see page 7, paragraph A.1). The college reserves the right to keep a copy of all coursework produced by a student.

B. Students working on a project governed by a contract or agreement to which the college is a party shall be bound by the terms of that contract or agreement.

C. Students who are hired or directed to perform specific tasks that contribute to the creation of copyrightable or patentable intellectual property will ordinarily

have no rights to ownership of that property, regardless of the source of funds from which they are paid. In such cases, the party who owns the copyright or patent of the rest of the property will ordinarily retain copyright or patent ownership of the portion contributed by the student.

D. Students, paid or unpaid, working collaboratively with covered individuals on projects that result in copyrightable or patentable intellectual property, except those who are hired or directed to perform specific tasks that contribute to the creation of such property, will be granted the same rights and obligations of copyright and patent ownership as would another covered individual working collaboratively on the project. To the extent a covered individual working with the student asserts sole ownership of the work product, he or she must establish this right through a written agreement as soon as it becomes reasonably apparent that copyrightable or patentable property may be produced as a result of the collaboration, or be barred from asserting sole ownership rights.

E. If none of the above relationships apply, students performing work compensated by the college are subject to the provisions governing staff or other non-faculty employees, and their work constitutes work for hire under U.S. law, as set forth in this policy.

F. Students may also be subject to rules and restrictions of their departments, so long as such rules and restrictions are consistent with this policy.

G. The college reserves the right to make copies of student papers, dissertations, and theses for use in the college curriculum and for archival purposes.

H. Students may not disseminate notes or video or audio recordings they make in class for commercial purposes unless approved by the instructor.

V. What is the process for formalizing ownership and allocation of rights/responsibilities?

A. Reporting the Creation of Intellectual Property.

The creator(s) of copyrightable intellectual property that may be owned by the college pursuant to this policy and the creator(s) of patentable intellectual property, or any individual(s) claiming an interest in such copyrightable or patentable intellectual property, including an individual acting on behalf of the college, shall disclose such development to the chief academic officer so that the college may act to protect its ownership interest in the property. Such disclosure shall be made when it can be reasonably concluded that copyrightable or patentable intellectual property has been created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator(s) and the college.

B. Waiver or Return of Rights.

The college may, in its sole discretion, waive, transfer, or license to the creator(s) its rights in any intellectual property when such action does not conflict with obligations to other interested parties. This could occur, for instance, if the costs for protecting and developing the intellectual property are not likely to be matched by anticipated income and royalties.

C. Agreements regarding the ownership and use of intellectual property.

In the event the college or any covered individual wishes to negotiate a special agreement regarding intellectual property referred to in Section III.C, or otherwise modify the application of this policy to any particular intellectual property, an agreement regarding ownership and use of such property may be reached. The chief academic officer shall be responsible for negotiating all such agreements.

VI. How are royalties distributed?

Unless otherwise agreed, the net income (gross royalties and license or use fees minus administrative, licensing, legal, marketing, and other reasonable expenses) resulting from the marketing of copyrightable or patentable intellectual property owned by the college pursuant to this policy will be divided as follows:

- In all cases—50% to the inventor(s)/creator(s) and 50% to the college.

In the event that intellectual property is created by multiple inventors, the inventors' royalties will normally be shared equally among all inventors unless they agree otherwise in writing. The inventor's share will continue after he or she leaves the college.

VII. How are conflicts resolved?

In the event that a dispute arises regarding the application of this policy, the chief academic officer shall appoint a three-person *ad hoc* Intellectual Property Adjudication Committee to adjudicate the dispute. The committee shall consist of one member chosen by the chief academic officer, one member chosen by the individual(s) involved in the dispute, and a third member chosen by the first two appointees. All committee members shall be employees of the college. The *ad hoc* committee shall establish its own procedures and shall issue a written decision, which shall be the final decision of the college. If any party is not satisfied with the decision, the matter shall be submitted to binding arbitration, to take place on the college campus, according to the rules of the American Arbitration Association. The parties shall agree on a single arbitrator who has expertise in the field of higher education and intellectual property. Fees and costs of the arbitration shall be borne equally by all parties.

VIII. What if there is a conflict of interest?

- A. Faculty, staff, and students cannot use their institutional affiliation to popularize the competing product of for-profit enterprises.
- B. Before entering into an agreement with an outside entity to commercialize a course taught at the college, including an agreement to record or distribute classroom lectures or performances, faculty must seek approval from the chief academic officer .

IX. To whom should questions about this policy be addressed?

All questions about this policy should be referred to the chief academic officer.

X. How can the policy be changed?

The college reserves the right to change this policy from time to time. Proposed changes normally will be developed by the chief academic officer, in consultation with appropriate representatives or committees of the faculty, staff and students. The president has sole authority to approve changes to this policy.

THIS POLICY IS EFFECTIVE AS OF May 22, 2007.

Sanford J. Ungar
Sanford J. Ungar
President