

INTELLECTUAL PROPERTY POLICY

I. Policy Overview and Definitions

This policy addresses the ownership of Intellectual Property for works developed or created by members of the College community, including faculty, research staff, College staff, and students, and the circumstances and processes under which agreements and determinations of ownership are reached. The policy applies to Intellectual Property (IP) developed or created by members of the College community or with College resources.

Definitions

Faculty: Professors, associate professors, assistant professors, instructors, lecturers, and the visiting professors of the College.

Research Staff: All the staff members at the College whose primary job function is academic research. Research Scientists, Postdoctoral fellows, Newhouse Fellows, and the Research staff in Wellesley Centers for Women are examples of staff members who fall in this category. Administrative staff, including library staff, who support academic research, but not as their primary job function, are not included in this category.

College Staff: Shall mean the administrative staff at the College who are not classified as research staff above.

Scholarly work: *Scholarly work* is defined broadly to include pedagogical, literary, scientific and other creative work developed by faculty members, research staff and/or students (or College staff acting outside the scope of their employment). This includes: (1) work related to scholarship, such as books, journal articles, inventions, advances, discoveries, software, creative works, artistic works in any medium (including, but not limited to, musical composition, choreography, visual art, scriptwriting), videos and photographs, and (2) work related to teaching, such as textbooks, lecture notes and other course notes (whether in summary or verbatim form, whether privately held by the faculty member or distributed to the class, whether paper or electronic), problem sets, syllabi, training materials, and Web sites for classes. *Scholarly work* created by faculty, research staff, or students is considered IP and is normally owned by the creator(s). This means that the vast majority of *scholarly work* generated by faculty and/or students is IP that is owned exclusively by the creator(s). Exceptions may arise in circumstances involving *identity interest*, *functional interest*,

exceptional use of college resources, or due to the College's Open Access Policy as described below. IP created by College staff within the scope or course of their employment is owned by the College. A College staff member can ask that their role document in HR be modified (with the approval of their supervisor) to explicitly classify them as research staff for the purposes of IP, if they feel research is a significant part of their responsibilities.

Exceptions to IP

The College has an ownership interest in IP if it involves an *identity interest*, a *functional interest*, or the *Open Access Policy*. The College may have an ownership interest in some cases of exceptional use of College resources.

(i) The College has an "**identity interest**" in works that are integral to, and reflect more directly on, the identity of the College than on the identity of the individual(s) who create them. For example, it has an *identity interest* in items disseminated by and for the College, such as various College catalogs, institutional Web pages, alumni bulletins, admissions brochures, and fundraising materials. An *identity interest* also occurs when there is a prominent use of the College's name, or of any image, trademark or logo of the College. Simply identifying the author of a work as a Wellesley professor would not be considered prominent use of the College's name. Faculty members and research staff who intend to utilize the College's identity in creating IP must discuss ownership of the product as early as possible in the product's development with the Provost. Determination of ownership must be reached prior to its distribution.

(ii) The College has a "**functional interest**" in works that are used to enhance the effective functioning and coordination of ongoing operations of the College, or in which the College has a contractual or legal obligation. For example, it has a *functional interest* in administrative and personnel procedures, including software, and internal handbooks and reports. The College has a *functional interest* in IP created with Federal or other outside funds which carry an obligation that the College retain certain IP rights or assign them to another party outside the College. Certain collaborative agreements also require the College to negotiate IP rights with other entities, creating a *functional interest*. If the College has a *functional interest*, the IP is owned by the College.

(iii) "**Exceptional use of College resources**" for faculty or student work means that the College has provided funding, facilities, or staff support of a degree or nature not typically made available. Ordinary use of desktop computers or the College library, routine support

from the College's Library and Technology Services (LTS) staff, or use of College office space does not constitute *exceptional use of College resources*. In addition, the College's provision of standard labs and studios, funding of sabbatical leaves, and funding provided to support *scholarly work* (e.g., start up funds and annual faculty development grants) are typically not considered to be *exceptional use of College resources*. In the instance that a faculty member or research staff member expects to be provided, or the College expects to provide, exceptional and atypical support, a contractual agreement or formal determination should be reached in advance of such funding and allocation of resources, fixing the extent, if any, of College ownership of IP that may result from the work (See Section III of this Policy).

(iv) "**Open Access policy**" - Wellesley College adopted the Open Access Policy for scholarly articles in Feb 2013. The full policy can be viewed in appendix A.

II. Policy for Faculty, Research Staff, College Staff, and Students

A. Faculty and Research Staff

Scholarly works created by members of the faculty and research staff and all the intellectual property rights associated with them remain with the creator(s) unless the College has an *identity* or *functional interest*, or unless the work is created by, with, or through *exceptional use of college resources* and an agreement has been reached between the creator(s) and the College regarding joint ownership of the IP. All scholarly articles are governed by the *Open Access Policy*.

If there is an *identity* or *functional interest* the College owns the rights to the IP. For instance, the College has a *functional interest* in faculty administrative work, such as committee reports and departmental or institutional records. When faculty members contribute to College publications such as the College catalog, the work is owned by the College because of the *identity* and *functional interest* in the work.

While the IP ownership of work related to teaching rests with the faculty member, the College has a *functional interest* in its ongoing instructional operations.

By teaching at the College, faculty members grant a non-exclusive perpetual license to the College to use and modify curricular and instructional materials they develop at the College. (This does not include lecture notes, audio or video recordings of lectures, or preliminary

versions of textbooks or monographs.) Any faculty member has the right to opt-out of this license. The opt-out would be for 3 year periods, renewable every 3 years.

B. College Staff

The legal principle embodied in copyright law known as “work made for hire” provides that all work created by employees within the scope or course of their employment belongs to the employer. The College has both *functional* and *identity interests* in IP developed by College staff members, and could not function if it had to negotiate the right to use work produced by individual staff members. Following standard and typical employment practice, the College owns all IP developed by College staff members within the scope or course of their employment. If an individual is hired as both a member of the College staff and the faculty or research staff, the determination of IP rights depends upon the relation of the IP to the scope of employment of each job. IP that is created by members of the College staff outside the scope or course of their employment is the property of the staff member. College staff members must discuss with their supervisor, in advance, any situations in which they intend to claim ownership of any IP that could be construed as being within the scope or course of their employment. The ownership, use, and development of such IP will be governed by mutual agreement between the creator(s) and the College, or if an agreement cannot be reached between the creator(s) and the College, by a determination made under the procedures of Section III of this Policy.

When IP is created by College staff members working directly with members of the faculty, research staff or with students, the College has an interest in the IP. For example, when a programmer in LTS develops software in collaboration with or at the request of a faculty member, the College owns the software written by the staff member. In all cases faculty members, research staff, College staff and students are expected to acknowledge assistance in appropriate fashion.

C. Students

Scholarly work generated by students in their capacity as students are owned by the students who create them. In addition, the Family Educational Rights and Privacy Act gives students certain privacy rights over personally identifiable information the College possesses. Course-related materials, assignments and other similar materials in students’ possession may also include IP of faculty members. Students who consider distributing such materials to others should be aware that they may not have property rights to all the materials in their

possession such as course syllabi, copies of lectures or other IP of faculty members.

Students who are employed by the College are subject to IP policies for College staff (see Section II.B). The College owns all rights to IP created by student employees within the scope or course of their employment unless the student works in a faculty-directed or research staff-directed project (with or without compensation) leading to *scholarly work*, in which case the faculty member or researcher owns the student-created IP. Faculty members or research staff are expected to acknowledge assistance in an appropriate fashion.

D. Grants, Sponsored Works and Specially Funded Works.

When grants and contracts from government agencies or private sponsors contain provisions governing intellectual property and/or other rights to the property which obligate the grantee (the College) in a way that supersedes the individual IP rights of the faculty member(s) or research staff who procured the grant, the College will retain IP rights because in such cases the College has a functional interest in the IP. However, under ordinary circumstances and all circumstances that do not explicitly obligate the College in this way, the individual faculty member(s) or research staff who procured the grant or contract will retain their customary (or normal) IP rights associated with that grant or contract (for example, with regard to data sets, publications, inventions, etc.) The Provost's Office will assure that IP restrictions are accounted for in grant application and administrative processes associated with it. Principal investigators are required to comply with any such restrictions, including reporting requirements. The Provost's Office must be consulted in advance of any grant application regarding such restrictions (see Section III.A).

III. Process for Determination of Ownership of Intellectual Property

In the vast majority of cases, application of the foregoing principles will be straightforward and there will be no question about who owns the rights to the IP. In such cases, the party with rights (a faculty member, research staff, College staff, student or the College) will decide the uses of the IP and will receive any income associated with it. All questions about whether a project involves *exceptional use of College resources*, or whether a *functional* or *identity interest* of the College may exist should be referred to the Provost. The Provost, in consultation with the creator(s) and appropriate College deans, vice presidents and supervisors will endeavor to reach an agreement with the creator(s) regarding the ownership, use and development of the IP. Agreements will be deposited with the Vice President for Finance and Administration of the College according to the procedures established in Section

VI.D. If no agreement is reached, the Provost will make a determination (See Section III.B).

A. Reporting

The uniform application of this Policy requires that the College be made aware of IP created by members of the College community with the use of College resources. Responsibility for reporting the creation of IP rests with the creator(s). The Provost will develop a procedure that will facilitate such reporting.

In cases where the IP is a *scholarly work* created by a faculty member, research staff, or College staff member outside the scope of his or her employment, and no *identity* or *functional interest* is involved, no reporting is required. Routine professional activities reports would suffice, and are typically submitted after the fact. *Scholarly work* created by students in their capacity as students need not be reported.

Certain cases must be addressed specifically to the Provost. Creator(s) should report, as soon as the situation is reasonably clear and before work is well underway, on the production or planned production of any IP that meets one or more of the following conditions:

1. The IP involves or has the potential for involving a *functional* or *identity interest* of the College.
2. Production of the IP involves or may involve *exceptional use of College resources*.
3. The IP is produced with Federal or other outside funds which impose ownership, reporting or other requirements on the College or the creator(s). In such cases, reporting may be required within specified time limits, which must be observed.
4. The IP is jointly created by faculty or research staff and College staff.
5. The IP is created in a collaborative relationship with another entity requiring that entity's IP policies be reconciled with those of the College.
6. A creator intends to seek a patent on or otherwise commercialize the IP, in which case, the process of protection or commercialization may involve substantial cost and effort, and the creator(s) may wish the College to consider providing some or all of that support and share the net rewards, liabilities or risks with the College.
7. The creator is a College staff member who intends to claim ownership of IP that could be

construed as being within the scope or course of employment at the College.

8. A creator has any question about ownership or other rights in the IP.

In the case of a group IP project, all those in the group shall be named in the report, and if the report contains an initial proposal for the disposition of rights and proceeds, all members of the group shall sign.

B. Determination process

When a report is required under Section III.A., and no agreement with the creator(s) is reached, the Provost, in consultation with the creator(s) and appropriate College deans, vice presidents and supervisors, shall make a determination whether the IP involves a *functional or identity interest*, whether its creation involves *exceptional use of College resources*, or whether the work is created within the scope or course of employment of a College staff member at the College. The Provost shall make a determination of ownership of the IP and associated intellectual property rights, responsibilities, and use rights of the College and the creator(s), and, if appropriate, how the College will recoup its costs and share in financial gains from the IP. This determination should be made in a timely manner. In all cases, the Provost will be guided by the principles set forth in this Policy and the creator(s) will be given an opportunity to explain the situation or proposal and recommend terms for ownership, responsibilities, use rights, risks and financial arrangements.

C. Written Determination

The Provost's determination shall be made in writing, signed by the Provost. The determination shall contain provisions outlining the allocation of ownership, interests, use rights, responsibilities, risks, and a mechanism for the sharing of net proceeds, if any, and other rights between the creator(s) and the College. The Provost will cause the written determination, once made, to be delivered promptly to the creator(s). The determination, bearing the date on which it was delivered to the creator(s), shall be filed with and maintained by the Vice President for Finance and Administration of the College. The determination shall become final and shall be binding on the creator(s) and the College unless, within thirty (30) days of the date on which the Provost has delivered the determination to the creator(s), the creator(s) file a notice of appeal of the Provost's determination with the Provost.

D. Appeals

On receipt of a notice of appeal, an *ad hoc* committee of Wellesley students, faculty or staff members shall be formed by the Vice President for Finance and Administration of the College. It shall be comprised of one individual selected by the Provost, one individual selected by the creator(s), and one individual agreed to by the creator(s) and the Provost. In the event that the creator(s) and the Provost cannot agree, the third member will be appointed by the Vice President for Finance and Administration of the College. The committee shall review the Provost's determination, the position of the Provost and the creator(s), and the relevant facts and circumstances surrounding the IP, and will make a written recommendation to the President not later than sixty (60) days following the date of receipt of the notice of appeal. The President, after review of the recommendation of the *ad hoc* committee, shall issue a determination within thirty (30) days of receipt of the *ad hoc* committee recommendation. The President's determination will be filed with the Vice President for Finance and Administration of the College, and a copy will be delivered to the creator(s). This determination of the President will be final and will be binding upon the College and the creator(s).

E. Time

The President, on application by either the Provost or the creator(s) or on the President's independent initiative, shall have the authority to modify the time requirements of this Section III for good cause.

F. President or the Provost as Creator

In the event that the President or the Provost is a creator or co-creator of IP as to which no agreement has been reached, and which requires a determination under this Section III, the process described in subsections A, B, C, D, and E of this Section III shall not apply as to that IP. The determination shall instead be made by the Chair of the Board of Trustees of the College. The Chair's determination, when ratified by majority vote of the Board of Trustees, shall be final and shall be binding upon the creator(s) and the College.

IV. Transfer of Rights to the College

The College anticipates that even when IP is clearly the property of individuals, those individuals may wish to transfer rights to the College in exchange for help in developing, disseminating or protecting their creations. Requests by members of the College community for such an exchange will be addressed on a case-by-case basis. As stated in II.A, by teaching at the College, faculty members grant a non-exclusive perpetual license to the College to use and modify curricular and instructional materials they develop at the College. (This does not

include lecture notes, audio or video recordings of lectures, or preliminary versions of textbooks or monographs.) Any faculty member has the right to opt-out of this license. The opt-out would be for 3 year periods, renewable every 3 years. For all scholarly articles, they also provide a nonexclusive, irrevocable, worldwide license as per the *Open Access Policy*.

V. Time Spent on IP Production Not for the College

IP developed by students, faculty, research staff and College staff without the use of College resources, or outside the scope or course of employment at the College is not governed by this Policy, unless it involves an *identity interest* of the College. For instance, a report provided to another organization in a consulting role is IP created through outside employment. Faculty members should be guided in accepting any outside employment by the Faculty Handbook. College staff members should be guided by Wellesley policies on conflict of interest and outside employment as outlined in the Administrative Handbook.

VI. Application of this policy; Effective Date; Registry of Agreements and Determinations

A. Faculty, Research Staff and College Staff

This Intellectual Property Policy applies to and is binding upon members of the faculty, research staff and upon members of the College staff by reason of their employment at Wellesley College. Unless otherwise provided in writing, the terms, conditions, and provisions of this Intellectual Property Policy shall be deemed to survive termination of employment and shall continue to apply to any IP created, in whole or in part, by a member of the faculty, research staff, or a member of the College staff while employed by the College.

B. Students

This Intellectual Property Policy applies to and is binding upon students as an element of the contract between the student and Wellesley College. Unless otherwise provided in writing, the terms, conditions, and provisions of this Intellectual Property Policy shall be deemed to survive the student's graduation or other termination of the contract between the student and Wellesley College and shall apply to any IP created, in whole or in part, by a student while enrolled at the College.

C. Effective Date

This Intellectual Property Policy, upon adoption by the Academic Council of Wellesley College,

will be sent to the Board of Trustees of Wellesley College for adoption. It shall become effective upon adoption by the Board of Trustees of Wellesley College. This policy shall apply to IP created, in whole or in part, by members of the Faculty, research staff, College staff, and students on or after the date of adoption by the Board of Trustees.

D. Registry of Agreements and Determinations

The Vice President for Finance and Administration of the College shall maintain a registry of all agreements and final determinations pertaining to Intellectual Property to which this Policy applies. All agreements between creator(s) and the College pertaining to ownership, rights, duties, and obligations of each in IP to which this Policy applies and all final determinations made pursuant to Section III of this Policy shall be deposited in said registry and retained by the Vice President for Finance and Administration.

Appendix A - Open Access Policy

1.0 Policy Statement

The Wellesley College Open Access Policy establishes the rights of Wellesley College faculty to preserve and distribute their work in the College's digital repository, in order to ensure visibility of their work.

2.0 Overview

Prior to the adoption of this policy, when a paper was accepted for publication, faculty member transferred all their copyright for the work to the publisher who is charged with the task of disseminating the work. Under the Open Access Policy, faculty retain non-exclusive rights for non-commercial uses of their work without having to negotiate for this right unless they choose to do so. The policy is in sync with other "rights-retention" policies **adopted by several Colleges and Universities.**

3.0 Purpose

The purpose of the Open Access Policy is to ensure that Wellesley College faculty retain by default their rights including the right to keep copies of their publications for non-commercial use on a web server maintained by Library & Technology Services (LTS), allowing for wider dissemination and visibility of their work.

4.0 Scope

The policy applies to all scholarly articles authored or co-authored while the author is a member of the Faculty except for any articles completed before the adoption of this policy and any articles for which the Faculty member entered into an incompatible licensing or assignment agreement before the adoption of this policy.

5.0 Policy

Each Faculty member grants to Wellesley College permission to make available his or her scholarly articles and to exercise the copyright in those articles. More specifically, each Faculty member grants to Wellesley College a nonexclusive, irrevocable, worldwide license to exercise any and all rights under copyright relating to each of his or her scholarly articles, in any medium, provided that the articles are not sold for a profit, and to authorize others to do the same.

The Provost or Provost's designate will waive application of the license for a particular article or delay access for a specified period of time upon express direction by a Faculty member.

Each Faculty member will provide an electronic copy of the author's final version of each article no later than the date of its publication at no charge to the appropriate representative of the Provost's Office in an appropriate format specified by the Provost's Office. The Provost's Office may make the article available to the public in an open-access repository.

The Office of the Provost will be responsible for interpreting this policy, resolving disputes concerning its interpretation and application, and recommending changes to the Faculty from time to time.

6.0 Effective Date

This policy was approved by the Academic Council by a unanimous vote on February 6, 2013. The Academic Council's **Advisory Committee on Library and Technology Policy** is overseeing this policy. The policy will be reviewed after three years and a report presented to the Faculty.

