

Wellesley College Intellectual Property (IP) Policy Frequently Asked Questions

Question: What is the intent of this policy?

Answer: The College's IP policy was developed to clarify the ownership of intellectual property by students, faculty and staff at Wellesley College when that property has been created using College resources. In addition, the IP policy provides a clear process for resolving any disputes.

Question: I am a faculty member and most of my job is the creation of intellectual property such as course materials and scholarly publications. Who owns these?

Answer: As a general rule, the vast majority of scholarly work created by the faculty is owned by the faculty, with a few exceptions. The College has an ownership interest in IP if it involves (i) an *identity interest*, (ii) a *functional interest*, or (iii) *exceptional use of College resources*.

Question: What is an identity interest?

Answer: The College has an identity interest in any content that directly represents the College more than the individual who created the content. Contributions made by individual faculty towards course catalogs, institutional web pages and promotional materials are examples of content in which the College has identity interest and over which it may exercise ownership as it sees fit.

Question: What is a functional interest?

Answer: 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. Examples are administrative procedures, handbooks or software developed to simplify an administrative function.

Question: What constitutes exceptional use of College resources?

Answer: "Exceptional use" includes instances that extend beyond college-provided resources that are considered typical. For example, access to a personal computer, support staff such as LTS employees, and office space are considered "typical" resources. Similarly, startup funds negotiated between a faculty member and the College are considered "typical." Examples of exceptional use include College support to file for a patent or College funds to support the creation of a MOOC.

Question: Can you define the exceptional use based on a dollar amount? How will I know that the College has allocated exceptional resources to my scholarly work?

Answer: The definition of "exceptional use" is negotiated on a case-by-case basis, in conformance with the principle that an exceptional allocation of College financial resources represents an investment by the institution that it has a right to recoup and in whose revenues it has a right to share.

The allocation of atypical, exceptional resources can result from a faculty request (e.g., for supporting filing of a patent), or it may happen at the invitation of the College (such as additional faculty support for the creation of a MOOC). In both these cases, the Provost's Office will inform the faculty about the exceptional use as appropriate.

Question: The IP policy does not define explicitly how the College and the faculty would share any revenues resulting from monetizable work supported through the exceptional use of College resources. Why?

Answer: While the College understands that faculty will have their own interest in revenue sharing, there is no strict formula for allocating costs and revenues, since the division of these will depend on particular circumstances. Those circumstances will be reflected in and governed by a separate agreement or policy with the Provost's Office and determined on a case-by-case basis.

Question: Who owns the intellectual property on scholarly works resulting from grants?

Answer: In general, the scholarly works resulting from grants are owned by the faculty and other co-authors. However, when a grant or contract has a provision that obligates the College (the grantee) to be the responsible party, then the College will exercise a functional interest in the scholarly works.

Question: Can you give me an example of the case where a grant obligates the College to be the responsible party?

Answer: One of the prime examples of this is Mellon grant guidelines for scholarly work involving digitized content. You can read more about this at <http://bit.ly/1iccJLi> and the document titled "Policy on Intellectual Property" which can be found at <http://bit.ly/1icdoMP>.

Question: I am a student. How does this policy address my intellectual property?

Answer: All the works created by a student are owned by the student, with two exceptions. If the student is employed by the College, then all the work created by the student in this capacity is owned by the College. If the student works in a faculty directed project (with or without compensation) that results in scholarly works, then the faculty owns the intellectual property, and the faculty are expected to acknowledge the student contributions in the appropriate fashion.

Question: I am a staff member. Who owns the intellectual property that I create during my work at the College?

Answer: All the works created by a staff member are considered "work made for hire" and the College owns the intellectual property rights for these works. If a staff member collaborates in his or her role of a staff member with a faculty member or students to produce scholarly work, the College has a functional interest in the resulting work.

Question: I am a staff member in Wellesley Centers for Women. Are my works considered "work made for hire"?

Answer: No. Those staff members whose primary job function is academic research are classified as "research staff" and their intellectual property rights are the same as that of faculty.

Question: If I am both a faculty member and an administrator how is my intellectual property treated?

Answer: As a general rule, your primary designation at the time when the intellectual property is developed would govern its ownership. However, though these situations are rare, they can be extremely complicated. So, our advice is to seek clarification from the Provost's office.

Question: What is the purpose of the provision for a "non-exclusive perpetual license to the College to use and modify curricular and instructional materials", and what are examples of curricular and instructional materials that are included?

Answer: The purpose is to allow a department to continue running department course(s) either in case of an emergency involving a faculty member, or in case a faculty member departs who was responsible for developing some or all of the curricular materials used in an essential course. This could include the syllabus and handouts for the course, but not the faculty member's actual lectures in the form of lecture notes or recorded lectures. Another example might be handouts developed by one or more faculty that may have become an integral part of several courses.

Question: How does a faculty member opt-out of the non-exclusive license for the College to use curricular materials they have developed? What happens with joint work? What happens if the faculty member dies or leaves the College?

Answer: Opting-out is accomplished by completing a confidential form available from HR. The license applies to joint work unless all authors have opted out. Opting out ends with the faculty member's departure, retirement or death.

Question: Why is opting-out confidential? How will colleagues know if they can make use of materials a colleague has developed?

Answer: Confidentiality is for the sake of junior faculty who might be hesitant to say they don't want their materials to be used by others. If someone uses materials of a colleague who has opted-out without asking permission, that colleague can inform them that he/she has opted out.

Question: I am a staff member. I worked at a different institution before coming to Wellesley and developed some systems for which I own the intellectual property. I use it for my work at Wellesley and intend to develop it further. What happens in this case?

Answer: Typically, the College will have ownership only for the portion of the systems developed when you are a staff member at the College, provided such a division is feasible. However, the College's decision to exercise this right depends on several issues, including the significance of the portion developed at the College to the entire product. We strongly

recommend that you seek the advice of the Provost's office for cases such as these.

Question: What policy governs intellectual property created before this IP policy went into effect?

Answer: 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. All IP produced prior to the adoption of this policy is owned by the faculty with a couple of exceptions. If a contract between the IP owner and the College already exists, it will remain in force until the end of the contract period. All scholarly publications produced by the faculty after February 6, 2013 are subject to the open access policy (<http://www.wellesley.edu/provost/openaccess>) adopted by the College.