

**Intellectual Property Policy**  
**Occidental College**  
**September 2020**

**I. Purpose**

The purpose of this policy is to stimulate intellectual development both in and outside the classroom. The policy seeks to encourage the development, expression, and dissemination of ideas and inventions by recognizing and rewarding creative activity among members of the faculty and staff.

This policy preserves the academic tradition of faculty rights in their scholarly works, while recognizing the College's ownership interest in inventions and other works created by faculty and staff within the scope of their employment. The policy supports open and free exchange of ideas, including publication in scholarly and scientific journals, in a manner that is consistent with preservation of access to the information in scholarly and scientific journals by the College community.

This policy meets the needs of faculty and staff by:

- Preserving freedom of authorship, to publish, to share or decline to share with others, as one chooses
- Allowing authors to retain intellectual property rights in textbooks, works of art, and other classroom materials, and in certain instances, an option to take their work and use the work elsewhere when leaving the institution
- Motivating the development and dissemination of intellectual property by providing appropriate financial rewards to creators and the College, as well as administrative assistance to creators.
- Granting faculty a voice in institutional policy and in commercial deals in which their work is involved.

This policy meets the needs of the College through:

- Protection of the College's reputation and institutional identity
- Appropriate recovery of College investments in the creation of intellectual property by faculty and staff
- Retaining for the College a fair share of revenues from commercial opportunities resulting from the licensing of intellectual property created by faculty and staff, and
- Retaining for the College the option to continue using certain works developed by faculty who subsequently leave the institution.

**II. Application of Policy**

This policy shall apply to all faculty and staff employed by the College.

### **III. Ownership of Intellectual Property**

#### **A. General Policy on Ownership of Intellectual Property**

Unless otherwise stated in this policy, the College is the owner pursuant to federal and California law of all intellectual property created by faculty and staff members of the College community that is:

- Created or developed during the course of an individual's responsibilities to the College, including works made for hire; or
- Created or developed pursuant to a sponsored agreement or pursuant to a written agreement to transfer ownership to the College; or
- Created or developed with the significant use of College facilities, funds, resources or supplies.

Members of the College community own intellectual property that is developed on their own personal, unpaid time, in the absence of any sponsored project agreement or other agreement giving rights to the College, and without or only incidental use of College funds or facilities. Incidental use of College resources includes the following:

- Only a minimal amount of unrestricted funds have been used; and
- Only a minimal amount of time has been spent using College facilities, equipment or resources other than the use of offices, libraries and routinely available office-type equipment such as desktop or laptop personal computers, all of which is regarded as incidental.

#### **B. Exceptions to the General Policy on Ownership of Intellectual Property**

##### **1. Traditional Academic Works**

Consistent with long-standing academic tradition, the College shall not claim an ownership interest in faculty-authored textbooks or scholarly publications, art works, musical compositions, or literary works, whether or not related to the professional fields of the faculty members and regardless of the medium of expression, unless the work is subject to contractual restrictions. Such traditional intellectual property includes pedagogical, scholarly, literary, or artistic work such as textbooks, manuscripts, scholarly works, fixed lecture notes, syllabi, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of their author. Placement or creation of these works on the Internet does not change their character.

If in the absence of this policy the College would be deemed the owner of any of the artistic or scholarly works within this traditional academic exception, the College will, upon written request, convey the copyright to the author(s) of those works.

## 2. Non-Traditional Academic Works

Non-traditional academic works include electronic courseware, computer programs primarily created to perform utilitarian tasks, original data base design, data base driven web sites, web pages and sites, non-traditional artistic works, and other emerging types of non-traditional intellectual property.

The College would be deemed the owner of intellectual property rights in such non-traditional works only if such works are (1) created at the direction of the College, or (2) pursuant or related to an assigned duty, or (3) with more than minimal use of College resources. Absent an agreement to the contrary, any of the foregoing non-traditional intellectual property created in the manner specified in this section shall vest as “works made for hire” (or the equivalent) by the College at the discretion of the Vice President of Academic Affairs.

Any author of such non-traditional works may request negotiation of an agreement with the College with respect to the property they have created in accordance with the process for negotiating formal agreements outlined in §V.D below.

When the work in question is courseware, faculty will automatically have a right of portability (the right to take and use the course upon departure from the College). In that instance, the College may request permission from the faculty member to use the course after departure of the faculty member. Such permission shall not unreasonably be withheld. The College shall pay appropriate royalties for the use of the course following such departure.

### C. Ownership Issues Unique to Students

In general, the terms of this policy do not apply to students at the College. However, any faculty member who wishes to include student contributors as owners in specific projects may petition the Vice President of Academic Affairs. There are unique issues involving student works, as listed below:

- In addition to College rights identified elsewhere in this policy, the College will claim ownership rights with respect to intellectual property created by a student from another College serving as an extern under the direction or control of College faculty or staff, and with respect to Occidental students serving as interns under the direction or control of faculty or staff
- As a condition of matriculation, the College reserves the right to make copies of dissertations or theses as needed for the academic or archival purposes of the institution.
- As a condition of matriculation, the College requires that students waive any claims against the College, its employees, or fellow students arising out of the reproduction, excerpting, and/or distribution of student-authored postings to College-sponsored courseware Web sites as needed for the academic, research, and archival purposes of the institution.

- Students working on a project governed by a contract or agreement to which the College is party shall be bound by the terms of that contract or agreement and their employment status at the College.
- Students duly enrolled in a course have a right to take class notes for personal use, but notes in a course shall not be taken or disseminated in any manner or method for any purpose unrelated to the student's academic endeavors, unless approved in writing by the instructor.

#### D. Works For Hire and Consultants/Independent Contractors

Under federal law, works of non-employees such as consultants and independent contractors generally are owned by the author and not by the College, unless there is a written agreement to the contrary. The College requires that all consultants and contractors have a contract with the College that has been reviewed by the Office of General Counsel. The College will generally require this contract to provide that ownership of such works will be assigned to the College. Examples of works that the College may retain non-employees to prepare include (but are not limited to):

- Reports by consultants or subcontractors
- Computer software
- Architectural or engineering drawings
- Illustrations or designs
- Artistic works
- Web pages

It is the responsibility of the College department overseeing a project or contract that involves the creation of intellectual property to ensure that any contract signed with an independent contractor or consultant contains the applicable work for hire language. The Vice President of Academic Affairs (VPAA) will assist in obtaining the standard contract form with this language from the Office of General Counsel.

### **IV. Process for Formalizing Ownership, and Allocation of Responsibilities**

#### A. Formal Agreements

Because ownership of Intellectual Property is divisible in many ways, formal agreements will generally be based upon an unbundling and distribution of ownership rights in order to grant the authors and the College the rights each finds more advantageous and the responsibilities each is best qualified to discharge.

It will be the responsibility of the VPAA to assure that where someone seeks a formal agreement, all persons involved in the creation of intellectual property share in resulting revenues according to their contribution. The VPAA will develop criteria that can be used to determine equitable allocation of ownership rights among the various parties when formal agreements are entered into. The VPAA is also responsible for monitoring obligations under the agreements once they are created.

Intellectual property resulting from research supported by a grant, contract or gift will be subject to the specific terms included in the grants, contracts or gifts to the extent of any conflict with this policy. Consultants or independent contractors working under such grants or contracts must sign standard independent contractor agreements with the work for hire provision, unless the terms of the grant or contract otherwise specify.

#### B. Responsibilities of Creators of Intellectual Property

The following is a list highlighting some of the responsibilities of intellectual property creators under this policy:

- External Collaborations: Creators dealing with outside persons or organizations may not: (a) sign agreements which abrogate the College's rights as stated in this policy or which otherwise conflict with this policy; (b) use the name of the College in connection with any copyright; or (c) transfer material relating to intellectual property outside the College without prior permission from the College.
- Assignment: For work in which the College has a right to ownership or use, creators, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the College, or its assignees, any or all rights to the work, including assignment of ownership or particular license rights, as deemed appropriate by the College.
- Initiate the Agreement Process: Before Intellectual Property is disclosed either to the public or for commercial purposes, and before publishing same, the author shall submit a reasonably complete and detailed disclosure of such intellectual property to the VPAA, as well as to their respective Department Chair, and request where so desired an initiation of a formal agreement governing ownership of the intellectual property.

#### C. Responsibilities of College

The following is a list highlighting some of the responsibilities of the College under this policy:

- Resource Use: The College shall periodically review and specify in writing what constitutes "substantial use of College resources." The standard may vary amongst different Departments.
- Sharing of Revenue: The College shall remit to creators their share of income from Intellectual Property works as specified in this policy.
- Consultation: The College shall consult with the creator of the intellectual property to determine whether and how it is to be made public, developed, modified and or commercialized.
- Equitable Sharing of Revenues: When formal agreements are created, the College shall ensure that any revenues realized after direct costs are recouped are shared

equitably, as determined by the College, among those involved in the creation of the intellectual property.

#### D. Retention of Rights in Scholarly Publications

The College strongly encourages faculty, staff and students who assign their copyright rights in scholarly publications to outside publishers to retain the royalty-free rights of reproduction and instructional use for themselves and for the College or to request that the publisher place a note on the first page of the article giving nonprofit organizations the right to make copies of all or any portion of the article for educational purposes without written permission or payment of an additional fee. Upon request, College administrators and legal counsel will provide assistance relating to assignment agreements and such retention-of-rights clauses.

### V. Administration of the Policy

This section describes the process by which faculty, staff, students and others can protect intellectual property covered under this policy. The College will determine ownership of intellectual property and will facilitate the licensing, commercialization or other transfer of intellectual property. This is the responsibility of the Office of the General Counsel.

The Office of the General Counsel (or its delegate) shall be responsible for evaluating and marketing technologies, administering invention reporting, obtaining patent and copyright protection for intellectual property, and negotiating license agreements, transfers of tangible research property, confidentiality agreements, and other agreements to transfer and/or distribute technology. The College faculty, staff, students and others who require advice regarding intellectual property should consult with the Office of the General Counsel, as well as their respective departments.

#### A. Disclosure of Intellectual Property

When a member of the College community creates potentially patentable intellectual property which, under this policy, is owned by the College, the intellectual property should be disclosed promptly to the Office of the General Counsel. The Office of the General Counsel may furnish individuals with disclosure forms and other documents necessary to facilitate evaluation of the intellectual property.

An invention disclosure provides information about the inventor(s), the nature of the invention, circumstances leading to the invention, and activities by the inventor(s) to reduce the invention to practice. Typically, the inventor(s) may submit manuscripts, sketches, drawings and other pertinent data or materials as part of the disclosure. An invention disclosure is also used to report technology that may not be patented but may be protected through other means such as copyright or trade secret.

Members of the College community are expected to use their own good judgment and common sense in determining whether an invention has commercial potential. If it does, the invention should be considered “potentially patentable” and should be disclosed as set forth in this section. The failure to make timely and complete disclosure of an invention conceived or reduced to practice may jeopardize the ability of the College to protect the invention.

## B. Patent Protection

By securing protection for inventions, the College obtains the exclusive right to exclude all other parties from making, using offering to sell, or selling products or methods covered by the patent for a specified term (usually 20 years from the date the patent application is filed). The exclusive right may be secured on a country-by-country basis upon filing and prosecution of patent applications, a process that may be time consuming and costly.

In making the decision about whether to file a patent application for an invention, the College will take the following factors into consideration:

- Whether and to what extent the College has ownership of the invention;
- Whether the inventor has made full and complete disclosure of the invention to the College;
- Whether there are conflicts of interest and/or conflicts of commitment and, if so, whether they have been managed or resolved;
- Whether ongoing research is continuing at the College in the same or related areas as the invention; and
- Whether the College is permitted to do so under sponsored agreements.

Any publication or other non-confidential disclosure that discloses an invention even in minimal detail, or public use of such invention, prior to filing for a patent precludes patenting in many foreign countries and precludes protection in the United States unless a patent application is filed within one year from such publication or public use. Questions regarding the implications of publication or public use upon patent rights should be directed to the Office of the General Counsel.

## C. Copyright Protection

Copyright protection for books, articles, computer software, websites, musical compositions, artwork, sculpture, films, photographs, videos and other artistic works is important to the College to recognize authorship of the work and to guarantee that the College may license the material for publication, duplication, display and distribution.

In order to recognize authorship and protect the integrity of the work, the College requires a notice of copyright to be affixed to such materials in the following form:

“Copyright [year] or ©[year] Occidental College. All rights reserved.”

## D. Commercialization and Royalty Sharing

Commercialization is one of the College’s priorities in developing and distributing intellectual property. Commercialization facilitates the transfer of the College’s technology for society’s use and benefit while generating income to support research and education. The College seeks to

generate the greatest possible royalty revenue it reasonably can without compromising its research and education mission. This is done through the negotiation of fair, reasonable and consistent license and other agreements that serve as the base for a long term relationship. The proceeds from such agreements are shared with inventors/authors in varying percentages depending upon the type of intellectual property and other factors, as detailed below.

All licensing and royalty payments derived from intellectual property to which the College has rights under this policy shall be administered by the Office of the General Counsel. Payments received shall be applied first to the payment of any direct expenses not reimbursed by licensees, such as fee for patent searching, filing, prosecution, enforcement and maintenance, as well as marketing, licensing and auditing expenses. After application to such expenses, cash proceeds from license and other commercialization arrangements shall be applied as follows:

- Fifty percent (50%) to the inventor(s) or the inventor(s)' heirs or assigns; and
- Fifty percent (50%) to the College.

At the time of the invention disclosure, co-inventors may provide a statement regarding the percentage distribution to each co-inventor in correspondence with their respective contribution to the invention. In such case, the Office of the General Counsel shall divide the fifty percent portion of cash proceeds in accordance with the statement of percentage distribution. In the absence of such a statement, the College shall assume that each co-inventors' respective contribution and consequent percentage distribution are the same, and in that case, the Office of the General Counsel shall divide the fifty percent portion of cash proceeds evenly among the co-inventors.

## **VI. Conflict of Interest**

Faculty and staff cannot use their institutional affiliation to popularize the competing educational product of new, for-profit enterprises. Before entering into an agreement with an outside entity to commercialize a course taught at the College, faculty must review any existing conflict of interest policies, and seek approval from the Office of the General Counsel and assure compliance with conflict of interest, conflict of commitment and similar College policies.

## **VII. Resolution of Disputes**

Complaints regarding the application of this policy brought by a faculty member shall be referred to the Faculty Council.

## **VIII. Binding Arbitration**

In the event that, due to conflict, deadlock, lack of timeliness, or other good cause, a dispute under this policy cannot be resolved by the Faculty Council or pursuant to any grievance proceeding that may be set up by the VPAA under § VII, above, such dispute shall be submitted first to mediation utilizing a mediator mutually agreed to by the parties and if not resolved, then to binding arbitration pursuant to the rules of the American Arbitration Association and administered by it.

## **IX. Waiver of Policy Application**

The VPAA has the authority in appropriate circumstances to waive application of this policy when application of the policy would result in an inequity.

## **X. Recognition of Intellectual Property for Tenure and other Purposes**

The College recognizes that creation of intellectual property may take time away from the creation of traditional independent scholarship. The VPAA shall encourage the Faculty Council to study this issue and determine what steps should be taken to recognize the creation of intellectual property for tenure and promotion purposes.

Effective date: August 18, 2020

Signed by:   
Vice President of Academic Affairs