

Berry College Intellectual Property Policy

1. PURPOSE

Berry College (“College”) is dedicated to providing an environment that supports the creation and development of Intellectual Property by Faculty, Employees and Students. Such activities contribute to the academic and professional development of Faculty, Employees and Students, enhance the reputation of the College, and provide additional educational opportunities for participating Students. While Intellectual Property may, in some cases, be the product of a Creator and that Creator’s time and resources, oftentimes, the creation and development of Intellectual Property depends not only on the Creator’s ingenuity, time and resources but also on contributions (both monetary and otherwise) from the College and third parties. It is important, therefore, to stimulate the development of Intellectual Property by protecting the interests of all those involved in the creation and development of Intellectual Property at the College or using College Resources.

Accordingly, Berry College does hereby establish this IP Policy with respect to the development, protection, and transfer of rights to Intellectual Property resulting from the work of its Faculty, Employees, Students, and other third parties.

2. APPLICABILITY AND IMPLEMENTATION.

This IP Policy applies to all Creators and to all types of Intellectual Property.

3. GOALS

In keeping with the purposes enumerated above, this IP Policy has been drafted and implemented with the following goals established as primary:

- a. to provide incentives to all parties for the creation of intellectual property by providing a return to those who create and those who invest in such creation;
- b. to provide protection for the investment of persons or entities, including the College, to the extent such investment is substantial and particular rather than merely routine; and
- c. to encourage full and open discussion between all interested parties including the college, faculty, students, employees, and any party claiming an interest in and to any intellectual property.

4. DEFINITIONS

The following definitions shall apply to the terms used in this IP Policy:

- a. "**College**" means Berry College.
- b. "**College Intellectual Property**" means Intellectual Property owned by the College pursuant to this IP Policy as set forth below in Section 5.
- c. "**College Resources**" means tangible and intangible assets of the College, including but not limited to (i) funds from any source other than regular employment salary; (ii) facilities and landholdings; (iii) classrooms; (iv) class time; (v) personnel; (vi) offices; (vii) labs; (viii) studios; (ix) equipment, whether owned or leased; (x) production facilities, (xi) computer hardware, (xii) software, (xiii) support or resources; (xiv) funding, (xv) grants, (xvi) contracts and awards; or (xvii) other College owned resources.
- d. "**Copyrightable Material**" means original works of authorship fixed in any tangible medium of expression, now known or later developed, from which the works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.
- e. "**Creator**" means any Faculty, Employee, or Student, who authors, creates, discovers, invents, or develops, Intellectual Property subject to this IP Policy.
- f. "**Employee**" or "**Employees**" means College administrators acting in an administrative capacity, staff hired by the College, on either a full- or part-time basis, to perform College duties, and Students who receive work study funds or hourly wages for performing duties at the specific direction of, or assigned by, College administrators, staff and Faculty. "Employee" does not include a Student scholar providing research assistance to Faculty or engaging in collaborative research or creative endeavors with Faculty, even if such Student is receiving work study funds or hourly wages for such assistance, research or creative endeavors. For the purposes of this IP Policy, ownership of Intellectual Property developed or created by administrators when such administrators are acting in a Faculty capacity will be determined in accordance with those provisions of this IP Policy applicable to Faculty.
- g. "**Faculty**" means any person hired by the College to conduct instructional activities, whether on a full- or part-time basis. Faculty includes persons hired as adjunct or visiting professors and instructors.
- h. "**Faculty Intellectual Property**" means all Intellectual Property owned by Faculty as identified in Section 5(a).
- i. "**Intellectual Property**" means any creation, invention, innovation, trade secret, technology, know-how, skill, scientific or technological development, and research data regardless of whether they would be protected under applicable patent, trademark, copyright or other laws.

- j. **“Invention”** or **“Inventions”** means any new and useful process, product, discovery, computer software, machine or composition of matter, or improvement thereon, whether patentable or otherwise.
- k. **“IP Policy”** means this Intellectual Property Policy.
- l. **“Sponsor”** means a third-party entity that finances the creation of Intellectual Property pursuant to a contract or arrangement between the College and that entity, including charitable donations from a third party entity to the College. Publishers as well as the federal, state and municipal governments, or any agency of those governments, can be a Sponsor under this IP Policy.
- m. **“Student”** or **“Students”** means any person taking one or more courses at the College, either full-time or part-time.
- n. **“Substantial Use of College Resources”** means the use of College Resources, whether during or after customary College business hours, other than the use by Faculty or Students (as applicable) of College Resources routinely made available to such Faculty or Students in the course of teaching, the development of traditional works of scholarship, or experiential learning in a particular academic program. Normal and ordinary use of College-provided office space, equipment and other resources when used to produce traditional works of scholarship shall not constitute “Substantial Use”.
- o. **“Traditional Works of Scholarship”** means Intellectual Property that is created independently and at the initiative of Faculty or Students for traditional academic purposes, but does not include Intellectual Property created by Faculty or Students while making a Substantial Use of College Resources. Traditional Works of Scholarship generally includes the development of courses, the teaching of classes and development of related material, works of art, or scholarly research or creative endeavors, considered within academia or the College to be evidence of professional or academic accomplishment or advancement by Faculty or Students in their particular academic program. The preceding list of Traditional Works of Scholarship is non-exhaustive.

5. OWNERSHIP OF INTELLECTUAL PROPERTY

Ownership of all Intellectual Property created in whole or in part by Faculty, Employees or Students shall be subject to the following guidelines:

- a. Faculty:
 - i. Intellectual Property created by a Faculty member in connection with a project funded, in whole or in part, by a Sponsor, shall be owned in accordance with the terms of any applicable contract or

agreement between or among the Faculty member, the College and the Sponsor. Such arrangement is to be agreed to in writing, in advance or as soon as practicable, and in full conformance with other provisions of this IP Policy. In the absence of such contract or agreement any Intellectual Property arising from such project shall be owned by the College;

- ii. Except for Intellectual Property described under Section 5(a)(i), Traditional Works of Scholarship created by a Faculty member shall be owned by such Faculty member;
- iii. Intellectual Property, other than Traditional Works of Scholarship, created by a Faculty member pursuant to an express direction from the College shall be owned by the College;
- iv. Unless otherwise provided for above, and subject to any agreement between College and a Faculty member, Intellectual Property created by a Faculty member while making Substantial Use of College Resources shall be owned by the College.

With consent of a Faculty member, the College may record, in any form now known or later invented, such Faculty member's classroom lectures and may use, copy, reproduce, distribute, prepare derivative works using, perform and display such recordings for the benefit of the College so long as such recordings are used for non-revenue producing purposes. In the event the college desires to use such recordings for revenue producing purposes the college shall reach a separate agreement with the respective faculty member regarding such use or shall contract to produce same as a work for hire under separate agreement.

- b. Employees: Unless otherwise, agreed to in a writing signed by the College and the relevant Employee, all Intellectual Property created or developed by Employees in the course of their employment with the College, or at the specific direction or request of the College, shall be deemed a "work made for hire" and owned by the College.
- c. Students:
 - i. Intellectual Property created or developed by a Student in connection with projects funded, in whole or in part, by a Sponsor shall be owned in accordance with the terms of any applicable contract or agreement between or among the College, Sponsor, Student, or Faculty member regardless of whether such Student was acting as a Student or Employee. In the absence of such an agreement, any Intellectual Property arising from such project shall be owned by the College;
 - ii. Except as provided in Section 5(c)(iv), Traditional Works of Scholarship created by a Student shall be owned by such Student;

- iii. Intellectual Property created or developed by a Student while acting in the capacity of an Employee shall be owned by the College;
- iv. If a Student is not acting as an Employee, Traditional Works of Scholarship created or developed by a Student in collaboration with Faculty shall be owned, subject to Subsection 5(a), by such Student individually or jointly with such Faculty in accordance with applicable law, unless the Student and Faculty agree otherwise in writing;
- v. Unless otherwise delineated within subsections (i) – (iv) above, (a) Intellectual Property created by a Student while making a Substantial Use of College Resources and (b) Intellectual Property created by a Student pursuant to an express direction from the College, shall be owned by the College.

6. COMMERCIALIZATION

The College, pursuant to the terms of this section and subject to any separate agreement, may commercialize any Intellectual Property that is owned by the College, either in full or jointly with others, in accordance with Section 5. Commercialization shall be governed to the fullest extent possible under an agreement to be reached between the college, the creator(s), and any other third-party with a legally recognizable interest in the commercialization of any such Intellectual Property as follows:

- a. To the extent such Intellectual Property is created under an express direction by the College under Section 5(a)(iii) and is considered a work for hire, the College shall be entitled to any and all revenues derived there from, subject to the terms of any agreement reached between the parties at the time of the engagement for the hired work;
- b. To the extent such Intellectual Property is owned by the College in accordance Section 5(a)(iv) herein, the College hereby acknowledges and agrees that it shall not be authorized to proceed with the commercialization of any such Intellectual Property absent the consent and agreement of all interested parties subject to this agreement, and on such terms as may be mutually agreed upon in advance of such commercialization.
- c. To the extent such Intellectual Property is owned by faculty subject to Section 5(a)(ii) of this agreement, the parties hereby acknowledge and agree that such owner shall be authorized to proceed with the commercialization of any such Intellectual Property without the consent or agreement of the College. Should such owner desire the College to invest and participate in the commercialization of such Intellectual Property, the parties shall reach a separate agreement to establish the terms under which such commercialization shall occur.

Should the parties be unable to reach agreement pursuant to section (b) of this Section 6 then the parties agree to first submit the dispute to an independent third-party for non-binding mediation pursuant to the rules for Commercial Mediation of the American Arbitration Association, or through such other process of mediation as the parties may agree upon in writing, and shall make good faith effort to resolve the issues through such process. Should the parties continue to be unable to reach agreement pursuant to said section, the dispute shall be submitted to binding arbitration under the rules and regulations of the association enumerated herein.

If the College decides not to participate in the commercialization of any Intellectual Property subject to this Agreement it shall communicate such decision to the Creator, and the College shall assign the College's rights in and to the College Intellectual Property to the Creator on such terms and conditions as the parties shall agree.

7. FURTHER ASSURANCES AND PROCEDURAL RIGHTS

At the written request of and the cost and expense of College, Creators of College owned Intellectual Property agree that they will take all actions and execute all documents reasonably necessary or desirable to record and perfect the right, title and interest of College in and to the Intellectual Property. For Intellectual Property that is jointly owned pursuant to Section 5, the College shall be primarily responsible for perfecting and enforcing rights in the Intellectual Property, including the prosecution of patent and copyright registration applications.

8. RESOLUTION OF DISPUTES

The Provost will be primarily responsible for this policy and for fulfilling the College's obligations under the policy. In the absence of any specific resolution procedure enumerated herein, College personnel shall have the right to appeal decisions of the Provost. Appeals shall be made in writing to the President within thirty (30) days of the final decision of the Provost and shall state the decision complained of and the redress desired. The President's decision shall be final.

9. RESPONSIBILITY OF PARTIES

It is the responsibility of the College and all members of the College community to ensure adherence to this IP Policy.

Faculty, Employees, and Students shall have the obligation to:

- a. Make themselves aware of and adhere to restrictions on rights in Intellectual Property deriving from agreements between the College and the Sponsors;
- b. Inform the College in a timely manner of any and all material that should be protected pursuant to the provisions of this IP Policy, and to cooperate with the College to obtain such protection;

- c. Obtain written permission from the Provost to publish, in journals or other media, use, or distribute any College Intellectual Property; and

Faculty and Employees shall have the obligation to:

- a. Ensure that Students or contractors working collaboratively or under the Faculty or Employee's direction on projects (whether or not for pay) that may result in Intellectual Property have executed the appropriate agreements concerning the assignment of rights as appropriate under this IP Policy.

Any and all requests by any person for a clarification, explanation or determination of any of the rights or obligations under this IP Policy shall be made in writing to the Provost. The Provost shall respond within a reasonable time upon the receipt of such request.

10. SEVERANCE/CHOICE OF LAW

Any provision of this IP Policy which is prohibited by law, unlawful or unenforceable under applicable law, shall be ineffective only to the extent of such prohibition, without invalidating the remaining provisions of this IP Policy. Where the terms of this IP Policy are inconsistent with applicable law, and where applicable law controls, this IP Policy shall be deemed to be amended to comply with applicable law. This IP Policy shall be construed and interpreted according to the laws of the State of Georgia.

11. RESERVATION OF RIGHTS

The College in consultation with the Academic Council reserves the right to modify and/or make changes, as it deems advisable at any time to this IP Policy. Changes shall become effective after approval by the Academic Council and upon publication of the revised IP Policy.