

## 126 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, 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.

*Scholarly work* created by faculty or students is IP and is normally owned by the creator(s). *Scholarly work* is defined broadly to include pedagogical, literary, scientific and other creative work developed by faculty members and/or students (or staff members 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 websites for classes. This means that the 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*, or *exceptional use of college resources*, as described below. IP created by college staff within the scope or course of their employment, on the other hand, is owned by the college.

The college has an ownership interest in IP if it involves (i) an *identity interest* or (ii) a *functional interest*, and may have an ownership interest in IP if its creation involved (iii) an *exceptional use of college resources*. Depending on the IP involved, the college's ownership interest may arise out of one or more of an *identity* or *functional interest* or *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 (see the college's communications webpage for more information). Simply identifying the author of a work as a Bates professor would not be considered prominent use of the college's name. If the college has an *identity interest*, the IP is wholly owned by the college. Therefore, faculty members who intend to utilize the college's identity in creating IP or a product that incorporates the college's IP must discuss with the Dean of the Faculty ownership of the IP and/or product as early as possible in the development

of the IP and/or product. Determination of ownership must be reached prior to distribution of the IP and/or product.

(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, which gives rise to a *functional interest*. If the college has a *functional interest*, the IP is wholly owned by the college.

(iii) “**Exceptional use of college resources**”, with respect to 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 computers or the college library, routine support from the college’s Information and Library Services (ILS) 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., startup funds and annual faculty development grants) are typically not considered to be *exceptional use of college resources*. In the instance that a faculty 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/or 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). If a contractual agreement or formal determination is not reached in advance of such funding and/or allocation of resources, and a faculty member or student proceeds with a project involving *exceptional use of college resources*, the parties’ rights in any resulting IP will be determined in accordance with the procedures set forth in Section III of this Policy, including any requisite determination regarding whether the project involved *exceptional use of college resources*.

## II. Policy for Faculty, Staff, and Students

### A. Faculty

*Scholarly works* created by members of the faculty and all the intellectual property rights associated with them remain with the creator(s) unless the college has an *identity* or *functional interest* or the work is created by, with, or through *exceptional use of college resources*.

As discussed above, if there is an *identity* or *functional interest*, the college wholly owns all right, title, and interest in and to the IP, unless the college and the creator(s) agree otherwise. 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 or Bates Magazine, the work is owned by the college because the college has both *identity* and *functional interests* 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. In consideration of employment as a faculty member 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. If requested by the college, faculty members will execute and deliver to the college a written agreement granting the college a license consistent with this Policy.

The college may have an ownership interest in common with the creator(s) in faculty work that involves *exceptional use of college resources*, including substantial use of other college employees. 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.

#### B. 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 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 staff members within the scope or course of their employment. If an individual is hired as both a member of the staff and the faculty, 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 staff outside the scope or course of their employment is the property of the staff member. 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 staff members working directly with members of the faculty or with students, the college has an interest in the IP. For example, when a programmer in ILS 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, staff members and students are expected to acknowledge assistance or co-authorship when appropriate.

#### C. Students

*Scholarly work* generated by students in their capacity as students are owned by the students who create them. 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 or the college.

Students who are employed by the college are subject to IP policies for staff (see Section II.B of this Policy). The college owns all right, title, and interest in and to IP created by student employees within the scope or course of their employment, unless the student is employed in a faculty-directed project leading to *scholarly work*, in which case the faculty member or the college, as applicable, owns the student-created IP. Faculty members are expected to acknowledge assistance or co-authorship when appropriate.

#### D. Grants, Sponsored Works and Specially Funded Works

Many 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 some way. In such cases, the college has a *functional interest* in the IP and owns all property rights associated with the IP. The Office of External Grants 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 Dean of the Faculty must be consulted in advance of any grant application regarding such restrictions (see Section III.A of this Policy).

### III. Process for Determination of Ownership of Intellectual Property

In the 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 owner will decide the uses of the IP and will receive any income associated with it, provided that a faculty member, staff member, or student who co-owns IP with the college will not determine the uses of the IP, and receive any associated income, in the absence of an agreement with the college. 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 Dean of Faculty. The Dean 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 Treasurer of the college according to the procedures established in Section VI.D. If no agreement is reached, the Dean will make a determination (see Section III.B of this Policy).

#### 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 Dean of the Faculty will develop a procedure that will facilitate such reporting.

In cases where the IP is a *scholarly work* created by a faculty member, or staff member outside the scope of his or her employment, and no *identity* or *functional interest* is involved, no reporting is required, provided that, upon the college's request, faculty members will execute a written agreement granting the college a non-exclusive perpetual license to use and modify any curricular and instructional materials that the faculty member develops at the college, which may be considered *scholarly work* (see Section II.A of this Policy).

Certain cases must be addressed specifically to the Dean of the Faculty. Creator(s) must 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 and 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. The creator(s) 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(s) is a 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. The creator(s) has any question about ownership or other rights in the IP.

Unless otherwise agreed, the creator(s) should use a current IP Disclosure Form promulgated by the Dean to report IP to the college. If there are multiple creators of the IP resulting from a project, the report must name all the creators and all the creators sign the report.

## B. Determination Process

When a report is required under Section III.A, and no agreement with the creator(s) is reached, the Dean of the Faculty, 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 staff member at the college. The Dean 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 Dean 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 Dean's determination shall be made in writing, signed by the Dean. 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 Dean 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 Treasurer 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 Dean has delivered the determination to the creator(s), the creator(s) file a notice of appeal of the Dean's determination with the Dean of Faculty. If the creator(s) do not file a notice of appeal, the college and the creator(s) will execute a written agreement allocating their respective right, title, and interest in and to the IP consistent with the Dean's determination within thirty (30) days after receiving a copy of the Dean's determination.

### D. Appeals

On receipt of a notice of appeal, an *ad hoc* committee of Bates students, faculty or staff members shall be formed by the Treasurer of the college. It shall be comprised of one individual selected by the Dean of the Faculty, one individual selected by the creator(s), and one individual agreed to by the creator(s) and the Dean. In the event that the creator(s) and the Dean cannot agree, the third member will be appointed by the Treasurer of the college. The committee shall review the Dean's determination, the position of the Dean 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 Treasurer 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). Each of the parties will execute a written agreement allocating respective right, title, and interest

in and to the IP consistent with the President's determination within thirty (30) days after receiving a copy of the President's determination.

#### E. Time

The President, on application by either the Dean of the Faculty 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 Dean of Faculty as Creator

In the event that the President or the Dean of the Faculty 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 Section II.A, faculty members grant a non-exclusive perpetual license to the college to use and modify curricular and instructional materials developed at the college, which license will be made the subject of written agreement upon the college's request.

If the college has an ownership interest in the IP, e.g., if the IP involves *identity interest*, *functional interest*, or *exceptional use of college resources* or if the creator(s) and the college agree to transfer the ownership interest of the creator(s) to the college, the creator(s) will execute and deliver promptly to the college a written agreement assigning the creator(s) rights in the IP to the college.

#### V. Time Spent on IP Production Not for the College

IP developed by students, faculty and staff members 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 statement regarding Class Responsibilities. Staff members should be guided by Bates policies on conflict of interest and outside employment as outlined in the Employee Handbook.

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

### A. Faculty and College Staff

This Intellectual Property Policy applies to and is binding upon members of the faculty and upon members of the college staff by reason of their employment at Bates College. The policy should require faculty and staff to sign an acknowledgement or participation agreement as a condition of employment. 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 or a member of the college staff while employed by the college. As used in this policy, the term “faculty” shall mean the professors, associate professors, assistant professors, instructors, lecturers, and the visiting professors of the college, and the term “college staff” shall mean the administrative officers and all non-faculty employees of 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 Bates 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 Bates 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 became effective May 2, 2009. It was amended on February 16, 2016. This policy shall apply to IP created, in whole or in part, by members of the Faculty, members of the college staff, and students on or after the date of adoption by the Board of Trustees.

### D. Registry of Agreements and Determinations

The Treasurer 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 Treasurer.