

CATAWBA COLLEGE INTELLECTUAL PROPERTY POLICY

Faculty Approval, Feb 1, 2005; Revised, Apr 1, 2008.

Board of Trustees approval, Feb 15, 2005.

The College and its individual faculty members, administrators and staff, and students are united in the goals of creating and disseminating knowledge. Yet the College recognizes that questions as to rights, ownership, and commercialization of new intellectual property are inevitable. The purpose of this intellectual property policy is to establish means for determining the ownership of the products of original authorship (also known as "informational intellectual property") and inventorship (also known as "patentable intellectual property") and for resolving disputes that may arise from time-to-time among authors or between authors and the College.

Who is covered by this policy?

The College's intellectual property policy applies to all College employees, including full-time faculty, part time and adjunct faculty, administrative officers, and staff. It applies as well to College students if they are employed by the College or contributing to a College project that results in copyrightable (as described below) or patentable intellectual property. More broadly it applies to anyone using College resources under the supervision of College personnel, including volunteers, interns and transient students enrolled at other colleges. Finally, the terms of this policy are embodied in the contracts that govern the work done for the College by consultants and independent contractors.

What is covered by this policy?

This policy is applicable to all intellectual property (as described below) created by covered individuals whether acting alone or in groups, performing research or engaging in work or study at the College or in connection with a College program. Because some covered individuals may be collaborating with coauthors or colleagues who would not ordinarily be considered covered individuals, it is important that such coauthors and colleagues be apprised of and assent to the College policy prior to beginning work on any project that might result in intellectual property to which this policy applies.

What is copyrightable subject matter?

To be protectible by copyright, a work must be original, creative and fixed in a tangible medium of expression from which it can be perceived, reproduced or otherwise communicated directly or with the aid of a machine or device. In copyright parlance, originality does not mean novelty. It merely means that the work originates with its author. Facts, statistics, or discoveries from nature, for instance, are not original in this sense and not protectible by copyright, nor are ideas, processes or methods of operation. The threshold for creativity under copyright law is regarded as very low. However, the law does not articulate a particular standard. Because a work must be fixed in a tangible medium, a lecture, for instance, is not protectible by copyright, although the written text prepared in anticipation of delivery or a recording of the lecture are protectible. Works of copyrightable authorship fall into eight categories: literary works (including software programs), musical works (including accompanying lyrics), dramatic works (including accompanying music), pantomime and choreographic works (in notated or recorded form), pictorial, graphic, and sculptural works, motion pictures and other audiovisual works (including screen displays), sound recordings, and architectural works.

Copyright ownership

By long-standing tradition, colleges generally do not claim ownership of copyright in scholarly and other professional works created by faculty, staff, and students or share in the revenues derived from the publication, performance or display of such works or from the creation of derivative works, such as excerpts, revisions and translations. The College's intellectual property policy conforms to this tradition:

ownership of these copyrights is vested in the covered person(s). The College also waives ownership of copyright products commonly known as "work made for hire," e.g., class lectures, course materials created for use in College curricula. The copyrights in sound or audiovisual recordings of such lectures are also vested in the covered person(s). While the College holds the exclusive right to license the distribution of such recordings for such purposes as distance learning, the lecturer will be permitted to develop the underlying preparatory and lecture materials for future presentations or to negotiate with the College for a license, often on a royalty-free basis, to adapt the lecture for use in a compilation of the author's own works or as a contribution to any other scholarly publication. When works are created for the Institution by administrative officers or members of the staff or other nonfaculty employees within the scope of their employment, the copyrights vest automatically in the College by operation of the copyright law.

There are nine statutory categories of works that typically are created under collaborative circumstances that would typically make licensing burdensome if each collaborator claimed his or her portion of the applicable rights. For that reason, the copyright law permits these specific categories of works, which include contributions to periodicals or anthologies, translations, instructional texts, tests, answer sheets, and so forth to be regarded as works for hire if the parties involved agree to such an arrangement expressly in a written instrument; otherwise, ownership of copyright is vested in the covered person. Copyright in such works may also be owned by the College if the author and the College agree.

Additional circumstances exist under which the College may claim ownership in works of authorship by covered individuals: for instance, when such works are funded by externally-sponsored programs under any agreement that allocates such ownership to the College or when an individual to whom this policy applies was assigned, directed or specifically funded by the College to develop the work and the College has negotiated a written assignment of rights with the covered individual.

Similarly, the College may claim ownership of the copyright in works developed with substantial use of College resources (e.g., funds, facilities, lab equipment, personnel support in excess of those resources widely available to others in the same class or category of employment) to produce products which will be used primarily by academic and/or nonacademic units, e.g., instruments to assess institutional effectiveness.

The College will register in its own name the copyrights in all works that it owns. The College will assist those to whom this policy applies to register in their own names the copyrights in works that they own if they request such assistance.

When may the college use copyrightable intellectual property owned by covered individuals?

The owner of a copyright in a work of authorship possesses the exclusive rights to reproduce the work, prepare derivative works, distribute copies of the work and derivative works to the public, and perform and display the works publicly. The College cannot assert a claim to exercise any of these rights with regard to works whose copyrights are owned by individuals to whom this intellectual property policy applies. Nevertheless, in furtherance of the College's educational mission, those who own such rights are strongly urged to grant the College nonexclusive, royalty-free, perpetual licenses to exercise these rights to facilitate continuity in teaching, scholarship and research. Licenses of this kind are prepared and administered by the Office of the Vice President and Dean of the College.

Distribution of royalties

When revenues accrue to the sale or license of any copyrightable work owned by the College, the College and the author(s) or inventor(s) shall share in the resulting net income. "Net income" is defined as gross revenues minus administrative,

licensing, legal and other reasonable expenses. In the case of works made for hire or any other case, for which the College owns the copyright, the division will be negotiated by the College administration and the author or inventor. Joint authors or inventors shall divide their portion of Net Income equally.

What is patentable subject matter?

United States patent law provides that utility patents may be granted for the invention of "any new and useful process, machine, manufacture or composition of matter or any new useful improvement thereof". The term invention includes a discovery, and the term process means "process, art or method and includes a new use of a known process, machine manufacture, composition of matter or material".

Responsibility to disclose

Because publication of potentially patentable material may destroy patentability, it is important that any patentable inventions be disclosed promptly to the College.

Applications for patent protection

The inventor will have the right to pursue an application to patent or commercialization of the invention. If this is done without substantial College support, the inventor will be entitled to any resulting income. Alternatively, the College and the inventor may prepare a plan for the shared development and protection of the invention and an agreement describing the allocation of income that reflects the respective contributions of the parties. If the inventor does not pursue a patent application or the introduction of the invention into public use, the College may choose to do so, and the inventor will cooperate with the College and assign ownership rights to the College.

Resolution of disputes

If a dispute arises between an individual to whom this policy applies and the College, such dispute will be referred to an *ad hoc* committee. The members of each such committee shall consist of the Vice President and Dean of the College or her/his designee, representing the College, a College employee selected as a representative by the individual(s); and an additional participant agreed to by the other two members. If a dispute arises between two or more individuals to how this policy applies, such dispute will be referred to an *ad hoc* committee comprised of a College employee selected by each party to the dispute and the Vice President and Dean of the College or his/her designee as the neutral.

Allegations of infringement

Allegations of infringement brought by third parties against individuals covered by this intellectual property policy will be referred to the appropriate Vice President with responsibility over the area in which the covered individual(s) complained of for investigation and resolution. If disciplinary action is deemed appropriate, the Vice President involved will follow College procedures for discipline for violations of College policies.

Amendments to this policy

As with all policies, the College reserves the right to amend this intellectual property policy from time-to-time.

Questions about this policy

Questions about this policy should be directed to the Vice President and Dean of the College.

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