

INTELLECTUAL PROPERTY RIGHTS POLICY

I. INTRODUCTION

Emmanuel College is committed to providing an atmosphere conducive to scholarship, research, and creative activity. Students, faculty, and staff are encouraged to engage in the scholarly pursuit of knowledge, artistic production, and research. Although not the original intent, the results of such pursuits may lead to the development of intellectual property that may be patented, copyrighted, or otherwise have commercial value. It is the purpose of this intellectual property rights policy to inform all Emmanuel College community members of their rights and responsibilities whenever the results of their research or creative endeavors are patentable, copyrightable, or commercially marketable. The College recognizes the need to balance a number of diverse interests in such matters; thus, this policy reflects its commitment to (a) encourage, support, and motivate students, faculty, and staff in the creation of new knowledge and new applications of existing knowledge; and (b) safeguard the current and potential financial assets of the College.

The parties to this agreement believe that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for the College and its learning communities reasonable access to, and use of, the intellectual property for whose creation the College has provided assistance.

The Vice President of Academic Affairs is responsible for the interpretation and implementation of the provisions contained in this policy. The Intellectual Property Rights Committee will resolve appeals and disputes.

II. COVERAGE

This policy, as amended from time to time, applies to all full-time and part-time Emmanuel College faculty, staff (including administrators), and graduate and undergraduate students engaged in teaching, research, study, or other forms of activity within or related to the College, or working with or without monetary compensation on any project under the direction and control of the College (collectively “Emmanuel College community members”); and anyone using College facilities or conducting activities under the supervision of College personnel. Contracts and subcontracts will generally include language that determines the ownership of intellectual property that is developed by those working under the terms of the contract or subcontract.

The policy covers all intellectual property that is created using College funding (including external funding administered by the College), facilities, materials or other resources.

III. EXCLUSIONS

If any portion of this policy conflicts with any agreement signed by the College, the provisions of the agreement will prevail. If any portion of this policy conflicts with a signed agreement between the College and a creator (or a person who assists in the creation of intellectual property) or between the College and an external funding agency, the terms of the signed agreement will prevail.

IV. COPYRIGHT OWNERSHIP

With respect to determining ownership of copyright, the College's policy addresses works by category of copyrightable work (including traditional or non-directed works, directed work, and sponsored or externally contracted works) and by category of author (i.e., faculty, staff, or student). Ownership of copyrighted subject matter, including software, hinges on which category of work and which category of author, pertain to the work at issue.

Copyrightable Works by Emmanuel College community members

1. Works by Faculty.

- a. **Traditional Works or Non-Directed Works:** A "traditional work or non-directed work" is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty member resulting from non-directed effort. (Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this policy, 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 creator.)

Ownership: The creator of the work is the owner, unless it is a work covered by section b. below, directed work, sponsored work requiring College ownership, or a work for hire described in a written agreement between the work's creator and the College. (See section 2., below, for the definition of "work for hire;" under the Copyright Act of 1976 the College is deemed the "Author" of a work for hire.) If the College is to be involved in commercializing a traditional work or non-directed work, the work's creator shall assign the work to the College under an Assignment Agreement. The Assignment Agreement shall contain provisions outlining the commercialization responsibilities of the College and a mechanism for the sharing of commercial proceeds with the Author. In cases of ownership by the creator of a traditional work, the College, where practical, shall be granted a non-exclusive, nontransferable, perpetual, irrevocable, royalty-free license for its own educational or research use (hereinafter referred to as a "Shop Right").

- b. Traditional Works or Non-Directed Works Involving Exceptional Use of College Resources:** "Exceptional use of College resources" means College support of traditional works with resources of a degree or nature not routinely made available to an Emmanuel College community member in a given area.

Ownership: The default is College ownership. However, upon agreement by the Vice President of Academic Affairs (considering the College resources and other resources used), the College may release or transfer its rights to the work's creator, with the College retaining (a) a Shop Right, and/or (b) the College's right to require reimbursement and/or income sharing from the creator to the College if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the Vice President of Academic Affairs.

- c. Directed Works:** "Directed works" include works that are specifically funded by the College (including, but not limited to, works for hire by faculty).

Ownership: The work's creator, where practical, shall be granted a Shop Right. The College may release or transfer its rights to the work's creator under a written agreement negotiated between the creator and the College, usually with the College retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the College if the work produces income for the creator. The parties may also negotiate for joint ownership of such works, with the approval of the Vice President of Academic Affairs.

- d. Sponsored or Externally Contracted Works:** A "sponsored or externally contracted work" is any type of copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the College and third parties, including sponsored research agreements.

Ownership. For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the College, the creator of the work must disclose the work to the College and the College shall be the owner thereof. Provided there is no conflict with a sponsored agreement, the College may release or transfer its rights to the work's creator under an agreement negotiated between the creator and the College, usually with the College retaining (a) a Shop Right, and/or (b) the right to require reimbursement and/or income sharing from the work's creator to the College if the work produces income for the creator; or the parties may also negotiate for joint ownership of such works, with the approval of the Vice President of Academic Affairs.

For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the College or a third party, the creator of the work shall own the work, subject to required

disclosure to the College where required under College policy. In case of ownership by the work's creator, the College, if practical, shall be assigned a Shop Right.

2. **Works by Staff.**

Most works by staff members (i.e., non-faculty employees) are considered to be "Works for Hire." A "work made for hire" is:

- a. A work prepared by an employee within the scope of his or her employment; or
- b. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

Ownership: Works for hire made by staff shall be owned by the College. In special cases, though, the College may enter into a written agreement in advance that the employee shall own the copyright. In addition, the Vice President of Academic Affairs may waive College ownership.

3. **Works by Independent Contractors.**

Ownership: Works by independent contractors (not including all faculty) shall be owned in accordance with the contract under which the work was created. The College shall insure that there is a written contract for work by an independent contractor specifying College ownership.

4. **Works by Students.**

"Student works" are papers, computer programs, theses, artistic and musical works, and other creative works made by students.

Ownership: Ownership of the copyright to these works belongs to the student unless the work falls within one of the exceptions described below:

- a. **Sponsored or Externally Contracted Works:** Ownership shall be in accordance with the section of this policy on sponsored or externally contracted works made by faculty.
- b. Any data generated in a course or through research performed with a faculty member belongs to the College and faculty member.

- c. **Works for Hire:** Student works created by students in the course of their employment with the College shall be considered to fall within the scope of Work for Hire in accordance with the section of this policy on works for hire made by staff.

As provided by the College policy or as agreed to mutually, rights in student works may be transferred between the student and the College. In such cases, a written Assignment Agreement shall specify the respective rights and obligations of the parties. The parties may also negotiate for joint ownership of such works, with the approval of the Vice President of Academic Affairs.

Patent/Copyright Protection: Notwithstanding the above, in the event that a work is subject to both patent and copyright protection and the College owns the patent, the College shall also own any related copyright.

V. PATENT OWNERSHIP

With the exception of "Inventions made on Own Time," hereinafter defined, every invention or discovery or part thereof that results from research or other activities carried out at Emmanuel College, or that is developed with the aid of the College's facilities, staff, or through funds administered by the College, shall be the property of the College and, as a condition of employment or enrollment and attendance, shall be assigned by the College inventor to Emmanuel College in accordance with these policies.

Patent Application

Patents on inventions made by an Emmanuel College community member may be applied for in any country by the College or through an authorized agent(s) or assignee(s). The College shall exercise its rights of ownership of such patent(s), with or without financial gain, with due regard for the public interest, as well as the interests of inventors and sponsors concerned.

Inventions Made on Own Time

Inventions or discoveries made by College personnel or students entirely on their personal time and not involving the use of College facilities are the property of the inventor except in case of conflict with any applicable agreement between the College and the federal or state government or agency thereof. For purposes of this provision, an individual's "personal time" shall mean time other than that devoted to normal or assigned functions in teaching, College service, or direction or conduct of research on College premises or utilizing College facilities. The term "College facilities" shall mean any facility or resource (including funding administered by the College), including equipment and material, available to the inventor as a direct result of the inventor's affiliation with the College, and which would not be available to a non-College individual on the same basis.

Personnel or students who claim that inventions are made on personal time have the responsibility to demonstrate that inventions so claimed are invented on personal time. All such

inventions shall be disclosed in accordance with the College's disclosure procedures applicable to inventions made on College time or with the use of College facilities, and shall demonstrate the basis of the inventor's claim that only personal time was utilized. In each instance so demonstrated to conform to the definition of personal time, the College shall acknowledge in writing that the invention is the sole property of the inventor in accordance with the "waiver" provision, below.

If the inventor chooses, inventions or discoveries made on personal time and utilizing the inventor's own facilities and materials may be assigned to the College. Under this arrangement, the procedures will be the same as for inventions or discoveries made by College personnel on College time and/or with the use of College facilities.

Waiver and Release of College Rights

Pursuant to these policies and to its patent procedures, Emmanuel College, after consultation with the inventor, shall cause its rights to subsequent patents, if any, to be waived to the inventor if the College is convinced that no College facilities, time, or materials were used in the development of the discovery or invention, that it was made on personal time, and that such waiver would not conflict with any pertinent agreement between the College and a sponsoring agency or agencies.

Pursuant to these policies and to its patent procedures, the College, after consultation with the inventor, may in its discretion and upon such terms as it deems appropriate, cause its rights to the discovery or invention, if any, to be released and waived to the inventor if the College is convinced that the discovery or invention is clearly one that is non-patentable, that it does not warrant further evaluation as to patentability, or if the discovery or invention has been returned to the College after negative evaluation by the College's agent(s).

VI. SHARING ROYALTIES OR OTHER INCOME

Ownership Retained by the Creator

Neither the College nor any of its faculty and staff should benefit financially from the sale of materials that are developed solely for sale to Emmanuel College students (e.g., course packs);

It is understood that royalties will accrue from materials that are developed for sale to an audience broader than just Emmanuel College students. College faculty and staff who may potentially retain royalties from the sale of these materials to Emmanuel College students must inform the Intellectual Property Rights Committee if either of the following conditions is met:

1. Students purchased the materials in conjunction with a course taught by the faculty and staff who will earn the royalties, or
2. The faculty and staff who will earn the royalties were involved in selecting the materials that students are expected to purchase.

Ownership Retained by the College

Royalties and other income will first be used to reimburse documented expenses in the following order:

1. Costs paid by the College in conjunction with processing of patent or copyright application, marketing, licensing, defense or enforcement of the intellectual property, or related legal costs.
2. Costs associated with the use of equipment, materials, and staff services of any of the various campus units that assisted in the development of the materials.

Costs will be determined by the normal fee schedule of the unit providing the support; funds, supplies, or services provided to the project by a department or college, or by any other unit of the College; normal salary, even that provided by sabbatical, need not be repaid.

After direct and indirect expenditures are reimbursed, the royalties and other income will be disbursed as follows:

Distribution of Royalties for Intellectual Property Owned by College

| | <i>Creator</i> | <i>Office of the Vice President of Academic Affairs</i> |
|--|----------------|---|
| The first \$5,000 | 100% | |
| The portion between \$5,001 - \$50,000 | 75% | 25% |
| The portion between \$50,001 - \$100,000 | 60% | 40% |
| The portion over \$100,000 | 50% | 50% |

This table shows the distribution of royalties only in those cases where the College owns the Intellectual property rights and royalties will be shared with the creator. If the creator does not report to the Vice President of Academic Affairs, then the administrative unit most comparable to that academic unit will receive this share of the royalties.

Notwithstanding anything else herein, no royalties will be shared with (a) any independent contractor (other than faculty) resulting from any work or invention by such contractor that is owned by the College or (b) any staff resulting from any work made for hire by such staff that is owned by the College.

In the event of multiple creators, they will determine the allocation of the creators' share of the royalties, preferably when the research or creative work is first undertaken. If they cannot agree on the distribution, the money shall be deposited into a College account until such time as the creators agree on a written distribution plan or a dispute resolution mechanism resolves the issue.

The royalties assigned to the office of the Vice President of Academic Affairs (or comparable administrative unit) should be used directly or indirectly to encourage and support additional research and creative endeavors. This may take the form of summer faculty research grants, purchase of specialized equipment, start-up funds for new Emmanuel College community members, etc. *Note:* If an infringement suit or claim of patent invalidity is brought against the College during the life of a patent, the income distribution attributable to that patent may be halted pending settlement of the suit. Similarly if there is a legal challenge to the validity of a copyright, income distribution may be halted pending settlement of the suit.

VII. ADDITIONAL PROVISIONS

All individuals whose works or inventions are covered by this policy have a duty to disclose their works and inventions promptly in accordance with the procedures specified by the College.

Regardless of anything contained in this contract to the contrary, the College shall have sole discretion in whether, and if so how, it pursues registration, licensing, commercialization, defense or enforcement of any intellectual property addressed by this policy.

Regardless of anything contained in this contract to the contrary, all references to College ownership of intellectual property herein, or assignment of intellectual property to the College herein, are intended and deemed to be presently effective such that the College hereby owns, and all applicable persons hereby assign to the College, all right, title and interest in and to all relevant intellectual property. All such persons further agree to execute written assignments memorializing such assignment at the College's request.

VIII. INTELLECTUAL PROPERTY POLICY AND RIGHTS COMMITTEE

The Intellectual Property Policy and Rights Committee will be composed of three faculty members (appointed by the Faculty Senate), a college dean or librarian (appointed by the Vice President of Academic Affairs), a representative from Finance and Administration (appointed by the Vice President of Finance and Administration), and one additional administrator (appointed by the Vice President of Academic Affairs) and the Vice President of Academic Affairs who serves as the chair and a non-voting member. At the time of initial appointment or election, each member shall be designated as serving a one- or two-, or three-year term, so that the term of one faculty committee member and one administration member will expire each year and

replacements will be appointed or elected each year. After the first appointment subsequent members shall serve a three-year term, commencing on July 1 and terminating on June 30. Committee members may serve one additional three-year term.

The Committee shall review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies, when such changes affect existing policies. The Committee shall serve as a forum for the receipt and discussion of proposals to change existing College policy and/or to provide recommendations for contract negotiations. The Committee may only function in case of need. The Intellectual Property Policy and Rights Committee will decide disputes over ownership, and its attendant rights, of intellectual property. The committee shall make an initial determination of whether the College or any other party has rights to the invention or other creation, and, if so, the basis and extent of those rights. The Committee shall also make a determination on resolving competing faculty claims to ownership when the parties cannot reach an agreement on their own. The Committee will review the merits of inventions, and other creations, and make recommendations for the management of the invention, including development, patenting, and exploitation.

Decisions of the Committee may be appealed in writing to the President of the College who has final authority for resolving the issues.