

Intellectual Property			
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Purpose: Tusculum College, like other universities and colleges, has endeavored to create an academic and community environment conducive to the provision of public service and the creation of new information through the development by faculty and learners of many types of Intellectual Property (IP).

In the words of the Commission on Colleges of the Southern Association of Colleges and Schools, Tusculum College's Intellectual Property Policy clearly demonstrates basis and procedures "concerning ownership of materials, compensation, copyright issues, and the use of revenue derived from the creation and production of all intellectual property." (*The Principles of Accreditation, 2008 Edition, 3.2.14, p. 25*)

Policy: Ownership and Control Principle

ACADEMIC and NON-ACADEMIC EMPLOYEES AND STUDENTS

According to international treaties and pertinent federal statutes, IP is divided into two major categories: industrial or patent and copyright. In general, these products and ideas of human genius "can be bought, sold, transferred, assigned, or licensed." Each was authored or created and is owned by someone or some group controlling its rights. As such, these assets may be eligible for such legal protection as copyright or patent and could be controlled by licensing.

Ownership and control of IP in higher education is diverse, with different emphasis based upon institutional size, mission, external collaborations, and local interest. A common premise running through all IP policies and the basic intention of the College is to provide encouragement for faculty, staff, and students to produce works broadly defined as IP. Other common assumptions of IP policies include a general desire for society to enjoy useful writings, artwork, or inventions as well as the protection of the Creators of works and the colleges where they were created.

A determination of ownership and control in colleges and universities is most often based upon the level of contribution(s) of the parties to the creation of the work or item. Tusculum College's Intellectual Property Policy is not intended to alter the traditional ownership by the Creator of works such as a poem, a book, or a painting. However, the College may or may not choose to enter a claim of ownership of Intellectual Property created by its students or employees if Substantial College Resources (SCR) were used in its creation.

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Procedure: Ownership and Control Procedures:

It is the general policy of Tusculum College that, with certain exceptions here noted, Intellectual Property will remain the property of its creator or owner, so that its faculty, staff, students may be encouraged to engage in those activities of the mind or hand that may result in original works of benefit to society within the classroom and without. To that end, four categories of ownership have been established: Creator ownership; Creator ownership with College Interest; Creator ownership with College and/or outside party interest; and College ownership:

a. Creator ownership: If no use or nominal use of Normal College Resources (NCR) was employed in the development or creation of an IP, all income derived from the IP is retained by the Creator. No prior disclosure is required. If upon its completion the medium so lends itself without expense of reproduction, the Creator will, upon request, provide the College with one free copy of the IP. Except where the Creator may be required by contract to assign IP rights to a third party, e.g., a publisher, a nonexclusive, royalty-free license for use of the IP in furtherance of the College academic mission may also be provided at the discretion of the Creator. Examples: a book for the library, an art print for the gallery collection.

b. Creator ownership with College interest: If prior written approval has been granted by the President for use of Substantial College Resources (SCR), ownership of IP is vested in the Creator. Additionally, the Creator agrees to provide , the College with a non-exclusive, royalty-free license to use, publish or disseminate such IP. Applications for patents and copyright have specific legal requirements and involve cost. In those cases where it is anticipated from the beginning that such protection will be sought employing any part of SCR, the Creators must disclose the conception of the IP to the College through the Provost in writing at the time that the written request for the use of SCR is made. The College has 90 days from notification of conception by the Creator to grant or refuse approval for use of SCR. In the event that the College fails to either grant or refuse such permission within such 90 day period, permission shall be deemed refused. The College shall be the exclusive owner of all rights to any IP created using SCR without College permission.

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Procedure continued:

Income derived from an IP created with the use of SCR is shared between the Creator and the College per this scale:

- 1) If College funds pay for part of development costs, royalty distribution will be negotiated on a case-by-case basis between the Creator and the College (with written authorization by the Provost) prior to the award of development funds.
- 2) When Federal grants or state funding covers development costs, both the College and the Creator will be bound by revenue-sharing terms to be negotiated by the Creator, the College and the funder prior to creation of the IP.

c. Creator ownership with College interest and/or outside party interest:

Outside funding may be employed with SCR in the creation of an IP. In such a case, the Creator must notify the Provost and the Vice President of Advancement in writing of the conception of the IP and the associated funding arrangement. The College's Office of Advancement and the Provost must review and pre-approve in writing all agreements between the Creator and any governmental or non-governmental outside party. Also, all grants requested through the College must be approved and signed by the President. Contract agreements with outside parties must specify: 1) cost and revenue sharing arrangements; 2) the manner in which the outside party will safeguard College proprietary information. If government funding or support covers the creation of an IP under this section, a grant agreement between the parties will govern all aspects of the IP process before and after creation.

Tangible research property (TRP) is most often created as an offshoot of something else and is subject to the terms (ownership or otherwise) of grants, arrangements, or contracts under which it was produced. TRP is treated as Intellectual Property for the purposes of this policy.

d. College ownership: The College asserts exclusive ownership of IP under three circumstances: Commissioned Works; Cooperative work; and Negotiated IP transfer. Although it will retain such ownership, it may choose to transfer or otherwise assign its ownership in the IP, in whole or in part, to one or more other parties: person or committee in the College organizational chain from Board of Trustee Chairman down.

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Procedure continued:

- 1) **Commissioned Works:** Commissioned Works are those which are specifically assigned to be undertaken for the College, and may be created by students, faculty, staff, administration, independent contractors, or consultants. Commissioned Works may be prepared as a part of full-time or part-time employment duties, and are typically supervised by some
- 2) **Cooperative work:** Cooperative work is produced with the use of Substantial College Resources (SCR) per a written agreement negotiated in advance. Such work has no expectation of income or royalty split and should be subject to the same guidelines as those in Section b regarding “Creator ownership with College interest.”
- 3) **Negotiated IP transfer (NIT):** A Negotiated IP transfer (NIT) results when a Creator with ownership in an IP voluntarily transfers his/her rights, in whole or in part, to the College. Such an NIT must take the form of a written document signed by the Creator and witnessed.

Administration:

Ownership and Control Administration

- a. Routine administration of Tusculum College’s Intellectual Property Policy will be vested in the office of the Provost. The provisions and terms of the IP policy will be interpreted and applied by the Provost, subject to the review and approval of the President. The President or the President’s designee will determine the manner in which marketing, revenue, and other non-creative aspects of IP are handled.
- b. **Use of Tusculum name and logo:** In accordance with the Tusculum College policy (see Policy 5.10 Conflict of Interest), Creators may employ the College name to introduce themselves only. Logos and other symbols and other trademarks must be used in accordance with established policy. All use of College logos and symbols must be approved in advance by the Office of Public Relations. In no case may Creators employ the Tusculum name or its trademarks to imply College endorsement of or responsibility for IP created under section “Creator ownership” above.

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Administration continued:

c. Intellectual Property (IP) review: As the Tusculum College IP policy affects many constituencies; it should be reviewed regularly and updated. An IP sub-committee of the College Council, comprised not only of faculty but of staff and students as well, should be constituted under a College Council Chair on an alternate year basis and appointed by that body to make recommendations to it and, by its vote, to the Provost for changes or amendments. Any proposed changes in the IP Policy must also be approved by the faculty, the administration and the Board of Trustees.

d. Dispute resolutions: Disputes over interpretation or application of the Tusculum College IP policy should be resolved through the College's grievance policy (see Policy 5.15 Grievance Procedure).

Revenue Use: Ownership and Control Revenue Use

For purposes of this policy, "revenue" includes all monetary proceeds received by the College from all considerations concerning the commercialization, transfer, licensing, or other exploitation of its owned IP. Without limitation, such revenue may include royalties, sales proceeds, and a variety of different fees (e.g., maintenance, option, transfer).

Non-cash consideration (e.g., stock) for, say, an IP licensing, may also be accepted and is considered revenue. At its discretion, the College may at some point convert non-cash considerations into cash.

Ownership and Control Revenue Distribution: When revenue is received by the College from an IP, it will deduct its expenses or obligations assumed in the pursuit of patent or copyright, marketing, licensing or otherwise administering the IP. Anything remaining will be declared "net proceeds" and will be distributed in accordance with above sections "Creator ownership with College interest" or Creator ownership with College interest and/or outside party interest."

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Independent Contractors:

Under existing Copyright laws, absent a written copyright assignment, ownership of works created by independent contractors and consultants typically vests in those parties and not in the party that hired such independent contractor or consultant. As such, if the services of an independent contractor or consultant are required, it is important to obtain a written assignment of all IP from such independent contractor or consultant to the College. It should be kept in mind that employees working outside the scope of their employment may be considered independent contractors. Forms for such assignments can be obtained from the Provost's Office.

Definitions: Intellectual Property: Traditionally, IP, according to the World International Property Organization, refers "to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce." In this document, IP includes inventions, copyrightable original works, tangible research property, and trademarked materials centered uniquely upon the inspiration of Creators associated with Tusculum College. Tusculum College ascribes to the following definitions to various units of IP:

Creator: Refers to an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of Intellectual Property. Creators include faculty, staff, students, administrators, those working under College contract, or the College working in collaboration with off-site associates, physical or corporate. "Creator" includes the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.

Invention and Patent: Legally, an invention is any new and useful process, machine, manufacture, or composition of matter that is novel, non-obvious, and useful. It may include such devices or software not eligible under the category of copyrighted original works. A patent is a government-granted, fixed-period exclusive right awarded to an inventor or his assignee for public disclosure of the details of an invention. During the fixed time period, the patent excludes others from manufacturing, employing, or marketing the invention.

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Definitions continued:

Copyrighted original works: A copyright, like a patent, is a fixed-length government protection, in this case for an original literary or artistic work. Under U.S. copyright law, copyright subsists “in original works of authorship” and it can be fixed in any tangible medium of expression. From the medium, the work may then be “perceived, reproduced, or otherwise communicated” with or without the use of machine or device. These works include, but are not limited to traditional academic works or commissioned works.

"Traditional academic copyrightable works" are a subset of copyrightable works created independently and at the Creator's initiative for traditional academic purposes. Examples include class notes, books and texts, theses and dissertations, courseware or lesson ware, articles, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, pictorial, graphic and sculptural works, motion picture and other audio visual works, sound recordings, or other works of artistic imagination that are not created as an institutional initiative.

Commissioned Works are those works created as an institutional initiative. Tangible research property (TRP): Tangible (or corporeal) items produced in the course of research projects. TRP includes such items as: biological materials, engineering drawings, computer software, integrated circuit chips, specialized computer databases, prototype devices, circuit diagrams, and equipment. Individual items of TRP may be associated with copyrights or patents.

Trademarked materials: Trademarked materials are materials of identity adopted by the College to distinguish itself from other corporate entities. These may include names, logos, symbols, domain names, distinctive dress, uniform (s) or slogan(s), or any combination thereof.

Substantial College Resources (SCR): Include services, equipment or facilities, or support staff time provided by the College that by at least one definition, “go beyond what is traditionally and commonly made available to the faculty, staff, or students for the preparation of course materials, work materials, or the fulfillment of typical work or academic-related obligations.” Commonly, it also includes dedicated funding or release time or both.

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Definitions continued:

Normal College Resources (NCR): Nominal employment resources provided as part of the student academic program, the normal faculty course development program, or typically provided to staff as part of their employment. Use of NCR is not considered use of Substantial College Resources. Examples of resources normally provided for employees often include office space, a computer, non proprietary information, library access, and Internet access.

Disclosure: Most frequently a concern in relation to patentable discoveries or inventions, but may involve other works. Under terms of this policy, a discovery, invention, or work will be considered disclosed when a written description is provided to the office of the Provost. It is the responsibility of the creator to initiate disclosure, in writing, of any IP produced using substantial College resources before such resources are used for the project. Failure to initiate such disclosure may be grounds for disciplinary action.

Revenue: For purposes of this policy, “revenue” includes all monetary proceeds received by the College or Creator from all considerations concerning the commercialization, transfer, licensing, or other exploitation of its owned IP. Without limitation, such revenue may include royalties, sales proceeds, and a variety of different fees (e.g., maintenance, option, transfer). Non-cash consideration (e.g., stock) for, say, an IP licensing, may also be accepted and is considered revenue. At its discretion, the College may at some point convert non-cash considerations into cash.