

BIRMINGHAM-SOUTHERN COLLEGE POLICY ON INTELLECTUAL PROPERTY

Birmingham-Southern College (“College”) encourages the production of creative and scholarly research, artistic activity, works and inventions, known broadly as intellectual property, among faculty, students and staff. The products of this scholarship may create rights and interests on behalf of the creator, author, inventor, public, sponsor and the College. The purpose of this policy is to support and reward artistic activity and scientific research and scholarship, and to help faculty, students and staff identify, protect, and administer intellectual property matters and define the rights and responsibilities of all involved. The College faculty and employees are encouraged to retain a non-exclusive, royalty-free license to allow them and the College to use work they author or create and intend to publish in furtherance of the College’s academic mission (e.g., in the classroom, at lectures, etc.). This policy shall not be construed in a manner that would undermine the academic mission of the College or conflict with the By-Laws or Charter of the College.

1. Application of Policy

The policy applies to works created by all classifications of faculty, staff and students of the College and to non-employees such as consultants and independent contractors, who create works on behalf of the College, unless a written agreement exists to the contrary.

2. Identification of Intellectual Property (“Intellectual Property”)

Intellectual property shall consist of the following:

- (1) Copyrightable material produced from creative and scholarly activity, such as text (manuscripts, manuals, books, and articles); videos and motion pictures; music (sound recordings, lyrics, and scores); images (print, photographs, electronic, and art); and computer software (programs, databases, web pages, and courseware); and
- (2) Patentable works such as patents (processes, machines, manufactures, or compositions of matter); devices; and software excluded from copyrighted materials; and
- (3) Trademarked materials, such as words, names, symbols or logos, domain names, trade dress, and slogans or any combination of words which has been adopted by the College to identify itself and to distinguish itself and its sponsorship from others.
- (4) Trade Secrets

3. Ownership and Use

- (1) **General Rule.** Keeping with the view that one of the College’s primary benefits to society is the production of original works by its employees and students, and in order to best encourage such activity, it is the general

policy of Birmingham-Southern that Intellectual Property shall be the property of the author or creator. The College may assert ownership rights to Intellectual Property developed under circumstances set forth further below.

(2) **Patentable Intellectual Property**

Responsibility for Disclosure of Patentable Intellectual Property: The College personnel who alone or in association with other entities create or intend to create patentable subject matter with non-routine or extraordinary use of College resources must disclose the matter and obtain prior authorization from the Office of the Provost (or designee). Such disclosure shall be made when it can be reasonably concluded that a patentable subject matter has or will be created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator and the College. Creators are encouraged to seek the advice of the Provost (or designee) in determining whether the subject matter is patentable or whether the College desires to pursue patenting the matter.

Determination of Rights to Patentable Subject Matter: Except as set forth below, the creator of patentable intellectual property shall retain his/her rights, and the College shall not assert ownership rights. However, creators will grant perpetual permission to the College for cost-free use of Intellectual Property that is developed for the College courses or curriculum, so that the College's continued use of such material for educational purposes at Birmingham-Southern would not be jeopardized. The College will have and may assert ownership rights to patentable intellectual property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program under an agreement which allocates rights to the College.
- Development involved a substantial contribution from the College or required significant, non-routine use of the College resources (e.g. facilities, equipment, funding) or more than routine use of the College personnel. Extensive participation of students directly in the development, or indirectly through use and feedback that substantively influences development, constitutes significant use of the College resources, unless the participation is routine or normal in the education and instruction of our students. For purposes of this policy, "substantial contribution" refers to the extensive and unreimbursed use of College space and resources that are not ordinarily used in this manner in the College's educational or instructional endeavors.

- Material was developed by administrators or other non-faculty employees in the course of employment duties and constitutes work for hire under US law.
- The creator was assigned, directed, or specifically funded by the College to develop the material and the College has confirmed the assignment in writing.

(3) **Other Intellectual Property**

Responsibility for Disclosure of Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give faculty members the right to retain ownership of their Intellectual Property. This policy protects that traditional right, and faculty are not obligated to disclose the creation of these materials, even when the product might have commercial value, unless the material was developed under one of the qualifying conditions listed in the next section in which case the creator is responsible for reasonably prompt disclosure. However, faculty are encouraged to disclose any protectable material that has commercial value to the extent that they may wish assistance in copyright protection and marketing in exchange for profit sharing with the College. All disclosures should be made to the Office of the Provost.

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this policy, “substantial contribution” refers to the extensive and unreimbursed use of College space and resources that are not ordinarily used in this manner in the College’s educational or instructional endeavors.

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(4) **Intellectual Property Developed Under Sponsored Research Agreements**

Ownership of Intellectual Property developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement. Sponsored research and artistic programs funded by private sponsors should be reduced to a written agreement that is submitted in advance to the Provost. The Provost, with the review and approval of the President, will inform the College employee of the contractual terms required for the use of College resources, facilities, students, or personnel. The Agreement between the College employee and the private sponsor will provide for appropriate compensation or reimbursement to the College for the use of College resources, facilities, students, or personnel. Government and nonprofit sponsors generally should follow the same procedure, subject to laws or conditions that are unique to such bodies.

(5) **Special Agreement**

The overriding principle underlying this Intellectual Property Policy is to encourage creativity and inventiveness, so the College reserves the right to allow some flexibility in applying this policy on a case-by-case basis. In such cases, ownership and use of materials developed pursuant to a special agreement between the College and the creator/author will be governed by the principles of that agreement.

4. **Administration**

Office of the Provost: The Policy on Intellectual Property shall be administered by the Office of the College Provost and the stated terms and provisions of the policy shall be determined and interpreted by the Provost with the review and approval of the President.

Intellectual Property Review Committee: In implementing this policy, the Provost shall appoint a standing Intellectual Property Review Committee whose functions shall include (1) reviewing policy provisions from time to time, as needed, with recommendations for change or amendments to the Provost; and (2) reviewing other issues as requested by the Office of the Provost or other interested parties.

Dispute Resolution: When a dispute arises over the application or interpretation of this policy, an ad hoc I.P. Dispute Resolution Committee shall be formed to consider the issues and render a decision. The I.P.D.R. Committee shall consist of three members of the College community – one chosen by the College employee, one chosen by the College administration and one agreed to and selected by the first two selected committee members. The I.P.D.R. Committee may conduct a private hearing and formulate other reasonable and necessary procedures to reach a majority decision in writing within sixty (60) days after selection of the Committee. If either party is dissatisfied with the decision of the Committee the party may appeal the Committee decision in the same manner and to the same extent as the review provided under provision III.B.7.i. of the Faculty Handbook. This appeal provision would apply as well to non-faculty College employees who have a dispute arising under this I.P. policy.

Changes to Policy: The College reserves the right to change this policy from time to time but only in accordance with the principles of Chapter III of the Faculty Handbook that limit the retroactive effect of amendments. Amendments to this policy would be presumed to have prospective effect as to all members of the College community. Proposed changes will normally be discussed among the vice presidents and deans and the Provost.

5. Royalties

All revenues derived from the College-owned Intellectual Property including electronic media will be received and administered by the Office of the Provost. For each specific piece of Intellectual Property owned by the College, costs incurred in the process of perfecting, transferring, and protecting the College rights to the property paid by the College will first be deducted from the gross income available before distribution. An accurate accounting of all such costs shall be made available to the author/creator upon request. The distribution of net proceeds (income less all costs including that of an agency engaged to provide patent administration services) that is received from the College-owned Intellectual Properties shall be shared equally between the creator and the College absent agreement otherwise. The companies licensed to market or use Intellectual Property.

6. Use of the College names/logos

Faculty, staff, and students may use the College name and logos to identify themselves (John Doe, Professor of Physics, Birmingham-Southern College). The College name(s) and logos shall not be used by individuals or entities in a manner that implies the College endorsement or responsibility for particular activities, products, or publications involved, for commercial purposes, or by any individual or group promoting itself, without the express written permission of the Provost.