

RANDOLPH-MACON COLLEGE POLICY ON INTELLECTUAL PROPERTY RIGHTSⁱ

I. Basic Principles and Purpose

Randolph-Macon College subscribes to the 1940 Statement of Principles on Academic Freedom and Tenure jointly agreed upon by the American Association of University Professors and the Association of American Colleges (now the Association of American Colleges and Universities). This Statement says that "Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution." The Statement further notes that "Institutions of higher education are conducted for the common good and not to further the interest of either the individual teacher or the institution as a whole. The common good depends upon the free search for truth and its free exposition." (See Randolph-Macon College *Faculty Handbook*, Section 2.1)

The purpose of this policy is to promote the free search for truth by faculty, staff, students and visitors at Randolph-Macon College while guarding the rights of authors of intellectual property and the rights and appropriate interests of the College in the use of its facilities and resources.

II. Traditional Academic Work – Author Owns Intellectual Property

The AAUP Statement on Copyright (1999) states that "Prevailing academic practice is to treat the faculty member as the copyright owner of works that are created independently and at the faculty member's own initiative for traditional academic purposes." The College historically has not, and does not now, assert any claim or ownership interest in the categories of traditional academic work including but not limited to: textbooks, class handouts and presentations, research articles, proposals or monographs, student theses or dissertations, paintings, drawings, sculpture, musical or dramatic compositions and performances, poetry, and popular fiction and nonfiction. The AAUP Statement on Copyright notes that this practice has been followed for the most part, regardless of the physical medium in which these "traditional academic works" appear; that is, whether on paper or in audiovisual or electronic form.

Staff members may also produce works that are covered under this policy, and enjoy ownership of the intellectual property so created.

Students enjoy academic freedom and the right to free inquiry and expression. Such inquiry and expression may result in the production of traditional academic works. Students enjoy ownership of the intellectual property so created. Students serving as interns may also be subject to the intellectual property policies of the outside agency to which they are assigned. The recognition of students' intellectual property rights shall not be interpreted to contradict the College's policies regarding student publications (see *Fishtales*, "Student Bill of Rights").

Visitors to the campus enjoy academic freedom and the right to free inquiry and expression. Such inquiry and expression may result in the production of traditional academic works. Visitors may enjoy intellectual property rights to such work, subject to the College's policies regarding access to and use of its facilities.

III. Work for Hire – College Owns Intellectual Property

Materials written, created, produced or otherwise generated "for hire" are defined as inventions, creations, manuscripts, or other works or things of commercial value which are written, created, produced or otherwise generated by persons, including but not limited to

faculty and staff members, who are engaged by the College specifically to write, create, produce or otherwise generate such materials or to conduct the research or other activity which produced anything included in the material(s); or are released from other College responsibilities in order to write, create, produce or otherwise generate materials at the initiative of the College. Works for hire are the exclusive property of the College.

IV. Joint Works – College and Author Co-own Intellectual Property

Traditionally, “co-authorship” means that two or more faculty members, staff members, or students, often from different academic institutions, have collaborated on a creative work and are co-owners of the intellectual property. This traditional understanding of co-authorship is under this policy to be treated as traditional academic work.

Under some conditions, the College may assert co-authorship and thus co-ownership of intellectual property. Such conditions may hold if there is significant use of College resources, and/or if outside sponsorship contractually shares intellectual property rights with some entity not under the control of the College.

A. Significant Use

Use of office or classroom space, libraries, general computational facilities or equipment routinely used in the regular performance of academic duties, does not constitute significant use of College resources. The use of specialized experimental or computational laboratory facilities or equipment or other special instrumentation is not considered significant use if it involves brief periods of time or limited use, e.g. for exploratory tests. Significant use includes utilization of College laboratories or special instrumentation outside of the expected use deriving from regular teaching and professional activities; dedicated assistance by College employees; special financial assistance beyond sabbatical leaves, faculty development grants or monies obtained through other ordinary competitive processes; or extensive use of shared facilities.

If the College determines that the production of intellectual property is governed by this “significant use” policy, it may reasonably request reimbursement for any unusual financial or technical support, possibly in the form of compensation from future royalties. The College should consider whether an assertion of co-ownership of the copyright or patent has a detrimental impact on the free inquiry of faculty, staff or students before making such assertion.

B. Outside Co-Sponsorship

Materials written, created, produced or otherwise generated pursuant to or under the sponsorship of an outside foundation, agency or government and under the auspices of a College grant shall be subject to the copyright, patent and exploitation terms and conditions of said grant, contract or agreement.

Where said grant, contract or agreement obligates the faculty member to share or convey intellectual property rights to the outside sponsor or third party, the College shall be given the right to review the contract and assess whether it has an interest in asserting co-ownership of the rights. This is especially the case when the ownership of intellectual property rights by an outside agency would remove the knowledge created from general distribution, such as in the creation of ‘trade secrets.’ Where no obligation to convey to the sponsor exists, all rights revert to the author, subject to the terms of this policy.

In the case of government contracts or grants, the government always retains the right to duplicate and use the works for government purposes.

V. Notification Requirements

It is the obligation of the author of intellectual property to notify the Dean of the College if Section IV may be applicable. When notification is made, the College will determine on a timely basis if the intellectual property produced is subject to Section IV, and if so whether the College wishes to assert a claim of co-ownership.

It is the obligation of College employees entering into contractual arrangements for the production of intellectual property that may be governed by Section IV and assign or may assign rights to an outside sponsor or third party to notify the College and permit the College to review the contract and its terms.

VI. Reciprocity

For works governed by Section IV, if the intellectual property right is retained by the author the College shall enjoy nonexclusive royalty-free license to the work for internal educational and administrative purposes. Conversely, when the College holds all or part of the copyright, the author shall retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works produced by said author (AAUP, Statement on Copyright).

For works governed by Section III., the author shall retain the right to take credit for creative contributions, to reproduce the work for his or her instructional purposes, and to incorporate the work in future scholarly works produced by said author.

VII. Outside Employment

Under some circumstances the exercise of a property right by a faculty member or staff member may constitute outside employment. A faculty member should consult with the department chair and the Dean of the College if the exercise of the property right might be construed as constituting outside employment. If the Dean of the College determines that such exercise of the property right does constitute outside employment, then policies governing such employment shall be invoked (see 13.1.10 of the *Faculty Handbook*).

VIII. Disputes and Appeals

A. Disputes

Disputes between the author(s) and the College over ownership of intellectual property rights or the application of policies governing intellectual property rights will be heard by an ad hoc committee convened for the purpose, made up of two persons named by the author(s), two persons named by the College, and one person named by the four members previously seated to serve as chair. Legal counsel shall not be allowed to attend any hearing. The decision of the ad hoc committee will take the form of findings of fact, conclusions, and a recommended resolution. The findings of fact, conclusions, and recommendations must be based solely on the hearing record, pertinent College policies and procedures, and the law. The committee's recommended resolution shall be made to the President of the College.

B. Appeals

Appeals will be addressed per the College's grievance procedures.

IX. Rights Sharing

For intellectual property for which the faculty member, staff member, student or visitor retains ownership rights, the author and the College may by mutual agreement enter into an arrangement under which the costs, ownership, and rewards of the property are shared by the author and the College.

ⁱ Portions of this policy are drawn from policies at Ferrum College, Roanoke College, University of Delaware, and Worcester Polytechnic Institute.