

Emory & Henry College

Intellectual Property Policy

Introduction

Emory & Henry College encourages the development, writing, invention, and production of intellectual property by its faculty, staff, and students.

Intellectual property is defined as intellectual and creative works that can be copyrighted or patented, such as literary, dramatic, musical and artistic works, computer software, multimedia presentations, inventions, etc.

Copyrighted material may be produced through individual efforts, College-assisted individual efforts, extramural sponsored efforts, or College-assigned efforts. Examples of works covered by copyright include, but are not limited to, the following:

- Books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and survey instruments;
- Lectures and unpublished lecture notes;
- Films, slide programs, filmstrips, charts, transparencies, pictorials, graphics and other visual aids; video and audio tapes and cassettes, CDs and DVDs;
- Live video or audio broadcasts;
- Programmed instruction materials;
- Computer programs and documentation;
- Original course content or course design materials developed for use within a learning management system such as Moodle or Blackboard.

Please note that notwithstanding the following information and conditions, a student retains portfolio rights to works created by the student as a class assignment or as part of a pro-bono commission approved as a student project by an instructor. A pro-bono commission is work that an instructor may approve for students to undertake as a skill-building opportunity. Students may receive token payments provided by the person or group that commissions such a work.

The ownership of a copyright or patent resulting from the development of intellectual property and any rewards or recognition attributed to the copyright or patent will be determined according to the following conditions.

Individual Efforts

Emory & Henry recognizes the long-standing custom and tacit understanding that faculty members, staff members, and students own the copyright to their individual scholarly, artistic, musical, and literary works. An employee or student of the College is entitled to ownership of copyright and royalties or other income derived from individual scholarly, artistic, musical, or literary works. Individual work for members of the faculty is defined as that scholarly work which is generally expected of faculty and incorporated into the regular recognitions and rewards processes of the College and is not a specific College-assigned effort. Individual work, so defined, is automatically exempt from the formal review procedures of this policy.

College-Assisted Individual Efforts

Original materials or works created by employees of the College are subject to copyright by the employee and/or College as co-author if:

- the production cost is specifically shared by the employee and the College
- the original work is not prepared in accordance with the terms of the contract or grant in which the College is a party
- the original work was created as a specific College assignment

In cases where an original work was created with College financial assistance in which the assistance is less than 50 percent the individual employee shall retain the copyright and the College may share in the division of royalty and other income up to the total costs contributed by the College.

Copyright on materials or works produced by employees of the College for use in the classroom, such as original course content or digital graphic media created for use within a learning management system licensed by the College, shall be retained by the employee. Such materials may be used by the copyright owner for other purposes and at other venues as long as any references to Emory & Henry College are removed first. The employee may not utilize College-licensed software applications to access and utilize original course content or digital graphical media in the course of teaching courses at other institutions.

Ownership Resides with the Employee or Student

Copyright ownership resides with the employee or student if one or more of the following criteria are met:

- The work is the result of individual initiative, not requested by Emory & Henry College.
- The work is not the product of a specific contract or assignment made as a result of employment with the College.
- The work does not involve use of College facilities, time, and/or other resources and is not derivative of any other College-owned copyright. (e.g. students may not use College equipment or resources for works for hire.)
- Inventions or discoveries made by the employee entirely on his/her personal time (e.g. made during non-working hours) and not involving the use of the College facilities or materials are the property of the inventor except as may be specified in any applicable agreement between Emory & Henry College and the federal or state government, or an agency thereof.
- Emory & Henry College reserves the right to bind and permanently retain copies of student honors theses, graduate student masters theses, and other student-created work such as capstone course projects. Such documents will be housed in the Frederick T. Kelly Library or other climate-controlled, secure-access, facility as deemed appropriate. The College further reserves the right to digitize and reformat these materials for its own use as deemed necessary.

The employee or student shall disclose promptly to the College all discoveries and inventions made during the term of any Agreement or Contract. The duty to disclose arises as soon as the employee or student has reason to believe, based on his or her own knowledge or upon information supplied by others, that the discovery or invention may be patentable. Certainty about patentability is not required before a disclosure is made. The employee or student shall execute such declarations, assignments, or other documents as may be necessary in the course of invention evaluation, patent prosecution, or protection of rights to insure that title to such inventions shall be held by the College.

Ownership Resides with the College

Copyright ownership resides with the College if one or more of the following criteria applies:

- The work is prepared within the scope of an employee's job duties.

- The work is the product of a specific contract or assignment made in the course of the employee's employment with Emory & Henry College.
- The development of the work involved significant facilities, time, and/or other resources of the College including, but not limited to, released time, grant funds, College personnel, salary supplement, leave with pay, equipment, or other materials or financial assistance, or is derivative of any other College-owned copyright.

Although an employee may not personally profit from College-owned property which he or she developed, the employee may include it as representative in a personal portfolio.

Routine use of the library, office space, equipment, supplies, facilities, College-licensed software applications such as learning management systems and desktop productivity or publishing applications does not, for the purposes of this policy, constitute College assistance.

Patents

With the exception of inventions made on personal time, every invention or discovery or part thereof that results from research or other activities carried out at the College by the employee or that is developed by the employee with aid of the College's facilities, staff or through funds administered by the College during any Agreement or Contract shall be the property of the College and, as a condition of employment, shall be assigned by the employee to the College in the manner prescribed by the College.

Joint Ownership

Joint ownership agreements should be negotiated prior to creation of the property. When it can be foreseen that commercially valuable property will be created, the College and the employee or the College and the student should negotiate an agreement for ownership and the sharing of benefits. The College and the employee or the College and the student may enter into an agreement for an equitable arrangement for joint ownership, sharing of royalties, or reimbursement to the College for its costs and support. In all such joint ownership cases, the agreement shall provide that the College will have a perpetual license to use the work without compensation to the employee or student for such use.

Use of Revenue

The revenue derived from College-owned intellectual property is considered to be the same type of funding as that which allowed the development of the intellectual property, i.e. federal, state, county, or institutional. Revenue from intellectual property generated by more than one type of funding is allocated to that revenue source in the year it is received in the same proportion as the funding that allowed the property to be created. The College shall determine the use of the funding.

Equity

The equity of the inventor or inventors in a patent is determined largely by the source of funding for the research which led to the invention or discovery, as follows:

- College-funded research: the inventor or inventors share in the net proceeds from a patent, as indicated below, with all patent costs paid by the College and recouped from the proceeds.
- Apportionment details are described in the "Proceeds" section below.
- Personal research: if no significant use of College facilities is involved, the inventor or inventors may obtain and retain full rights to a patent, or they may assign the invention or discovery to the College for handling as under College-funded research.
- Research funded by government or industry: the inventor or inventors share as specified in the contract or grant and, if applicable, as further specified below.

- Extramural consulting funded research: the inventor or inventors share in the rights to a patent as specified by the extramural consulting agreement, unless approval for extramural consulting was not obtained and/or substantial use of College facilities was involved.

Proceeds

In the case of College-funded research, the inventor or inventors will receive 50 percent of the first \$100,000 of net royalty; 40 percent of the second \$100,000; and 30 percent of all net royalty income over \$200,000.

Net royalty income will be determined by the following method: first, all out-of-pocket College expenses for obtaining, defending and marketing the patent will be recovered. Second, a 15 percent administrative charge will be used to provide resources to encourage invention disclosures and to process these in a timely manner, and to facilitate the transfer and commercialization of discoveries and inventions.

The inventor or inventors are required to execute assignments and other documents that the College determines to be necessary to obtain a patent. The College faculty, other employees, and students must report all inventions or discoveries considered patentable to the College's President. Note that, in the United States, a patent on an invention or discovery must be applied for within one year of the first publication disclosing an invention or discovery and that, in certain foreign countries, a patent must be applied for prior to such a publication.

The College is required to consider promptly any disclosure of an invention or discovery and determine within six months what action it plans; otherwise, the inventor or inventors may request the rights to the invention or discovery for subsequent patenting on their own, unless this is prohibited by the provisions of an applicable grant or contract.

The College shall have the right to determine how and for what consideration any patent rights assigned to the College shall be used.

Liability Issues

All College faculty and staff members will ensure that the courses and materials created by them are original except for such materials from copyrighted sources that are reproduced with the written permission of the copyright holder; that the courses or materials will in no way constitute a violation of or an infringement upon any copyright belonging to any other party; that the courses or materials will contain no information previously published or copyrighted by the faculty member unless such information is noted in the course or material; and that the course or material will contain no matter which is libelous or in any way contrary to law.

Disciplinary Action

Individuals are responsible and liable for their own actions in the creation, use, and distribution of intellectual property. Violations of this policy may also result in disciplinary action by the College including expulsion from the College and/or termination of employment.