

**BOWDOIN COLLEGE  
INTELLECTUAL PROPERTY POLICY**

I. Preface

As part of its basic mission, Bowdoin College encourages the discovery, creation and wide dissemination of knowledge, artistic work, inventions, and educational materials. The most effective way to achieve these ends is to ensure academic freedom among faculty and students. A well-defined policy for the allocation of ownership rights associated with intellectual property will facilitate the creation and dissemination of original work.

This policy addresses the ownership of intellectual property created by faculty, staff, and students. In doing so, it recognizes the common law and traditions of ownership in colleges and universities, as well as the importance of College investments in supporting creative work. This policy is designed to articulate rules that clarify ownership of most intellectual property and to identify and address those exceptional cases where ownership interests may be shared by the creator and the College or where ownership may be uncertain, and to establish procedures for allocating ownership interests and resolving uncertainty over ownership.

II. Scope and Definitions

This policy addresses the determination of ownership of intellectual property rights for inventions and other works developed or created by members of the College community. It applies to all members of the College community, including faculty members, staff, and students of the College. The Policy applies to intellectual property, creations, inventions, advances, discoveries, software, written materials, creative works and other work product conceived or developed in the course of College activities or with College resources, referred to in this Policy as “**IP**”.

The College has an ownership interest in IP if it involves (i) an *identity interest*, (ii) a *functional interest*, or (iii) *substantial use of College resources* (see definitions below). The College, however, will not assert any ownership interest in the case of *traditional scholarly works*. In keeping with the College's goals and consistent with academic practices, these are owned by the creator(s). “**Traditional scholarly work**” is defined broadly to include pedagogical, literary, artistic and creative works created by faculty with or without the assistance of other members of the College community.–This includes works related to teaching, such as lecture notes and other course notes (whether in summary or verbatim form, whether privately held by the faculty member or distributed to the class, whether paper or electronic), problem sets, syllabi, and websites for classes, and works related to scholarship, such as journal articles, books, text books, artistic works in any medium, videos, and photos. Patents are not traditional scholarly work. This means that the vast majority of faculty work – which finds traditional scholarly, pedagogical and artistic channels for circulation – is owned exclusively by the faculty member who created it. In contrast, most IP created by non-faculty College employees in the course of their employment is not *traditional scholarly work* and is owned by the College.

This policy is not intended to prohibit the use or creation of open source software or public domain materials under appropriate circumstances, or to interfere with the ability of the author of such materials to comply with applicable restrictions and license conditions.

(i) The College has an “**identity interest**” in works that are integral to, and reflect more directly on, the identity of the College than on the identity of the individual(s) who create them. For example, it has an *identity interest* in items disseminated beyond the College, such as various catalogues, institutional web pages, alumni bulletins, admissions brochures, and fundraising materials. An *identity interest* also occurs when there is a prominent use of the College’s name, or of any image, trademark or logo of the College (See Section VII below). Simply identifying the author of a work as a Bowdoin Professor would not be considered prominent use of the College’s name. IP in which the College has an *identity interest* will generally be owned by the College.

(ii) The College has a “**functional interest**” in works that are used to enhance the effective functioning and coordination of ongoing operations. For example, it has a *functional interest* in administrative and personnel procedures, including software, and internal handbooks and reports. IP in which the College has a *functional interest* will be owned by the College.

(iii) “**Substantial use of College resources**” means that the College has provided support with resources of a degree or nature not routinely made available to all faculty and includes special support, either in the form of funding, or the use of facilities or staff. For example, the provision of a lab space, studio, extensive equipment dedicated to the use of a faculty member or extended IT support from a staff member involves the *substantial use of College resources*. However, ordinary use of desktop computers, College libraries and limited secretarial or administrative resources, including routine support from the College’s IT department, and provision of offices, do not constitute *substantial use of College resources*. In addition, the College’s funding of sabbatical leaves and funding provided through the Faculty Resource Committee are not considered *substantial use of College resources*.

### III. Policy for Faculty, Staff, and Students:

#### *A. Faculty:*

Faculty members regularly create certain types of *traditional scholarly works*. *Traditional scholarly works* and all the intellectual property rights associated therewith, remain with the creator(s) even when their creation involved *substantial use of College resources*.

Where the College has an *identity* or *functional interest* in the IP, the College will own the rights to the IP. For instance, the College has a *functional interest* in faculty administrative work, e.g., committee reports and departmental records. Similarly, the College will own rights to faculty-created computer software in which it has an *identity* or *functional interest* – for example, an art historic tour of the College’s art collection. When faculty members create IP as a contribution to College publications such as the Catalogue or Alumni Magazine, the work is owned by the College because of the *identity* and *functional interest* in the work. The College will not be deemed to have a *functional* or *identity interest* in *traditional scholarly works*.

The College will also have a joint ownership interest in faculty works -- other than *traditional scholarly works* -- that involve *substantial use of College resources*, including substantial use of the work-time and skills of other College employees. In these cases, the faculty member and the College will each have an ownership interest in the IP, and its use and development will be governed by mutual agreement of the creator(s) and the College, under terms to be set forth in a written document as described in Section IV. For example, patentable products that come out of laboratory research at the College involve *substantial use of College resources* and both the creator and the College would have ownership interest in the patent. Another example involves the substantial use of Information Technology (IT) support in the creation of IP that is not a

traditional scholarly work. In such cases, the College and the faculty member will each have an ownership interest in a project in which the faculty member provides the content and IT staff create the software (also see III.B.). Faculty should acknowledge appropriately the creative work of staff in both *traditional scholarly work* and other faculty works.

The terms of any financial or use sharing arrangement between the College and a faculty member will be negotiated under the procedures set out in Section IV. In the case of commercially developed products, the shares will depend, for example, on the development costs and who has undertaken the investment. As a point of reference, many colleges and universities have an arrangement to share income at a proportion of from 50-70% to the institution and 50-30% to the faculty member.

#### *B. Staff:*

Although non-faculty staff occasionally create scholarly articles and books, most of their work does not fall in this category and is subject to a legal principle known as the “work made for hire” doctrine, which provides that works created by employees within the scope of their employment belong to the employer. Non-faculty staff will own scholarly articles and books they create. The College, however, will own other IP developed by non-faculty staff in the course of their work at the College, and upon request, the creator will execute a written assignment to the College, acknowledging the College’s ownership of such IP. This result is consistent with the College’s *functional or identity interest* in IP developed by non-faculty staff. For example, the College has a *functional interest* in the work of IT staff and in works created by administrative staff to manage the institution. Similarly, the College has an *identity interest* (and perhaps a *functional interest*, too) in works created by the Communications Office and other departments that communicate with constituencies beyond the College community.

When IP other than scholarly articles and books is created by a non-faculty staff member working directly with a faculty member, the College will have an interest in the IP. For example, when an IT staff member develops software in collaboration with or at the request of a faculty member, the College will own that software to the extent it is written by the staff member. The faculty member will have an interest in the IP to the extent he or she was also involved in writing the software. In all cases, faculty and staff members are expected to acknowledge assistance or co-authorship when appropriate.

#### *C. Students:*

Literary, scholarly and artistic works created by students – for example, essays, papers, works of art, poems, and short stories — will be owned by the students who create them. The College has no *identity or functional interest* in other classroom, laboratory, and academic materials generated by students in the instructional process, provided that they are not used for commercial purposes. Commercial use of such materials (for instance, selling a transcript of a lecture) would likely involve a College *identity interest* and the IP of a faculty member, and would require approval by the College and the faculty member).

When the student is employed by the College, IP policies for non-faculty staff will apply. See discussion in Section III.B above. The College will own all rights in IP created by student employees unless the IP is a *traditional scholarly work*, in which case either the faculty member or the student will own the student-created IP, depending on the circumstances. Faculty members are expected to acknowledge assistance or co-authorship when appropriate. Students receiving fellowships for research – for example, Surdna or Coles Fellowships – will not be deemed to be “employed by the College” for the purposes of IP determination.

*D. Grants, Sponsored Works and Specially Funded Works:*

In the event a grant from a government agency or private sponsor contains provisions governing intellectual property and/or rights to the property, these provisions take precedence over this Policy. College faculty and staff should understand any such provisions before agreeing to a different allocation of rights than set forth in this Policy. Information about intellectual property policies of major granting agencies is described in the College Grants Manual. The ownership of commissioned work done by faculty for the College will be governed by the contract agreement.

IV. Process for Determination of Ownership of Intellectual Property:

In the vast majority of cases, application of the foregoing principles will be straightforward, and there will be no question about who owns the rights to the IP. In such cases, the party with rights (a faculty member or the College) will decide the uses of the IP and will receive any income associated with it. In some cases, there may be questions about, for example, whether a project involved *substantial use of College resources* or whether a *functional* or *identity interest* is involved (e.g. providing a Bowdoin course to The Teaching Company). Such questions should be addressed to the Dean for Academic Affairs.

*A. Reporting:*

The uniform application of this Policy requires that the College be made aware of IP created by members of the College community with the use of College resources. Responsibility for reporting the creation of IP rests with the creator. Much of this reporting will be done in the ordinary course of employment, for instance by turning in a draft of an alumni bulletin or administrative report to one's supervisor, or by faculty submitting annually a "Professional Activities Form" to the Dean for Academic Affairs. IT staff will similarly be required to submit a periodic report of all development activities to the College's Chief Information Officer (CIO).

In cases where the IP is a *traditional scholarly work* created by a faculty member, no reporting, other than the annual "Professional Activities Form," is required. Academic work by students in their capacity as students need not be reported to the College unless the student wishes to make a commercial use of the work.

In certain cases, reports will need to be addressed specifically to the Dean for Academic Affairs. Creator(s) should report, as soon as the situation is reasonably clear and before work is well underway, on the production or planned production of any IP that meets one or more of the following conditions:

1. The IP has the potential for involving a *functional* or *identity interest* (unless it is clear to the creator(s) that the IP will be owned by the College).
2. The IP is jointly created by faculty and non-faculty staff (unless it is clear to the creator(s) that the IP will be owned by the College).
3. The creator is uncertain whether the work is *traditional scholarly work* or whether it falls within the "scholarly article or book" exception.
4. The creator intends to seek a patent on or otherwise commercialize the IP, in which case the process of protection or commercialization may involve substantial cost and effort, and the creator may wish the College to consider providing some or all of that support.
5. The creator has any question about ownership or other rights in the IP.

In the case of a group IP project, all those in the group shall be named in the report, and if the report contains an initial proposal for the disposition of rights and proceeds, all members of the group shall sign. The CIO and other administration officers should also report creative activities and address questions about IP ownership rights to the Dean for Academic Affairs as soon as practical if any question arises, either as a result of required reporting or otherwise.

*B. Determination process:*

In cases where there is uncertainty over the ownership of or interest in IP, the Dean for Academic Affairs, in consultation with the creator(s), shall make a determination whether the IP involves a *functional or identity interest* of the College and whether its creation involves *substantial use of College resources*. The Dean shall also make a determination of whether or not the IP is *traditional scholarly work*. By so doing, the Dean shall make a determination of ownership of the IP and associated intellectual property rights, responsibilities, and use rights of the College and the creator(s), and, if appropriate, how the College will recoup its costs and share in financial gains from the IP. In all cases, the Dean will be guided by the principles set forth in this Policy and the creator(s) will be given an opportunity to explain the situation or proposal and recommend terms for ownership, responsibilities, use rights and financial arrangements.

Should the creator(s) disagree with the Dean's determination, an ad-hoc committee shall be formed and comprised of one individual selected by the Dean for Academic Affairs, one individual selected by the creator(s) and one individual agreed to by the creator(s) and the Dean. The committee shall review the circumstances surrounding the IP, and will make a recommendation to the President who will make the College's final determination.

*C. Written Agreement:*

After a determination has been made, an agreement shall be put in writing and signed by all parties. The agreement shall contain provisions outlining the allocation of ownership and interests and use rights, responsibilities and a mechanism for the sharing of commercial proceeds, if any.

V. Transfer of Rights to the College:

The College recognizes that even when IP is clearly the property of individuals, those individuals may wish to transfer rights to the College in exchange for help in developing, disseminating or protecting their creations. Requests by members of the College community for such an exchange should be made to the Dean for Academic Affairs and will be addressed on a case-by-case basis.

VI. Time Spent on IP Production Not for the College:

IP developed by a College community member as part of outside employment, or on his or her own time without the use of College resources, is not governed by this Policy, unless it involves an *identity interest* of the College. For instance, a report provided to another organization in a consulting role is IP created through outside employment. (Scholarly work done under a grant to the College is not outside employment, and thus needs to be reported.) Faculty should be guided in accepting any outside employment by the Faculty Handbook statement regarding Professional Activities and Responsibilities. Staff members should be guided by the Conflicts of Interest policy in the Employee Handbook.

VII. Note on College Trademarks and Other Identifiers:

The terms BOWDOIN and BOWDOIN COLLEGE are registered trademarks of the College. In addition, the College possesses trademark rights in various other words and symbols associated with the College, such as the College seal and the sun logo (collectively with the terms BOWDOIN and BOWDOIN COLLEGE, the “College Trademarks”). No member of the College community may use, or grant permission to any other person or entity to use, any College Trademark without prior written permission from the College. Requests to use any College Trademarks should be directed to the Treasurer’s Office. The College will own trademarks and service marks relating to goods and services developed at the College.

VIII. Application of Policy:

This policy binds the College and the faculty, staff, students and others upon whom it is effective as a condition for participating in the use of Bowdoin funds or facilities. As they relate to work produced while in the College’s employ, the terms of the policy continue to bind individuals whose relationship with the College has ended.

In the transition from the existing policy – where a Patent policy and common law are operative – to this new policy, it will be assumed that this policy will govern any new projects that begin after the date of Trustee approval. The Dean for Academic Affairs should be notified of such projects, and questions about the determination of ownership and interest or the application of the new policy will be resolved using the procedure set forth in Section III, above. Faculty members and non-faculty staff whose projects began before the date of Trustee approval may voluntarily invoke the procedure set out in Section IV above without invoking the substantive principles of this policy. In such cases, the current Patent policy and common law principles will apply unless there is mutual agreement to employ the substance of this policy.