

POST-LEGAL REVIEW

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Intellectual Property Policy - POST-LEGAL REVIEW DRAFT -

Introduction

Skidmore College has developed this Intellectual Property Policy to benefit the public by encouraging and enabling technology development and transfer. The Skidmore College community is inherently creative, and Skidmore's physical and intellectual resources enhance the creativity of members of that community. This policy reflects, in part, Skidmore College's contribution to that creativity. It encourages creators to innovate by guaranteeing them a share in the benefits resulting from the Intellectual Property that they develop. At the same time, it also promotes research and educational activities at Skidmore by allowing Skidmore to retain a share of the benefits flowing from all Intellectual Property developed under its auspices.

The intellectual endeavors and activities of Skidmore College's faculty, staff, or students may result in products of a tangible nature and it may be deemed advantageous to enter these products into commerce. The College strives to support its faculty and employees in securing commercial development of intellectual property resulting from their research so that society may benefit at the earliest opportunity. These products may be the subject of a patent application or copyrightable work or other tangible material and are known collectively as intellectual property.

Intellectual Property at Skidmore College

The following policies apply to ownership of patents and copyrights in works invented or created by Skidmore students, staff, independent contractors, and faculty, including academic, library, and athletic faculty, using College funds, facilities, or other resources. The Committee on Intellectual Property oversees the policies.

Copyright

I. Ownership

Traditional Academic Works. Skidmore College has historically waived any copyright interest it may legally have to traditional academic works created by faculty. Examples include class notes and syllabi, books and articles, works of fiction and nonfiction, poems and dramatic works, musical and choreographic works, pictorial, graphic, and sculptural works, computer programs and educational software.

Skidmore College has also waived any copyright interest it may legally have to works created by students. Examples include materials produced for class assignments or honors theses.

This policy, shared by most other colleges and universities, recognized a long-standing tradition of encouraging scholarship and innovation in teaching. Although technological advances have changed the media in which ideas may be fixed, Skidmore's fundamental policy with regard to such works remains one in which copyright ownership shall be held by the individual(s) who create(s) the work subject to the provisions of Section II.

Notwithstanding any language in this policy to the contrary, the College reserves the right to use all course content or courseware (e.g., syllabus, course readings and other course related materials) developed by faculty of the College for the institution's instructional program on an irrevocable, non-exclusive, royalty free basis.

II. Exceptions

A. Institutional Works (or Works Made for Hire). For purposes of this Policy, "institutional works" shall include any works commissioned by the College and/or created under its direction. The College shall own intellectual property rights in institutional works, such as those produced in service activities, except as otherwise provided in prior written agreements. This includes works created by non-faculty employees (either staff or student employees) within the scope of their employment. However, this does not include traditional academic works created by non-faculty employees under the supervision of a faculty member in his or her research or teaching projects. In this case, the faculty member would retain copyright ownership, except in instances in which the College can claim ownership rights under exception II.C. The College shall also own intellectual property rights in works created by faculty members made pursuant to a specific direction or assigned task other than normal teaching or research activities.

B. Patentable Works. Skidmore College's Patent Policy will apply to encoded works or computer software when the work is developed in the normal course of the relationship between an employee and the College and where the encoded work is patentable, even if the work could also be copyrighted. For example, computer software that was traditionally only protectable by copyrights can now be protected with patents. A copyright for computer software will remain with the creator of the software. However, if the computer software is patentable, the College will require the creator to transfer the patent rights to the College in accordance with the terms specified in the Patent Policy portion of this agreement, provided a significant use of College funds has occurred in creating the work or that the software was a result of an assigned or administrative duty or developed under the terms of a third party agreement (e.g. Research Agreement, Non-Disclosure Agreement, Material Transfer Agreement).

C. College-Sponsored Materials. Skidmore shall own intellectual property rights when it provides substantial support to a project or when substantial use is made of College resources. The following conditions provide a useful guide:

1. Routine support available to all faculty will not generate College claims of ownership. A traditional academic work will not be treated as "made for hire" merely because it is created with College resources, facilities, or materials of the sort traditionally and commonly made available to faculty members. Examples of routine support include office or laboratory space, secretarial services, divisional travel grants, and access to generally available computer facilities and support.
2. Similarly, nearly routine support available to selected faculty will not normally generate College claims of ownership. Examples of nearly routine support include sabbatical leaves, start-up funds at the time of hire, discretionary grants, student wage grants, major grants, grants for endowed chairs, fellowships, senior faculty leaves and other grants from the Faculty Development Committee or other similarly constituted intramural grant committees.
3. Routine support available to all students will not generate College claims of ownership. Examples of routine support include student laboratory space and access to generally available computer facilities and help-desk support.
4. Skidmore will share ownership of the copyright with the author(s) when it funds specific projects with substantial grants of money or resources other than those listed above. Prior to the project commencing, there should be an agreement signed by the principal parties describing the specific expected copyrightable project and how the copyright for this product is to be shared.

The conditions listed above are provided only as representative examples and are not intended to describe all possible conditions or combinations of conditions. The final determination of "substantial support" or "substantial use" will be determined by the Committee on Intellectual Property based on a review of the facts in each case.

D. Third-Party Agreements. Works created in agreement with or under the sponsorship of a third party will be governed by the agreement with the third party and/or by applicable law governing the ownership of intellectual property generated as a result of such third party agreements. The Dean of the Faculty or the Vice President for Academic Affairs must approve any agreement with a third party that requires the substantial use of Skidmore resources or imposes any terms or conditions on the College. Third party extramural agreements include, but are not limited to, Sponsored Research Agreements/Contracts, Material Transfer Agreements or Non-Disclosure/Non-Use Agreements. These third party contracts identify the expectations and needs of both parties and address a variety of issues including period of performance; amount of funding; scope of work; the disposition of data; deliverables; intellectual property rights; ownership of equipment; liability; publication rights; termination; governing law; space; and indirect cost rates.

Patent Policy

I. Disclosure. Inventions conceived or first reduced to practice using College funds or facilities or developed under a Third-Party Agreement shall be promptly disclosed in writing to the Office of Sponsored Research (acting on behalf of the Office of the Vice President for Academic Affairs), Palamountain Hall, Rm. 436, Skidmore College, 815 North Broadway, Saratoga Springs, NY. 12866-1632. The inventors shall complete the appropriate Invention Disclosure Form supplied for this purpose. The Disclosure Form, all supporting documentation and discussions relative to the invention shall be treated as confidential communications as is the custom. All tangible documents and records shall be retained in a locked cabinet in the Office of Sponsored Research.

II. Ownership

- A. All patentable inventions conceived or first reduced to practice using College funds or facilities or developed under a Third-Party Agreement, by faculty, staff or students, as well as non-employees who participate in research projects at the College, shall belong to the College. The inventor shall assign all such inventions and any applications or patents resulting therefrom to the College. The inventor shall execute documents of assignment to convey to the College all of the employee's interest in the invention owned by the College and shall cooperate and assist the College in all phases of the patent application process. On request, each person covered by this policy will sign an appropriate agreement to implement this policy.
- B. Abandonment. If the College cannot, or decides not to, proceed in a timely manner to patent and/or license an invention, the College, upon request, shall reassign ownership to the inventors to the extent possible under the terms of any agreements that support or relate to the work. In this context "in-a-timely-manner" shall mean a period sufficient to provide for the conduct of background research and investigation, convening the Committee on Intellectual Property, providing sufficient time for Committee deliberation, for the Committee to formulate a recommendation to the Vice President for Academic Affairs and for the Vice President for Academic Affairs to render a decision. As a general guideline, such actions shall be completed within a period of 60 - 90 days following receipt of a

complete and fully executed copy of the Invention Disclosure. The actual time required will be dependent on considerations such as the complexity of the invention, scheduling of the committee, and the need to secure outside counsel.

III. Third Party Agreements

Works created in agreement with or under the sponsorship of a third party will be governed by the agreement with the third party. The Dean of the Faculty or the Vice President for Academic Affairs must approve any agreement with a third party that requires the substantial use of Skidmore resources.

IV. Revenues

Royalty distribution for patents owned by the College shall be as follows: All administrative and legal expenses incurred in connection with the patent will be deducted from the gross royalty income. After these deductions, the royalty income is divided 50% to the inventor(s), with the other 50% divided between the inventor's department (Departmental Allocation normally 20%), a research account in the Office of Sponsored Research, and the College. The Committee on Intellectual Property shall for each case make a recommendation to the Vice President for Academic Affairs for the allocation of revenue between the inventor's department, the Office of Sponsored Research, and the College.

Skidmore anticipates that a portion of its proceeds will be used to support education or scientific research.

Skidmore College reserves the right, in consultation with the Committee on Intellectual Property, to amend and clarify these conditions.

Committee on Intellectual Property

The Committee on Intellectual Property serves as an advisory committee to the Vice President for Academic Affairs on all College intellectual property issues. The committee's responsibilities will include the review of intellectual property issues affecting the College, determination of ownership of intellectual property, recommendation of policies for allocation of revenues, and review or development of policy recommendations pertaining to intellectual property. The membership of the committee is as follows:

- *Dean of the Faculty (or designee) (shall serve as Chair)*
- *Vice President for Finance and Administration and Treasurer (or designee)*
- *Chief Technology Officer (or designee)*
- ***3 Faculty (derived from the membership of the Faculty Development Committee)***
- Director of Sponsored Research shall serve as an ex officio member of the committee and shall provide administrative support to the committee.

Skidmore College reserves the right to amend the composition of the committee as it deems necessary to achieve the objectives of this policy.