



COLLEGE POLICY GUIDELINES/PROCEDURES

POLICY NUMBER: **3203B**
DATE: **02/29/2020**
POLICY TYPE: Academic & Instruction
POLICY TITLE: Intellectual Policy Guidelines and Procedures

GUIDELINES/PROCEDURES:

PATENTABLE INVENTIONS

OWNERSHIP OF INVENTIONS

- A. Any invention resulting from activities related to an employee's employment responsibilities or developed with support from college-administered funds, facilities or personnel shall be owned by and assigned to the college.
- B. Any invention unrelated to an employee's employment responsibilities and that is developed exclusively on his or her own time without any college funds, resources, or facilities shall be owned by the inventor.
- C. Ownership of an invention developed in the course of, or resulting from, work supported by a grant or contract with a governmental entity or non-profit or for-profit nongovernmental entity shall be determined by the terms of the grant or contract. If no contract exists, it shall be owned by and assigned to the college.

DISCLOSURE, ASSIGNMENT AND PROTECTION

- A. An Intellectual Property Committee (IPC) will assist in the assessment, management and commercialization of intellectual property developed by employees, students, independent contractors and guests. Inventors should promptly disclose their invention in the prescribed form (Appendix A), signed by the inventor and submit it to the IPC at woodhouse@madisoncollege.edu
- B. The right of employees to publish the results of teaching and other creative activities remain intact, subject only to the terms of a grant or contract funding the work. However, any public disclosure of an invention, such as a presentation, publication, or grant proposal, prior to filing a patent application, limits patent rights and reduces an invention's commercial value. Therefore, employees are required to disclose their invention prior to sending out manuscripts, grant applications or making other disclosures of the invention.
- C. To protect and preserve the intellectual property rights defined in this policy and to comply with federal regulations, inventors shall promptly complete any assignments and other appropriate

documents as requested by the IPC to protect Madison College's or a third party's ownership and rights to inventions.

- D. The IPC shall make a recommendation as to whether Madison College should seek patent protection for an Invention. The recommendation will be based upon the availability of funds, an assessment of the invention's patentability and/or potential for patent protection, as well as an assessment of the invention's commercial value. At the request of the inventor, the recommendation of the IPC is reviewable by the president. When the failure to patent or protect the invention with other forms of intellectual property is based solely on the lack of funds, the president or his designee may commit discretionary funds to protect the invention, and if it becomes licensed, may recover the costs from gross licensing income.
- E. The IPC will review all Invention disclosures, evaluate their patentability and potential commercial value, and provide a written final evaluation within 60 days of the date of submission to the IPC. The 60 days is contingent upon receiving all requested follow up information by the IPC.
- F. If upon final review, it is determined the college will not pursue patent protection or other forms of intellectual property, licenses, or other commercialization of the invention, the college, upon approval of the president, will waive ownership rights in favor of the inventor. In this scenario, the inventor may pursue patent protection, licenses, or other commercialization of the invention disclosure on his/her own, independent of this policy.
- G. If the college contributed extraordinary resources (see definitions) to the support of the work in which the invention was developed, the IPC with the approval of the president, may require as a condition of a waiver (explained in letter f above) 20% of the net licensing income the inventor receives as the result of any license or sale of the Invention. Net licensing income are the remaining licensing income after payment of patenting and other costs.
- H. The college acknowledges the obligation of employees and inventors to protect their inventions as trade secrets when necessary to preserve the college's or sponsor patent rights. Thus, inventors should take reasonable precautions to ensure the confidentiality and physical security of formulas, methods, processes, patterns, computer code, devices, compositions of matter, or other tangible research property (TRP). In these cases, employees and inventors shall ensure that students are not deprived of the opportunity to publish, fully participate in, and benefit from the creative activity.

LICENSING AND COMMERCIALIZATION

- A. Agreements that grant to companies the rights to commercially develop inventions are encouraged. The IPC is responsible for negotiating such agreements on behalf of the college for inventions that are accepted by the IPC and the college. An inventor may be updated and consulted on the progress of license negotiations, but will not have the right to review or approve the terms (including financial terms) of any agreement. The college does not have a commitment to an inventor to secure a minimum royalty. Royalties will be distributed according to the Distribution of Income Section (Section V) in this policy.

COPYRIGHT

This policy addresses copyright ownership, the assignment of rights associated with copyright ownership, licensing of rights and the distribution of any licensing Income. The college encourages the preparation and publication of copyrightable works that result from teaching or other creative activity by employees, guests and students, including, but not limited to research, technological innovation, and scholarly or artistic endeavors. The influence of new technologies on teaching, learning, and creative activity will continue and how they affect higher education and copyright law are difficult to predict. Thus, this copyright policy may require periodic

review. The IPC will work closely with the president, deans, directors, faculty, and staff to achieve an equitable approach to resolving these complex issues as they arise.

OWNERSHIP OF COPYRIGHTED WORKS

- A. Copyrighted works include, but are not limited to, course syllabi, textbooks, electronic course content, software, other electronic media, assessment protocols, and other course and program materials as well as works created by students in the course of their education, such as images, papers, essays, and theses.
- B. In keeping with academic tradition, the college does not claim ownership to teaching, scholarly, or artistic works, regardless of their form of expression, with two exceptions:
 - i. All works created for a college institutional purpose in the course of an employee's prescribed duties are considered "works made for hire" as defined by U.S. Copyright law. These include course syllabi and related teaching materials. These also include works on which there have been simultaneous or sequential contributions over time by numerous employees or students. Accordingly, works created as part of an employee's independent creative activity are not owned by the college.
 - ii. Whether a copyrighted work is considered a "work made for hire" depends on the purpose of the work created and not the form of its expression. Three factors are considered in determining the ownership of any copyrighted work not covered by a written agreement: (a) the creative initiative for the work, (b) control over content and final approval, and (c) extraordinary resources or compensation, if any, provided by the college. The IPC shall review and rule on all disputes regarding copyright ownership.
 - iii. If the college contributed extraordinary resources to authors, the resulting works should be considered "works made for hire" to the extent permitted under U.S. Copyright law, and authors shall assign their rights in such works to the college. Such authors shall receive the licensing income described in the Distribution of Income in Section VI below. Madison College's title shall include all rights provided by U.S. Copyright law. This title is necessary to guarantee the college's exclusive right to control the method and manner its educational programs and courses are offered to the public and to secure new revenues to replenish and enhance college resources.
- C. The college recognizes the terms of any grant or established contract and ownership rights associated with the information in this policy.
- D. All authors shall assign to the college rights consistent with the above.
- E. Whenever deans, directors, or other administrators commission new works, copyright issues should be clarified and fixed in a written agreement prior to the start of the project. Such agreements may vary from the terms of this policy.
- F. The college grants to an author of a course syllabus a non-exclusive, royalty free, perpetual license to use, display, copy, distribute and prepare derivative works for the author's personal use and for the use at other educational institutions.
- G. All employee and student authors grant the college a non-exclusive, royalty free, world-wide right to retain a copy of the copyrighted works as well as use the copyrighted works for archival and grading purposes.
- H. Authors may obtain licenses to copyrighted works owned by the college to develop derivative works accordingly.

AUTHORSHIP AND PERMISSION

- A. Collaborators on a single work are joint authors, as defined under U.S. Copyright law. Because joint ownership can create management problems, it is recommended that faculty, staff, students, or guests have agreements that define the interrelated rights and duties among the parties prior to beginning work.

- B. All copyrighted works owned by the college shall prominently bear the legend “© 20__Madison Area Technical College. All rights reserved.”
- C. All authors are responsible for securing permissions or licenses from third party owners before reproducing, distributing, making a derivative work, or displaying third party copyrighted works. It is assumed that all material displayed on the internet is copyrighted unless permission is expressly granted within the material or it is clearly in the public domain. Whether a particular use constitutes “fair use” under U.S. Copyright law can be difficult to interpret. The IPC and college legal counsel (if required) will provide assistance regarding questions of fair use and copyrights.
- D. Use of college trademarks or logos require permission of the college, however general use on items such as internal communications, syllabi, etc. Are exempt from this requirement. Please direct requests for permission to the college’s director of marketing.

DISCLOSURE, LICENSING AND COMMERCIALIZATION

- A. Anyone subject to this policy shall promptly disclose their copyrightable works in the prescribed form, signed by the author(s), and submit to the IPO.
- B. College counsel shall draft standard agreements for the college to enter into with employees and others in order to clarify ownership of copyrights and the allocation of rights associated with specific projects. Such agreements shall set out the framework for granting rights associated with new works in order to make them available for teaching, learning, and creative activity.
- C. Agreements that grant rights to third parties to commercially develop copyrighted works owned by the college are encouraged. The IPC is responsible for negotiating these agreements on behalf of the authors and the college for any copyrights accepted by the IPC and the college.
- D. When practical, authors will be informed on the progress of license negotiations, however, they do not have a right to review or approve the legal or payment terms of any agreement. The college does not have a duty to an author to secure a minimum royalty.
- E. Authors will receive written final evaluations of their copyright disclosures within 60 days of the date of formal submission to the IPC. If upon final review it is determined that the college will not pursue licenses or other commercialization of the disclosure, then the IPC, with approval of the president, will waive ownership rights in favor of the author(s).
- F. If the college contributed extraordinary resources to the support of the work that intellectual property was developed, the IPC may require as a condition of the waiver that authors grant 20% of the net licensing income they receive as a result of any license or sale of the copyrighted work back to the college.

TANGIBLE RESEARCH PROPERTY

- I. The college owns any tangible research property (TRP), unless the TRP arises as a result of a grant or other contract, in which case the terms and conditions of the grant or contract will apply. Where the grant or contract is silent, TRP is owned by the college and all employees shall work with the college in executing documents or taking other action consistent with the college’s ownership.
- II. Principal investigators, laboratory directors, and related program staff are primarily responsible for the custody, care, and control of TRP, including its storage, use, and distribution.
- III. Principal investigators may wish to make TRP broadly available for others’ scientific use. Scientific exchanges should not be inhibited due to potential commercial considerations. Intellectual property rights in TRP should be referred to the IPC pursuant to this policy.

TRAINING AND TECHNICAL ASSISTANCE CONTRACTS

- I. CONTRACTS AUTHORIZED BY STATE STATUTE(38.14)

- A. 38.14 contracts are a funding instrument used by the college to contract with organizations that wish to sponsor training or technical assistance projects. To retain maximum flexibility and accomplish the goals of this policy, 38.14's are negotiated individually. The terms of such agreements may vary, depending upon the type of the work and the interests of the sponsor, college employee, and the college. Standard terms for such agreements exist or are developed as needed.
- B. A 38.14 and an intellectual property license may be negotiated simultaneously. The college is not obligated to any author or inventor for any amount of licensing income, nor shall such persons be entitled to a portion of contract revenues in lieu of licensing income, regardless of the terms of any license or 38.14. When practical, inventors and authors will be updated and consulted on the progress of negotiations. However, they do not have the right to review or approve the legal or payment terms of any agreement.

DUTY TO DISCLOSE ON FEDERAL GRANTS

- A. The Federal Government has certain intellectual property rights to an invention created and reduced to practice under federal grants. Under Federal Regulations, 37 C.F.R., 401, et seq., the college must report all such inventions to the funding agency and elect to file for a patent within one year prior to any statutory bar date. If the college elects not to file for a patent it must inform the agency, which then has the right to take the title. Authors and inventors must report all inventions to the IPC on an invention disclosure for submission to the sponsoring agency.
- B. Authors and inventors whose inventive work has been conducted under federal grants should be aware that the federal government retains certain interests in all scholarship results.

MATERIAL TRANSFER AGREEMENTS

- I. Companies, universities, and other institutions may require that the college and employees sign Material Transfer Agreements ("MTA's") to receive research materials from the other party. MTA's typically restrict the use of where the materials may be put and prohibit redistribution of the materials to other employees. MTA's for materials furnished to the college are similar to 38.14's and are treated by the college in the same way.
- II. Like 38.14's, the college negotiates MTA's individually. The terms of the agreements may vary, depending upon the type of the work and the interests of the sponsor, principal investigator, and the college.
- III. Any employee who is asked to sign an MTA must submit the MTA to the president for review and approval in accordance with this Section V. Only the president or cabinet member may sign an MTA.
- IV. An MTA and an intellectual property license may be negotiated simultaneously. The college is not obligated to any author or inventor for any amount of licensing income, regardless of the terms of any license or MTA, unless approved by the president. When practical, inventors and authors will be updated and consulted on the progress of negotiations. However, they do not have a right to review or approve the legal or payment terms of any agreement.
- V. Employees are not required to use an MTA for outgoing materials unless the materials have been assigned to the college, although the employee may choose to use an MTA. If the materials have been assigned to the college, the employee should contact the IPO.

DISTRIBUTION OF INCOME

FINANCIAL RESPONSIBILITY AND COSTS

- I. The college assumes financial responsibility for the intellectual property it owns. This responsibility may include, but not limited to, the costs of assessing patentability, filing and maintaining patents, registering copyrights, trademarks, marketing and licensing invention, electronic courses, copyrighted works, and paying licensing income. The college is not obligated to protect or commercialize any

particular Invention or copyrighted work unless it has made an explicit contractual commitment to do so. Activities related to the protection and marketing of college intellectual property are intended to be self-supporting. Thus, the IPC is charged with the responsibility of using the college's resources carefully, with a view to promoting the fiduciary interest of the whole institution.

- II. Income earned from the sale, licensing, or other transfer of intellectual property of the college will be received solely by the college and will, except where a grant or contract specifies otherwise, be distributed successively as follows: 1) Reimbursement of all direct expenses related to prosecuting and maintaining intellectual property protection and securing licenses, such as fees for outside legal counsel and other experts, if required; 2) of the remainder, 50% to the inventor(s) or author(s), and 50% to the college, to be used or distributed at its discretion.
- III. When there is more than one Inventor or author, distribution will be prorated according to the contribution of each as may be agreed to in writing between the parties. Factors taken into account in setting an author's individual share will include, but are not limited to, the number of participants in the project, creative or inventive contribution, extraordinary project leadership, and time devoted to the project outside customary working hours. If an agreement cannot be reached, then distribution shall be according to Section VIII, Dispute Resolution.
- IV. In the event that a student may make an important contribution to the development of Intellectual property, faculty directors of a project may share a portion of their licensing income with the student. Student rights are described in detail in Section IX.
- V. Licensing income is payable to inventors and authors only upon actual receipt by the college. In the case of the death of an inventor or author, all royalty distributions which would have been due such person will be paid to his/her estate or as directed by his/her personal representative.

POLICY ADMINISTRATION

- I. INTELLECTUAL PROPERTY COMMITTEE (IPC)
 - A. The IPC is an advisory body, reporting directly to the president. Its membership, purposes, chair, and other details are outlined in its charter. The charter is subject to review annually.
 - B. The IPC's purposes will include duties described in #2 below, but the fundamental purposes of the IPC shall be to advise the president by a) interpreting the terms of this policy; b) recommending changes or exceptions; c) annually reviewing the IP policy.
 - C. The IPC is charged by the president with responsibility for administering this policy.
- II. The IPC shall have the following duties:
 - A. Keep the official records of Invention and copyright disclosures, patents, copyright registrations, and licenses.
 - B. Evaluate the commercial potential of Invention and copyrighted works or contract with third party to do so.
 - C. Conduct technology licensing activities, including marketing, negotiating agreements, drafting licenses and other legal instruments, and performing any other services required to effectuate the commercialization of college intellectual property or contract with third party to do so.
 - D. Negotiate confidentiality and option agreements with companies; negotiate assignment and royalty sharing agreements with employees.
 - E. Help create programs that build new relationships between employees and companies.
 - F. Advise and counsel academic and administrative units regarding intellectual property.
 - G. Manage, negotiate and administer Materials Transfer Agreements (MTA).
 - H. Assist offices, departments, and divisions to develop new sources of revenue.
 - I. Engage outside consultants and other service providers as necessary to achieve the goals of the policy.
 - J. Advise the president on the Intellectual Property Policy.

DISPUTE RESOLUTION

- I. The IPC shall attempt to resolve any claim, dispute or controversy involving the rights to Inventions or copyrighted works.
- II. Upon the failure of the involved parties to reach a negotiated agreement, the IPC shall review all documents and records and hear testimony from all interested parties.
- III. IPC findings will be made in the form of recommendations to the president whose decision shall be final and binding on all parties.

STUDENT SCHOLARSHIP

Madison College students are subject to this policy when working for pay or for academic credit, or when they participate in faculty-led creative activities. A student working for pay for the college or for a third party under a contract is an employee within the meaning of this policy. Intellectual property created by a student during such employment or course of study shall be owned by the college or by the entity designated in the contract. Thus, in circumstances where a student originates intellectual property independently, using resources not owned by the college, and without faculty supervision, such intellectual property is owned by the student.

FACULTY DIRECTED STUDENT WORK

- A. In laboratory, workshop, clinical, practicum, and similar settings where the model for faculty direction of student research, technological innovation, technical assistance, and other creative activity is that of master/apprentice, all Invention and copyrighted works originate primarily from faculty direction within the master/apprentice relationship and are owned by the college under the terms described in the Patentable Inventions and Copyright Sections above.
- B. Faculty who supervise such student work have custody and control over all TRP (See Section III), subject to the terms of any grant or contract. Participating students have the right to access and use TRP, and it is appropriate for them to have copies as long as it is practical.
- C. A faculty member decides all matters concerning the publication of findings and results. Such decisions include the timing and choice of manuscript submissions and all issues pertaining to co-authorship and inventorship.
- D. Students shall maintain the confidentiality of proprietary information and trade secrets belonging to scholarship sponsors and faculty. The college may require students to sign and agree to be bound by confidentiality agreements, reasonable in their scope, when the agreement is required by a sponsor or otherwise required by the IPC to protect patentability. Such confidentiality extends not only to the work and TRP, but also to information received from Sponsors.
- E. A student working under a contract who releases TRP to a third party not a party to the contract, violates this policy and becomes subject to appropriate academic discipline, including termination from his or her academic program. Such unauthorized release includes, but is not limited to, uploading such materials to any computer or to a website to which persons not a party to the contract have access.

FACULTY REVIEWED STUDENT WORK

- A. In classrooms, electronic courses, and other settings where the model for faculty direction of students is that of critic or reviewer of independent scholarship or other creative activity, students own the copyrights, without limitation or license, to their written theses, essays, dissertations, or other copyrighted works and TRP. In such cases, students grant the college a non-exclusive, royalty free, worldwide right to retain a copy of student-owned copyrights as well as use student-owned copyrights for archival, grading, and assessment purposes.

- B. For avoidance of doubt, students employed by the college who assist faculty members by performing specific tasks or functions related to a faculty member's teaching or creative activity or who become a scholarly collaborator of a faculty member are not independent scholars. In such situations, rights to Intellectual property are those described in the Copyright Section above.

FACULTY DIRECTED AND/OR REVIEWED STUDENT WORK

- A. In all settings where the model for faculty direction of students may be either that of master/apprentice or reviewer/critic of independent creative activity, students should clarify their relationships with faculty members and note the above policies applicable to each model before undertaking a project. In the absence of a written mutual understanding between faculty member and student, the relationship will be determined by the appropriate dean, whose decision on such matters is binding on all parties.

MODIFICATION AND APPEAL

- A. Faculty and students may mutually agree to work differently than described, if the disposition and use of intellectual property and TRP comply with this policy. Such agreements must be in writing, signed by the parties, and approved by the appropriate dean at the beginning of the student-faculty relationship.
- B. Students who believe that they have been treated unfairly by faculty under this policy should report such concerns to the Office of the President. Where such concerns involve Intellectual property matters, they will be referred to the IPC for resolution as otherwise provided under this policy.

APPENDIX A

Inventors should utilize the [Invention Disclosure Form](#) signed by the inventor and submit it to the IPC at woodhouse@madisoncollege.edu.