

Our Lady of  
HOLY  
CROSS  
College



***Intellectual Property Policy***

**For  
Students, Faculty, and Staff**

**2006-2007**



## ***Our Lady of Holy Cross College Intellectual Property Policy***

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## **I. Preamble**

The faculty and administration of Our Lady of Holy Cross College believe that the public interest is best served by creating an intellectual environment whereby creative efforts and innovations can be encouraged and rewarded, while still retaining for the College and its learning communities reasonable access to, and use of, the intellectual property for whose creation the College has provided assistance.

Our Lady of Holy Cross College supports the development, production, and dissemination of intellectual property by its faculty members.

## **II. What is Intellectual Property?**

Although the law provides for several different types of intellectual property, faculty concerns center on two: copyrights and patents. The following definitions are taken from pertinent federal statutes:

When used in this policy, the term “Copyright” shall be understood to mean the rights that protect original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. “Works of authorship” (including computer programs) include, but are not limited to the following: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works (photographs, prints, diagrams, models, and technical drawings); motion pictures and other audiovisual works; sound recordings; and architectural works. “Tangible media” include, but are not limited to, books, periodicals, manuscripts, phone records, films, tapes, and disks.

When used in this policy, the term “Patent” shall be understood to mean the rights that protect inventions or discoveries which constitute any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof; new and ornamental designs for any useful article and plant patents being for the asexual reproduction of a distinct variety of plant, including cultivated sprouts, mutants, hybrids, and new found seedlings, other than a tuber propagated plant or plant found in an uncultivated state.

[Note on computer software: Computer programs fall into a gray area between the two types of intellectual property. Programs that are a part of a “new and useful process” may be eligible for patent protection, while programs embodying minimally original expression may be eligible for copyright protection.]

[Note on duration of patents and copyrights: The duration of a patent is 20 years from the date of the filing of the patent. Actual patent protection begins when the patent actually issues from the Patent & Trademark Office. The duration of a copyright (for works created and published after January 1, 1978) is the life of the author plus 70 years. Before that date, the duration of copyright (with some exception) had been 75 years, increase to 95 years in 1998. Unlike patent protection, copyright protection under the Copyright Act attaches as soon as a work is “fixed in a tangible medium of expression,” i.e., put on paper. There is no need to place a notice on distributed copies or applying to the Copyright Office for registration. (There are some benefits in doing so, but they are irrelevant to the duration of copyright.)]

### **III. Who Owns the Intellectual Property?**

Intellectual property created, made, or originated by a faculty member shall be the sole and exclusive property of the faculty, author, or inventor, except as he or she may voluntarily choose to transfer such property, in full, or in part.

Our Lady of Holy Cross College shall own copyright only in the following 4 circumstances:

1. The College expressly directs a faculty member to create a specified work, or the work is created as a specific requirement of employment or as an assigned institutional duty that may, for example, be included in a written job description or an employment agreement.
2. The faculty author has voluntarily transferred the copyright, in whole or in part to the institution. Such transfer shall be in the form of a written document signed by the faculty author.
3. The College has contributed to a “joint work” under the Copyright Act. The institution can exercise joint ownership under this clause when it has contributed specialized services and facilities to the production of the work that goes beyond what is traditionally provided to faculty members generally in the preparation of their course materials. Such arrangement is to be agreed to in writing, in advance, and in full conformance with other provisions of this policy.
4. The College approves submitted thesis for graduate credit or for program completion.

#### **IV. Who May Use the Intellectual Property?**

Material created for ordinary teaching use in the classroom and in department programs, such as presentations, syllabi, assignments, and tests shall remain the property of the faculty author, but institutions shall be permitted to use such material for internal instructional, educational, and administrative purposes, including satisfying requests of accreditation agencies for faculty-authored syllabi and course descriptions.

In an agreement transferring copyright for such works to a publisher, faculty authors are urged to seek to provide rights for the institution to use such works for internal instructional, educational, and administrative purposes.

#### **V. Distributions of Any Funds Generated**

Faculty, staff, and students retain the right to all royalties resulting from the publication of their scholarly works.

In cases where the College exerts ownership, the distribution of monetary proceeds from applicable intellectual property shall be distributed as follows:

For all net income

- the Creator shall receive 40%
- the College shall receive 60%

In the event of multiple creators, the creators will determine the allocation their individual shares (i.e., of the 40%) when the work is first undertaken.

#### **VI. How to Resolve Emerging Issues and Disputes**

Questions regarding emerging issues and disputes will be addressed to the Academic Council for issues relating to undergraduate programs and to the Graduate Council for issues relating to graduate programs.

The Academic and Graduate Councils shall monitor and review technological and legislative changes affecting intellectual property policy and shall report to relevant faculty and administrative bodies, when such changes affect existing policies.

The Academic and Graduate Councils shall serve as a forum for the receipt and discussion of proposals to change existing institutional policy and/or to provide recommendations for contract negotiations.

Disputes over ownership, and its attendant rights, of intellectual property will be reviewed by the Academic and Graduate Councils. Recommendations will be forwarded back to the Academic Vice President and Dean of Academic Affairs. The Vice President and Dean of Academic Affairs will forward his/her recommendation to the President of the College.

The Academic and Graduate Councils shall make an initial determination of whether the College or any other party has rights to an invention or other creation, and, if so, the basis and extent of those rights. These Councils shall also make a determination on resolving competing faculty claims to ownership when the parties cannot reach an agreement on their own.

The Academic and Graduate Councils will review the merits of inventions, and other creations, and make recommendations for the management of the invention, including development, patenting, and exploitation.

If the inventors/creators disagree with the determination of the Council he/she may appeal to the Vice President and Dean of Academic Affairs. The recommendation of the Vice President and Dean of Academic Affairs can be appealed to the President of the College.

## **VII. Copyright Policy**

Faculty, staff, and students are to adhere to the federal copyright laws regarding photocopying of material. These laws are readily available for review in the library. Where there is doubt as to whether the use of materials meets fair use guidelines, permission should always be obtained.

## **VIII. Patent Policy**

Inventions resulting from work carried on by, or under the direction of, college personnel, supported, in whole or in part, by funds under control of the College, or involving college facilities, should be used and controlled to produce the greatest benefit to the College and the public. The College reserves the right to acquire and retain legal title to any such inventions. An employee responsible for such invention, upon the request of the board of regents of the College, is to assign all rights, title, and interest to the College. The board of regents may apply for a patent in its own name or the evaluation of the invention and application for patents may be made by contractual arrangement or assignment as approved by the board. If the board declines to pursue a patent application, it may release its rights to the inventor. The board of regents respects and recognizes the right of sponsors of research and development to the title of such invention as may arise from projects sponsored by them in conformance with this policy, explicitly stated contractual agreements covering such sponsorship, or applicable law.

Reference: *AAUP Suggestions and Guidelines for Institutional Policies and Contract Language for Ownership of Intellectual Property*;

<http://www.aaup.org/Issues?DistanceEd/Archives/specgmt/ipguide.htm>

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