Intellectual Property Policy

Policy Statement

As part of its mission, Manhattanville 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, Staff, 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 common law, statutory law, and traditions of ownership in colleges and universities, as well as the importance of Manhattanville College’s investments in supporting creative work.

This policy is designed to:

- contribute to a College environment that encourages the creation of Intellectual Property;
- clarify ownership of Intellectual Property;
- identify and address cases where ownership interests may be shared by the Creator and the College or where ownership may be uncertain; and
- establish procedures for allocating ownership interests and resolving uncertainty over ownership.
Entities Affected by the Policy

Faculty, Staff, Students, Vendors and Contractors

Policy Background

No comprehensive policy addressing this issue previously existed.

Intellectual Property Creation and Ownership Scenarios

Ownership of Intellectual Property – General
- One of the College's primary benefits to society is the production of original Works by its Faculty, Staff, and Students. In order to encourage scholarly and creative activity, generally it is the College's policy that Intellectual Property shall be the property of the Creator.
- The College may assert and retain ownership rights to Intellectual Property developed under certain circumstances as set forth below.

Ownership of Intellectual Property – Staff and Student Employee
- Staff and Student Employee rights - Work
  - The College owns the copyright to any Work created by Staff and Student Employees within the scope of their employment at the College.
  - The College may, but is not required to, grant the Staff or Student Employee a royalty-free non-exclusive license to use the Work for mutually-agreed purposes.
  - Staff and Student Employees retain ownership over work conducted outside the direct scope of their College employment, such as consulting, publications or outside presentations, so long as this work is conducted outside of College time and/or with the permission of the appropriate supervisor.

Ownership of Intellectual Property – Faculty
- Faculty rights – Work
  - Faculty retain ownership of copyright in their Work, which would include, but is not limited to, traditional scholarly, literary, artistic and creative work such as
articles, essays, poetry, artwork, photographs, trade books, textbooks, monographs, sound recordings and audiovisual works, as well as instructional materials developed and used for classroom or other course work.

- **Faculty rights - Work created with Designated Investment from the College:**
  - If Faculty creates the Work with designated investment from the College, such as investment in laboratories, equipment, or other resources for the purpose of completing the Work, then ownership of the Work shall be agreed upon between the College and Faculty prior to the College’s investment.
  - The College will be granted a non-exclusive, royalty-free license by the Faculty to use the Work for educational purposes.

- **Faculty rights – Fully online courses:**
  - Faculty shall own fully online courses, developed by a faculty member upon request of the college, including all syllabi, instructional materials and online content. The College shall have the right to use the course description and the learning outcomes of the course for the development of subsequent versions. Faculty will retain exclusive ownership of other aspects of the course, including but not limited to audiovisual content or specific demonstrations created by a faculty member, unless otherwise specified in a written agreement with the faculty member.
  - Faculty retain the right to the materials they developed for any fully online course without the express permission or notice to the College.
  - Course descriptions and objectives developed by constituent schools or academic departments for use in a fully online course are fully owned by the College.

- **Faculty rights – Work made for hire:**
  - If Faculty creates the Work as a specific requirement of employment or as an assigned institutional duty, such as a report developed by a Dean, the Chair, or members of a Faculty committee, then the College owns the copyright in the Work and the College grants Faculty a non-exclusive, royalty-free license to use the Work for educational purposes.
  - In cases where the Work falls outside the normal scope of employment of Faculty (such as a professor of art history commissioned under special contract to write a catalog for a campus art gallery), then the College will own the copyright where there is a written agreement, signed by both parties, stating that the Work made for hire doctrine applies.

- **Faculty rights - Work created with external grant, contract support, and contractual transfers:**
If Faculty creates the Work with the support of an outside entity, such as a grant or contract from a government entity (local, state, federal, or foreign), a grant or contract from a foundation or other non-profit, or a grant or contract from private industry, the terms of that grant or contract will determine ownership of the Intellectual Property in that Work.

- Faculty will consult with the Office of the Provost/Vice President for Academic Affairs prior to submitting for a grant or contract.
- The College will make commitments regarding ownership of Faculty Work only at the time of application.

Where Faculty owns the copyright in Work prepared pursuant to a program of sponsored research accompanied by a grant or contract from a third party, then Faculty may transfer either the entire copyright or a more limited license to the College in writing.

If Faculty enters into an agreement granting the copyright, or any of the rights therein, to a third party, the College may reasonably request that the Faculty make efforts to reserve to the College the right to use the work in its internally administered programs of teaching, research, and public service on a non-exclusive royalty-free basis.

Exceptions: The Provost/Vice President for Academic Affairs has the authority to negotiate exceptions to ownership for these types of Works created with Significant College Financial Resources, Equipment, or Staff Support. Such exceptions are valid only if in writing and if signed by the Provost/Vice President for Academic Affairs and the Faculty.

Ownership of Intellectual Property – Student

**Student rights – Student Work**

- A Student Work is owned by the Student, subject to a non-exclusive royalty-free license to use the Student Work for the College’s educational purposes if the Student Work is not a confidential educational record. The College owns the copyright to any Work created by Student Employees within the scope of their employment at the College.
- Students are encouraged to use a licensing framework to protect their work while explicitly allowing permissible uses.
- Any student Work that is produced with the collaboration of a faculty or staff requires prior approval from the faculty/staff before it may be used for any public purposes (commercial or non-commercial).

**Student rights - Limitation on transfer rights in Student Work**

- Student Work may have market value.
• Students should ensure that their marketing, commercial distribution, or transfer of rights does not infringe upon the rights of co-authors of the Student Work.
• Any Student Work that is produced by more than one Student is subject to the following limitation:
  ▪ A Student involved in creating a Work jointly must seek permission from the other Student Creators. In such cases, the majority of Student Creators determine if the requested use is permissible.
  ▪ If Student Creators are evenly divided regarding giving permission, then the appropriate Dean may, in consultation with the Vice President for Academic Affairs, allow or deny some or all uses for any reason satisfactory to the Dean.

• Student rights – Acknowledgment of Manhattanville College on Student Work
  • The Faculty who has taught, assisted, mentored, or worked with the student in developing a Student Work, in consultation with the appropriate Dean, will decide whether or not to credit Manhattanville College on a Student Work.
  • If so requested, in cases where third parties have directly contributed to the production of Student Work through a donation to the College, the Student(s) who owns such Student Work agrees to acknowledge or credit the Donor in a manner satisfactory to the appropriate Dean and the Office of Institutional Advancement.

Ownership of Intellectual Property – Vendors and contractors
• The College expects to own the copyright in the Work of vendors and contractors for work done within the scope of their contractual agreement(s) with the College.
• The College official with Signatory Authority engaging the vendor or contractor and signing the contract is responsible for ensuring that the contract protects the College’s Intellectual Property rights.

Ownership of Trademarks/Service Marks/Word Marks
• Use of College-owned trademarks, service marks, logos, and word marks, as stipulated by the Manhattanville Brand Identity Guide, is prohibited without written permission from the Office of Communications.

Use of Student, Staff, and Faculty Images
• Except to the extent prohibited by law, College may use images of Faculty, Staff, or Students without consent for educational and identification purposes and Faculty may
use images of Students without consent for educational purposes, so long as use is compliant with student rights under the Federal Educational Rights and Privacy Act (FERPA).

Procedures

Selection of the Intellectual Property Committee

● The Intellectual Property Committee shall be a standing committee, comprised of six ex-officio members and three Faculty members appointed by the President:
  - Chief Compliance Officer (non-voting)
  - Director, Library (voting)
  - Chief Financial Officer (voting)
  - Vice President for Institutional Advancement (voting)
  - Vice President for Academic Affairs (or designee) (voting)
  - Appropriate Dean (based upon School where Creator is enrolled/employed) (voting)
  - Four Faculty members (voting; one tenured faculty from School of Education, one tenured faculty from School of Arts and Science, one faculty member from the School of Nursing and Health Science, and one faculty member from School of Professional Studies)

● Other members of the Faculty and Staff may be appointed by the President to provide broad technical expertise across various disciplines.

Completion of the Disclosure Form

● When Faculty, Staff, or Student creates Intellectual Property, the Creator shall notify the Vice President for Academic Affairs of the existence or potential existence of the Intellectual Property by completing an Intellectual Property Disclosure Form. Should the Vice President for Academic Affairs be the Creator of Intellectual Property, the completed Intellectual Property Disclosure Form will be submitted to the President.

● The completed Intellectual Property Disclosure Form must be submitted to the Vice President for Academic Affairs with an information copy to the appropriate Dean.

Evaluation of the Intellectual Property

● The Intellectual Property Committee will review disclosures for the purpose of classifying them into one of the categories outlined in the Intellectual Property Creation and Ownership Scenarios section of this document.
● Creator will submit to the Intellectual Property Committee an estimate for the market value of the Intellectual Property. The Intellectual Property Committee will evaluate the merits of the Intellectual Property and the equities involved, using the materials/information submitted by the Creator(s).

● Two or more persons may share copyright ownership of a Work; for example, a book or article written collaboratively by two academic colleagues. When two or more individuals have made substantial creative contributions to Intellectual Property, they will determine among themselves and in writing the individual share each will receive. A copy of that agreement will accompany the Intellectual Property Disclosure Form.

● In the event that agreement cannot be reached, the Intellectual Property Disclosure Form should be filed and the Intellectual Property Committee will hear oral and written statements. After such presentation, the Intellectual Property Committee will make a recommendation to the President, who will issue a final determination.

Commercialization

● The process for licensing, selling, or otherwise conveying Intellectual Property will comply with all applicable federal and state statutes.

● In commercializing Intellectual Property, the College, through the Intellectual Property Committee, shall be guided by the following principles:
  o Active Creator(s’) participation in all commercialization will be pursued;
  o The primary objective and responsibility of the College shall be to assure that Intellectual Property is brought into the widest possible use for the general benefit of society;
  o Intellectual Property is treated as an asset and an appropriate return should be sought.

● In an effort to commercialize Intellectual Property, the College will have the right to exploit Intellectual Property, pursuing a variety of arrangements such as licenses, assignments or sale of rights, partnerships, and joint ventures, subject to the limitations and ownership rights outlined in the policy above. The selection of particular arrangements will depend upon the individual circumstances.

● It may be in the best interests of the Creator and the College to enter into a commercialization arrangement with entities wholly or partially owned or controlled by the Faculty, Staff, or Students who originated the Intellectual Property. Because these arrangements have the potential of contributing to economic development, such arrangements may be considered and accepted by the College, provided they are not specifically prohibited by law, the above policy, and that adequate provisions, including full disclosure of interests, are made to avoid or otherwise protect against Conflict of Interest on the part of those involved. (see Conflict of Interest Policy)
• If no commercialization has occurred within two years after the Intellectual Property is disclosed, the Creator(s) may request that all rights be transferred to the Creator. The request should be addressed to the Intellectual Property Committee. It should explain what efforts have been made to date and why the Creator(s) should receive ownership.
  o The Intellectual Property Committee will make a determination as to whether reasonable efforts to commercialize have been taken and will forward a recommendation to the President.

Review of the Disclosure Form

• The Intellectual Property Committee, and any other additional resource partners, shall have 90 calendar days from the disclosure of the Intellectual Property to assess the scientific, technical and economic merit as well as to decipher the potential commercial value. If this evaluation has not taken place during the 90 days, then the time shall have lapsed and primary ownership rights to the Intellectual Property shall be returned to the Creator.
  o If the Intellectual Property Committee determines that the Intellectual Property under consideration is exempt under the terms of this Policy, the Intellectual Property shall be released to the Creator and the College will not claim ownership.
  o If the Intellectual Property Committee determines that the College has an ownership right in the Intellectual Property, but that the chances of successful commercialization are minimal or the costs of pursuing such commercialization outweigh the income potential, the Intellectual Property Committee shall release the Intellectual Property to the Creator(s), as above.
  o If the Intellectual Property Committee determines that the College has an ownership right but that the Work has not been developed to the point where a decision as to patentability or commercialization is possible, the Intellectual Property Committee shall place the Work in a pending status, provide the Creator(s) with the reasons for taking such action and request that the Creator(s) report back at some specified date.
  o If the Intellectual Property Committee determines that the College has an ownership right in the Intellectual Property and an interest in retaining the ownership, the Intellectual Property Committee will make a recommendation to the President to:
    o Inform the Creator(s) in writing that the College claims its ownership right to the Intellectual Property;
○ Negotiate and record the rights of the Creator(s) to share in any income with the College.

- All costs associated with commercialization of Intellectual Property will be paid for initially by the College. These costs shall be offset against future income.

- The President makes the final decision regarding ownership of Intellectual Property as well as the sharing of income with the College.

### Definitions

**Creator**
- Individual who wrote, designed, and/or created a Work or Student Work

**Faculty** *(NOTE – The entire definition of Faculty will have to be revisited after the Board of Trustees approves the proposed Bylaws of the Manhattanville College Faculty; this will be an editorial change)*
- College Faculty shall consist of “all Faculty members who hold a full-time tenured or tenure-track teaching appointment” at a rank described in the By-Laws of the Manhattanville College Faculty. “Only those Faculty members whose primary responsibilities are teaching, scholarly research, professional development, and service to the College.” Faculty By-Laws, § I.B.1.
- Adjunct Faculty while teaching a course for credit.
- For purposes of this policy only in the context of determining Intellectual Property rights, Staff while teaching a course for credit.

**Intellectual Property or Work**
- Includes patentable and potentially patentable work (processes, machines, manufactures, or compositions of matter); devices; software excluded from copyright protection; and supporting technology and know-how that is required for development or application of any of the foregoing.
- Includes “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 include the following categories: (1) literary works; (2) musical works, including any accompanying words; (3) dramatic works, including any accompanying music; (4) pantomimes and choreographic works; (5) pictorial, graphic, and sculptural
works; (6) motion pictures and other audiovisual works; (7) sound recordings; and (8) architectural works.” 17 U.S.C. § 102(a).

- Intellectual Property and Work are used interchangeably throughout this policy.

Joint Work
- A Joint Work is “a work prepared by two or more creators with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.” 17 U.S.C. §101.
- A common example of a Joint Work is a book or article written, collaboratively, by two academic colleagues. Each is said to be a “co-owner” of the copyright (the percentage owned by each party negotiated by the Creators), with each having all the statutory rights of the copyright owner (i.e., to license others to publish, to distribute to the public, to translate, and the like), provided that any revenue from such uses is shared with the other.

Net Revenue
- Income received from the commercialization of College-owned Intellectual Property, less all costs and expenses incurred by the College in connection with the College-owned Intellectual Property, including, without limitation, legal fees, filing fees, licensing agent fees, consultant fees, accountant fees, and out-of-pocket expenses.

Non-exclusive License
- A license of Intellectual Property rights that gives the licensee a right to use, make, adapt, or sell the licensed item on a shared basis with the licensor and other licensees. Licensor has the right to enter into non-exclusive licenses with multiple licensees.

Revenue Sources
- Potential sources of revenue from Intellectual Property may include but are not limited to: Works of fiction or nonfiction, blogs, podcasts, webcasts, academic and professional publications, audio and audiovisual recordings, audiobooks, dramatic works (including plays, musicals, operas, scripts, and screenplays), live performances based on the Work, video and digital works, videogames, photographs, prints, paintings, drawings, computer programs, songs, song lyrics, online or digital artwork, two dimensional graphic artwork, sculptures, models, applied art (including posters, textiles, jewelry, toys, dolls, sweatshirts, t-shirts, and other apparel).

Royalty-free License
- A license of Intellectual Property rights that gives the licensee a right to use, make, adapt, or sell the licensed item on a shared basis with the licensor and possibly other licensees, in which no payment is due under the license.

Royalty
- Any payment made to a Creator for each copy of a Work sold or distributed by any method of distribution. Royalties are often paid per item made, used, streamed, or sold.

Signatory Authority
- The authority of specifically designated employees to sign on behalf of the College according to the tiers of financial limits set forth by the College’s Contract Review Policy Contractual Agreements Other Than Purchasing Goods and Services Policy 5.3.2.

Significant College Financial Resources, Equipment, or Staff Support
- Significant College Financial Resources, Equipment, or Staff Support are those resources supplied to an individual beyond Standard College Resources.
- Common examples include but are not limited to significant or sole use of specialized lab space, specialized equipment, competitively awarded college grants, funding not available to all Faculty, and external grant support services.

Staff
- Employees of the College who are non-instructional, either salaried or hourly.

Standard College Resources
- Standard College Resources are those resources supplied to all faculty and staff, including office space and computers, and services such as the library, photocopying, secretaries, and funding sources available to all faculty, i.e., non-competitive awards such as sabbaticals.

Student
- Any person currently enrolled in a course at the College
- Includes all part-time, full-time, undergraduate and graduate Students

Student Work
- Work created as a result of, and for, College assignments or other academic or College work, and does not include any work created by a student on his or her own outside the purview of classes or other academic or College work.

Syllabi
• A document that presents the structured approach as to what is to be taught in the course. The syllabus is not a creative expression; it is a skeletal outline of the course. It is a blueprint for teaching a course which is what the faculty was hired to do. It is not embedded with intellectual expression.

Work made for hire
• (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities. 17 U.S.C. §101.

Responsibilities

Faculty
• Who create Work in which the College may have an ownership interest should make an immediate disclosure, in writing, to the Dean of their respective School.
• Encouraged to retain a non-exclusive, royalty-free license, to allow them and the College to use Work they author or create in furtherance of the College's academic mission (e.g., in the classroom, at lectures, etc.).
• Responsible for his or her contribution to such Work including, without being limited to, ensuring that his or her contribution to such Work does not violate or infringe on any copyright, any right of privacy, or any other right of any person, and that such Work is not libelous, obscene, or otherwise contrary to law.
• Responsible for obtaining any necessary permissions for the use of any copyrighted materials the Faculty contributes to such Work.
- Agrees to indemnify and hold harmless Manhattanville College against any loss, damage, liability, or expense that the College incurs as a result of the preparation or production of such Work, including, without being limited to, any material in such Work that infringes or violates any copyright, right of privacy, or any other right of any person, or is libelous, obscene, or contrary to law.

**Intellectual Property Committee**
- Reviews disclosures for the purpose of classifying the Intellectual Property into one of the categories outlined in the Intellectual Property Creation and Ownership Scenarios section of this Policy.
- Make a recommendation to the President as to ownership of the Intellectual Property

**Staff**
- Who create Work in which the College may have an ownership interest should make an immediate disclosure, in writing, to the appropriate Vice President.
- Encouraged to retain a non-exclusive, royalty-free license, to allow them and the College to use Work they author or create in furtherance of the College's academic mission within the scope of their staff employment.
- Responsible for his or her contribution to such Work including, without being limited to, ensuring that his or her contribution to such Work does not violate or infringe on any copyright, any right of privacy, or any other right of any person, and that such Work is not libelous, obscene, or otherwise contrary to law.
- Responsible for obtaining any necessary permissions for the use of any copyrighted materials the Staff contributes to such Work.
- Agrees to indemnify and hold harmless Manhattanville College against any loss, damage, liability, or expense that the College incurs as a result of the preparation or production of such Work, including, without being limited to, any material in such Work that infringes or violates any copyright, right of privacy, or any other right of any person, or is libelous, obscene, or contrary to law.

**Student**
- Who creates a Student Work in which the College may have an ownership interest should make an immediate disclosure, in writing, to the Dean of his or her respective School.
- Agrees to indemnify and hold harmless Manhattanville College against any loss, damage, liability, or expense that the College incurs as a result of the preparation or production of such Student Work, including, without being limited to, any material in such Student Work that infringes or violates any copyright, right of privacy, or any other right of any person, or is libelous, obscene, or contrary to law.
- Responsible for his or her contribution to such Student Work including, without being limited to, ensuring that his or her contribution to such Student Work does not violate or infringe on any copyright, any right of privacy, or any other right of any person, and that such Student Work is not libelous, obscene, or otherwise contrary to law.
- Responsible for obtaining any necessary permissions for the use of any copyrighted materials the Student contributes to such Student Work.
- May choose to apply for licensing for a more substantial Work such as a thesis, capstone project, or electronic portfolio.
- Must retrieve his/her Student Work. The College has no obligation to preserve Student Work and reserves the right to destroy Student Work after the end of the semester in which the Student Work was created.

**Violations of the Policy**

Violations of this policy may result in disciplinary action by the College as employer, or legal action by the College or by the rights holder(s) of a misused copyrighted work.

**Interpreting and Implementing Authority**

Director of Library, Provost, and Chief Compliance Officer

**Relevant Links**

- Conflict of Interest Policy
- 1976 Copyright Act
  [http://www.copyright.gov/title17/](http://www.copyright.gov/title17/)
- Digital Millennium Copyright Act (DMCA)
  [http://www.copyright.gov/reports/studies/dmca/dmca_executive.html](http://www.copyright.gov/reports/studies/dmca/dmca_executive.html)
Fair Use Flowchart

Public Domain Works
https://copyright.cornell.edu/resources/publicdomain.cfm

Creative Commons Licenses
http://creativecommons.org/licenses/

CC SA License Text
https://creativecommons.org/licenses/by-sa/4.0/legalcode

Technology, Education and Copyright Harmonization Act (the TEACH Act) (2002)
https://www.copyright.com/Services/copyrightoncampus/basics/teach.html

https://www.copyright.gov/reports/exsum.html

Policies from the following institutions were useful in drafting this document: Emerson College, Tufts University, Goucher College, Becker College, Moravian College and Theological Seminary, Grinnell College, Davidson College, and Bowdoin College.

---

**Policy Adoption Review and Approval**

Recommended approval by President’s Cabinet on August 29, 2016
Approved by President on November 9, 2016
Notification to Student Government Association on November 16, 2016
Notification to Faculty Assembly on November 16, 2016
Notification to Staff Assembly on November 16, 2016
Notification to Board on November 16, 2016
Drafting Team reviewed and incorporated comments made during public comment period on February 20, 2017
Revised Bylaws to Faculty Assembly for Review, January, 2020
Approved by Academic Affairs Committee on May 19, 2020
Approval by Board of Trustees on May 29, 2020