

# **APPENDIX K**

## **CENTRE COLLEGE**

### **POLICY ON INTELLECTUAL PROPERTY**

**Approved by Faculty, September 20, 2004**

Approved by College Council, October 26, 2004

Centre College of Kentucky (the “College”) encourages the production of creative and scholarly research, works, and inventions, known broadly as Intellectual Property, among Faculty, students and staff. The products of this scholarship may create rights and interests on behalf of the creator, author, inventor, sponsor and the College, as well as the general public. The purpose of this policy is to support and reward creativity, research, and scholarship, and help Faculty, staff, and students identify, protect, and administer intellectual property matters and define the rights and responsibilities of all involved. Because the roles of Faculty employees and non-Faculty employees are different with regard to expectations of scholarly work and because academic tradition favors Faculty retention of Intellectual Property created, the rights of Faculty employees and non-Faculty employees are somewhat different under this Policy.

#### **1. Application of Policy**

The policy applies to works created by all classifications of employees (both Faculty employees and non-Faculty employees) and students of the College and to any non-employees such as consultants and independent contractors who create works on behalf of the College, unless a written agreement exists to the contrary.

#### **2. Identification of Intellectual Property (“Intellectual Property”)**

Intellectual property shall consist of the following:

- (1) Copyrightable material produced from creative and scholarly activity, such as text (manuscripts, manuals, books, and articles); videos and motion pictures; music (sound recordings, lyrics, and scores); images (print, photographic, and electronic); works of art; and computer software (programs, databases, web pages, and courseware);
- (2) Patentable works such as patents (processes, machines, manufactures, or compositions of matter); devices; and software excluded from copyrighted materials;
- (3) Trademarked materials, such as words, names, symbols or logos, domain names, trade dress, and slogans or any combination of words which has been adopted by the College to identify itself and to distinguish itself and its sponsorship from others; and
- (4) Trade Secrets.

Intellectual Property rights, like other forms of rights, can be held by one person or by many. Also, there are different kinds of rights to each work (such as the right to distribute and the right to receive royalties) and different persons or entities can hold different rights.

### **3. Ownership and Use**

- (1) **General Rule.** In keeping with the view that one of the College's primary benefits to society is the production of original works by its employees and students, and in order to best encourage such activity, it is the general policy of the College that Intellectual Property shall be the property of the author or creator. The College may assert ownership rights to Intellectual Property developed under circumstances set forth further below.
- (2) **Retention of Rights.** All College employees are expected to assign a non-exclusive, royalty-free license to use any Intellectual Property created by them to the College for its use in furtherance of its academic mission (e.g., in the classroom, at lectures, in promotional materials, etc.), except where the creator assigns rights to the Intellectual Property to a third party, such as a publisher.
- (3) **“Work for Hire.”** Under federal copyright law, a “work for hire” is one “prepared by an employee within the scope of his or her employment.” Basically, for non-Faculty employees (including students working for the College, in work-study or otherwise), any work produced in the performance of one’s duties for the College, whether or not specifically directed to do so, will be considered a “work for hire” and, thus, will be deemed owned and authored by the College. For Faculty, what is considered to be produced within the “scope of employment” is more difficult to ascertain and, therefore, works produced by Faculty will not be deemed “works for hire” unless they are the subject of a specific, written agreement with the College and the creator or creators.

#### **(4) Patentable Intellectual Property**

Responsibility for Disclosure of Patentable Intellectual Property: College employees who alone or in association with other entities create or intend to create patentable subject matter that follows from College funding purposefully directed toward that creation or from the significant use of resources such as College facilities or equipment (if the equipment is purchased primarily with the development of patentable Intellectual Property in mind) must disclose the matter and obtain prior authorization from the Office of the Dean of the College. Such disclosure shall be made when it can be reasonably concluded that a patentable subject matter has been or will be created, and sufficiently in advance of any publication, presentation, or other public disclosure to allow time for possible action that protects rights to the Intellectual Property for the creator and the College. Creators are encouraged to seek the advice of the Dean of the College in determining whether the subject matter is patentable or whether the College desires to pursue patenting the matter.

Determination of Rights to Patentable Subject Matter: Except as set forth below, the creator of patentable Intellectual Property will retain his or her rights, and the College will not assert ownership

rights. The College may assert ownership rights to patentable Intellectual Property developed under any of the following circumstances:

- Development was funded as part of an externally sponsored research program or other agreement that allocates rights to the College.
- Development follows from College funding purposefully directed toward that creation or requires the use of resources such as College facilities or equipment (if the equipment is purchased primarily with the development of patentable Intellectual Property in mind), where the College and the creator have entered into a written agreement to that effect..
- The creator was assigned or directed by the College to develop the material.
- Material was developed by non-Faculty employees in the course of employment duties and constitutes work-for-hire under federal law.

#### **(5) Other Intellectual Property**

Responsibility for Disclosure of Non-Patentable Intellectual Property: In contrast to historical business practice, the tradition of academic institutions is to give Faculty members the right to retain ownership of their Intellectual Property. This policy protects that traditional right and Faculty are not obligated to disclose to the College the creation of non-patentable Intellectual Property, even when the property might have commercial value, unless the property was developed under one of the qualifying conditions listed in the next section, in which case the creator is responsible for timely disclosure to the College. However, Faculty are encouraged to disclose any protectable non-patentable Intellectual Property that has commercial value to the extent that they may desire assistance in copyright or trademark protection and marketing in exchange for profit sharing with the College. All disclosures should be made to the Office of the Dean of the College.

Determination of Rights to Non-Patentable Intellectual Property: Except as set forth below, the creator of non-patentable Intellectual Property will retain his or her rights, and the College will not assert ownership rights. The College may assert ownership rights to non-patentable Intellectual Property developed under any of the following circumstances:

- Development was funded as part of an externally sponsored research program or other agreement that allocates rights to the College.
- Development follows from College funding purposefully directed toward that creation or requires the use of resources such as College facilities or equipment (if the equipment is purchased primarily with the development of

non-patentable Intellectual Property in mind), where the College and the creator have entered into a written agreement to that effect.

- The creator was assigned or directed by the College to develop the material.
- Material was developed by non-Faculty employees in the course of employment duties and constitutes work-for-hire under federal law.

#### **(6) Intellectual Property Developed Under Sponsored Research Agreements or Specific College Funding**

Ownership of Intellectual Property developed pursuant to an agreement with any sponsor, including the College, will be governed by the provisions of that agreement. When Faculty or any other employees obtain funds or other support from the College, such as a Summer Research Grant or other development funds, to enable specific projects in which Intellectual Property might be created, that person and the College may, particularly in the case of substantial funding, negotiate a written agreement stating what, if any, rights to the Intellectual Property produced will vest in the College. In the absence of such an agreement, the rights to any Intellectual Property created will be determined by other provisions of this Policy. Employees involved in negotiating sponsorship agreements or seeking sponsorship funds from the College should consult with the Office of the Dean of the College.

#### **(7) Special Agreement**

The overriding principle underlying this Intellectual Property Policy is to encourage creativity and inventiveness, so the College reserves the right to allow some flexibility in applying this policy on a case-by-case basis. In such cases, ownership and use of materials developed pursuant to a special agreement between the College and the creator/author will be governed by the principles of that agreement.

### **4. Administration**

Office of the Dean of the College: The Policy on Intellectual Property will be administered by the Office of the Dean of the College and the stated terms and provisions of the policy will be determined and interpreted by the Dean.

Intellectual Property Review Committee: In implementing this policy, the Dean will appoint a standing Intellectual Property Review Committee whose functions will include (1) reviewing policy provisions from time to time, as needed, with recommendations for change or amendments to the Dean; (2) serving as a non-binding decision-making body in the case of any dispute relating to this policy; (3) reviewing other issues as requested by the Dean or other interested parties.

Dispute Resolution: In the event a party does not accept the non-binding decision of the Intellectual Property Review Committee with regard to a dispute, that party can request a binding arbitration by a panel of three arbitrators pursuant to, and administered by, the American Arbitration Association. This decision will be final.

Changes to Policy: As this Policy has been adopted by the College Council, upon recommendation by the senior staff and Faculty of the College, any changes to this Policy must be made by majority vote of the College Council.

## **5. Royalties**

Any revenues derived by employees of the College from the sale or exploitation of Intellectual Property entirely owned by them will be allocated and distributed solely within their discretion. All revenues derived by the College from the sale or exploitation of Intellectual Property entirely owned by it will be allocated and distributed by the College in its sole discretion. Revenues derived from the sale or exploitation of Intellectual Property owned jointly by the College and any employee or employees will be allocated in accordance with any specific written agreement between or among them that governs this issue. In the absence of a written agreement specifying allocation of revenues from jointly-owned Intellectual Property, the following will apply: (1) all costs incurred in the production of, and in the process of perfecting, transferring, and protecting the rights to, the Intellectual Property will be reimbursed to the party incurring them; (2) an accurate accounting of all such costs will be provided by the appropriate party to the other party or parties upon request; (3) all net revenues, after costs have reimbursed, will be divided evenly by the parties, with the College taking a one-half share and the other party or parties taking or evenly dividing, as the case may be, the other one-half share. The College and/or the creator or creators of the work may, in appropriate circumstances, take equity positions in companies licensed to market or use Intellectual Property.

**6. Use of Centre name/logos/marks** Faculty, staff, and students may use the Centre name, logos, and marks to identify themselves (John Doe, Professor of Physics, Centre College). Centre's name, logos, and marks shall not be used by individuals or entities in a manner that implies College endorsement or responsibility for particular activities, products, or publications for commercial purposes, or by any individual or group promoting itself, without the express written permission of the Director of Communications.

Acknowledgement: This policy borrows extensively from or is inspired by the Washington and Lee University Policy on Intellectual Property, the Birmingham-Southern College Intellectual Property Rights Policy, the Dartmouth College Policy on Patents, the AAUP Suggestions and Guidelines for Institutional Policies [on Intellectual Property] and Contract Language, and policies from other, similar institutions.