

Guilford College Policy:

Intellectual Property

Approved by the Board of Trustees October 6, 2006
[From Faculty Handbook, p. 221]

SECTION 1. INTRODUCTION

This document establishes a policy for Guilford College with respect to intellectual property developed by members of the Guilford College community. Guilford College is a community of creative thinkers and, therefore, the College encourages the development and dissemination of knowledge, ideas, inventions, and educational materials. These activities contribute to the public welfare, provide educational opportunities for students, contribute to professional development of the individuals involved, and enhance the reputation of the College. Guilford College further acknowledges that some of such inventions and materials may have commercial value. Therefore, the purpose of this Policy is to address intellectual property procedures in accordance with best practices without stifling creative endeavors or the dissemination of scholarly work. The College expects that this Policy will evolve, as the mission evolves and as the types of intellectual property evolve. As the Policy evolves, consideration will be given to the values drawn from Guilford College's Quaker and liberal arts traditions. Review of this Policy will seek to ensure consistency with the College's core values.

The provisions of this Intellectual Property Policy are subject to the applicable federal and state laws and regulations.

SECTION 2. INVENTIONS

A. PATENT OWNERSHIP

Guilford College shall own all rights and title in all inventions or discoveries of College faculty, staff and students that are: (i) conceived or first actually reduced to practice as a part of or as a result of College research or activities within the scope of the inventor's employment by the College, or (ii) that involve the use of College time, facilities, staff, materials or funds administered by the College. Inventions that are made by faculty, staff, and students entirely on their own time and without the use of College facilities, equipment, staff, supplies, resources, or trade secret information, shall remain the exclusive property of the inventor. Revised 2014 Faculty Handbook 222 In the event there is a question as to whether the College has an ownership claim to an invention, the invention should be disclosed according to Section 2(B) below. Such disclosure is without prejudice to the inventor's ownership claim. In determining ownership interest in an invention, the College may determine that the College has no property interest in an invention because its conception and reduction to practice was unrelated to the inventor's duties as a College employee or involved only insignificant use of College resources (such as office space or libraries normally available to all faculty and staff). The inventor will receive a written statement confirming the College's property interest. If a student makes an invention which is, or may be, subject to College ownership in accordance with this Policy, the student shall disclose the invention to the College as provided in Section 2(B) below, and the College, together with the student, shall determine an equitable resolution of ownership rights.

B. DISCLOSURE

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College faculty, staff, and students are required to report all inventions and discoveries in which the College may have an interest to the College's Intellectual Property Committee (a "Disclosure Report"), at which time the possibility of exploring patenting should be considered. Students should first discuss an invention with their instructor, who shall assist them in further discussion with the College.

In order to preserve rights in unpatented inventions, it shall be the duty of the inventor, or of the supervisor if the inventor is not available, to report to the Intellectual Property Committee any publication, submission of manuscript for publication, sale, public use, or plans for sale or public use, of an invention, if a Disclosure Report has previously been filed with respect to the invention. If an invention is disclosed to any person who is not employed by the College or not working in cooperation with the College upon that invention, a record shall be kept of the date and extent of the disclosure, the name and address of the person to whom the disclosure was made, and the purpose of the disclosure. The inventor shall promptly notify the Intellectual Property Committee of the acceptance for publication of any manuscript describing the invention or any sale or public use made or planned by the inventor.

In those cases in which the College has obtained a patent without obligation to any sponsor that supplied funds under a contract, grant, or other arrangement for the development of the underlying invention, and no arrangement has been made for commercial development of the invention within a reasonable period from the date of the issuance of the patent, the inventor(s) may request in writing a release of the College's patent rights. The Intellectual Property Committee will Revised 2014 Faculty Handbook 223 promptly either grant the request or will advise the inventor of the College's plans for the development of the invention.

As to any invention in which the College has determined that the College has an interest, the inventor, upon request, shall execute promptly all contracts, assignments, waivers or other legal documents necessary to vest in the College or its assignees any or all rights to the invention, including complete assignment of any patent or patent applications relating to the invention. College personnel may neither (a) sign patent agreements with outside persons or organizations which may affect the College's rights and interests as stated in this Policy or as provided in any grant or contract funding the invention, nor (b) without prior written authorization use the name of the College in connection with any invention.

C. REVENUE SHARING

The College shall share revenue which it receives from patents or inventions with the inventors. As noted above, specific provisions of grants or contracts may govern rights and revenue distribution regarding inventions made in connection with sponsored research; consequently, revenues the College receives from such inventions may be subject to payments of royalty shares to sponsors or contractors. Moreover, the College may contract with outside persons or organizations to obtain, manage, and defend patents, and any royalty shares or expenses contractually committed to such persons or organizations may be deducted before revenues accrue to the College.

The revenues (net, if applicable per the preceding paragraph) which the College receives from a patent or invention will be applied first to reimburse the College for any incremental expenses incurred by it in obtaining and maintaining patents and/or in marketing, licensing and defending patents or licensable inventions. After provision for such expenses, the inventor's share of such revenues shall be as follows: 50% of the first \$500,000 of the net revenue and 35% of net revenue thereafter. In the case of co-inventors, each such percentage share shall be subdivided equally among them, unless the College in its sole discretion determines a different share to be appropriate. Applicable laws, regulations or provisions of grants or contracts may, however, require that a lesser share be paid to the inventor.

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D. INVENTOR REQUEST FOR A DETERMINATION OF COLLEGE RIGHTS

If the inventor believes that the invention was made outside the general scope of his or her College duties or entirely on the inventor's own time and without the Revised 2014 Faculty Handbook 224 use of College resources, and does not choose to assign the rights in the invention to the College, he or she shall, in the invention disclosure, request that the Intellectual Property Committee determine the respective rights of the College and the inventor in the invention and shall include information on the following points:

- i. The circumstances under which the invention was made and developed;
- ii. The employee's or student's official duties at the time of the making of the invention;
- iii. Whether he or she requests a waiver or release of any College claims or acknowledgment that the College has no claim;
- iv. Whether he or she wishes a patent application to be prosecuted by the College, if it should be determined that an assignment of the invention to the College is not required under this Policy; and
- v. The extent to which he or she would be willing voluntarily to assign domestic and foreign rights in the invention to the College if it should be determined that an assignment of the invention to the College is not required under this Policy.

E. RESPONSIBILITIES OF GUILFORD COLLEGE PERSONNEL

Employees engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with this Policy or with the College's contractual commitments. Such employees should make their College obligations known to others with whom they make such agreements and should provide other parties to such agreements with a statement of this Policy.

SECTION 3. COPYRIGHTS

The Guilford College policy with regard to copyrightable works is intended to foster the traditional freedoms of the College faculty, staff, and students in matters of publication, through a fair and reasonable balance of the equities among authors, sponsors, and the College. At the same time, the policy is intended to ensure that copyrightable materials in which the College has a legitimate interest are utilized in a manner consistent with the public interest.

A. DEFINITION OF COPYRIGHTABLE MATERIAL Copyrightable materials include original works of authorship for which property rights are protected under federal copyright legislation such as books, Revised 2014 Faculty Handbook 225 manuscripts, artistic works, movies, television programs, software, music, and multimedia materials.

B. COPYRIGHT USE Guilford College supports the responsible, good faith exercise of fair use rights, as codified in 17 U.S.C. § 107, by faculty, librarians, and staff in furtherance of their teaching, research, service, and other educational activities. The College shall:

- i. Inform and educate the College community about fair use and the application of the four fair use factors as set forth in 17 U.S.C. § 107 and as interpreted in applicable case law. The four factors are:

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- (a) The character and purpose of the proposed use.
 - (b) The nature of the work to be used.
 - (c) The amount and substantiality of the portion to be used.
 - (d) The effect on the market or potential market for the work.
- ii. Develop and make available resources concerning copyright laws in general and the application of fair use in specific situations.
 - iii. Ensure that employees and students have access to assistance in making fair use determinations.

C. OWNERSHIP

i. WORKS BY FACULTY

(a) NON-DIRECTED WORKS

A “non-directed work” is a pedagogical, scholarly, literary, or aesthetic (artistic) work originated by a faculty employee resulting from an effort that is not specifically funded or created at the direction of the College. Such works may include textbooks, manuscripts, scholarly works, fixed lecture notes, distance learning materials not falling into one of the other categories of this Policy, works of art or design, musical scores, poems, films, videos, audio recordings, or other works of the kind that have historically been deemed in academic communities to be the property of the author.

Except as otherwise provided in Section 3 of this Policy, non-directed works shall be owned by the author (the word “author” as used in this Policy also includes the plural where there is more than one author or contributor) of the work. (See Section 3(C)(ii) below for the definition of “work for hire;” under the Copyright Act Revised 2014 Faculty Handbook 226 the College is deemed the “Author” of a work for hire.) If the College is to be involved in commercializing a traditional work or non-directed work, the work’s author shall assign the work to the College. In cases of ownership by the author of a traditional work, the College, where practical, shall be granted a nonexclusive, nontransferable, royalty-free license to reproduce, distribute, publicly perform, publicly display, or make derivative works of the work for its own educational or research use (hereinafter referred to as a “Shop Right”).

(b) TRADITIONAL WORKS OR NON-DIRECTED WORKS INVOLVING EXCEPTIONAL USE OF COLLEGE RESOURCES

“Exceptional use of College resources” means College support of traditional works with resources of a degree or nature not routinely made available to faculty in a given area. The following are some examples of that are presumed to be exceptional use:

1. waiver of fees normally required to use specialized College facilities (e.g., equipment, production facilities, service laboratories, special computing resources, studios) where those facilities are used in creation of the work;
2. College grants or gifts in support of the work’s creation;
3. reduction in levels of teaching, service or other College employment responsibilities (e.g., course load, student advising, division/department meetings, office hours, administrative tasks) granted solely for the purpose of facilitating creation of a specified work or works; and
4. use of College personnel, laboratory space, equipment, or supplies not routinely made available to faculty or employees.

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Exceptional use does not normally include routine use of College personnel, office space, laboratories, desktop computers, libraries, telephones, and information resources in a manner that (i) does not interfere with or delay use for College business purposes, and (ii) does not result in substantial direct costs to the College.

Traditional works or non-directed works involving exceptional use of College resources shall be owned by the College. However, upon approval by the Intellectual Property Committee, the College may release or transfer its rights to the work's author, with the College retaining (i) a Shop Right, and/or (ii) the right Revised 2014 Faculty Handbook 227 to require reimbursement and/or income sharing from the author to the College if the work produces income for the author. The parties may also negotiate for joint ownership of such works, with the approval of the Intellectual Property Committee.

(c) DIRECTED WORKS "Directed works" include works that are specifically funded or created at the direction of the College (including, but not limited to, works for hire by faculty or other employees).

Directed works shall be owned by the College. The work's author, where practical, shall be granted a Shop Right. The College may release or transfer its authorship rights to the work's author under a written agreement negotiated between the author and the College, usually with the College retaining (i) a Shop Right, and/or (ii) the right to require reimbursement and/or income sharing from the work's author to the College if the work produces income for the author. The parties may also negotiate for joint ownership of such works, with the approval of the Intellectual Property Committee.

(d) SPONSORED OR EXTERNALLY CONTRACTED WORKS

A "sponsored or externally contracted work" is any type of copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the College and third parties.

For a sponsored or externally contracted work created under an agreement that expressly requires copyright ownership by the College, the author of the work must disclose the work to the College. Provided there is no conflict with a sponsored agreement, the College may release or transfer its rights to the work's author under an agreement negotiated between the author and the College, usually with the College retaining (i) a Shop Right, and/or (ii) the right to require reimbursement and/or income sharing from the work's author to the College if the work produces income for the author; or the parties may also negotiate for joint ownership of such works, with the approval of the Intellectual Property Committee. For a sponsored or externally contracted work created under an agreement that does not expressly require copyright ownership by the College or a third party, the author of the work shall own the work, subject to required disclosure to the College. In case of ownership by the work's author, the College, if practical, shall be assigned a Shop Right.

ii. WORKS BY COLLEGE STAFF

Revised 2014 Faculty Handbook 228 Most works by College staff members are considered to be "Works for Hire." A "work made for hire" is:

- (a) a work prepared by an employee within the scope of his or her employment; or
- (b) 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.

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Works for hire made by College staff shall be owned by the College. In special cases, however, the College may enter into an agreement in advance that the employee shall own the copyright. In addition, the Intellectual Property Committee may waive College ownership.

iii. WORKS BY INDEPENDENT CONTRACTORS

Works by independent contractors shall be owned in accordance with the contract under which the work was created. The College shall ensure that there is a written contract for work by an independent contractor specifying College ownership.

iv. WORKS BY STUDENTS

“Student works” are papers, computer programs, theses, dissertations, artistic and musical works, and other creative works made by students in the instructional process. For purposes of this Policy, the term “students” includes teaching, graduate, and research assistants.

Except as provided below, student works shall be owned by the author, and, the College, where practical, shall be granted a Shop Right.

(a) Sponsored or Externally Contracted Works: Ownership shall be in accordance with Section 3(C)(i)(d) of this Policy on sponsored or externally contracted works made by faculty or other College employees.

(b) Works for Hire: Student works created by students in the course of their employment with the College shall be considered to fall within the scope of Work for Hire in accordance with Section 3(C)(ii) of this Policy on works for hire made by College staff. Revised 2014 Faculty Handbook 229

D. DISTRIBUTION OF INCOME

1. Commercialization of Employee or Student Owned Works by College: If a College employee or student wants College assistance to commercialize a work for which he/she owns the copyright, he/she must contact the Intellectual Property Committee. If the Intellectual Property Committee agrees to assist in commercialization, the author must assign copyright in the work to the College. The assignment agreement shall contain provisions outlining the commercialization responsibilities of the College and a mechanism for the sharing of commercial proceeds with the author. The author receives sixty (60%) percent of the net proceeds from the commercialization of the work and the College receives forty (40%) percent.

2. Commercialization of College Owned Works: The College may commercialize works owned by the College. If a work created by a faculty member is owned by the College due to exceptional use of College resources and is commercialized by the College, the College receives sixty (60%) percent of the proceeds and the author receives forty (40%) percent of the net proceeds.

3. Commercialization of Jointly Owned Works: Works that are jointly owned by the College and the author may be commercialized in accordance with an agreement negotiated by the parties and the division of proceeds will be specified in that agreement.

E. WORKS SUBJECT TO PROTECTION BY BOTH COPYRIGHT AND PATENT LAWS

In cases where an invention or creation is subject to protection under both patent law and copyright law, if the College elects to retain title to its patent rights, then Revised 2014 Faculty Handbook 230 the

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inventor/author(s) shall assign the copyrights to the College and the inventor/author(s) shall be compensated in accordance with the royalty provisions of this Policy regarding patent revenue sharing.

F. VIDEOTAPING AND RELATED CLASSROOM TECHNOLOGY

Any courses which are videotaped, recorded, or transmitted using any media are College property and may not be further distributed without permission from the Intellectual Property Committee. All videotaped courses shall carry an appropriate copyright notice.

G. COPYRIGHT REGISTRATION

The responsibility for determining the need for copyright registration of a College owned work shall rest with the Intellectual Property Committee.

H. USE OF THE COLLEGE NAME IN COPYRIGHT NOTICE

In general, all College owned works should bear appropriate copyright notice. Such copyright notice should be composed and affixed in accordance with United States copyright law, as follows: Copyright (year) Guilford College. All Rights Reserved.

The date in the notice should be the year in which the work was created, with separate dates included for years in which any changes are made to the work.

SECTION 4. TRADEMARKS AND SERVICE MARKS

Trademarks and service marks (collectively "trademarks") include any word, name, symbol, sounds or device used by a person or entity in commerce to distinguish its goods/services from those of others and to identify the source of those goods/services. Trademarks used for goods or services distributed by the College shall be owned by the College. Examples include, but are not limited to, names and symbols used in conjunction with computer programs or College activities and events. The ownership of a trademark is determined by the identity of the entity that uses the trademark. It follows that the fact that a member of the faculty, staff or student creates a trademark used by the College does not confer any ownership rights in the faculty member, staff or student. The Intellectual Property Committee should be consulted about registration, protection, and use of marks.

SECTION 5. PROPRIETARY INFORMATION

Proprietary information arising out of College work (e.g. Actual and proposed terms of agreements, financial arrangements, or confidential business information) shall be owned by the College. Trade secret is a legal term referring Revised 2014 Faculty Handbook 231 to any business or technical information, whether or not copyrightable or patentable, which derives commercial value from not being generally known or readily ascertainable and is the subject of reasonable efforts to maintain its secrecy. Trade secrets are proprietary information.

SECTION 6. ADMINISTRATION OF INTELLECTUAL PROPERTY

1. ORGANIZATION

The Academic Dean is responsible for the administration of intellectual property matters at the College. The College may contract with outside agents for certain technology transfer services, including marketing and licensing of College owned copyrights and inventions. The Academic Dean is authorized to negotiate with reputable agencies or firms to secure arrangements for intellectual property

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management, including evaluation of invention disclosures, filing of patent, trademark, and copyright applications, and licensing and administration of intellectual property.

2. INTELLECTUAL PROPERTY COMMITTEE

The Academic Dean shall appoint an Intellectual Property Committee (IPC) consisting of no fewer than three members. The Academic Dean shall serve as Chairman of the Committee, and the Chief Financial Officer and at least one tenured faculty member shall serve on the Committee. The Committee shall be responsible for the following:

- i. Review and recommend to the Board of Trustees changes to these Procedures.
- ii. Decide upon appropriate disposition of intellectual property disclosures.
- iii. Resolve questions of intellectual property ownership.
- iv. Recommend the expenditure of royalties.
- v. Make such recommendations as are deemed appropriate to encourage disclosure and assure prompt and effective handling, evaluation, and prosecution of invention opportunities and to protect the interests of the College and the public.

The President of the College shall have the right to review and overrule any decision of the Intellectual Property Committee. Any interested party may appeal a decision of the Intellectual Property Committee to the President of the College.