

From the Faculty Manual, pgs 47-51

Intellectual Property

Purpose

The purpose of this policy is to clarify issues related to the ownership, use, and sale of intellectual property created by faculty and students at Covenant College.

Covenant College wishes to foster an intellectual environment that encourages and rewards creativity, innovation, and excellence while stewarding its resources for the benefit of its constituents. In this policy the college seeks to foster these goals and honor academic traditions while recognizing federal laws. It is in this spirit that Covenant College supports the development, production, and dissemination of intellectual property created by its faculty and students.

Definitions

The following definitions are taken from pertinent federal statutes:

Intellectual property refers to any copyrightable or patentable work.

Copyright shall be understood to mean that bundle of 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.

Patent shall be understood to mean that bundle of 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.

Copyrightable work includes original works of authorship (including scholarly and artistic works as defined below) fixed in a tangible format including syllabi and other course materials, books and other literary works, articles, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, software,² internet sites, or other material that qualifies for protection under United States copyright law.

Patentable work is any new and useful discovery, process, machine, device, manufactured product, composition of matter, or other invention that qualifies for protection under United States patent law.³

¹Note 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.

Scholarly and artistic works are works reflecting research and/or creativity that within a scholarly setting are considered as evidence of professional advancement or accomplishment. Examples include publications, conference papers, lectures, working papers, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, computer programs, the products of science, and similar works.

Works for hire or Work Made for Hire refer to works prepared by a faculty member within the scope of employment at the college, with this clarification: the federal law recognizes that the copyright for works for hire rests with the institution. Materials created by faculty for their courses, however, have been considered an exception since the administration provides very little control and direction for their development.⁴

College resources refer to any fiscal, physical, and human resources necessary for the ordinary operation of the college, including but not limited to college funds, facilities, equipment, supplies, services and personnel.

Substantial use of college resources refers to extensive use of resources beyond what is ordinarily made available to faculty. For example, for faculty "substantial use" would be reduction in teaching load or funding that goes beyond the customary release time, grants and

³ **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 and 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, increased 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.)

⁴ From the American Association of University Professors "Statement on Copyright" (<http://www.aaup.org/statements/Redbook/Spccopyr.htm>) [Accessed 27 October 2005]:

"Some colleges and universities have promulgated policies, typically unenforced, that proclaim traditional academic works to be the property of the institution. Faculty handbooks, for example, sometimes declare that faculty members shall be regarded as having assigned their copyrights to the institution. The Copyright Act, however, explicitly requires that a transfer of copyright, or of any exclusive right (such as the exclusive right to publish), must be evidenced in writing and signed by the author-transferor. If the faculty member is indeed the initial owner of copyright, then a unilateral institutional declaration cannot effect a transfer, nor is it likely that a valid transfer can be effected by the issuance of appointment letters to new faculty members requiring, as a condition of employment, that they sign a faculty handbook which purports to vest in the institution the ownership of all works created by the faculty member for an indefinite future.

"Other colleges and universities instead proclaim that traditional academic works are "works made for hire," with the consequence that the institution is regarded as the initial owner of copyright. This institutional claim is often stated to rest upon the use by the faculty member, in creating such works, of college or university resources such as office space and supplies, library facilities, ordinary access to computers and networks, and salary.

"The pertinent definition of "work made for hire" is a work prepared by an "employee within the scope of his or her employment." In the typical work-for-hire situation, the content and purpose of the employee-prepared works are under the control and direction of the employer; the employee is accountable to the employer for the content and design of the work. In the case of traditional academic works, however, the faculty member rather than the institution determines the subject matter, the intellectual approach and direction, and the conclusions. This is the very essence of academic freedom. Were the institution to own the copyright in such works, under a work-made-for-hire theory, it would have the powers, for example, to decide where the work is to be published, to edit and otherwise revise it, to prepare derivative works based thereon (such as translations, abridgments, and literary, musical, or artistic variations), and indeed to censor and forbid dissemination of the work altogether. Such powers, so deeply inconsistent with fundamental principles of academic freedom, cannot rest with the institution.

sabbaticals awarded within current policy. Other examples include extraordinary use of special equipment, facilities, supplies, or time of college employees.

Tangible media include, but are not limited to, books, periodicals, manuscripts, recordings, films, tapes, and disks.

Joint Authors [copyright]. The collaborating creators of a single copyrightable work who merge their separate contributions to the work. Joint authorship implies joint ownership of copyright in the work created. Co-owners of a copyright are treated as "tenants in common," with each co-owner having an independent right to license the use of a work, subject to a duty of accounting to the co-owners for any profits.

Joint Inventors [patent]. Two or more inventors of a single invention who collaborate in the inventive process.

Joint Copyright Ownership: Copyright of an original work by more than one author, in which the contributions of any author is not distinguishable from another. An example of this would be the copyright on a scholarly paper written by colleagues.

License [patent-trademark-copyright]. A permission to use an intellectual property right, under defined conditions -- as to time, context, market line, or territory. In intellectual property law, important distinctions exist between "exclusive licenses" and "nonexclusive licenses." An exclusive license does not necessarily mean that this is the one and only license granted by the licensor. In giving an exclusive license, the licensor promises that he or she will not grant other licenses of the same rights within the same scope or field covered by the exclusive license. However, the owner of rights may grant any number of nonexclusive licenses of the same rights. In a nonexclusive license, title remains with the licensor. A patent license is a transfer of rights that does not amount to an assignment of the patent. A trademark or service mark can be validly licensed only if the licensor controls the nature and quality of the goods or services sold by the licensee under the licensed mark. Under copyright law, an exclusive licensee is the owner of a particular right of copyright, and he or she may sue for infringement of the licensed right. There is never more than a single copyright in a work regardless of the owner's exclusive license of various rights to different persons.

Policy on Ownership and Use of Intellectual Property

Notwithstanding the *works for hire* principle, intellectual property of a scholarly or artistic nature created, made, or originated by a faculty member shall be the sole and exclusive property of the creator, author, or inventor unless a specific contract with alternative provisions has been negotiated prior to the creation of the property (desirable when the production of intellectual property involves substantial use of college resources), or as he or she may voluntarily choose to transfer such property, in full, or in part to the college.

Intellectual property created for pedagogical purposes, including scholarly and artistic works, shall remain the property of the faculty author. With permission of the creator, the college shall be permitted to use intellectual property *distributed publicly* (e.g. copied for students, or made openly available through the Covenant College computer network, or posted to websites and pages hosted on the Covenant College computer system) for internal, instructional, educational, and administrative purposes (such as satisfying requests of accreditation agencies), and for promotion of the college during the period of employment of the faculty member and for a period not to exceed one calendar year after the end of

employment of the faculty author or creator. The creator may use and amend this material without consulting the college.

THE SPECIAL SITUATION OF SYLLABI:

Because syllabi are required of all faculty teaching courses as part of their college obligations, and because both the form and the nature of the content are described in the *Covenant College Faculty Manual*, and because such materials are used as examples for accreditation purposes, as instructive to students and others outside the college, and as reference materials for new faculty, they will be the joint property of the college and the faculty member creating them. The faculty member reserves the right to correct, improve, and otherwise alter a syllabus per the faculty member's judgment, without the prior permission of the college, for as long as she or he is responsible for teaching the course. Syllabi for courses taught by teams of instructors will be under the control of the current team members as they have need. In the case of substantive changes to a syllabus by the college after a faculty is no longer responsible for a course, the name of the original faculty member shall be removed from the syllabus.

Works for hire that would not customarily be considered of a scholarly or artistic nature, nor created for pedagogical purposes, shall be considered jointly owned by the creator and the college.

In the case of a *commissioned work* with a person or organization within or outside the college, ownership is determined by a written contract prepared prior to the start of the project.

Intellectual property created by students of Covenant College is considered the property of the student. Intellectual property created by students and faculty jointly is considered to be jointly owned by the creators.

Intellectual property created by a faculty member outside the scope of the faculty member's job responsibilities, and without the use of the college's resources, is the sole property of the creator even though the work is similar to the creator's job duties.

Faculty members are expected to notify and disclose to the college any potential discovery or invention that such individual has made and has reason to believe might be useful and patentable or otherwise protectable under current federal law, including potentially useful devices, methods, biological materials, and certain software even if not patentable. In this case the administration is responsible to initiate negotiations of ownership.

The college shall own copyright or patent only in the following three limited and expressly defined circumstances:

- I. 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.
- II. The faculty creator 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.

III. The college has contributed to a *joint work* under the provisions of 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 go 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 agreement. The administration is responsible to initiate negotiations of ownership related to this provision.

Distribution of Any Funds Generated

Funds received by the faculty member from the sale of intellectual property owned by the faculty author or inventor shall be allocated and expended as determined solely by the faculty author or inventor.

Funds received by the college or university from the sale of intellectual property owned by the college shall be allocated and expended as determined solely by the college.

Funds received by the faculty member and the college or university from the sale of intellectual property owned jointly by the faculty member and the college shall be allocated and expended in accordance with the specific agreement as negotiated by the parties when the work is first undertaken.

In the event of multiple creators, the creators will determine the allocation their individual shares as negotiated by the parties when the work is first undertaken.

Conciliation Regarding Emerging Issues and Disputes on Intellectual Property

The parties to this policy are Christians and believe that the Bible commands them to make every effort to live at peace and to resolve disputes with each other in private (see Mathew 18:15-20; 1 Corinthians 6:1-8). Therefore, the faculty and administration agree that any claim or dispute arising from or related to this policy shall initially be submitted to an organization using biblically -based mediation procedures such as or similar to the Rules of Procedure for Christian Conciliation of the Institute for Christian Conciliation, a division of Peacemaker Ministries.⁵ Decisions may be entered as judgments in any court otherwise having jurisdiction. The parties understand that these methods shall be the initial remedy for any controversy or claim arising out of this agreement, and put off their right to file a lawsuit in any appropriate court of law until after the biblically-based mediation process described above has failed to resolve the dispute. Following mediation, the parties may also jointly agree to arbitration as an alternative to litigation.

Responsible Party

Responsibility for this policy lies with the vice president for academic affairs.

⁵ As accessed on April 11, 2006 at www.HisPeace.org.