INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER POLICY

INTELLECTUAL PROPERTY

Section I. Introduction

Virginia Wesleyan College is a community dedicated to teaching, scholarship, and research. The College seeks to encourage creativity and innovation among its faculty, students, and staff. To support this endeavor, the College provides equipment, facilities, information resources, and personnel. The College also seeks specific support for creative activity from external sources, both private and public.

Increasingly, intellectual property and technology transfer are matters of importance to Virginia Wesleyan because of their potential to advance the state of knowledge and contribute to the greater social good; to absorb substantial institutional resources in their creation; to generate income; and to raise ethical and legal questions of actual or perceived conflict of interest for the inventor and the College. Traditionally, in institutions of higher learning, the ownership of literary, artistic, and scholarly works has rested with the creator.

The policy exists to encourage creativity, innovation, and research, clarify ownership of intellectual property rights, create opportunities for public use of College innovations, and provide for the equitable distribution of monetary and other benefits derived from intellectual property. Its focus is on the determination of a property’s ownership and the equitable division of the rewards stemming from it. This policy does not reverse the traditional ownership by the creator of, for example, a poem, a painting, or a scholarly work.

Section II. Purpose

This policy is implemented as part of our mission as a not-for-profit institution. The specific aims of the policy are to:

1. Ensure that the traditional rights of scholars and researchers to the monetary and other benefits of their labor are respected;

2. Protect the rights of the College (which it might or might not choose to exercise) with respect to intellectual property created with substantial College resources beyond normal use, or with substantial resources dedicated to the creator’s use in the production of the property;

3. Encourage the development and dissemination of intellectual property by providing appropriate incentives to creators and the College;

4. Facilitate the wide transfer of useful inventions, writings and works of art to society; and

5. Protect the College’s name and trademarks.

Section III. Definitions

Subd. 1. Creator. “Creator” refers to the individual(s) who invent, author, create, or were otherwise responsible for the intellectual creation of the intellectual property, as defined in the applicable intellectual property statutes.
Subd. 2. Intellectual Property. “Intellectual property” refers to inventions, creations, new processes, etc. It includes any work eligible for copyright protection and any invention eligible for patent protection under U.S. or international law.

Subd. 3. Net Income. “Net income” means the gross monetary payments the College receives as a result of transferring rights in the intellectual property less the College’s out-of-pocket expenditures (including legal fees) directly attributable to protecting, developing, and transferring that intellectual property.

Subd. 4. Regular Academic Work Product. “Regular academic work product” means any copyrightable work product which is an artistic creation or which constitutes, or is intended to disseminate the results of, academic research or scholarly study. Regular academic work products include, but are not limited to, books, class notes, theses and dissertations, course materials designed for the web, distance education and other technology-oriented educational materials, articles, poems, musical works, dramatic works, pantomimes and choreographic works, pictorial, graphic and sculptural works, or other works of artistic imagination. Software specifically needed to support a regular academic work product or which is designed to disseminate the results of academic research and scholarly study is also considered a regular academic work product.

Subd. 5. Covered Individual. “Covered individual” means persons who are:
1. Employed by Virginia Wesleyan, including full-time and part-time faculty members, adjunct faculty, administrative officers, and staff members;
2. Independent contractors or consultants;
3. All Virginia Wesleyan students. For the purpose of this policy, a “student” is any individual who registers for a course at Virginia Wesleyan; and
4. Anyone using College facilities or resources under the supervision or with the permission of College personnel, including, but not limited to, volunteers.

Subd. 6. Specially Commissioned Work. “Specially commissioned work” means a work specially ordered or commissioned by the College and which the College and the creator expressly agree in a written instrument signed by them shall be considered as such.

Section IV. Application

Subd. 1. Application. This policy applies to all intellectual property meeting the criteria for College ownership as described in Section VI, produced by covered individuals, acting individually or in groups, performing research or engaging in work or study at Virginia Wesleyan or in connection with a College program.

Subd. 2. Effective Date. This policy applies to intellectual property disclosed to the College after the effective date of this policy. The effective date of this policy is to be determined by action of the Board of Trustees pending necessary reviews and approvals. [The effective date is October 19, 2005.]

Section V. Administrative Procedures

The development of a work of intellectual property that might be copyrightable or patentable and meets the criteria for College ownership as described in Section VI should be reported fully and in writing, at the earliest time possible, to the Vice President for Academic Affairs and Dean of the College. S/he will promptly meet with the inventor to consider the issues of ownership, copyright, and patent, all aspects of the invention, including but not limited to the extent to which College resources have been used and the distribution of potential proceeds. It is assumed that in most cases a timely and amicable agreement will be reached.
If an agreement cannot be reached, the division chairpersons (or the appropriate vice president or supervisor in the case of a staff member) will review the circumstances attending the development of the intellectual property, including the prior investment of College resources, and make a recommendation to the Vice President for Academic Affairs and Dean of the College.

Section VI. College Ownership

The College shall own copyright only in the following three 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 agreement.

Section VII. Exceptions to College Ownership

Subd. 1. Regular Academic Work Product. A regular academic work product is owned by the creator and not the College.

Subd. 2. Course Requirement. Intellectual property created solely for the purpose of satisfying a course requirement is owned by the creator and not the College.

Subd. 3. Pre-Existing Rights. If the intellectual property referred to in subdivisions 1 and 2 is a derivative of or otherwise uses preexisting College-owned intellectual property, this section shall not prevent the College from asserting its preexisting rights.

Subd. 4. Contractual Agreements. For intellectual property created in the course of or pursuant to work done under agreement between the College and external sponsor(s), ownership will be determined in accordance with the terms of the College’s agreement with the external party and applicable law.

Section VIII. Use of Intellectual Property

Subd. 1. Rights to Publish. Nothing in this policy shall be construed as affecting the rights of a creator to publish, except that in cases when College ownership has been established the creator must agree to observe a brief period of delay in publication or external dissemination if the College so requests and such a delay is necessary to permit the College to secure protections for intellectual property disclosed to it by the creator.

Subd. 2. Use of Teaching Materials. In order to facilitate joint work on teaching materials and support collaborative teaching, and notwithstanding the ownership rights otherwise granted by this policy, individuals who contribute teaching materials used in jointly developed and taught College courses
thereby grant a nonexclusive, nontransferable license to the College to permit other contributors to the course to continue using those jointly produced teaching materials in College courses.

Section IX. Distribution of Income

Subd. 1. In cases where no use has been made of College equipment, facilities, or employee and/or student time, or in traditional cases involving the creation of literary, artistic, and scholarly work, the College will have no claim of equity. In cases where this applies, the inventor is at liberty to pursue patent negotiations independently. However, in such cases, the name of the College may not be used in connection with inventions in which the College has no equity interest without prior written permission.

Subd. 2. In cases where the College does have equity rights according to Section VI and there has been normal use of College equipment, facilities, or employee and/or student time devoted to the invention, the College will be deemed to have a 40% of gross equity interest in the invention.

Subd. 3. In cases where the College does have equity rights according to Section VI and there has been significantly above normal use of College equipment, facilities, or employee and/or student time or College contributions, including additional salary, devoted to the development of the invention, the College will be deemed to have a 60% of gross equity interest in the invention.

Subd. 4. In cases that would normally be covered by Subd. 2 and Subd. 3, but where gross equity has been determined to be less than $5,000, the College shall assert no claim of a percent of gross equity interest.

Section X. College Responsibilities

The College shall have the responsibility to:

1. Provide oversight of intellectual property management and technology transfer;
2. Establish effective procedures for licensing and patenting intellectual property;
3. Promote effective distribution and marketing of intellectual property;
4. Protect the College’s intellectual property; and
5. Inform individuals covered by this policy about its provisions.

Section XI. Responsibilities of Applicable Individuals

Covered individuals have a responsibility to:

1. Adhere to the principles and procedures embodied in this policy;
2. Create, retain, and use intellectual property according to the applicable local state, federal, and international laws and College policies;
3. Disclose promptly in writing intellectual property owned by the College pursuant to this policy or created pursuant to sponsored research or other contractual arrangements with external parties that are governed by section VII, subdivision 4, and assign title to such intellectual property to the College or
its designee to enable the College to satisfy the terms of any applicable funding or contractual arrangement; and

4. Cooperate with the College in securing and protecting the College’s intellectual property, including cooperation in obtaining patent, copyright, or other suitable protection for such intellectual property and in legal actions taken in response to infringement.

Section XII. Compliance

Failure to comply with the provisions of this policy is a violation and may result in discipline of an employee in accordance with applicable College policies and procedures.