

Bard College Intellectual Property Policy

I. Policy Overview and Definitions

Bard College is fully committed to encouraging and facilitating the intellectual and creative endeavors of its faculty, staff, and students, and recognizes that these endeavors lie at the core of the fundamental educational mission of the College. The College supports the wide dissemination of original work and research as it greatly contributes to society and to the body of common knowledge. This policy is meant to establish guidelines and processes for determining ownership of intellectual property in the absence of any preceding contract or agreement that has been made. The purpose of this document is to define appropriate rules and procedures, and to clarify and protect the rights of faculty, staff, students, and the College, with respect to intellectual property. In doing so, the College recognizes both legal principles and established traditions in higher education.

This policy applies to all full-time and part-time faculty, visiting faculty, staff, students, student employees, graduate students, and any individual using College resources or facilities while developing intellectual property (“IP”).

Scholarly work created by faculty or students is considered IP and as a matter of College policy is generally owned by the creator(s), with the College claiming no rights to it, unless otherwise indicated in this policy. “**Scholarly work**” is defined broadly to include pedagogical, literary, scientific, and other creative work developed by faculty members and/or students (or staff members acting outside the scope of their employment). This includes:

- (1) work related to scholarship, such as books, journal articles, lab notebooks, inventions (except as set forth in III.C), advances, discoveries, software (including contributions to open-source projects), research data sets and texts, creative works, artistic works in any medium (including, but not limited to, musical composition, choreography, visual art, scriptwriting, games, films, photographs).
- (2) work related to teaching, such as textbooks, lecture notes and other course notes (whether in summary or verbatim form, whether privately held by the faculty member or distributed to the class, whether paper or electronic), laboratory procedures, demonstration apparatus, examinations and quizzes, problem sets, syllabi, training materials, slides, videos, and websites developed for classes.
- (3) This means that most of the scholarly work generated by faculty and/or students is IP that is owned exclusively by the creator(s). The creator(s) of scholarly work have the right to own the copyright and receive revenue because of their original work. Exceptions may arise in circumstances involving *identity interest*, *functional interest*, or *exceptional use of College resources*, as described below. IP created by College staff within the scope or course of their employment is owned by the College.

The College has an ownership interest in IP if it involves (i) an *identity interest*, (ii) a *functional interest*, or (iii) *exceptional use of College resources*.

(i) The College has an “**identity interest**” in works that are integral to the identity of the College or that reflect more directly on the identity of the College than on the identity of the individual(s) who create them. For example, the College has an *identity interest* in items disseminated by and for the College, such as College catalogs, institutional web pages, alumni bulletins, admissions brochures, and fundraising materials. An *identity interest* also occurs when there is a prominent use of the College’s name, or of any image, trademark, or logo of the College. Simply identifying the author of a work as a Bard faculty member would not be considered prominent use of the College’s name. Faculty who intend to utilize the College’s identity in creating IP must discuss ownership of the IP as early as possible in the IP’s development with the Chief Financial Officer (CFO), or their designee, whenever possible. Determination of ownership must be reached prior to its distribution, publication, or commercial exploitation.

(ii) The College has a “**functional interest**” in works that are used to enhance the effective functioning of ongoing operations of the College, or in which the College has a contractual or legal obligation. For example, the College has a *functional interest* in administrative and personnel procedures, administrative data sets, procedural handbooks, committee reports, departmental records, products of institutional research, and software developed at the direction of the College. The College has a *functional interest* in IP created with Federal or other outside funds which carry an obligation that the College retain certain IP rights or assign them to another party outside the College. Certain collaborative agreements also require the College to negotiate IP rights with other entities, creating a *functional interest*. If the College has a functional interest, the IP is owned by the College.

(iii) “**Exceptional use of College resources**” for faculty or student work means that the College has provided funding, facilities, or staff support of a degree or nature not typically made available. Ordinary use of desktop computers, resources in the College library, routine support from the Office of Information Technology staff, or use of College office or lab space does not constitute *exceptional use of College resources*. In addition, the College’s provision of shared scientific equipment, standard labs and studios, research and travel funds, the Bard Research Fund, and funding of sabbatical leaves, are not considered to be *exceptional use of College resources*. In the instance that a faculty member expects to be provided, or the College expects to provide, exceptional support, a contractual agreement or formal determination should be reached in advance of such funding, fixing the extent, if any, of College ownership of IP that may result from the work (see Section III of this Policy).

II. Policy for Faculty, Staff, and Students

A. Faculty

Ownership of *scholarly works* created by members of the faculty and all the intellectual property rights associated with them remain with the creator(s) unless the College has an *identity or functional interest* or the work is created by, with, or through *exceptional use of College resources*.

If there is an *identity or functional interest*, the College owns the rights to the IP. For instance, the College has a *functional interest* in faculty administrative work, such as committee reports and departmental or institutional records. When faculty members contribute to College publications such as the College catalogue or the *Bardian* magazine, the work is owned by the College because of the *identity and functional interest* in the work.

Faculty own the copyright of the assignments and syllabi they create. In the case of IP developed by multiple faculty, perhaps over many semesters, ownership follows US copyright law for multi-author documents and derivative works. While the IP ownership of work related to teaching rests with the faculty member, the College has a *functional interest* in its ongoing instructional operations. By teaching at the College, faculty members grant a non-exclusive perpetual license to the College to use and modify (but not publish or commercialize) assignments and syllabi they develop at the College, though the IP continues to be owned by the faculty creator(s).

The College may have an ownership interest in common with the creator(s) in faculty work that involves *exceptional use of College resources*, including substantial use of other College employees. The ownership, use, and development of such IP will be governed by mutual agreement between the creator(s) and the College, or if an agreement cannot be reached between the creator(s) and the College, by a determination made under the procedures of Section III of this Policy.

B. Staff

The legal principle embodied in copyright law known as “work made for hire” provides that all work created by employees within the scope or course of their employment belongs to the employer. The College has both *functional and identity interests* in IP developed by staff members and could not function if it had to negotiate the right to use work produced by individual staff members. Following standard employment practice, the College owns all IP developed by staff members within the scope or course of their employment. **If an individual is hired as both a member of the staff and the faculty, the determination of IP rights depends upon the relation of the IP to the scope of employment of each job.** IP that is created by members of the staff outside the scope or course of their employment is the property of the staff member. Staff members must discuss with their supervisor, who should then direct the individual to the CFO, or their designee, in advance of any situations in which they intend to claim ownership of any IP that could be construed as being within the scope or course of their employment. The ownership, use, and development of such IP will be governed by mutual agreement between the creator(s) and the

College, or if an agreement cannot be reached between the creator(s) and the College, by a determination made under the procedures of Section III of this Policy.

Although procedures or source codes in the area of information technology created by staff in the course of their employment by the College fall under the “work made for hire” doctrine and are owned by the College, the Chief Information Officer (CIO) in consultation with the CFO, or their designee, have the authority to determine when, and under what conditions, it would be beneficial for the College to share such intellectual property with other institutions or individuals or to participate in open-source sharing.

When IP is created by staff members working directly with members of the faculty or with students, the College has an interest in the IP. For example, when a programmer in IT develops software in collaboration with or at the request of a faculty member, the College owns the software written by the staff member. In all cases, faculty members, staff members, and students are expected to acknowledge assistance or co-authorship when appropriate.

C. Students

Ownership of scholarly works created by students in their capacity as students (as opposed to their capacity as **College** employees) and all the intellectual property rights associated with them remain with the creator(s) unless the **College** has an *identity or functional interest*, or the work is created by, with, or through *exceptional use of College resources*. Faculty members are expected to acknowledge assistance or co-authorship when appropriate. Students should be aware that course-related materials, syllabi, videos, assignments, examinations, and other similar materials in their possession may include IP belonging to faculty members. Students who consider distributing such materials to others should be aware that they may not have property rights to the materials in their possession. Under no circumstances may a student use the IP of a faculty member, such as materials derived from lectures or other teaching materials, for commercial purposes.

Students who are employed by the College are subject to IP policies for staff (see Section II.B above). The College owns all rights to IP created by student employees within the scope or course of their employment unless the student is employed in a faculty-supervised project leading to scholarly work (as above), in which case the faculty member owns the student-created IP. Faculty members are expected to acknowledge assistance or co-authorship when appropriate.

D. Grants, Sponsored Works, and Specially Funded Works

Some grants and contracts from government agencies or private sponsors contain provisions governing intellectual property and/or other rights to the property which obligate the grantee (the College) in some way. In such cases, the College will comply with such provisions, including taking or assigning ownership if required. The CFO, or their designee, will assure that the IP restrictions of the sponsor are adhered to. Principal investigators are required to

comply with any such restrictions, including reporting requirements. The CFO, or their designee, must be consulted in advance of any grant application with IP restrictions (see Section III.A).

E. Independent Contractors

Under the law, ownership of works created by independent contractors and outside consultants resides with such individuals and not with those hiring them to perform the work at issue. Therefore, when hiring independent contractors or outside consultants to perform work for the College, there must be a written agreement ensuring proper assignment of IP to the College.

III. Copyrights, Trademarks, & Patents

A. Copyright Notice

Any publication of a work owned by the College under this Policy shall bear a copyright notice as follows:
Copyright or © (year) Bard College, All Rights Reserved. The date in the notice should be the year in which the work is first published, i.e., distributed to the public or any sizable audience.

B. Trademark

The College retains all rights to control the use of its name and trademarks in association with any work, regardless of the ownership of the work in which its name or trademark is being used. Faculty, staff, and students may use the College's name, logos, and/or other marks where necessary to identify themselves on matters of official College business. The College's name, logos, and other marks shall not be used for commercial purposes or by individuals or entities in a manner that implies College endorsement or responsibility for activities, products, or publications, or by any individual or group promoting itself, without the express written permission of the CFO or their designee.

C. Patent

Unless the terms of a sponsored work agreement or other contractual agreement provide otherwise, the College shall own any discoveries or inventions conceived or first reduced to practice in the course of College employment or with the use of College resources, facilities, or personnel, as well as all related tangible research property.

The College shall make no claim to an invention or discovery made by a faculty member pursuant to a disclosed and approved outside employment or consulting engagement.

The College has a right to apply for patent protection or otherwise protect and market any inventions and discoveries it owns. The inventor agrees to: (a) promptly notify the College of the existence of the invention; (b) maintain the confidentiality of the invention for a reasonable period of time to enable the College to evaluate the value and patentability of the invention; (c) provide the College with information necessary to evaluate the value and patentability of the invention; and (d) execute such documents and take such actions as the College may reasonably request, at the College's expense, to enable the College to apply for and obtain patent protection for such invention.

D. Warranty

Creators shall obtain appropriate permissions and releases necessary to avoid infringing upon the rights of others. Creators of any work owned by the College under the terms of this Policy warrant that, to the best of their knowledge: (1) the work does not infringe on any existing copyright, trademark, or other legal right; (2) that work not identified in quotation marks is the expression of the creator of that work; (3) all necessary permission for

quotations have been obtained; and (4) the work contains no libelous material or any material that invades the privacy of others.

IV. Process for Determination of Ownership of Intellectual Property

In most cases, application of the foregoing principles will be straightforward and there will be no question about who owns the rights to the IP. In such cases, the party with rights (a faculty member, staff member, student, or the **College**) will decide the uses of the IP and will receive any associated revenue. All questions about whether a project involves *exceptional use of College resources*, or whether a *functional* or *identity interest* of the **College** may exist, should be referred to the CFO, or their designee. The CFO, and/or their designee, in consultation with the creator(s) and appropriate **College** deans, vice presidents, and supervisors will endeavor to reach an agreement with the creator(s) regarding the ownership, use, and development of the IP. Agreements will be deposited with the CFO, or their designee, according to the procedures established in Section VI.D. If no agreement is reached, the CFO will decide (see Section III.B).

A. Reporting

The uniform application of this Policy requires that the College be made aware of IP created by members of the College community with the use of College resources. Responsibility for reporting the creation of IP rests with the creator(s). In cases where the IP is a *scholarly work* created by a faculty member, or a staff member outside the scope of his or her employment, and no *identity or functional interest* is involved, no reporting is required. *Scholarly work* created by students in their capacity as students need not be reported.

Certain cases must be addressed specifically to the CFO or their designee. Creator(s) should report, as soon as the situation is reasonably clear and before work is well underway, on the production or planned production of any IP that meets one or more of the following conditions:

1. The IP involves or has the potential for involving a *functional* or *identity interest* of the College.
2. Production of the IP involves or may involve *exceptional use of College resources*.
3. The IP is produced with Federal or other outside funds which impose ownership, reporting, or other requirements on the College or the creator(s). In such cases, reporting may be required within specified time limits, which must be observed.
4. The IP is jointly created by faculty and staff.
5. The IP is created in a collaborative relationship with another entity requiring the entity's IP policies be reconciled with those of the College (see Section V).
6. A creator intends to seek a patent on or otherwise commercialize the IP, in which case the process of protection or commercialization may involve substantial cost and effort, and the creator(s) may wish the College to consider providing some or all of that support and share the net rewards, liabilities, or risks with the College (see Section IV).
7. The creator is a staff member who intends to claim ownership of IP that could be construed as being within the scope or course of employment at the College.
8. A creator has any question about ownership or other rights in the IP.

In the case of a group IP project, all those in the group shall be named as co-creators in a report, and if any agreement contains a proposal for the disposition of rights and proceeds, all members of the group shall sign.

B. Determination Process

When a report is required under Section IV.A and no agreement with the creator(s) is reached, the CFO, and/or their designee, in consultation with the creator(s) and appropriate College deans, vice presidents, and supervisors, shall make a determination whether the IP involves a *functional or identity interest*, whether its creation involves *exceptional use of College resources*, or whether the work is created within the scope or course of employment of a staff member at the College. The CFO shall decide ownership of the IP and associated intellectual property rights, responsibilities, and use rights of the College and the creator(s), and, if appropriate, how the College will recoup its costs and share in financial gains from the IP. This determination should be made in a timely manner. In all cases, the CFO will be guided by the principles set forth in this Policy and the creator(s) will be given an opportunity to explain the situation or proposal and recommend terms for ownership, responsibilities, use rights, risks, and financial arrangements.

C. Written Determination

The CFO's determination shall be made in writing, signed by the CFO. The determination shall contain provisions outlining the allocation of ownership, interests, use rights, responsibilities, risks, and a mechanism for the sharing of net proceeds, if any, and other rights between the creator(s) and the College. The CFO, or their designee, will cause the written determination, once made, to be delivered promptly to the creator(s). The determination, bearing the date on which it was delivered to the creator(s), shall be filed with and maintained by the office of the CFO. The determination shall become final and shall be binding on the creator(s) and the College unless, within thirty (30) days of the date on which the CFO, or their designee, has delivered the determination to the creator(s), the creator(s) file a notice of appeal of the CFO's determination with the appropriate dean, vice president, or supervisor.

D. Appeals

On receipt of a notice of appeal, an *ad hoc* committee of Bard faculty and administrators shall be formed by the CFO. It shall comprise one individual selected by the CFO, one individual selected by the creator(s), and one individual agreed to by the creator(s) and the CFO. If the creator(s) and the CFO cannot agree, the third member will be appointed by the appropriate dean or supervisor. The committee shall review the CFO's determination, the positions of the CFO and the creator(s), and the relevant facts and circumstances surrounding the IP, and will make a written recommendation to the President not later than sixty (60) days following the date of receipt of the notice of appeal. The President, after review of the recommendation of the *ad hoc* committee, shall issue a determination within thirty (30) days of receipt of the *ad hoc* committee recommendation.

The President's determination will be filed with the CFO, and a copy will be delivered to the creator(s). This determination of the President will be final and will be binding upon the College and the creator(s).

E. Time

The President, on application by either the CFO or the creator(s) or on the President's independent initiative, shall have the authority to modify the time requirements of Section IV of this Policy for good cause.

F. President, Provost, or Dean of the Faculty as Creator

If the President or the CFO is a creator or co-creator of IP for which no agreement has been reached and which requires a determination under Section IV of this Policy, the process described in subsections A, B, C, D, and E of Section III of this Policy shall not apply as to that IP. The recommendation shall instead be made by the Chair of the Board of Trustees of the College. The Chair's recommendation shall be final and shall be binding upon the creator(s) and the College.

v. Voluntary Transfer of Rights to the College & Commercialization

A. *Transfer of Rights*

The process of protecting and/or commercializing IP often involves substantial cost and effort. The College anticipates that even when IP is clearly the property of individuals, some of those individuals may wish to transfer rights to the College in exchange for its help in developing, disseminating, or protecting their creations. Requests by members of the College community for such an exchange will be addressed on a case-by-case basis. As stated in Section IV.A.5, if the creator(s) of IP wish to seek the College's help in pursuing patent protection and/or commercialization of their IP, they should inform the CFO or their designee as soon as it becomes reasonably clear that their work might be considered potentially patentable or marketable.

Before agreeing to take an ownership interest in any IP the College will, in consultation with the creator(s), evaluate the work as to its patentability and marketability, taking all precautions necessary to protect the creator(s). The CFO may propose an allocation of ownership, interests, use rights, responsibilities, risks, and a mechanism for the sharing of net proceeds, if any, and other rights between the creator(s) and the College. For example, a proposal might offer that once the invention is patented and licensed or otherwise commercially exploited, the College will first be reimbursed for all past or continuing expenses related to the invention's licensing and commercial development, after which the distribution of income shall be 50% to the College and 50% to the creator(s).

The College, in consultation with the creator(s), may choose to file for a patent itself, may enter into agreements with collaborative institutions and companies to further share the risk and the net rewards of patenting and commercialization, or may offer to sell the invention outright to a third party.

B. *Royalties/Commercialization*

The College shall have sole discretion to decide whether and how it will seek to commercialize or otherwise exploit IP owned by the College. The College is not obligated to protect or commercialize any IP unless it has made an explicit contractual commitment to do so. The College assumes financial responsibility for IP it owns. In the event the College receives royalty or other income from inventions or works created by anyone covered by this Policy, the College may, but shall not be required to, share such income with the creator. In the case of inventions or works created and owned by anyone covered by this Policy, the creator shall have sole discretion to decide whether and in what manner they will seek to commercialize or otherwise exploit the IP.

VI. Time Spent on IP Production Not for the College

Faculty members and staff members should be guided by Bard's policies on conflict of interest and outside employment as outlined in the Employee Handbook.

VII. Application of this Policy/ Effective Date/ Registry of Agreements and Determinations

A. Faculty and College Staff

This Policy applies to and is binding upon members of the faculty and upon members of the College staff by reason of their employment at Bard College. Unless otherwise provided in writing, the terms, conditions, and provisions of this Policy shall be deemed to survive termination of employment and shall continue to apply to any IP created, in whole or in part, by a member of the faculty or a member of the College staff while employed by the College. As used in this policy, the term “faculty” shall mean the professors, associate professors, assistant professors, instructors, lecturers, and visiting professors of the College, and the term “College staff” shall mean the administrative officers and all non-faculty employees of the College.

B. Students

This Policy applies to and is binding upon students as an element of the contract between the student and Bard College. Unless otherwise provided in writing, the terms, conditions, and provisions of this Policy shall be deemed to survive the student’s graduation or other termination of the contract between the student and Bard College and shall apply to any IP created, in whole or in part, by a student while enrolled at the College.

C. Effective Date

This Policy became effective January 1, 2024. This Policy shall apply to IP created, in whole or in part, by members of the faculty, members of the College staff, and students.

D. Registry of Agreements and Determinations

The office of the CFO shall maintain a registry of all agreements and final determinations pertaining to IP to which this Policy applies. All agreements between creator(s) and the College pertaining to ownership, rights, duties, and obligations of each in IP to which this Policy applies and all final determinations made pursuant to Section III of this Policy shall be deposited in said registry and retained by the office of the CFO