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Merrimack College Intellectual Property Policy

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1. Purpose.

This policy defines the rights and responsibilities of Merrimack College (the “College”) and its faculty, staff, and students with respect to ownership and administration of intellectual property. This policy reflects the culture of the College and its interest in the advancement of knowledge and the support of professional development for its members. It also recognizes that new intellectual property contributes to the social good. In the course of research, scholarship, education, and other activities, Merrimack College faculty, staff, and students create patentable inventions, works protected by copyright, and other forms of intellectual property that merit legal protection and have financial as well as scientific and scholarly value. In keeping with the mission of the College, this policy protects and celebrates the intellectual production of members of the Merrimack College Community (defined below) and demonstrates the College’s commitment to free inquiry and the interchange of ideas. This policy is based on respect for those who are inventors and developers of creative works; it is therefore also intended to provide faculty with intellectual property guidelines that foster innovation and inspire creativity.

2. Individuals Covered by the Policy.

This policy applies to the Merrimack College Community, consisting of:

Faculty Members, including visiting faculty, adjunct, and full time faculty hired to teach specific courses including Summer Session, Bachelor Degree Completion (BDC) and distance learning, all regardless of their status as full-time or part-time. Where a staff member has been tasked with teaching responsibilities, the staff member will be treated as faculty for purposes of intellectual property associated with the teaching;

Staff, including those persons who do not have faculty status and are employed by the College to carry out administrative, academic, technical, or other duties of any nature or kind. Staff members include postdoctoral associates, graduate fellows and trainees, and students who are performing services as College employees; and

Students enrolled in one or more Merrimack College courses.

3. Defined Terms.

Intellectual Property or Intellectual Property Rights: Refers to rights existing now or in the future under patent law, copyright law, trademark law, data and database protection law, trade secret law, and any and all similar proprietary rights. Patentable discoveries and inventions may include processes, machines, articles of manufacture, or composition of matter including, where applicable, matter such as biological materials, prototype devices, and engineering designs. Works that may qualify for copyright protection include written and graphic works, computer software, and photographic, video, and audio works, experimental protocols and code written for statistical analyses, and works commonly accepted in the scientific community as necessary to validate research findings.

Invention: Refers to a new or useful process or discovery, method, technique, product, machine, device, manufacture, software, composition of matter, or improvement thereof which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

Inventor: Refers to an individual who makes an inventive contribution to patentable subject matter,

as determined in accordance with Title 35 of the United States Code.

Inter-Institutional Agreement (IIA): Also known as an Intellectual Property Management Agreement, a legal contract to provide for joint management of jointly owned intellectual property. IIAs delineate which party will take the lead on patenting and commercializing the resultant Intellectual Property as well as how the legal expenses and license revenue will be shared among the institutions that assert the ownership rights to the joint Invention(s).

Merrimack College Community: Faculty, staff, and students at Merrimack College.

Merrimack College Resources: Refers to dedicated funds (internal or external), space, personnel, or facilities used to support research and scholarship, including direct funding such as gifts, contracts, grants, and College-allocated funds; laboratory space or shared research and/or instrumentation facilities; and supervision or employment, including student employment, on any such College-funded scholarship or research.

Policy Administrator: The Vice President of Research or another delegate of the President.

Scope of Employment: has the meaning provided in the United States Copyright Act and applicable court rulings.

Work: any expression that is entitled to protection under copyright law, whether or not the copyright in such work has been registered or is the subject of a pending application for registration.

Equity: Any Equity or other class of securities received by the College and Inventors.

Net Income: means revenues, royalties, or income received by the College from an Invention less the expenses related to obtaining patent protection, marketing, licensing, or transferring the technology, and administering the Invention and associated commercialization responsibilities.

4. General Policy Concerning Intellectual Property Rights.

4.1. Faculty Members' Intellectual Property Rights.

The College recognizes and affirms the tradition in higher education that the copyright in academic works such as books and articles, lectures, syllabi, visual materials, and other teaching materials is owned by the faculty member authoring them rather than the employing educational institution. In keeping with that tradition, the College waives its ownership to the copyrights in those academic works. Faculty ownership of the copyrights in such academic works may, however, be affected by the terms of agreements with third-party sponsors, or by agreements between faculty and the College with respect to special projects such as the creation of online courses or other digital education offerings, all as set out further in Section 4.5 (Sponsored Research and Specifically Commissioned Works).

Faculty Members' rights in Inventions are set out in Section 5 (Policy as to Inventions).

4.2. Staff Members' Intellectual Property Rights.

Where a staff member authors a work in the Scope of Employment, the work shall be treated as a work made for hire under U.S. copyright law, and the copyright in the work shall be owned by the College (or shall be assigned by the author to the College, if the work is not governed by U.S. copyright law). Similarly, the copyright (and other Intellectual Property Rights) in work performed by a staff member using Merrimack College Resources will be owned by the College. A student acting in the role of a teaching assistant is treated as a staff member for purposes of this policy.

On certain occasions, and in compliance with College policy, a staff member may be tasked with teaching responsibilities. Where a staff member has been tasked with these responsibilities, the staff member will have the same rights under copyright (and bear the same obligations) as faculty members under Section 4.1 (Academic Work Authored by Faculty Members) and Section 4.3 (License to College in Course Materials).

If a staff member plans to author a work, but is uncertain whether they will own the copyright in the work, the staff member may bring the matter to the Policy Administrator for pre-approval as to copyright ownership. Staff members will not have rights to Inventions created in the Scope of Employment or using Merrimack College Resources, and will assign such rights (if any) to the College.

4.3. Course Materials License to College.

Where a faculty member incorporates their academic work covered in Section 4.1 (Faculty Members' Intellectual Property Rights) into course educational resources designed for departmental classroom use in a particular department or school, the College shall have a nonexclusive, paid-up, irrevocable license to use such academic works for such purposes. Works covered by this license include syllabi (such as those maintained by the School of Nursing and Health Sciences), course objectives, topics and themes, learning resources (including assigned or suggested reading), exam and test questions, and information about grading and evaluation. The rights the faculty member grants in these works are the full set of rights under section 106 of the United States Copyright Act, and include the right to copy, distribute, and modify the works.

4.4. Students' Intellectual Property Rights.

Students will own the copyright in all work they create as students while at the College. This includes work in College courses, in College labs, and in all other the College venues. The College, however, will retain ownership when Intellectual Property arises from the student's participation in sponsored research work or under the terms of an agreement with the student, such as an agreement regarding financial assistance, a research fellowship, or other student employment agreement, or a special agreement, all as further provided in Section 4.5 (Sponsored Research and Specifically Commissioned Work).

4.5. Sponsored Research and Specifically Commissioned Works.

There are instances in which faculty, staff and students agree to engage in research or other work sponsored by a third party, or agree to undertake work specifically commissioned by the College. In projects sponsored by third parties, the College will enter into an agreement with the sponsoring entity. This agreement will govern the Intellectual Property Rights of the sponsor, the College, and the College faculty, staff, and students who participate in the project.

There are also instances where faculty members or students agree to produce work that the College has specifically commissioned. In these instances, the agreement defining the work will govern the Intellectual Property Rights of participating faculty and students.

Members of the Merrimack College Community who enter into consulting agreements or other private agreements with parties outside of the College must ensure that such agreements contain no requirement to assign or otherwise transfer rights in any Intellectual Property owned by Merrimack College under this policy. Arrangements with other research institutions that involve dual appointments, visiting scientist agreements, and other arrangements will require an executed Inter-Institutional Agreement (IIA) which will make clear the Intellectual Property assignments and responsibilities by Institution.

If an individual is uncertain as to whether their work will fall under sponsored research or an agreement with the College for a particular project, he or she may bring the matter to the Policy Administrator for a determination.

4.6. Independent Work by Faculty and Staff.

Faculty members and staff retain the copyright (and all other Intellectual Property Rights) in materials they create outside the Scope of Employment at the College and which do not involve use of College Resources. Where such rights, title and interest are claimed and agreed upon, the College shall not assume any responsibility for costs or liability of patent prosecution, maintenance, enforcement, or licensing.

4.7. Faculty Sabbaticals and Leaves.

Unless there is an agreement otherwise (such as an agreement related to sponsored research or specifically commissioned work), work authored by a faculty member while on sabbatical, professional leave, or special leave (as approved in accordance with the College's standard procedures) will be considered independent work under Section 4.6 (Independent Work by Faculty and Staff), and the author will retain their copyright in the work for purposes of this policy.

5. Policy as to Inventions.

5.1. Disclosure of Inventions.

Members of the Merrimack College Community shall disclose any Invention that they make to the Policy Administrator promptly and in reasonable detail using the official disclosure form. The College will provide guidance in the development of a full disclosure. Members of the Merrimack College Community shall similarly disclose Intellectual Property other than patentable Inventions, including copyrighted software, in cases where the author deems the Intellectual Property to have commercial potential or otherwise require licensing or transfer to public use other than by publication or placement in the public domain.

Discussions of Intellectual Property that only involve Merrimack College faculty, staff or students (such as lab meetings) are by this policy treated as confidential and not public disclosures.

5.2. Decisions as to Patenting Inventions.

The Vice President of Research, in conjunction with the Office of the General Counsel, will make decisions about whether to pursue patent protection for any Invention in a timely manner, normally within ninety (90) days. In deciding whether to pursue patent protection on behalf of the College, the College will consider whether there is adequate prospective societal benefit to warrant patent protection (e.g., economic value, likely licensing opportunity), and whether there are any other circumstances (e.g., contractual obligations, governmental regulations, expert opinion) that might affect a decision to pursue patent protection. Where the College elects to seek a patent, it will assume all costs associated with patent prosecution, maintenance, and enforcement or will obligate the entity responsible for commercializing the Invention to assume such costs.

Where the College determines that patenting is inappropriate but that a commercial market may exist for an Invention to which the College has rights, the College will assist in seeking licensing or other agreements for the Invention, as determined in the discretion of the Policy Administrator and in accordance with Section 6 (Licensing and Enforcing the College's Intellectual Property).

5.3. Waiver of the College's Rights.

In the event that the College declines to pursue patent protection for an Invention, the College will waive its ownership rights and release them to the Inventor. It will notify the Inventor promptly of its decision. Such a waiver by the College shall occur in writing and may include financial restitution of sunk costs in the event of successful commercialization. Subsequently, upon written request of the Inventor, the College will assign its ownership rights to the Inventor, subject to the College's obligations to sponsors and applicable provisions of law. Where such a waiver occurs, the College shall incur no further expenses and shall assume no liability related to the Invention.

5.4. Inventor Requests for College to Pursue Patent Protection.

An Inventor who is entitled to ownership rights in an Invention may petition the College to accept assignment of those rights and the attendant control and responsibilities. The College is under no obligation to accept such assignment but shall evaluate and act on the petition in view of the objectives of this policy.

5.5. Publication.

Where the Inventor intends to publish information or make any other public disclosure related to the Invention, the Inventor must notify the Policy Administrator prior to making such public disclosure. Prior notice is necessary to allow the College to determine whether to pursue patent protection for the Invention. The College engages in research that is compatible, consistent, and beneficial to its academic role and mission, and encourages faculty to publish the results of their research activities, subject to this requirement of prior notice.

5.6. Share of Net Income from Inventions.

Where the College retains ownership of an Invention and that Invention is commercialized, the College will provide the Inventor forty percent (40%) of the Net Income (as such term is defined below) gained through technology transfer of the Invention. The other sixty percent (60%) of the Net Income shall be managed through the Office of the Provost. Exceptions to this policy may be made upon mutual agreement between the Inventor and the College. Where the Inventor shares the cost of such expenses

with the College, the distribution of Net Income will be adjusted to reflect the relative contributions of the College and the Inventor. Accounting of such net royalties or income shall occur at least annually.

5.7. Receipt of Equity.

If the College and Inventors are to receive Equity, or other class of securities, of a licensee as consideration in a license transaction for Inventions, then all of the Equity will be held by the College and managed by its designee. The College will seek to liquidate such Equity as soon as reasonably practicable, usually in the public market, rather than seek to maximize the return on the Equity by trying to time the sale of the Equity. The College does not act as a fiduciary for any Inventor concerning such Equity, and no Inventor will have any right to vote or direct the disposition of such Equity held by the College. The College has no obligation or duty to an Inventor regarding the relative value realized upon liquidation of such Equity, or with respect to any personal tax obligations that may arise as a result of the receipt by the Inventor or the Creator of a portion of the Net Proceeds from the disposition of such Equity. Once the Equity is liquidated, the proceeds will be treated as cash proceeds of the applicable license transaction and distributed as Net Income under the terms of this Policy.

Should any Inventor elect to receive any Equity from an entity involved in a license transaction with the College, the Inventor will be deemed to have waived the right to receive his or her portion of the Net Income from the Equity held by the College under this section. Such waived portion of the Net Income from the Equity will be reallocated among the remaining participants in the Net Income (including the College) on a pro rata basis using their respective percentages prior to the waiver.

6. Licensing and Defending the College's Intellectual Property.

The Office of Research and Sponsored Programs will maintain a database of College Inventions disclosures, patents, sponsored research agreements, and other Intellectual Property and licenses that in its judgment warrant such cataloging. Where warranted in its judgment, the College will endeavor to license its Intellectual Property in ways that make the technology available for public use. If necessary in its judgment, the College will vigorously defend and enforce its Intellectual Property rights through appropriate business and legal channels.

7. Open Access.

The College will, in the absence of compelling institutional interest to the contrary, permit faculty members the freedom to make their copyrighted works readily accessible by placing them in the public domain, or allowing them to be distributed via open source, creative commons, or similar open distribution methods, provided that doing so does not violate the terms of any existing College agreements such as non-disclosure agreements (NDAs) or government regulations, and follows College external communication and Intellectual Property protection policies.

8. Trademarks.

The College retains all rights in its trademarks, service marks, logos, domain names, and other identifiers.

9. Administration Of This Intellectual Property Policy.

The College has designated a Policy Administrator to manage this policy. Faculty, staff, and students can contact the Policy Administrator at research@merrimack.edu.

10. Disputes.

The Policy Administrator is authorized to resolve questions, complaints, and disagreements that might arise under this policy, with the following two exceptions. First, student disciplinary issues that might arise under this policy will be addressed through the College's student conduct process. Second, if a written College policy, collective bargaining agreement, or other applicable agreement provides a process for resolving disputes involving faculty or staff, that process will govern resolution of such disputes.

Where there is disagreement between an individual and the College as to ownership rights, the Policy Administrator shall conduct a review of the case and render a determination as to ownership. The burden of demonstrating that Intellectual Property was created outside the Scope of Employment and without use of Merrimack College Resources is the responsibility of the individual. The decision of the Policy Administrator may be appealed to the Provost, whose decision will be final and binding on the parties.

11. Assistance In Documenting Rights.

Faculty members, staff, and students agree to provide the College with timely assistance, on the College's reasonable request, in documenting and otherwise memorializing the rights in copyrighted works and Inventions governed by this policy. For example, where College owns an Invention, the Inventor must execute all appropriate assignments to the College and all documents necessary for the prompt prosecution of the Patent or to the maintenance and enforcement of the Patent.

12. Agreement to and Legal Effect of this Policy.

Members of the College faculty and staff agree to the terms of this policy by continuing their employment and/or by signing an acknowledgement and consent to this policy. Students agree to the terms of this policy by enrolling in a College course and/or by signing an acknowledgment and consent to this policy in connection with that enrollment. In addition, all members of the Merrimack College Community who are employed in a research capacity are required to acknowledge and agree to this policy upon hire. Similarly, all members of the Merrimack College Community who conduct funded research or training at Merrimack College are required to sign written acknowledgement and agreement to this policy. Individuals employed at other institutions who are given faculty appointments at Merrimack College for the sole purpose of teaching and who are not conducting any research activities or developing any works subject to copyright protection involving Merrimack College Resources are not required to agree to this policy. Signed acknowledgement is not required for enforcement of this policy by Merrimack College.

13. Responsible Parties.

The Vice President of Research and the Office of the General Counsel will be responsible for establishing and maintaining procedures and administrative support needed to implement this policy.

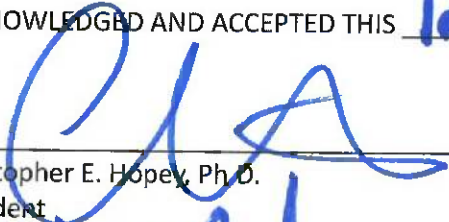
14. References

- Bayh–Dole Act or Patent and Trademark Law Amendments Act (Pub. L. 96-517, December 12, 1980)

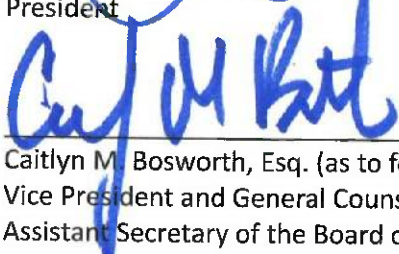
- Leahy-Smith America Invents Act (AIA) (Pub. L. 112-29, September 16, 2012)

Merrimack College reserves the right to modify or terminate this policy at any time, for any reason, in its sole discretion.

ACKNOWLEDGED AND ACCEPTED THIS 12th DAY OF April, 2024.



Christopher E. Hopey, Ph.D.
President



Caitlyn M. Bosworth, Esq. (as to form)
Vice President and General Counsel
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