

## Intellectual Property Rights

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### OPERATIONAL POLICY STATEMENT

Yavapai College (herein referred to as the “College”) is committed to providing an environment that supports the learning, teaching, scholarship, and creative activity of its faculty, students, and staff. As a matter of principle and practice, the College encourages all members of the College community to publish without restriction their papers, books, and other forms of communication in order to share openly and fully their findings and knowledge with colleagues and the public. The Intellectual Property Operational Policy is intended to promote and encourage excellence and innovation in teaching and scholarly research by identifying and protecting the rights of the College, its faculty, staff, and students. The long-standing academic tradition that creators of works own the copyright resulting from their teaching, writing, and research is the foundation of the College’s Intellectual Property Operational Policy. There are some exceptions to this tradition. This operational policy addresses these exceptions.

Intellectual property ownership of all work by academic employees, non-academic employees, or students shall vest in the creator except under the conditions described below.

Institutional Created Works. The College shall have ownership of works created by non-academic employees within the scope of their employment with the College, or as an assigned duty from the College (“work-for-hire”) for both academic and non-academic employees. The “work-for-hire” rule in the Copyright Act gives the College ownership of the copyright to copyrightable works produced by any employee within the scope of his or her employment, if the creation of the work was directed by the College or the employee was hired to create that work.

Substantial Use of College Resources. The College shall have rights to the intellectual property of work, in proportion to their contribution (not to exceed 50%) when a ‘substantial use’ of College resources have been used. Use of College resources is considered to be ‘substantial’ when it entails the use of College resources not ordinarily used by or available to that employee or available to all or virtually all, faculty, staff, and/or students. The College retains a right to royalty-free internal use of any materials for which the College has any rights of ownership.

In the event the College provides substantial resources for the creation of a work, the College and the creator shall own the intellectual property rights jointly in proportion to the respective contributions made. Where question arises as to whether a particular work involves “substantial use” or falls within the “scope of employment”, or “proportion of contributions to the work” the matter will be referred to an ad-hoc committee including the faculty member’s Instructional Dean, the Vice President of Academic Affairs, and the Faculty Senate President or designee. The

determination of the committee will be made within 45 days of request. If the committee requests additional time, it must, in any event make its determination within 35 days of its request for additional time. The employee will be notified of the decision of the Committee within 5 days of the committee's determination. The employee shall have 30 days from the date of the mailing of the notice to appeal the Committee's decision. The appeal shall be heard by the Vice President of Academic Affairs, the Vice President of Financial and Administrative Services, and the Faculty Senate President or designee. The decision on appeal shall be issued within 30 days. If the Intellectual Property Committee fails to notify the employee in writing of determination of ownership within the stipulated time period, then the College's rights to the work shall automatically become the property of the creator.

Student Created Work. Work created by a student employee during the course and scope of employment is owned by the College, unless otherwise agreed upon between the student and the College. However, work created by a student to meet a course requirement using College-provided resources for which the student has paid tuition and fees to access the course or using resources available to the public is the property of the student.

Faculty Created Work. In the case of scholarly works, including course materials, the College cedes copyright ownership to the author/creator(s). Scholarly works include, but are not limited to, course syllabi, instruction materials (textbooks and course materials), distance learning works, journal articles, research bulletins, lectures, monographs, plays, poems, literary works, works for art (pictorial, graphic, sculptural, or other artistic creation), computer/software programs, electronic works, sound recordings, musical compositions, and similar creations. Intellectual property created during a sabbatical is defined as a scholarly work unless defined differently in an addendum to a specific sabbatical plan agreed to by the faculty member and Vice President of Academic Affairs. Typical sabbatical plans do not require the use of substantial college/university resources. Payment of salary per se does not constitute a significant use of college resources.

College-Obtained Funding. When employee-created intellectual property results from third-party grants, contracts, or awards made to the College, the intellectual property is owned by the College unless written agreement involving the College, the employee, and the sponsor establishes an alternative ownership arrangement. No such agreement shall be entered into without the review and approval of the Vice President of Academic Affairs and the Vice President of Financial and Administrative Services. Funding awarded directly to a recipient shall not be considered as an 'award made to the College', and therefore alone would not constitute the work as College owned.

College Assignment of Rights: The College may assign all or a portion of its rights in a work to the creator, corporation, or business or to any other person in accordance with the law and when in the best interests of the College. As a condition of assignment, the College may preserve rights such as a royalty-free, perpetual, irrevocable, non-exclusive license to use and copy the work in accordance with the preservation and the right to share in any proceeds from commercialization of the work. Requests by a creator to have all rights assigned to the creator for purposes that would be in the best interest of the public or College, shall be made in writing to the Vice President of Academic Affairs and the Vice President of Financial and Administrative Services. If no response is made within a 45 day time period, the rights will be granted to the creator.

Creator Assignment of Rights: In the case of employee-owned intellectual property, the author/creator may petition the College to accept assignment of ownership rights and the attendant

control of and responsibility for development. The College, however, is under no obligation to accept this assignment and would do so only when independent evaluation indicates that accepting the assignment would further the mission and work of the College.

Revenue Sharing: The College wishes to encourage excellence and innovation in teaching, scholarship, and creative activities and to support the notion that works produced at Yavapai Community College should be used for the greatest possible public benefit. In the context of these aims, the College endorses the legitimate expectation of employee author/creators to share in any net revenues produced by licensing or other development of intellectual property, as determined by their respective proportion of contribution to the work. Accordingly, for any work in which the College asserts ownership interest under this operational policy and the contribution to the creation of the work is equal, the College and the author/creator(s) will share any annual net revenue (revenues less recovery of all legal and other costs involved in protecting the intellectual property rights of the work, licensing costs, and other directly related administrative, legal, and marketing costs) in the following percentages, unless different contractual agreements have been reached in relation to particular works:

Net Revenue	Author/Creator(s)	College
\$10,000	100%	0%
\$10,000-\$25,000	75%	25%
\$25,000-100,000	60%	40%
>\$100,000	50%	50%

The college will provide priority consideration for budget requests from the department originating the revenue. If a work involves more than one employee as author/creator, the author/creators will divide their share equally unless they provide the College with an alternative revenue distribution agreed upon by them. Use of net revenues received by the College under this operational policy shall be restricted to the support of scholarly, research, or creative activity on the part of faculty, staff, and/or students.

Recognizing that this area is complex and rapidly evolving, College remains open to the possibility of arriving at special agreements as the need may arise in relation to particular projects.

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### **OPERATIONAL POLICY HISTORY**

Formerly 2.3.1, Adopted 12/12/2000 Revised 9/4/2012

Renumbered to Policy 2.07 in 10/2014

Revised to “Operational” Policy, changed Vice President of Instruction and Student Services to Vice President of Academic Affairs and Vice President of Financial Services to Vice President of Financial and Administrative Services 3/5/2021

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