

Table of Contents

I. Philosophy and Scope	1
II. Definitions for the Purpose of this Policy and Procedures.....	1
III. Ownership and Rights to Intellectual Property	3
IV. Fair-Use Doctrine.....	4
V. Agreements Related to Ownership of Intellectual Property	5
VI. Creative Commons Licensing	5
VII. Dispute Resolution	6

Intellectual Property Policy and Procedures

I. Philosophy and Scope

Frederick Community College (“FCC” or the “College”) encourages, incentivizes, and recognizes research, publishing, and other activities by faculty and staff that further the institution’s mission. The College seeks to achieve a fair balance between the rights of Creators who are employees and independent contractors, and the rights of the College related to intellectual property developed using its resources. This Policy and Procedures applies to the creation of intellectual property by members of the College community.

To ensure that FCC complies with laws governing patents, copyrights, trademarks and other intellectual property rights, this Policy and Procedures establishes procedures for all members of the College community while performing official College tasks.

Procedures are outlined in general terms and may not cover every possible situation. Certain provisions and procedures may not apply to students’ work in the classroom. Contact the Provost/Vice President for Academic Affairs for clarification as needed.

II. Definitions for the Purpose of this Policy and Procedures

- A. **“Intellectual property”** refers to the product of creative or scholarly efforts, whether or not protected by patent, copyright, trademark, trade secret laws, contract, or agreement. Expressions of original ideas, objects, data, applications, and processes are considered to be intellectual property. Expressions could include written material, spoken descriptions, models, sketches, musical scores (including any accompanying words), sculptures, software code and programs (and related manuals and/or documentation), websites or web pages, audiovisual works, architectural works, dramatic works (including any accompanying music), pantomimes and choreographic works, and paintings. Such property includes, but is not limited to, inventions, goods, materials, course material, lab manuals, instruments, equipment, biological organisms, chemical compositions, mask works, computer software, graphics, literary and musical works, and trademarks. The intellectual property may be in tangible or intangible form. Intellectual property in tangible form may be physically distributed. Intellectual property may be protected by one or more of the following: patent, copyright, trade secret, trademark, contract, or agreement.
- B. **“College resources”** refers to College premises, property, personnel, branding, or funding.
- C. **“College premises”** means buildings or grounds owned, leased, operated, controlled, supervised, or temporarily used by the College.
- D. **“College community”** includes trustees, students, and all employees of the College as well as any independent contractors or other third parties to the extent articulated under contractual agreements.
- E. **“Creator”** refers to any member of the College community who is the originator of intellectual property.
- F. **“Incidental use of College resources”** refers to the normal use of office space and facilities generally available to all College employees, such as libraries, computers, equipment, and support staff and does not (1) involve the procurement of special

Intellectual Property Policy and Procedures

supplies, services, equipment, or other support by the College, (2) constitute more than ten percent (10%) of the normal duty time of any administrator or classified employee in any semester, or (3) involve released or reassigned time, or (4) demand more than 20% of the normal work hours of assisting College employees in any semester. Incidental resources that are available to employees generally should not be counted in the assessment of the use of College resources or general funds.

- G. **“Invention”** refers, as broadly defined, to “anything that is new.” However, more specifically, an invention, which may or may not be patentable, is: (1) a new design for a product or device; (2) a new process, sequence, or methodology; or (3) a new use or application of a product, device, process, sequence, or methodology. An invention may also be an improvement of any of these three.
- H. **“Patent”** refers to any work recognized by a national patent office to have been created or invented by the bearer of the patent, alongside the rights and protections granted by ownership of the patent.
- I. **“Student Work”** means work that is prepared by an FCC student.
- J. **“Trademark”** refers to any symbol or combination of symbols which serve to identify the commercial source of items marked by the symbol.
- K. **“Trade Secret”** refers to any information, including, but not limited to, a formula, pattern, compilation, computer software, data, device, method, technique, process, or application that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable, under existing circumstances, to maintain its secrecy.
- L. **“Work for Hire”** is defined in the Copyright Act of 1976, as amended, and refers to copyrightable intellectual property, which is, for the purposes of this Policy and Procedures, deliverable to FCC, (1) prepared by an employee within the scope of his or her employment, or (2) produced as a result of a special order or commission by FCC. Work created pursuant to a research agreement between FCC and an outside party, either a private sector company or a governmental agency, is considered to be within the scope of employment. Lecture notes, articles, books, art and music works and other publications created by faculty members and technology created outside of the classroom and brought into the classroom are not considered within the scope of employment for purposes of this Policy and Procedures unless there is a specific written agreement between FCC and a faculty member, which provides that a deliverable will be considered a work for hire. Course and program descriptions, course justifications, student learning outcomes, course syllabi, and any other curriculum materials submitted by any FCC faculty member or staff member to the College Curriculum Review Committee for approval of a course, degree or certificate program, or other course of study shall be considered work for hire and within the scope of employment of any such faculty member or staff member. The copyright in such curriculum material shall belong to FCC.

Intellectual Property Policy and Procedures

III. Ownership and Rights to Intellectual Property

A. Ownership

1. For intellectual property created with incidental use of College resources or no use of College resources, the Creator retains ownership.
2. As a general rule, the College owns intellectual property created using College resources, unless the College, in its sole discretion, recognizes a specific exception. By way of example only, for intellectual property created using College resources but not at the direction of the College, employees can seek prior approval for Creator ownership. Should such approval be granted by the College, an agreement may be established between the College and the Creator, which maintains the right of the College to use the intellectual property for its educational mission and the development of its employees, and a royalty share may be established between the College and the employee. Other exceptions may be made by the College on a case-by-case basis (e.g., Faculty & Staff Writers Group, Sabbaticals).
3. For intellectual property created at the direction of the College and with College resources, the College will retain ownership and rights to the work, subject to specific written agreements between the College and the Creator to the contrary.
4. The College does not claim ownership for works developed by a member prior to becoming a member of the FCC community and prior to having any access to College resources such as works brought to the College from another place of employment.
5. The College shall own and have all rights to any inventions, discovered, created, or developed by College employees using FCC time, resources, facilities, or equipment, except as otherwise provided in this Policy and Procedures. This right shall include, but not be limited to, inventions that are (a) developed in the course of or pursuant to a sponsored project or other agreement, or (b) developed under a written agreement with FCC and with funds provided by FCC, or (c) developed using FCC time, resources, facilities, or equipment, or (d) offered to FCC by any Creators and accepted by FCC.
6. The College has the right to use Student Work for assessment and other non-commercial purposes without entering into any agreement with the student. An agreement must be established with the student if Student Work is to be used by the College or a College employee for other purposes.

B. Exceptions to Creator Ownership of Intellectual Property

Unless prior approval is established and, unless otherwise stated below, an agreement is entered into between the College and the Creator, the following types of intellectual property are not owned by the Creator:

1. Work for Hire - For purposes of ownership of works for hire, ownership vests in the College, unless there is a specific written agreement regarding the creation of the work and that agreement specifically vests title or ownership in someone other than the College. In the case of non-employee third parties with which the College

Intellectual Property Policy and Procedures

is contracting for services related to creation or development of the work, it is the general policy of the College (subject to exception approved by the President or the designee of the President) to enter into written “works for hire” agreements in which the College will obtain or retain ownership rights in the work as part of the agreement for work or services. Where the College owns the copyright in a work, it may acknowledge Creators (including Creators of works for hire) who have made a substantial creative contribution to the work.

2. Institutional Works - Work produced as a collaborative effort under the supervision and/or direction of the College.

The College generally owns institutional works. Accordingly, software and related documentation, as well as other works created by employees at the direction of the College for administrative support purposes, such as documents for administrative use and computer software created by non-faculty staff employees of the College for use by the College, are generally considered works for hire.

3. Educational Works - Work that is related to curriculum and materials used for the purposes of instruction for FCC students.

Unless otherwise negotiated prior to their creation, educational works created or developed by College employees during their employment with the College are owned by the College and the College has the right to modify, amend, and develop derivative uses for College purposes.

4. Grant Funded and Sponsored Works

When work is created with the support of an external entity through an agreement such as a grant or contract, and when any term or condition of the agreement conflicts or is inconsistent with this Policy and Procedures, then the conflicting or inconsistent term(s) contained in the agreement shall determine ownership of the intellectual property in that work.

5. Non-Credit Adjunct Faculty Works

With respect to non-credit instruction, the College will retain rights to unlimited use of all course titles and descriptions, regardless of the non-credit adjunct faculty’s employment status with the College, unless material is under copyright to another party. Course materials (e.g., syllabi, lesson plans, tests, quizzes) created outside the scope of the non-credit adjunct faculty’s normal responsibilities and produced without the use of College resources remain the sole intellectual property of the non-credit adjunct faculty member. A copy of all course materials will be kept by the Program Manager.

IV. Fair-Use Doctrine

The “Fair Use” doctrine allows educators and students to use copyrighted materials without seeking prior approval to certain types of resources under certain conditions. The fact alone that the intended use is educational does not remove restrictions; the “four fair use factors” which must be considered in total, are:

Intellectual Property Policy and Procedures

1. The purpose and character of the use, including whether the use is of a commercial nature or is for nonprofit educational purposes;
2. The nature of the copyrighted work;
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. The effect of the use upon the potential market for or value of the copyrighted work.

Educators retain some protection from infringement lawsuits because of Section 504(c)(2) of the Copyright Act. This protection is called “the good faith fair use defense” and is based on “a reasonable, good faith determination” by educational employees that their use of copyrighted materials falls under the exceptions for “fair use”: i.e., employees, acting within the scope of their employment, who make a reasonable, good faith decision that their use of copyrighted materials falls under the “Fair Use” doctrine. FCC students as well as employees are expected to act responsibly and legally by applying “Fair Use” principles to the completion of their activities and projects. The College does not assume legal responsibility for violations of applicable copyright law. Student employees are subject to all College policies relating to faculty and staff. For guidance about copyright compliance, consult the Copyright Policy and Procedures.

V. Agreements Related to Ownership of Intellectual Property

As indicated throughout this Policy and Procedures, the College may enter into legal agreements related to the creation and/or ownership of intellectual property. Agreements will be dealt with on a case-by-case basis, with the goal to achieve a fair balance between the rights of Creators who are employees of the College, and the rights of the College related to the intellectual property developed using its resources.

VI. Creative Commons Licensing

FCC encourages the development and dissemination of new knowledge and intellectual property by faculty and staff. A Creative Commons (CC) license enables the Creator(s) of copyrighted work to grant permission to others for access and use of intellectual property. A CC license helps Creators retain copyright while allowing others to copy, distribute, and make certain uses of their work. Copyright owners and Creators are encouraged to add a CC license to appropriate works for the purposes of sharing and dissemination. Given the multiple CC licenses available, copyright owners and Creators should consider the most appropriate license for their particular work, most commonly the CCBY license which permits maximum dissemination and use of material. For guidance about choosing and using a CC license, contact the Copyright Compliance Officer.

Copyright designation for works that are subject to an intellectual property agreement between the Creator and FCC are determined by the agreement. Works and materials created through publicly funded contracts and grants (grantors) may require open licensing, published as an Open Educational Resource (OER), and carry a Creative Commons CCBY license. Grantees may be required to develop learning materials such as

Intellectual Property Policy and Procedures

books, courses, modules, seminars, tutoring systems, and simulations as Open Educational Resources and use industry-leading e-learning open standards and specifications. In accordance with grant agreements, FCC will maintain its copyright over grant and contract-funded materials, in accordance with stipulations concerning dissemination, reuse, and adaptation of those materials under the CCBY license.

VII. Dispute Resolution

Should a dispute about the application of this Policy and Procedures arise between the Creator(s) and the College, resolution is first pursued using the [Complaint Policy and Procedures for Employees](#). Any involved party unsatisfied with the resolution may appeal in writing to the President within ten (10) workdays days of receipt of the decision. Upon request for an appeal, the President shall review the record and render a decision. The President's decision shall be final and there shall be no further appeal within the College.