

Statement on Intellectual Property Ownership

Whereas Simmons University is a community of learning dedicated to teaching, research, and scholarship; and

Whereas Simmons University strongly encourages the creation and dissemination of learned and aesthetic accomplishments, including copyright-protected works; and

Whereas, the evolution of technology, pedagogy, curricular development and higher education practice requires that the University examine the issue of copyright ownership in the academic community; and

Whereas, technology instructional research and new curricula are evolving at too rapid a pace to permit full anticipation and articulation of policy which can be mechanically and unambiguously applied to every situation;

This Statement is intended to articulate both a framework for understanding ownership of intellectual property rights at Simmons, and the principles that shall guide those charged with evaluating ownership issues as they arise.

The framework and principles are:

- First, that the traditional rights of scholars to the fruits of their labors should be respected.
 - Second, that works produced at the University should be used and made available for the greatest possible benefit, both within the Simmons community and beyond it.
 - Third, that U.S. federal copyright law grants copyright ownership of employment-related works to the University.
 - Fourth, that it is reasonable for the University to have greater rights to the use and commercialization of a project when University contributes exceptional resources to the project.
 - Fifth, that the University must protect the use of the Simmons University name.
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I. Scope and Coverage

This Policy applies to the faculty, staff, and students of the University. This Policy is supplemental to the Simmons University Invention and Patent Policy and is subject to any applicable laws and regulations or to specific provisions in grants or contracts that govern rights in copyrighted works created in connection with sponsored research.

II. Creation and Duties of the University Intellectual Property Committee

A. Composition of the Committee

The Committee shall be a standing committee comprising an elected representative from each of the Colleges of the University and an equal number of administrators appointed by the President. Committee members, with staggered appointments, shall serve for two years and may be reappointed for one additional term. The Committee shall select its Chairperson at the start of each fiscal year. The University Counsel shall be ineligible to serve as a member of this Committee.

B. Duties

The Intellectual Property Committee shall meet at least twice each fiscal year and have such responsibilities as the President may specify, including but not limited to the following duties:

- a. Assisting in identifying educational needs of the faculty and others related to compliance with intellectual property law and policies, and advising on appropriate ways to address those needs.
- b. Under procedures specified below, hearing and recommending resolution of disputes involving copyright ownership unless the copyright ownership issue may be referred to the College's Hearing Committee or other appropriate committee under the Faculty Policy Manual because of its relation to other matters in dispute between the parties.
- c. Identifying areas in which policy development is needed and recommending new or revised institutional policies and guidelines.

III. Copyright Ownership

Ownership of copyright in copyrighted works shall depend on the category of the work in question and on the employment status of its author. Categories of work defined under this Policy include:

- Traditional Works
- Traditional Works Involving Minimal University Resources
- Traditional Works Involving Exceptional Use of University Resources
- Directed Works
- Sponsored Research or Externally Contracted Works
- Works Made by Staff Members
- Works by Independent Contractors
- Student Works

IV. Traditional Works

1. Definition: Traditional Works are works resulting from an individual's effort on his or her own personal time without any direct support from or through Simmons and without the use of any Simmons resources beyond those normally provided by the University. [\[1\]](#) Traditional works would include scholarly publishing like books, abstracts, journal articles, art work, and syllabi. Within the context of Faculty responsibilities for teaching and scholarship, the ordinary use of computers, laboratory space, libraries, office space or equipment, and the routine services at routine levels of secretaries, administrative assistants, technicians, and University offices and personnel shall fall under this category. In addition, support from the Faculty Development Fund and/or the Fund for Research, the normal use of Departmental resources, attendance at training courses such as those offered by Academic Technology, mounting of Faculty and course webpages (including WebCT) on the College's server, for the usual conduct of teaching and research, and, unless otherwise noted in sections III.B. and III.C., shall fall under this category.

2. Ownership: The individual owns all intellectual property, may receive compensation for work and retains distribution rights.

B. Works Involving Minimal University Resources

1. Definition: The work results from the individual's efforts as an employee of Simmons University with minimal resources above and beyond those typically provided by Simmons. Minimal resources provided by the University may include instances where the University specifically designates a individual or University office to work with a specific Faculty member on a project so that the help received is above and beyond what would be provided to all Faculty on a regular basis, for example, the use of a paid assistant to help design a web-based course.

2. Ownership: The individual owns the intellectual property and has the right to distribute the work. The University has a non-exclusive license to use the work as part of the University's course delivery.

C. Works Involving Exceptional Use of University Resources

1. Definition: Exceptional use of University resources has occurred where the University has provided support for the creation of the work with resources to a degree or nature not routinely made available to faculty. Exceptional use may include: University funding or gifts in support of the work's creation; and/or reduction in levels of teaching, service or other typical University activities to facilitate creation of the work. Prior to granting exceptional University resources, the University shall notify the author that ownership of the resulting work is defined under III.C *Works Involving Exceptional Use of University Resources of the University's Intellectual Property Policy*.

2. Ownership: Traditional Works Involving Exceptional Use of University Resources shall be owned jointly by the University and the author. The University and the author each has a non-exclusive educational license to use the work, and each has a non-exclusive commercial license to market the work outside of the Simmons community. If licensed for commercial purposes either by the University or by the author, the University and the author shall share equally in the revenue net of expenses.

3. Release to Author: Upon request and through an appropriate written agreement, the University may release or transfer the University rights in a Traditional Work created through exceptional use of University resources to the author.

4. Release Agreement: Any agreement for release or transfer to an author of a Traditional Work Involving Exceptional Use of University resources shall include provisions that:

a. The University shall have a non-exclusive, non-transferable, royalty-free license to use the work for the University's own educational or research use; and

b. If commercialization of the work generates income, the author shall share income from such commercialization with the University in an amount to be determined by the University after consultation with the author.

5. Disputes: Disputes regarding whether a work has been created through use of exceptional University resources shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified below.

D. Directed Works

1. Definition: Directed Works are works that are specifically created or funded at the direction of the University. Funding need not to be substantial to constitute a Directed Work. As soon as practicable, the University shall notify the author that the work is one that the University has identified as a Directed Work. [\[2\]](#)

2. Ownership: The University shall own exclusive copyright in Directed Works. Where practicable in the estimation of the author's Dean, after consultation with the President, the author may be granted a non-exclusive, non-transferable, royalty-free license to the work for the author's own educational or research use.

3. Disputes: Disputes regarding whether a work is a Directed Work shall constitute disputes regarding ownership to be resolved under the dispute resolution procedures specified below.

E. Sponsored or Externally Contracted Works

1. Definition: A Sponsored or Externally Contracted Work shall be any copyrighted work developed using funds supplied under a contract, grant, or other arrangement between the University and a third party, including a sponsored research agreement.

2. Ownership. Where works are developed by an employee in the course of Sponsored research funded by a third-party or outside agency pursuant to an agreement approved by the Simmons University Office for Sponsored Programs, ownership of the copyright shall be determined by the terms of the agreement.

F. Works Created by Staff Employees Considered Works Made for Hire

1. Definition: For purposes of this Policy, a "work made for hire" is a work prepared by a Simmons employee within the scope of his or her employment.

2. Ownership: Works made for hire by Simmons staff shall be owned by the University.

G. Works by Independent Contractors

Works produced for the University by independent contractors or collaborator shall be considered Works Made for Hire and shall be owned by the University. No School, program or department shall enter into an arrangement for work to be produced by an independent contractor or collaborator without a written contract that has been reviewed by the Office of the University Counsel prior to signing and which shall, at a minimum, include a provision that the University shall own copyrighted works produced by the independent contractor or collaborator. A form of contract for an Independent Contract may be obtained from the University Counsel.

H. Student Works

1. Definition: Student Works are papers, computer programs, dissertations, theses, artistic and musical works, and other creative works made by Simmons students in the pursuit of her/his academic coursework while enrolled as a student.

2. Ownership and Use: Students shall own copyright in Student Works except in the following cases:

- a. Copyright to Traditional Works authored by faculty with assistance from a student shall be owned by faculty or the University in accordance with the terms of this policy.
- b. The University shall own a Student Work that is a Sponsored or Externally Contracted Work as set forth in this Policy.
- c. Student Works created in the course of the student's employment by the University shall be considered Works Made for Hire, and the University shall retain ownership and use of such works.
- d. Works created by students for third parties as part of an internship or experiential learning program are not subject to this policy.

IV. Dispute Resolution

A. How to Seek Review

A member of the Simmons community may seek resolution of a dispute regarding ownership or use of a work governed by this Policy by filing a written request with the President. The request for review and resolution shall be submitted to the President promptly, and in no event more than 45 days of learning facts that give rise to the dispute.

The President shall refer such requests to the Chair of the University Intellectual Property Committee who shall, in turn, appoint a panel of six members of the Intellectual Property Committee (three Faculty and three Administrators including the Chair) to hear the dispute. Panel members shall be chosen on a rotating basis. The President may refer an intellectual property dispute to another University committee (like the Hearing Committee) for review and disposition because of its relation to other matters in dispute between the parties.

B. Review Proceedings

In its discretion, the dispute resolution panel may elect to conduct a hearing into the matter or may make a recommendation based upon the written record, provided that all parties to the dispute are given an opportunity to present documentation and arguments in support of their respective positions. Each party shall provide the other party with a copy of any written materials submitted to the panel simultaneously with submission of such materials to the panel. Any hearing will be conducted following procedures set forth by the panel or as shall be promulgated by the Intellectual Property Committee as a whole. No party shall have the right to

be represented by counsel before the panel, but any party may be accompanied at a panel hearing by a member of the Simmons community who may act as an adviser.

C. Disposition

Unless good cause can be shown that a brief extension of time is needed to adjudicate this matter, the panel shall report its findings and conclusions to the President along with a written recommendation for disposition of the matter, within forty-five days of appointment of the panel by the Chair of the Intellectual Property Committee. Copies of such findings and conclusions shall be provided to all parties. With ten business days the President shall issue a written decision in the matter. The President's decision shall be final.

Highlights of FC Response to IP Draft, 12/16/02		
Use of Traditional Resources	Use of Minimal University Resources	Use of Exceptional University Resources
<p>Ownership - Individual retains ownership, may receive compensation, retains rights.</p>	<p>Ownership - Individual retains ownership and has distribution rights; University has non-exclusive license to use.</p>	<p>Ownership - Individual and University own jointly; each has non-exclusive license to use and to market the work, and they share equally in any profits.</p>
<p>Definition - Use of resources traditionally supplied to all faculty for use to satisfy Faculty responsibilities for teaching and scholarship. For example, the ordinary use of:</p> <ul style="list-style-type: none"> • Computers • Laboratory space • Libraries • Office space or equipment • Staff/Administrative Assistant. • Technicians • University offices and personnel • Faculty Development Funds • Fund for Research • In-house course offerings for faculty/staff, i.e., WebCt • College's server to 	<p>Definition - Use of resources above and beyond those typically provided to all faculty.</p> <p>For example, the Dean makes a specific arrangement with an individual faculty member to design an on-line course. The faculty member is paid \$2,000 and a portion of a staff assistant's time is charged to this project.</p>	<p>Definition - Use of substantial resources above and beyond those typically provided to all faculty.</p> <p>For example, the Dean makes a specific arrangement with an individual faculty member to design an on-line course. The faculty member gets 1/3 released time for the year to work on the project. (Assuming a \$60K salary and benefits, this costs the University approximately \$25K.)</p>

mount course and individual webpages		
Notification - None	Notification - No automatic notification, but a faculty member may request notification.	Notification - In writing, prior to the granting of resources.

[1] If the University pays a Staff Assistant or other individual to work specifically with an individual Faculty member on the development of a work, for example a webpage or web-based course, the work falls under category III.B or III.C, depending on the scope of the help given.

[2] Example: As part of a salaried position a faculty member or other employee of the University is directed to coordinate creation of a multi-authored course based on the work of several Simmons faculty; or Simmons commissions someone to write a history of Simmons University and pays \$15,000 for the 50 page manuscript.