

CHAMPLAIN COLLEGE  
INTELLECTUAL PROPERTY POLICY

Preamble. Evolving policy, legislation and case law have, over the years, caused uncertainty in the area of the ownership of intellectual property in college and university settings. In addition, the interest in emerging technologies, electronic learning and college partnerships with, and sponsorships from, the private business sector have highlighted the need for Champlain College to update and clarify its policies regarding the ownership and use of intellectual property.

Champlain College recognizes the long standing academic freedom exception to college ownership of traditional faculty produced academic materials. The College adopts this policy to clarify the extent of the preservation of this exception and in the spirit of fairness between the faculty and the College in a new and changing academic environment.

Scope of Policy. Acceptance of this policy is a condition of employment, continued employment, employment renewal or student enrollment at Champlain College. This policy applies to faculty, staff and other College employees, and students of the College. As this policy is designed to clarify and publish current College practices regarding intellectual property, this policy shall also apply to all current faculty, staff and other College employees, and students. Faculty shall include all faculty, adjuncts, visiting professors and faculty hired to teach a specific course, including summer and evening sessions and distance learning. Staff and other employees shall include all other persons employed by the College who are not faculty. Students who are also employed by the College shall be considered other employees for purposes of this policy. Students shall include all full or part-time graduate or undergraduate students, regardless of whether the student receives financial aid from the College. The terms of this policy shall survive the termination of employment of any employee of Champlain College, and the termination or graduation of any student of the College.

Copyright. By way of background, U.S. copyright law generally provides that initial ownership of copyright vests with the author of the work. The “Work for Hire” doctrine codified in the federal Copyright Act provides that in the case of works prepared by employees within the scope of the employee’s employment, the employer is presumed the author of the work and owns all rights in the copyright unless the parties have agreed otherwise in writing. There is no exception under this Work for Hire doctrine for faculty produced academic course materials and scholarly articles. Champlain College wishes to retain the long standing common law tradition of the “academic exception” to the Work for Hire doctrine for traditional works as set forth below.

A. Traditional Works. Except as otherwise stated in this Intellectual Property Policy, Champlain College adopts as policy the long standing tradition that faculty and students own

the copyright to their pedagogical, scholarly, or creative works, and recognizes this policy as an exception to the Work for Hire doctrine. This exception applies to traditional literary works developed from scholarly activities such as books, articles, plays and poetry, and also includes syllabi, lecture notes, tests, online tutorials, and other pedagogical works, regardless of medium, and regardless of whether this information is posted on the Champlain College web site,, and even though these works may have been created within a faculty member's scope of employment. To the extent that copyright ownership in these Traditional Works does not automatically vest with the individual faculty member/author of the work, Champlain College hereby transfers and assigns to such faculty member/author all rights, title and interest in the work.

B. Non-Traditional Works and Exceptions. All other works, including but not limited to, materials created for "Master Classes," "Master Modules," online courseware for distance learning classes, and works which the College declares itself as the internal sponsor of the work, shall not be considered Traditional Works within the academic exception. These works are generally created jointly with the College, and/or with significant investment by the College. They shall be considered Works for Hire regardless of the amount of College resources actually expended, and Champlain College shall therefore be the author of copyrightable works falling under this category and shall own the copyright in these materials and all of the rights appurtenant to such ownership. A non-exclusive, perpetual, royalty free license is hereby granted to faculty members who create syllabi, lecture notes, tests and other similar Traditional Works used as content delivered under or within the framework of the Master Classes, Master Modules, and/or distance learning programs, allowing the faculty member to use such materials, update and alter them, and make derivative works from them, in their scholarly endeavors at Champlain College or elsewhere.

Programs financed by government grants or governed by contracts with outside parties or sponsors often require the College to agree to certain provisions governing copyright ownership. Some programs require that the copyrights and other intellectual property generated under the funded or sponsored project be donated to the public domain, licensed without conditions or otherwise handled in the interest of the public good. In any event, the College must have full authority to negotiate, enter into and deliver such contracts, including provisions governing copyright ownership. As such, it is the policy of Champlain College that the College shall own the copyright, and retain an irrevocable right to assign the copyright, to all works created pursuant to or otherwise arising under programs or projects financed by government grants or governed by contracts with outside parties or sponsors and the College faculty, staff, other employees and students whose activities are covered by such agreement, in the sole determination of the College, shall do all things necessary to enable the College to fulfill its contractual obligations. In this instance, the College shall notify each dean or project director of the obligations with respect to copyright relating to his or her particular activities, however the failure of the College to so notify shall not relieve the faculty, staff, other employees or students of their obligations in this regard. It is the intention of Champlain College to attain from government or other third party sponsors the right of student or faculty attribution for such works. In the case of web sites created by faculty and students for third

parties, it is generally the intention of Champlain College to transfer ownership of the copyright in the web site and the materials contained therein to the third party while retaining the right of attribution in the faculty, students and the College.

C. Computer Software. Copyright in computer software (which term shall include user manuals and other accompanying explanatory materials and related computerized databases) created by an individual member of the faculty or a student for their scholarly activities will generally reside with the author under the academic exception mentioned above. However, copyright in computer software created by faculty, staff, other employees or students shall reside with the College in the following circumstances:

- (i) When the computer software has been developed for use by the College; or pursuant to an agreement between the College and an outside party or sponsor in which case copyright ownership shall be governed in accordance with the terms of the agreement;
- (ii) When development has been a joint or team effort such that the identity of the project resides with the College and not with particular individuals;
- (iii) When there has been substantial or special use of College resources, or resources specifically earmarked for the computer software development, or the assistance of College personnel including students; and
- (iv) When Champlain College declares prior to the creation of the computer software that it is the internal sponsor of the work because the identity of the project is expected to reside with the College, or substantial College resources are expected to be used or are earmarked for the project, or the ownership of the copyright in the computer software is otherwise in the best interests of the College or in furtherance of the College's mission.

Champlain College shall determine in its sole discretion whether a work falls under subparagraphs (i)-(iv) above, with the understanding that the use of College resources or personnel commonly available to all faculty, staff, other employees and students, such as libraries, offices, staff or secretarial support, and office equipment shall not constitute substantial or special use of College resources. Such determinations shall be binding upon all persons covered by this policy.

Faculty who intend to create computer software should reach agreement with the College's Senior Vice President for Finance & Administration in writing on copyright ownership prior to the creation of the software.

When copyright in computer software resides with the College, the College may choose to assign the copyright to the faculty member or student involved in the creation and the College, as a condition of such assignment, may retain rights in the copyright, including the right to receive royalty or other income payments. If no assignment occurs, the faculty or students involved in the creation of the computer software (as reasonably determined by the College)

are hereby granted a non-exclusive, perpetual, non-transferable, royalty free license to use the software for scholarly purposes at Champlain College or elsewhere.

Patents. The owner of the copyright to a work pursuant to this policy shall have the exclusive right to apply for, pursue, register and own one or more patents on or related to such work, including computer software that is also patentable. All faculty, staff, other employees and students agree to execute such documents or render such assistance, and take such other actions as the College may reasonably request, at the College's expense, to apply for, register, perfect, confirm or protect the College's right to pursue this intellectual property; and the College similarly agrees to execute such documents or render such assistance, and take such other actions as the individual faculty member, staff, or student may reasonably request, at such individual's expense, to apply for, register, perfect, confirm or protect such individual's right to pursue this intellectual property.

Use of Consultants and Independent Contractors. Under copyright law, copyright ownership of works created by outside consultants and independent contractors generally resides with the outside consultant or contractor, and not with the College or the person hiring the outside party. As such, College personnel hiring outside consultants and independent contractors (keeping in mind that in many instances students may also be considered independent contractors) shall observe the precaution of using a written agreement including the assignment of copyright and other intellectual property rights to the College. Assistance in drafting this agreement, or in obtaining a form agreement, is available from the Office of Finance & Administration

Prosecution of Infringements. The copyright owner shall have the right to prosecute infringements. In the event that the College is not the owner, the owner fails to prosecute an infringement upon the demand of the College, and the College is receiving income from the copyright or shall otherwise benefit from prosecution, the College shall have the right to prosecute the infringement and receive any resulting awards or settlements.

Use of Copyrighted Material by Faculty, Staff and Other College Employees, and Students of the College. Champlain College, as an educational institution that is both a consumer and producer of information, supports the College community's responsible and good faith exercise of fair use of copyrighted materials in pursuit of the College's educational mission. The College is committed to complying with laws protecting the rights of copyright holders, while recognizing that those rights are limited by fair use and other provisions of copyright law. The College provides information and resources to educate members of the College community about copyright law, the rights of copyright holders and the exercise of fair use. The faculty, staff and other College employees, the students of the College, and all members of the College community have an obligation to make informed and responsible decisions regarding their use of copyrighted materials and are obligated to comply with copyright law.

Effective Date and Amendment. This policy shall be effective as of July 1, 2010 and replaces the policy dated July 1, 2008. It may be reviewed periodically by the College and revised in the College's discretion.

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Created: 2/15/07  
Revised: 3/28/13

