WESTMINSTER COLLEGE
Intellectual Property Policy

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<th>POLICY TITLE</th>
<th>Intellectual Property Policy</th>
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<td>No. 130</td>
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<td>Effective Date</td>
<td>January 27, 2020</td>
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1. STATEMENT OF POLICY

Creating and disseminating knowledge is Westminster College's fundamental mission. The purpose of this policy is to clarify the respective ownership and use rights faculty, staff, and students have in intellectual property and to outline the use rights individuals have during the course of affiliation with Westminster College.

2. TO WHOM THIS POLICY APPLIES

This policy applies to faculty, staff, and students of Westminster College.

3. DEFINITIONS

A. Copyright Ownership Contract: An agreement between the College and the employee defining ownership of a specific copyright protected work. This agreement will outline ownership as well as revenue matters. Any Copyright Ownership Contract must be reviewed and approved by the College's General Counsel and the VP of Finance.

B. Copyright Protected Work: A work that is a product of original creation that is fixed in a tangible medium or form of expression-this does not include protection for the idea(s) that the expression itself embodies. Copyright is an automatic right, which applies when the work is fixed-written or recorded in some way. The types of material subject to copyright protection include, but are not limited to, the following:
   (1) Literary works such as periodicals, books, advertising copy or any other work that can be expressed in numbers or words
   (2) Musical and dramatic works (including the words therein), pantomimes, and
   (3) choreographic works
   (4) Pictorial, sculpture, graphic, photographic, architectural, audiovisual or motion picture work
   (5) Electronic course material, including software use in on-line courses
   (6) Core elements of curriculum
   (7) Computer programs and databases
   (8) All other Works of Authorship, as defined in Title 17 U.S.C.A.§107, which are fixed in a tangible medium of expression.
C. Fair Use: Fair use is a limitation and exception to the exclusive right granted by copyright law to the author of a creative work. An individual is responsible to ensure copyrighted material (that is to be used for school purposes) properly falls under the "fair use" doctrine. Examples of fair use, according to the Copyright Act of 1976, is use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholar ship, or research, is not an infringement of copyright." (17 U.S.C.A.§107). Section 107 provides the following factors be considered in determining whether the use made of a work in any particular case is a fair use:

1. the purpose and character of the use, including whether such 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.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

D. Independent Effort: Creative or technical works created by College faculty and staff outside the scope of their College employment where the choice, content, and direction of the effort is determined by the employee without direct assignment or supervision by the College provided only nominal use of college resources is made. Works created by independent effort are not covered by this IP policy and the College will not assert ownership over such works. The creator of the work may grant use rights to the College.

E. Intellectual Property: Intellectual Property is divided into two categories, technical works and creative works.

1. "Technical Works" include intellectual properties that are generally of a scientific, engineering, or technical nature--such as patentable or un-patentable inventions, devices, machines, processes, methods, and compositions; computer software; and College collections.
2. "Creative Works" include all intellectual properties not covered in
Technical Works that are of an artistic, scholarly instructional, assessment, or entertainment nature. Examples of creative works might include creative productions, such as works of art or design; musical scores; books, poems, and other types of scholarly or creative writings; films; video and audio recordings; and instructional materials, such as text books and multimedia programs. All computer software is included in Technical Works, with the exception of that which is clearly developed for entertainment or for instructional purposes, e.g., electronic textbooks and textbook supplements, classroom and self-study tutorials.

Creative Works do not include those productions of drama, music, athletics, and similar events that are managed by appropriate academic departments. Traditional academic publications that are produced as a normal outcome of scholarly work and have only minor commercial possibilities are not subject to this IP policy, except under specific and unusual circumstances. Examples of these publications would include professional papers published in scholarly journals, monographs of an academic nature, scholarly books of limited use, or supplementary texts, exhibited and published artistic creations or performances that are academic and non-commercial.

F. Nominal Use of College Resources: Nominal use of College resources is use that is within the required activity of one’s appointment at Westminster College. Personnel may make such nominal use of College resources and devote office time in carrying out a range of professional activities, some of which may involve income-generating projects. The College relinquishes (to the developers) ownership of Creative Works and its rights to any income generated as long as College resources are used in this nominal fashion, and the time involvement of the developer(s) of the project does not compromise their core responsibilities in teaching, scholarly work, and College citizenship. The following examples generally define such use:

(1) Minimal use of time and energy by the developer(s) in the creation or promotion of the Creative Work, while maintaining assigned levels of teaching, scholarship, and citizenship activities, so that anticipated performance in these areas is at the expected level.

(2) Student employees or technicians may not be used to do income-producing work or make up the slack in a faculty member's assignment so he or she can do income-producing work.
(3) Developers may not receive additional released time to develop a work, other than that assigned to normal faculty scholarship.

(4) Minimal use of College resources in the ordinary support of the developer's teaching, scholarly activities, and service activities.

(5) Use of photocopies, long distance telephone costs, postage, faxes, etc., specifically for a creative work may not exceed incidental use.

(6) Office supplies or software may not be purchased by the College or through a department account specifically for a creative work outside the scope of one's appointment at Westminster College.

(7) Secretarial help, such as typing manuscripts, may not be used to produce commercial products. Incidental help, such as formatting tables, is allowed.

(8) Course or instructional materials may not be generated with the use of support units financed by the College. Courses or instructional materials generated in the normal course of teaching, without such support, are allowed.

(9) Funding from outside grants is not considered to be nominal use of college resources.

G. **Scope of Employment:** The combination of tasks, activities, functions, projects, or other work for which the employee or faculty was hired, whether or not that task, activity, function, project or other work is specifically listed on the employee's job description or employment contract (for faculty).

H. **Substantial Use of College Resources:** Substantial use of College resources in generating Creative Works, as defined in this policy, is defined as use of College facilities, equipment, personnel and one's time in excess of that needed to fulfill the required activity of one's appointment at Westminster College. Substantial use of resources results when the creation of the work requires use of College resources beyond those allocated to the faculty in support of their academic work within their respective department or individual school. Such usage may occur as a result of actions of the College personnel involved or may occur when specific assignments are given to College personnel, or where contracts or other obligations are involved.

The following examples generally define such substantial use when they are applied, singly or in combination. While it is the responsibility of the dean or equivalent supervisor to evaluate situations and determine that substantial use of resources has occurred, faculty members or other employees have an obligation to notify their
supervisor and dean when they believe that their work involves more than nominal use. The following are examples of criteria for establishment of substantial use:

1. Extended use of time and energy by the developer(s) in the creation or promotion of the work that results in a reduction in the levels of teaching, scholarship, or citizenship activities, so that anticipated performance in these areas is at a level significantly less than normal;

2. Substantial use of College facilities such as laboratories, studios, equipment, production facilities, or specialized computing resources;

3. College funding commissioning a work's creation;

4. Release time to develop or complete work directly related to core or fundamental elements of curriculum, used in or developed for, curriculum currently or historically offered at the College, including paid sabbaticals granted for the particular purpose of developing or updating course materials;

5. Paid professional development leave to develop or complete a specific work for the College;

6. Direct assignment or commission from the College to undertake a creative project as a part of the developer's regular appointment;

7. Substantial use of funding from gifts to the College to support creation of the works involved, including grants;

8. Production of the work under specific terms of a sponsored research grant or contract;

9. Substantial subvention by the College of the publication of a scholarly book or creative work;

10. Use of specifically designated College funds or extensive use of the services of a support unit financed by the College for production of a Creative Work.

I. Use Rights: As related to the faculty, staff, and students of the College, use rights means the perpetual and irrevocable non-exclusive and royalty free rights to make defined uses of a copyright protected work. There must be appropriate attribution when the specified party does not hold the intellectual property right to the work being used.

J. Work: Material that can be protected under copyright law or any other statute in place now or enacted in the future that governs the protection of intellectual property
and is based on principles similar to the principles governing copyright.

K. **Works for Hire**: Works created by College faculty and staff within the scope of their College employment. The College is the owner and controller of all legal rights with regards to work for hire. Any such work assigned to staff artists, programmers, video camera operators, or communications personnel as part of their regular duties belongs to the College. Students paid or given specific academic credit by the College for videotaping or blogging cede their intellectual property rights to such materials to the College. Work created as foundational elements of curricula, including but not limited to, a syllabus, course content, learning outcomes, test questions and keys, and reading lists, are considered works for hire, as they are created within a faculty and staff member's scope of employment. For these works, the creator is granted a retained limited license to incorporate his or her work into portfolios or other promotional materials to advertise or promote the creator's work. The terms of such limited license do not permit commercial use or commercial reproduction of the work.

4. **APPLICABLE PROCEDURES UNDER THIS POLICY**

A. **Employee Ownership**. The College will not assert an ownership interest in the copyright of scholarly work or the products of independent effort related to the author's academic or professional field, regardless of the medium of expression. The original creator of the work retains ownership rights to the copyright of such work, unless:

   (1) The work is made for hire;
   (2) The work is commissioned by the College as a work for hire under a signed copyright ownership agreement;
   (3) The work is considered a core element of curriculum;
   (4) The work is commissioned by a third party, through an agreement with the College, where the ownership of the work is governed by a contract (this includes grant and award funded projects).
   (5) The work is created using substantial use of College resources.

B. **College Ownership**. The College retains sole ownership of all work created as core elements of curriculum used in, or specifically developed for, curriculum currently or historically taught at the College. Further, the College reserves the right to assign, at its sole discretion, any ownership rights it has to copyright protected works. The College also retains the right to use material developed by employees for use in
College programs and courses, unless there is a Copyright Ownership Agreement signed and properly executed prior to the development of the copyright protected works.

C. **Student Rights.** Unless a specific written agreement between the College and the student or a third party defines a specific ownership agreement, the student holds the ownership rights to individual copyright protected works created for academic credit, including contents of e-portfolios and creative works (as defined in this agreement) created as part of their educational experience at the College. This does not include work created by a student within the scope of employment at the College. Work created by the student within the scope of employment are considered Works Made for Hire and ownership and all other legal rights in the copyright protected work are owned by the College.

D. **Repayment of College Support Funds.** In certain situations of substantial use of College funds and other resources, it may be more appropriate for the developer(s) to repay such funds to the College and thus fall under the nominal rather than substantial use provisions of this policy. The dean and the Provost, in consultation with the developer(s) and the College President's office, will determine the appropriate level of repayment.

E. **Respect for the Intellectual Property of Others.** All members of the College community shall be individually responsible for the proper and fair use of the intellectual property of others. It is incumbent on the individual to know and to apply sound scholarly principles in crediting others for their ideas in the spirit of the Westminster College Manual for Faculty. The individual is likewise responsible for the fair use of copyrighted materials. Pirating or other unauthorized use of such materials is strictly prohibited. Failure to abide by the principles of properly credited and fair use of such materials subjects a member of the community to possible sanction under disciplinary policies in place elsewhere within the College. Each employee is responsible to ensure copyrighted material that is to be used for school purposes properly falls under the fair use doctrine, as outlined in this policy.

F. **Responsibility for Disclosure of Patentable Intellectual Property.** College personnel who alone or in association with other entities create or intend to create patentable subject matter with any use of College resources must disclose the matter and obtain prior authorization from the Office of the Provost (or designee). Such disclosure shall be made when it can be reasonably concluded that a patentable subject matter has been or will be
created, and sufficiently in advance of any publications, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator and the College. Creators are encouraged to seek the advice of the Provost (or designee) in determining whether the subject matter is patentable or whether the College desires to pursue patenting the matter.

G. Determination of Rights to Patentable Subject Matter. Except as set forth below, the creator of patentable intellectual property shall retain their rights, and the College shall not assert ownership rights. The College will assert ownership rights to patentable intellectual property developed under any of the following circumstances:

1. The development was funded by an externally sponsored research program or by any agreement, which allocates rights to the College;
2. The development required significant use of College resources (e.g. facilities, equipment, funding) or more than minimal use of College personnel. Participation of students directly in the development, or indirectly through use and feedback that substantively influences development, constitutes significant use of College resources;
3. The creator was assigned, directed, or specifically funded by the College to develop the material; or
4. The material was developed by administrators or staff in the course of employment duties and constitutes work for hire under US law.

H. Westminster College Name, Seal, or Logos. Faculty, staff, and students may use Westminster College's name, seal, logos, or other marks to identify themselves and the institution in the course of official College business, in accordance with standards described in the College's visual identity guidelines (available from the Office of Marketing and Communications). For personal purposes, no seal or logo may be used. Personal use of the College name must be restricted only to purposes of identification: e.g., "Jane Doe, Professor of Physics, Westminster College," or "John Doe, Class of '83, Westminster College." No use of College identifiers that might imply College endorsement or responsibility for events or activities shall be allowed except by the express, written consent of the President. Any and all use of the College name, seal, logos, or other marks for commercial purposes is prohibited unless approved contractually by the Vice President for Finance and Administration or specifically authorized in writing by the President.
5. DISPUTE RESOLUTION

A. The Provost and the General Counsel will resolve any intellectual property and use rights for any Works not clearly governed by this Policy on a case-by-case basis.

B. Any dispute involving the developer(s), a department, a College, or Intellectual Property Services that cannot be settled through informal discussions or mediation shall be submitted to the Provost's Office. The Provost then will appoint a subcommittee to investigate the dispute. The subcommittee will make a recommendation for resolution. Members of this subcommittee will include faculty, administration, and/or staff members. This recommendation will be delivered to the President's office within five (5) working days from the meeting of the subcommittee. The President will make a final determination, after consultation with the College's General Counsel. The President will deliver the final determination, in writing, within ten (10) days of receiving the subcommittee's recommendation. The President's decision is final.

6. HISTORY

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<th>Date of Last Action</th>
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<tr>
<td>January 27, 2020</td>
<td>Non-Substantive Changes to Intellectual Property Policy Approved</td>
<td>Policy Governance Committee</td>
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<tr>
<td>March 13, 2019</td>
<td>Intellectual Property Policy Approved</td>
<td>Policy Governance Committee</td>
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<tr>
<td>February 13, 2019</td>
<td>Intellectual Property Policy Rescinded</td>
<td>Board of Trustees</td>
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<tr>
<td>May 30, 2014</td>
<td>Intellectual Property Policy Approved</td>
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<tr>
<td>May 9, 2014</td>
<td>Intellectual Property Policy Approved</td>
<td>Faculty Senate</td>
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7. SIGNATURE, TITLE, AND DATE OF APPROVAL

Approved: /s/_________________________________________
Bethami A. Dobkin, President