Intellectual Property Policy

This policy describes the rights and responsibilities of the College, employees and students with regard to intellectual property and patents generated at Augustana College. The College seeks to provide an environment where faculty, staff, and students are encouraged to explore, discover, create, and to share these contributions with the wider world. The intent of this policy is to recognize the contributions of the College in providing an environment supportive of innovation and discovery, and of the creativity and unique talents of individual community members, in producing valuable intellectual property.

I. COPYRIGHT OWNERSHIP

A. Sole Ownership

Copyright is the ownership and control of the intellectual property in original works of authorship, which are subject to United States copyright law (U.S. Code Title 17). When any College employee (faculty or staff) or student is the creator of a copyrightable work, all rights in copyright shall remain with the creator except in the following circumstances:

1. The work is a work-for-hire by the College. A work-for-hire is defined as a work prepared by an employee within the scope of his or her employment. The College shall own all rights in a work-for-hire unless the Sr. Vice President for Academic Affairs has relinquished them in writing.

   Traditional Works of Scholarship and Instructional Works (both as defined in the appendix to this document) shall not be included in this category. Typically, a faculty member's work (inclusive of Traditional Works of Scholarship and Instructional Works) belongs to the faculty member and does not fit the work for hire description.

2. The work has been developed in the course of a project sponsored or commissioned by the College. For the purposes of this policy, a “sponsored” or “commissioned” project undertaken by a College employee (faculty or staff) or student shall be considered to be any project for which the College has provided Exceptional Support (defined in the appendix). Student
coursework called for by course syllabi or degree requirements shall not be considered “commissioned” or “sponsored” work.

3. The work has been developed in the course of or pursuant to an agreement between the College and a third party. The terms of the applicable third party agreement shall govern the disposition of rights in copyright. Externally funded projects (for which the College receives funding from external sources) fall under this category.

4. The work is covered by other terms specified in a written agreement between the creator and the College. When the work has been developed with monetary support from the College, but is not covered by points 1, 2, and 3 above, the College may require a written agreement specifying the disposition of rights in copyright.

For all copyrightable works covered in Sections I.A.1-I.A.4 above, any College employee (faculty or staff) or student who is the creator of the work in question may not enter into any agreement with a third party that would assign rights to the third party which are held by the College by virtue of this policy.

B. Individual-Institutional Shared Ownership

Rights in copyrightable works may be owned in part by the College and in part by one or more employee (faculty or staff) or student. The provisions of this section apply only to the joint ownership of works between one or more employee (faculty or staff) or student and the College. This section does not apply to joint ownership of copyrightable works between individual members of the College community or between individual members of the College community and external third parties.

Joint Ownership. Joint ownership and shared rights must be contractually agreed to before completion of the work. Occasions where joint ownership may be appropriate include, but are not limited to, instances where the College has provided Exceptional Support but wishes
to grant shared ownership to the faculty, staff or student creator(s) of the work. Such exceptions shall be noted in the contract completed prior to the creative process.

**Royalties/Profits.**

Division of royalties or other profits from the work must also be specified in the same contract. If no contract exists, division of royalties or other profits will be decided by an appeals committee as described in Section III. This committee will make a recommendation to the President on how to divide royalties and proceeds. The decision of the President, which is to be explained in writing, will be final.

**C. Use of Student Work**

As noted in Section I.A above, students own the copyright in works that they create during the course of their enrollment at the College, with the exception of works addressed in I.A.1-I.A.4. Faculty or staff who wish to reproduce, distribute or otherwise re-use works in which a student holds the copyright must obtain permission from the student copyright owner(s) prior to such use. This shall not be interpreted as limiting in any way the use of copyrighted works by employees (faculty and staff) of the College as allowed by Sections 107, 108 and 110 (Title 17 U.S.C.).

**D. Assignment of Rights to the College**

Individuals may wish to assign copyright to the College where that right would normally reside with the individual. The term ‘assignment’ formally means the transfer of copyright ownership and attendant rights. College employees (faculty or staff) or students may elect to assign this right for the purposes of facilitating commercial development of a work. In this case, the College accepts the responsibilities and rewards associated with this asset. Rights may be assigned wholly or in part. When assigned, the College assumes no extra liability or obligation incurred during the development or ongoing process except that which it
specifically acknowledges.

**E. Release of Copyright by the College**

The College may decide to release its interest in ownership rights to the creator of any intellectual property if this will be an advantage to all parties concerned. This may happen, for example, to support and encourage an individual faculty member to retain a relationship with the College. This relationship shall be sanctioned and approved through a written agreement with the President’s office.

**II. PATENTS**

The patent policy of the College establishes guidelines for inventions, improvements, and discoveries resulting from the work of College faculty, administrators, staff, students, research assistants, research associates, visiting scholars, and anyone employed by the College. This policy applies to all inventions, improvements and discoveries, whether patentable or not, which are conceived or reduced to practice through research and development supported by College-owned or administered funds, equipment, facilities, materials, or services. The policy covers three different categories of inventions:

1. Discoveries or inventions that are subject to the terms of sponsored projects or other agreements between the College and a third party. These inventions shall be disposed of in accordance with the terms of the applicable agreement. Most agreements will provide that the College will own the inventions and will grant certain license rights to the sponsor.

2. Discoveries or inventions that involve the use of funds, materials, or facilities administered by the College but that do not involve College obligations to a third party. These inventions shall be the property of the College.

3. Discoveries or inventions that do not involve either College obligations to a third party or the use of funds, materials, or facilities administered by the College. These inventions shall be the property of the inventor.

Any discovery or invention covered under this policy must be disclosed promptly to the Academic Dean by means of the Invention Disclosure Form that is available from the
Academic Dean's office. After this form is submitted, the College will make an evaluation in order to decide whether to apply for a patent. This decision is made by the President, in consultation with the Academic Dean (Sr. Vice President for Academic Affairs). The College will notify the inventor in writing in a timely manner of its final decision. If it fails to do so within 90 days of receiving a properly executed disclosure, or if it decides not to pursue a patent application, the invention will become the property of the inventor subject to the rights of any outside sponsor, if applicable.

**Royalties/Proceeds from Patents**

In order to recognize the intellectual and creative contributions of the inventor, when inventions are the property of the College, the College will share the proceeds from patents with the inventor. The inventor or inventors will receive a net royalty to be distributed as follows: 50% of the net royalties will be distributed to the inventor(s) and 50% will be retained by the College. Net royalties are defined as the total proceeds the College receives from marketing and selling the invention less expenses incurred by the College, including patent and/or litigation costs, consulting and professional fees, commissions paid to others, travel expenses, telephone and reproduction costs, and any other identifiable expenses. The College's share will be divided as follows: 50% will go to a restricted account to be used by the Academic Dean to support faculty and student research and scholarly activities (up to $250,000 annually), and 50% will be unrestricted for budget needs of the College.

In the event that two or more creators who are entitled to share royalty income cannot agree in writing on an appropriate sharing arrangement, the decision shall be referred to an appeals committee as described in Section III. This committee will make a recommendation to the President on how to divide royalties and proceeds. The decision of the President, which is to be explained in writing, will be final.

**III. APPEALS**

Inventors wishing to request an exception to this policy or to challenge a patent decision by the College, except in the case of royalties/profits, may submit a written appeal to the President. The appeal will be passed to an appeals committee comprised of the three Division Chairs, the Vice President for Finance, and the Vice President for Human
Resources. The appeals committee will prepare a report of its findings and make a recommendation to the President. The decision of the President, which is to be explained in writing, will be final.

**APPENDIX: DEFINITIONS**

Traditional Works of Scholarship: The term “Traditional Works of Scholarship” refers to any copyrightable work, regardless of its form, other than patentable intellectual property, which is created by College faculty, staff or students, and which has not been the subject of Exceptional Support. Examples of Traditional Works of Scholarship include scholarly publications, journal articles, research bulletins, monographs, books, play scripts, theatrical productions, poems, works of music and art, and non-patentable software.

Instructional Works: The term “Instructional Works” refers to any copyrightable work that is authored by an identifiable College faculty member or instructor primarily for the instruction of students in a traditional, online or hybrid course of instruction. Such works include, but are not limited to, course syllabi, lecture notes, lecture slides, visual or multimedia aids, websites, or other works integral to the pedagogical purpose of a specific College course.

Exceptional Support: The term “Exceptional Support” refers to financial or other support for research and teaching activities beyond that which the student or employee should reasonably presume to receive in the course of employment or degree completion. No support may be deemed Exceptional Support in the absence of a written agreement between the College and the creators that specifies ownership of copyright in all resulting works and the allocation of associated rights.

I. Exceptional Support does not include:

(a) sabbatical funding;
(b) the award of competitive internal research or teaching grants and fellowships;
(c) ordinary library services;
(d) clerical or administrative support;
(e) office or laboratory supplies and equipment;
(f) funding for endowed chairs; or
(g) ordinary use of College computers, servers and software platforms.
II. Specifically related to ‘online instruction’ (defined as instruction that is distributed to students through the Internet), Exceptional Support does not include:
(a) ordinary use of College servers and software platforms;
(b) basic instruction in web composing;
(c) basic orientation to the operation of online instructional techniques and processes;
(d) occasional technical troubleshooting assistance; and
(e) consultation with relevant College offices with respect to the creator’s rights under this Policy.

This policy incorporates feedback from the faculty and the members of President's Council, And was approved by the Board of Trustees on December 1, 2012. (01-18-2013)