

Intellectual Property Policy

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1. Policy Mission

The mission of this policy is to promote academic, creative, and applied excellence and enterprise, at the School of the Art Institute of Chicago (the “School”), by clearly defining the terms and conditions under which such work takes place. Core values at the School have strong emphasis on innovation and artistic freedom for students, faculty, and staff. The goal of this policy is to preserve and continue to grow our current practices, while supporting them in a fair and consistent manner across all disciplines and at every level of the School.

2. Policy Overview

The policy governs the intellectual property rights of faculty, students, staff, and the School in the work product created at or in connection with the School. This policy does so by delineating those works into categories and providing general default rules for ownership, usage rights, and appropriate profit sharing procedures. This policy also provides a set of conditions under which those default rules, as stipulated in the policy, may be changed, by agreement of the relevant parties – the creator(s), project sponsors, and School. The policy provides a set of procedures for its implementation and interpretation.

3. Goals and Principles

This policy reflects the following goals:

- To create an environment that encourages the creativity of faculty, staff, and students.
- To acknowledge and clarify the rights of faculty, staff, and students in their creations.
- To promote and facilitate the generation and dissemination of new ideas, art work, inventions, and writings to the public.
- To motivate the development and dissemination of intellectual property by providing appropriate financial rewards to creators and the School.
- To provide opportunities to contribute certain intellectual property to the public.

The policy is based upon the following principles:

- Individual creators have traditionally retained ownership of intellectual property rights in works of art and academic writings they create.
- The School provides resources to the entire campus community, and is therefore entitled to share in financial rewards from intellectual property created with such resources in certain circumstances.
- All parties should have incentives to pursue financial rewards together, consistent with the expressed goals of the policy. The distribution of these rewards should reflect, insofar

as possible, the creative contributions of the creator, and the resources contributed and risks assumed by both the creator and the School.

- Since it is frequently difficult to meaningfully assess risks, resources and potential rewards, negotiated agreements are to be encouraged whenever possible.

4. Definitions

Certain terms are used in this document with specific meanings as defined in this section. These definitions do not necessarily conform to customary usage.

Academic and Artistic Works means personal art works, books (including textbooks), educational courseware, syllabi, lesson plans, articles, non-fiction, novels, poems, musical works, dramatic works including any accompanying music, pantomimes and choreographic works, architectural drawings, design artifacts, pictorial, graphic and sculptural works, software, motion pictures and other similar audio-visual works, and sound recordings.

Creator means any person who creates an item of Intellectual Property.

Faculty means all full-time, part-time, and visiting faculty and instructors employed by the School of the Art Institute of Chicago.

Intellectual Property means property rights resulting from intellectual efforts, including without limitation works of art, designs, inventions whether or not reduced to practice, writings, discoveries, and other works eligible for legal protection under federal, state, and foreign laws. Intellectual Property includes, but is not limited to, rights associated with works of authorship under copyright laws (which generally relate to works of original authorship), patent laws (which generally relate to inventions), trade secret laws (which generally relate to information that has economic value in not being known to the public), trademark laws (which generally relate to brands, logos, and other source signifiers), and all other intellectual and industrial property rights of every kind and nature, whether arising by operation of law, agreement, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.

Net Proceeds means all proceeds received by the owner for intellectual property that he/she/it assigns, sells or licenses, minus reasonable application, legal protection, litigation, travel, marketing, and other similar costs directly attributable to the intellectual property being assigned, sold, or licensed. Net Proceeds does not include compensation for consulting services.

School means the School of the Art Institute of Chicago.

Sponsored Project means a School-sanctioned project or School-sanctioned work that arises out of or is supported by the contribution of funds, equipment, facilities, or other consideration by the School or an outside party facilitated through the School. Sponsored Projects include, for example, company-sponsored student courses, projects funded by federal or private grants, work

using special resources provided by a third party, and special projects or courses funded by the School and designated by the School as a Sponsored Project.

Staff means any employee of the school other than Students and Faculty. If a Student is also a school employee, he or she is considered as Staff with regard to intellectual property developed as a result of his or her employment, and as a Student with regard to other intellectual property. Staff includes central administration staff and museum staff working on School projects.

Student means any full-time or part-time graduate or undergraduate student enrolled at the School.

Substantial Use of School Facilities means extensive unreimbursed use of School laboratory, studio or computational facilities, intellectual property, funds, or human resources. The use must be requisite or important to the creation of the intellectual property; minimal use of a facility does not constitute substantial use. Extensive use of a facility or equipment commonly available to all faculty or professional staff (such as libraries, personal computers, and offices) does not constitute Substantial Use of School Facilities for purposes of this policy, nor does extensive use of a specialized facility for routine tasks. Whether a use constitutes a Substantial Use of School Facilities shall be determined in the reasonable discretion of the Provost in consultation with the applicable department head. While extensive use of a facility or equipment commonly available to all faculty or professional staff does not constitute Substantial Use of School Facilities under this policy, other School policies may limit such use or require reimbursement to the School.

5. Policy Provisions

A. Ownership Other than Sponsored Projects

5-A-1. Academic and Artistic Works

The Creator retains ownership of the Intellectual Property in Academic and Artistic Works he or she creates, except as provided in Sections 5-A-4 (Individual Agreements), and 5-C (Sponsored Projects). The Creator's ownership recognized in this section is subject to the provisions of Section 5-A-3 (Substantial Use of School Facilities) and to the School's use rights set forth in Section 5-B.

5-A-2. Intellectual Property Created Within Scope of Employment

Other than Academic and Artistic Works of Faculty and Students, Intellectual Property created by School employees shall be owned by the School if said Intellectual Property was created within the scope of their employment or by written agreement with the School. This provision includes, without limitation, computer software written by staff programmers.

5-A-3. Substantial Use of School Facilities - No Sponsorship

This provision covers Intellectual Property created with Substantial Use of School Facilities after the effective date of this policy, excluding Intellectual Property arising out of a Sponsored Project under Section 5-C and Intellectual Property owned by the School under Section 5-A-2. Faculty, Students, and Staff should contact the Office of the Provost prior to making Substantial Use of School Facilities (which may be subject to other School policies and procedures) and may enter into a written agreement with the School related to Intellectual Property arising out of such use. If the Creator and the School do not enter into a written agreement governing the ownership of Intellectual Property created by such Substantial Use of School Facilities, the Creator shall own such Intellectual Property, provided that for a period of ten (10) years following the creation of such Intellectual Property, the School shall receive: (a) at least 25% (twenty-five percent) of the annual Net Proceeds between the amounts of \$25,000 (twenty-five thousand dollars) and \$100,000 (one hundred thousand dollars) from all sources, and (b) 12% (twelve percent) to 25% (twenty-five percent) of the annual Net Proceeds above the amount of \$100,000 (one hundred thousand dollars) from all sources. The exact percentage of such Net Proceeds will be determined in the sole discretion of the School after consulting with the Creators. If the Creator develops Intellectual Property that is covered by this provision, he or she must make full and fair disclosure to the School of the sources of all proceeds, the amount of proceeds from each source, each type of cost deduction, and the amount of each type of cost deduction.

5-A-4. Individual Agreements

Intellectual Property that is the subject of a specific agreement between the School and the Creator thereof shall be owned as provided in said agreement. Such agreements by the School and the Creators are encouraged. Except where limited by external sponsorship agreements, Creators and the School may negotiate individual agreements to govern ownership of Intellectual Property regardless of the applicability of any other provision hereof.

B. Rights Reserved by the School

Except as otherwise provided in a written agreement with the School, when Intellectual Property is created by Faculty, Staff, or Students in connection with any School course, program, or other School-related project, with or without Substantial Use of School Facilities, the School shall have the perpetual, non-exclusive, non-transferrable, royalty-free rights to reproduce, display, perform, and otherwise use such Intellectual Property for all its educational, promotional, marketing, and other non-commercial purposes (collectively, the "Use Rights"). For the avoidance of doubt, the Use Rights shall not include the right to sell such Intellectual Property. Notwithstanding the foregoing, when Intellectual Property used by Faculty in connection with any School course, program, or project, including without limitation any educational courseware, syllabi, or lesson plans, was previously created by such Faculty outside of any School course, program, or other School-related project, without Substantial Use of School Facilities, then the School shall have the Use Rights with respect to such Intellectual Property, but such rights shall not: (a) include the right to sell such Intellectual Property, (b) include the right to perform courseware in whole, without express written consent, or (c) affect any existing open source license applicable to such Intellectual Property. The School's rights under this section shall encompass, without limitation, all Academic and Artistic Works. Upon request, the Creator shall

provide the School with electronic copies of any educational courseware, syllabi, lesson plans, scholarly papers, and theses subject to this section.

C. Sponsored Projects

5-C-1. Initiation of Sponsored Project

All proposals for Sponsored Projects should be promptly disclosed to the Office of the Provost. The Provost or her designee will then oversee the negotiation of the terms of the sponsorship. The final terms of any sponsorship agreement are within the School's discretion, but the School will endeavor to preserve for the Creator a non-exclusive, royalty-free right to reproduce, display, perform, or otherwise use such Intellectual Property for the Creator's own non-commercial educational, personal, promotional, scholarly, and portfolio purposes.

The Provost is also responsible for deciding whether to designate the School as the sponsor of a project and if so, whether the School will own Intellectual Property resulting from the Sponsored Project. Such internal sponsorships will typically arise when the School will provide substantial funding or facilities for the project.

5-C-2. Notice to, and Agreements with, Faculty and Students

The Office of the Provost shall inform participating Faculty and Students of the terms governing the Intellectual Property for a Sponsored Project. Such notice shall be in advance and in writing, and the School shall provide Faculty and Students the option not to participate in the project.

An external sponsor and/or the School may require Faculty and/or Students to agree in writing, as a condition of participation, to the terms of the Sponsored Project.

Except as otherwise provided in a written agreement with the sponsor, the Creator of Intellectual Property arising out of a Sponsored Project shall make reasonably prompt disclosure of such Intellectual Property to the Office of the Provost as set forth in Section 5-D-3.

5-C-3. Ownership of Intellectual Property Arising from Sponsored Projects

Unless written terms governing the Sponsored Project specify otherwise, the School shall originally own all Intellectual Property arising out of a Sponsored Project, and will continue to own it for a period of two (2) years following the date on which the Creator discloses such Intellectual Property to the School under Section 5-D-3.

If the School commercially develops the Intellectual Property during such two-year period, the School will retain ownership of the Intellectual Property thereafter. In these cases, the Creator shall receive a minimum of twenty five percent (25%) and a maximum of seventy-five percent (75%), as determined in the School's sole discretion, of the Net Proceeds received by the School. The School shall make a full and fair disclosure to the Creator of the sources of all proceeds, the amount of proceeds from each source, each type of cost deduction, and the amount of each type

of cost deduction. If the Intellectual Property has more than one Creator, each Creator's share of such percentage of the Net Proceeds shall be allocated in proportionate shares equivalent to his or her contribution to the property as determined in the sole discretion of the School after consulting with the Creators.

If the School does not commercially develop the Intellectual Property during the initial two-year period and fails to show reasonable diligence to develop it during this time, then the School shall, upon the written request of the Creator, assign the ownership rights for such Intellectual Property to the Creator unless such an assignment is prohibited by the terms of the sponsorship agreement, by the School's designation of an internal sponsorship, or by law. Such assignment shall be in writing and shall be subject to terms and conditions agreed upon by the School and the Creator. Unless otherwise agreed in writing, all Intellectual Property assigned to the Creator pursuant to this Section shall be subject to the School's reserved rights under Section 5-B and the revenue sharing provisions of Section 5-A-3.

Notwithstanding the foregoing, at the time the Creator discloses the Intellectual Property to the Office of the Provost, or at any time thereafter, the Creator may ask the School to decide whether it intends to commercially develop the Intellectual Property. Such a decision must be made by the School within one (1) year of the request or the School shall assign the Intellectual Property to the Creator as provided above.

D. Other Issues

5-D-1. Consulting Agreements and Other Business Activities

Faculty, Staff, and Students may not make unreimbursed Substantial Use of School Facilities to conduct outside consulting work and other business activities except by explicit prior written agreement with the School. Any member of the School community who is engaged in consulting work or other business activities is responsible for ensuring that his or her consulting or business activities are consistent with this policy and other applicable School policies. Faculty, Staff, and Students are encouraged to disclose consulting and business activities involving the use of School facilities to the Office of the Provost to help identify, prevent, and resolve potential conflicts or violations of policy.

Intellectual Property created under consulting agreements with outside firms or other business activities is owned as provided in the consulting agreement or other applicable agreement or law, except that (a) consulting or other work involving Substantial Use of School Facilities that is not the subject of a written agreement with the School shall be subject to Section 5-A-3, and (b) in the event of a conflict with this policy, this policy shall control, including without limitation any conflict regarding the ownership of Intellectual Property as between the School and the Creator.

5-D-2. Public Dedication and Dissemination

Intellectual Property owned by the Creator may be dedicated or licensed to the public by the Creator at any time, subject to any applicable written agreement, law, and the provisions of this policy. To facilitate the transfer of knowledge of the Intellectual Property to the public, the

Creator shall provide the School with a complete description and documentation of such Intellectual Property placed in the public domain or licensed to the public under an open license, specifically including a copy of the Intellectual Property in the case of printed material and complete machine-readable source code in the case of software. All such material provided to the School will be placed in the School library to the extent reasonably feasible.

Except as provided by the terms of any written agreement or the terms or designation of a Sponsored Project, and excluding any Intellectual Property owned by the School under Section 5-A-2, the Creator of any Intellectual Property owned by the School may request that the School place his or her Intellectual Property in the public domain or license such Intellectual Property to the public under an open license. Creators should submit such requests to the Office of the Provost, along with any information known to the Creator relating to any agreements, third party rights, law, or other factors that might be relevant to the decision. The Office of the Provost will review such information and perform further investigation as it deems necessary. If the School determines, in its sole reasonable discretion, that the dedication or license to the public of such Intellectual Property would not create undue risk or conflict with any law, agreement, or other school policy, then the School shall approve the Creator's request. A Creator may not dedicate or license Intellectual Property owned by the School to the public except as approved in writing by the School.

Whenever the School undertakes commercial or other development of Intellectual Property owned by the School which was created by Faculty or Students it shall endeavor to do so, if possible, in a fashion that provides for the widest possible dissemination, avoiding suppression of such Intellectual Property.

5-D-3. Internal Disclosure

The Creator of any Intellectual Property that is or might be owned by the School under this policy is required to make reasonably prompt written disclosure of the work to the Office of the Provost, and to execute any document deemed necessary to perfect legal rights in the School and enable the School to file patent applications and applications for copyright registration when appropriate. This disclosure to the Provost should be made as soon as possible, at the latest when legal protection for the creation is contemplated, and it must be made before the Intellectual Property is sold, used for profit, or disclosed to the public. Whenever legal protection for Intellectual Property is anticipated, all persons engaged in the creative activity are encouraged to keep regular notebooks and records documenting the activity and the process of creating the Intellectual Property to assist in the process of obtaining legal protection.

5-D-4. Use of Trademarks

The School's trademarks, including without limitation THE SCHOOL OF THE ART INSTITUTE OF CHICAGO, SAIC, and all other registered or unregistered names or logos (collectively, the "Trademarks") are the exclusive property of the School. No Faculty, Staff, or Students may use the Trademarks in a manner that states or implies that the School endorses, sponsors, or has an affiliation with any particular goods, services, or individuals without prior written consent. However, Faculty, Staff, and Students may identify their relationship to the

School and use the Trademarks for other similar factual purposes, in a manner that does not suggest sponsorship or endorsement by the School of the specific project. All requests for other uses of the Trademarks shall be made in writing to the School Communications Office, with complete details about the proposed use. For certain uses of the Trademarks, a written license agreement may be required. The trademarks of the Art Institute of Chicago, including without limitation THE ART INSTITUTE OF CHICAGO, the Art Institute of Chicago logo, the lion statues, and all other registered or unregistered names or logos are the exclusive property of the Art Institute of Chicago and may only be used with the written consent of the Art Institute of Chicago.

5-D-5. Other Policies

This policy is subject to all other applicable School policies and procedures, and to all applicable local, state, and federal laws and regulations, including without limitation those relating to information privacy, the disclosure of education records, and confidentiality.

6. Procedures

The Office of the Provost will administer this policy. The Office of the Provost will establish procedures to ensure compliance with this policy, including a procedure for considering in a timely manner any questions, comments, or disputes arising from or relating to this policy. All disputes regarding the interpretation or execution of this policy shall be resolved by the Provost. Upon request, the Provost shall appoint an ad hoc committee to develop recommendations for resolving a dispute. The ad hoc committee will include faculty representatives selected by the Faculty Senate.

This policy is complete and effective as of February 7, 2013 and may be amended from time to time by the Provost in consultation with the Faculty Senate and the Senior Staff, and with the approval of the President. This policy and all amendments will be published by and made available through the Office of the Provost. Amendments will be effective as of their date of publication unless they state otherwise.

SAIC Intellectual Property Policy Frequently Asked Questions

Why was this policy created? The policy was created to establish a clearer and more comprehensive understanding of the intellectual property rights of students, faculty, and staff who create work at or in connection with the School. The policy is further intended to facilitate and promote the collaborative development of intellectual property between faculty, students, staff, the School, and outside partners and sponsors. The creation of this policy gives access to a greater range of funding opportunities and partnerships, including federal grants.

What was the process for creating this policy? The policy was collectively developed in a working group to which faculty, staff, and students contributed. The group members were:

- Elissa Tenny, Provost and Senior Vice President of Academic Affairs
- Paul Coffey, Vice Provost
- Troy Klyber, Intellectual Property Manager, Legal/General Counsel
- Alan Labb, Associate Provost of Educational Technology and Innovation
- Claire Eike, Director of the School Library
- Anders Neriem, Professor, AIADO (Architecture)
- Helen Maria Nugent, Professor, AIADO (Designed Objects)
- Jim Termeer, Assistant Professor, AIADO (Designed Objects)
- Mina Matlon, Graduate Student of Arts Administration and Policy and IP Lawyer
- Pamela L. Jennings, former Director, Shapiro Center for Research and Collaboration

The working group sought to benchmark best practices among other academic institutions; understand the role of intellectual property policies and how such policies can protect the work of faculty, students, staff, and the institution; and write a draft policy to present to SAIC constituencies with the goal of reaching consensus, final approval, and implementation. On October 3, 2012, the draft policy was presented to Faculty Senate; on November 28, 2012 to Department Heads; on December 12, 2013 to Academic Steering; and on January 22, 2013 at an All Faculty Meeting. The policy was revised in response to comments and questions from these presentations. On February 7, 2013, the final policy was presented to the Board of Governors.

Why doesn't this policy address specific scenarios, departments, or equipment? This policy is intended to establish general standards that support creative practices in a fair and consistent manner across all disciplines and at every level of the school. As such, it does not describe specific scenarios, departments, or equipment, but rather encourages questions, discussions, and negotiated agreements in advance of work. The application of the policy will be shaped by such discussions.

Don't I own my own work? Yes, generally. The policy provides that faculty and students own the intellectual property for all their Academic and Artistic Works, unless the creator agrees to transfer ownership to the School or an outside sponsor for certain Sponsored Projects or by other individual agreement. The School may also receive a financial stake in intellectual property created with Substantial Use of School Facilities.

What is considered created within the scope of employment? Faculty own their Academic and Artistic Works even when such works are created as a part of their employment at the School. For example, faculty own the intellectual property in syllabi and lesson plans that they create. Work created as part of professional practice without connection to the School is not subject to this policy or use rights. However, faculty should not make Substantial Use of School Facilities in their professional practice without discussing it in advance with the School, and such work may be subject to Section 5-D-1 of the policy.

Intellectual property created by other School employees (staff) as part of their job is generally owned by the School. If you are unsure if a particular project is within the scope of your employment, please ask your supervisor or contact the Office of the Provost.

What is considered “Substantial Use of School Facilities?” Intellectual property created with Substantial Use of School Facilities may lead to certain revenue sharing obligations under Section 5-A-3 of the policy. Substantial Use of School Facilities is defined in the policy to require *extensive and unreimbursed* use of School property or funds, which must be *requisite or important* to the creation of the intellectual property. However, neither substantial use of commonly available facilities nor extensive use of specialized facilities for routine tasks constitutes Substantial Use of School Facilities. Questions about whether a use constitutes Substantial Use of School Facilities should be raised with your department head and Office of the Provost prior to such use.

What happens if I make Substantial use of School Facilities to create my work? Intellectual Property created after the effective date of the policy is subject to the revenue sharing provisions under section 5-A-3 of the policy. The creator is urged to reach an agreement with the School prior to making Substantial Use of School Facilities. If no such agreement is reached, the creator of the intellectual property is obligated to provide the School with at least 25% of the annual net proceeds between the amounts of \$25,000 and \$100,000, and between 12-25% of the annual net proceeds above \$100,000, for a period of ten years.

The creator has the responsibility to self-report Substantial Use of School Facilities to the Provost’s Office. Any royalties – which are intended to compensate the School’s investment in the creation of intellectual property and help fund further School equipment and resources available to faculty and students – are payable on the honor system.

Will everything that I create using my School-issued computer be owned by the School? No. Academic and Artistic Works are owned by the faculty or student creator, excepted as provided in Sections 5-A-4 (Individual Agreements) and 5-C (Sponsored Projects). Moreover, use of a School-issued computer or any commonly issued software does not, without more, constitute Substantial Use of School Facilities.

What is a “Sponsored Project?” A Sponsored Project is a School-sanctioned project supported by the School or an outside party facilitated by the School. Examples include company-sponsored courses, projects funded by federal or private grants facilitated by the school, and other special projects or courses designated by the School as Sponsored Projects. Under Section 5-C-2 of the policy, the School must provide advance written notice of the terms governing intellectual property for a Sponsored Project. All students and faculty participating in a Sponsored Project

must enter into a written agreement in order to participate. A standard form agreement for a course designated by the School as a Sponsored Project is available from the Office of the Provost. Students and faculty may decline to participate in a Sponsored Project.

If I use School resources in creating a work, does the School have rights to that work for that reason alone? The School does not claim ownership of the work, but does have limited use rights for work created at the School. Section 5-B of the policy provides that the School shall have certain use rights for intellectual property created in connection with any School course, program, or other School-related project. The School may use such intellectual property for its educational, promotional, marketing, and other non-commercial purposes, but shall not have the right to sell such intellectual property. This does not transfer ownership of intellectual property to the School; it only provides limited use rights for the School to use in connection with its mission.

Does the School have the right to reuse courseware and syllabi used by Faculty? A faculty member retains ownership of his or her intellectual property in courseware and syllabi unless he or she has agreed to transfer ownership of such intellectual property to the School. Section 5-B of the policy provides, however, that the School shall have use rights for courseware and syllabi developed or used at the School and that faculty shall provide electronic copies of these materials upon request. The School may use courseware and syllabi for its educational, promotional, marketing, and other non-commercial purposes, but shall not have the right to sell such materials. Moreover, courseware previously created outside of any School course, program, or project, without Substantial Use of School Facilities, may not be performed (reused as a course) in whole without the faculty member's written consent. Such courseware may be used as reference materials or excerpted for use in other School courses or programs.

May a faculty member use representational reproductions of student work in a book or article for which the faculty member receives compensation? Students generally retain ownership of the intellectual property in their Academic and Artistic Works. A faculty member preparing a book or article on behalf of the School may be able to use such student works pursuant to the use rights of Section 5-B, but it would be the faculty member's responsibility to obtain any necessary permissions for other uses.

May I release my project as open source or under an open license? Yes, in most cases. Under section 5-D-2 of the policy, the creator who owns intellectual property under the policy may dedicate or license the intellectual property to the public under an open license, consistent with any written agreements and law. Additionally, a student or faculty creator of intellectual property owned by the School under this policy may request that the School dedicate or license such intellectual property to the public; the School will do so as long as such action would not create undue risk or conflict with any written agreement or law. This does not apply to staff who create intellectual property, including software, for the School within the scope of their employment.

Are student employees treated as students or staff under the policy? A student employee is treated as staff with regard to intellectual property developed in the course of his or her employment, and as a student with regard to all other intellectual property.

Who will be responsible for enforcing Intellectual Property Rights when they are infringed?

Generally, the owner of the intellectual property is responsible to enforce his or her rights.

Whom do I contact to discuss my project or if I have further questions? If you have further questions or would like to speak about the application of this policy to a specific project, please contact Vice Provost Paul Coffey.