

PIERPONT COMMUNITY & TECHNICAL COLLEGE

Board of Governors Policies and Procedures

Policy # 63

PP-3063

SHORT TITLE: Intellectual Property

REFERENCE: W. Va. Code §§ 18-2A-4 and 18B-1-6

EFFECTIVE: May 18, 2023

AMENDED:

REPEALED:

REVIEWED:

SECTION 1. PURPOSE

Pierpont Community & Technical College (“Pierpont” or the “College”) encourages and recognizes research, publishing, and other activities by faculty and staff that further the institution’s mission. The College seeks to achieve a fair balance between the rights of Creators who are employees and independent contractors, and the rights of the College related to intellectual property developed using its resources.

SECTION 2. SCOPE AND APPLICABILITY

This Policy and Procedures applies to the creation of intellectual property by members of the College community. To provide that Pierpont complies with laws governing patents, copyrights, trademarks and other intellectual property rights, this Policy establishes procedures for all members of the College community. Procedures are outlined in general terms and may not cover every possible situation. For issues specifically related to Copyrights and the detailed use copyrighted material at Pierpont, refer to Board of Governors Policy #55, PP-3055, Copyright.

SECTION 3. DEFINITIONS

3.1 Intellectual property: the tangible or intangible product of creative or scholarly efforts, that the law protects from unauthorized use by others. Expressions of original ideas, objects, data, applications, and processes are considered to be intellectual property. Expressions could include written material, spoken descriptions, models, sketches, musical scores (including any accompanying words), sculptures, software code and programs (and related manuals and/or documentation), websites or web

pages, audiovisual works, architectural works, dramatic works (including any accompanying music), pantomimes and choreographic works, and paintings. Such property includes, but is not limited to, inventions, goods, materials, course material, lab manuals, instruments, equipment, biological organisms, chemical compositions, mask works, computer software, graphics, literary and musical works, and trademarks. Intellectual Property is traditionally comprised of four categories: patent, copyright, trade secret, and trademark.

3.2. College Resources: College premises, property, IT resources, personnel, branding, or funding.

3.3 College Premises: all buildings or grounds owned, leased, operated, controlled, supervised, or temporarily used by the College.

3.4. College Community: students, and all employees of the College as well as any independent contractors or other third parties to the extent it is included under contractual agreements.

3.5. Creative Commons License: a license granted by the copyright holders which allows them to retain the copyright to their works while giving the public permission to use those works under certain conditions.

3.6. Creator: any member of the College community who is the originator of intellectual property.

3.7. Fair Use: the right to use copyrighted materials without consent of the copyright owner, usually for scholarship, teaching, research, or criticism, as stipulated by Section 504(c)(2) of the Copyright Act.

3.8. Incidental Use of College Resources: the infrequent and de minimis use of Pierpont resources including office supplies, library resources, IT resources, human resources, or other resources on the Pierpont campuses. Generally, "incidental use of college resources" does not (1) involve the procurement of special supplies, services, equipment, or other support by the College; (2) constitute more than a nominal amount of normal duty time of any faculty, administrator, classified, or nonclassified employee; (3) involve released or reassigned time; or (4) demand more than a nominal amount of normal work hours of assisting College employees. It is the sole right of the Pierpont to determine whether more than Incidental Use of College Resources and/or facilities has occurred.

3.9 Invention: a new and useful machine, article of manufacture, composition of matter, process, solution to a problem, or any new use of the same that can be protected through patents.

3.10 Information Technology Resources: resources that include, but are not limited to, telephones, mobile devices, computers, printers, scanners, servers, networking devices, public access computers, and licensed software and services. These resources are often involved in the processing, storage, accessing, and

transmission of data owned by, controlled by, or contracted to the College.

3.11. Patent: any work recognized by a national patent office to have been created or invented by the bearer of the patent, alongside the rights and protections granted by ownership of the patent.

3.12. Student Work: work that is produced or created by a registered full-time or part-time student of the College without more than incidental use of College facilities or equipment or the direct use of Pierpont funds (where student financial aid and/or scholarships would not be considered "Pierpont funds"), that is produced or created outside of any employment by Pierpont, and that is not sponsored, contracted, or commissioned by Pierpont.

3.13. Trademark: any symbol or combination of symbols which serve to identify the commercial source of items marked by the symbol.

3.14. Trade Secret: any information, including, but not limited to, a formula, pattern, compilation, computer software, data, device, method, technique, process, or application that: (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use, and (2) is the subject of efforts that are reasonable, under existing circumstances, to maintain its secrecy.

3.15. Work for Hire: a work created by an employee within the scope of their employment that was specifically produced as a result of a special order or commission by Pierpont. This definition includes works prepared by employees in satisfaction of sponsored agreements between the College and outside agencies or companies. Certain commissioned works are also works for hire if the parties agree in writing. The employer, which for purposes of this policy is the College, is by law the author, hence the owner, of works for hire for copyright purposes. Ownership in a work for hire may be relinquished to the employee or others only by an official of the College authorized to do so.

SECTION 4. POLICY

4.1 Ownership and Rights to Intellectual Property

4.1.1 For intellectual property created with incidental use of College resources or no use of College resources, the Creator retains ownership.

4.1.2 The College owns intellectual property created using College resources, unless the College, in its sole discretion, recognizes a specific exception. Should the President or their designee, approve such an arrangement, the College and the Creator shall enter into a written agreement, in which the College maintains the right to use the intellectual property for its educational mission and the development of its employees, while the creator retains their ownership rights in the intellectual property. The College may pay the Creator a royalty in such

circumstances. The College may recognize other exceptions on a case-by-case basis.

4.1.3 The College retains ownership and rights to the intellectual property in any Work for Hire.

4.1.4 Course and program descriptions, course justifications, student learning outcomes, course syllabi, and any other curriculum materials submitted by any Pierpont faculty member or staff member for the Institutional Review of Curriculum Proposals for approval of a course, degree or certificate program, or other course of study are works for hire. Any copyright in such curriculum material belongs to Pierpont.

4.1.5 The College does not claim ownership for works developed by anyone prior to that person becoming a member of the Pierpont organization and having any access to College resources (i.e. intellectual property brought to the College from another place of employment).

4.2 Intellectual Property Procedures

4.2.1 The College owns and has all rights to any copyrighted materials, trademarks, patents, and/or trade secrets discovered, created, or developed by College employees using Pierpont time, resources, facilities, or equipment, except as otherwise provided in this Policy and Procedure. This right includes, but is not limited to, intellectual property that is (a) developed in the course of, or pursuant to, a sponsored project or other agreement with the College; or (b) developed under a written agreement with Pierpont and with funds provided by Pierpont; or (c) developed using Pierpont time, resources, facilities, or equipment; or (d) offered to Pierpont by the Creator and accepted by Pierpont in writing.

4.2.2 The College has the right to use Student Work for assessment, such as determining grades, and other noncommercial purposes, including for academic research or other not-for-profit scholarly purposes, without entering into any agreement with the student. In order to use a Student Work for any other purpose, the College and the student/creator shall enter into a written agreement establishing the parameters of the use.

4.3 Exceptions to Creator Ownership of Intellectual Property - The following types of intellectual property are not owned by the Creator absent a written agreement with the College to the contrary:

4.3.1 Work for Hire: For purposes of ownership of works for hire, ownership vests in the College. In the case of non-employee third parties with which the College is contracting for services related to creation or development of the work, the College shall enter into written "works for hire" agreements with the Creator in which the College will obtain or retain ownership rights in the work as part of the

agreement for work or services. Where the College owns the copyright in a work, it may acknowledge Creators (including Creators of works for hire) who have made a substantial creative contribution to the work.

4.3.2 Institutional Works: Work that is produced as a collaborative effort under the supervision and/or direction of the College. The College owns institutional works. Accordingly, software and software related documentation, as well as other works created by employees at the direction of the College for administrative support purposes, such as documents for administrative use and computer software created by nonfaculty employees of the College for use by the College, are considered works for hire.

4.3.3 Educational Works: Work that is related to curriculum and materials used for the primary purpose of instruction for Pierpont students. Unless otherwise negotiated prior to their creation, educational works created or developed for the primary purpose of instruction for Pierpont students by College employees during their employment with the College are owned by the College and the College has the right to modify, amend, and develop derivative uses for College purposes. Provided that, lecture notes, articles, books, games, movies, simulations, software, videos, art and music works and other publications created by faculty members and technology created outside of the classroom and brought into the classroom are not considered within the scope of employment for purposes of this Policy and Procedures unless Pierpont and a faculty member have entered into a written agreement, which provides that a deliverable will be considered a work for hire.

4.3.4 Grant Funded and Sponsored Works: When work is created with the support of an external entity through an agreement such as a grant or contract, and when any term or condition of the agreement conflicts or is inconsistent with this Policy and Procedures, then the term(s) contained in the agreement, not this policy, shall determine ownership of the intellectual property in that work.

4.3.5 Non-Credit Adjunct Faculty Works: With respect to non-credit instruction, the College retains the rights to unlimited use of all course titles and descriptions, regardless of the non-credit adjunct faculty's employment status with the College, unless the material is under copyright to another party. Course materials (e.g., syllabi, lesson plans, tests, quizzes) created outside the scope of the non-credit adjunct faculty's normal responsibilities and produced without the use of College resources remain the sole intellectual property of the non-credit adjunct faculty member. The College's program coordinator shall retain a copy of all course materials.

4.4 Copyright and Fair-Use

4.4.1 The "Fair Use" doctrine allows educators and students to use copyrighted materials for purposes of criticism, reporting, teaching, scholarship, and research without seeking prior approval to certain types of resources under certain conditions without prior approval, which may include College-owned

copyrighted material. Before using the desired material, consider the following four questions:

- 4.4.1.a **What is the purpose of the use?** This question can be challenged, and the individual using the material must have proof that this or her use of the material was for nonprofit, educational purposes and not for commercial uses or monetary gain. It is important to note that not all educational uses are covered by Fair Use. To be considered educational, the use must be "transformative," that is, it must do more than merely recast an original work into a new mode of presentation (i.e., recasting a novel as an e-book, audiobook, or translation into another language; these things are likely to be found to be derivative and thus protected by copyright). Functions that may be considered transformative include criticism, comments, news reporting, scholarship, research, or parody.
- 4.4.1.b **What is the nature of the copyrighted work?** Factual nonfiction works such as lab manuals, workbooks, and dictionaries support educational purposes and therefore are most likely Fair Use. Fictional works fall under stricter copyright coverage because of the creativity it took to create it. Digital materials also fall under strict copyright protection because of the monetary value placed on digital format. Click this [link](#) to use a tool that will assist in the determination of whether the intended use of copyrighted material falls within a statutory exception for instructors.
- 4.4.1.c **What amount of work will be used?** This factor focuses on whether the use employs more of the copyrighted work than necessary and measures how much of the original work was copied. Generally speaking, the greater the amount of a work that is used, the less likely it will be considered Fair Use. Copying the entirety of a work can be justified as a Fair Use when it is reasonably appropriate to achieve a transformative use and does not offer a competing substitute for the original. For example, copying an entire work in order to make it searchable may be permissible under Fair Use only if snippets of the work are capable of being viewed in the search results. In other circumstances, copying and disseminating an entire work is likely not going to be found to be a Fair Use.
- 4.4.1.d **What will the effect be of this use to the potential market for or value of the copyrighted work?** Will the use of the material have a negative impact on the ability of the author to reap monetary benefits from the work? If a use competes with or takes sales away from the copyright holder or avoids payment of a royalty in an established market, it will probably not be considered a Fair Use. If many copies of the work are widely distributed (i.e., the work is used in multiple sections of a course or is distributed to the general public) or if the use of a work appeals to the same audience as the original

work, it is less likely the use will be seen as a Fair Use. Even if a use is a Fair Use for one semester, repeated use of copyrighted material semester after semester may not be considered a Fair Use, because there is enough time to seek a license from the copyright holder to use the work.

4.4.2 Fair Use is an important doctrine but should be used with caution. There is no formula to ensure that a predetermined percentage or amount of a work – a specific number of words, lines, pages, or copies – may be used without permission.

4.4.3 None of the four factors described above and set out in the law is conclusive, and the weight to be given to each will vary in each instance. It is difficult to predict whether a particular use will fall within the scope of Fair Use, because the analysis is highly fact specific.

4.5 Agreements Related to Ownership of Intellectual Property

4.5.1 The College may enter into written agreements related to the creation and/or ownership of intellectual property. The College shall determine whether to enter such agreements on a case-by-case basis, with the goal to achieve a fair balance between the rights of Creators who are employees of the College, and the rights of the College related to the intellectual property developed using its resources.

4.6 Creative Commons Licensing

4.6.1 Pierpont encourages the development and dissemination of new knowledge and intellectual property by the College Community as described in this policy. A Creative Commons (CC) License enables the creators of copyrighted work to grant permission to others for access and use of College intellectual property. A CC License helps creators retain copyright while allowing others to copy, distribute, and make use of their work. Therefore, Pierpont encourages its creators to add a CC License to any College content distributed to the larger public via the College's website, with the exception of works that are subject to an intellectual property agreement between the Creator and the College. Works that are subject to an intellectual property agreement between the College and the Creator are not required to obtain a CC License, unless specifically stated in the agreement.

There are several CC [licenses](#) from which to choose. Creators should use the most appropriate license for their particular work. Among the different options, the CC-BY License is recommended for maximum dissemination and use of College material. The CC-BY License lets others distribute, alter, modify, and build upon copyrighted work, even commercially, as long as they credit the College for the original creation.

4.7 Dispute Resolution - Should a dispute about the application of this Policy and

Procedures arise between the Creator(s) and the College, the parties shall first pursue resolution using the Complaint Policy and Procedures for Employees.

SECTION 5. GENERAL PROVISIONS

- 5.1 **Review Period.** Pierpont Community & Technical College will review this policy as needed. Initial review will include discussions through the College's Meet and Confer process.
- 5.2 **Procedure.** The Board of Governor's Human Resources, Bylaws, and Policy Committee ("Policy Committee") will initiate and establish the guidelines for each review and will recommend any changes to the Board of Governors.
- 5.3 **Approval.** Pierpont's Policy Committee will forward recommendations to the Board of Governors for their final approval and adoption.
- 5.4 **Publication.** Pierpont will publish the policy on its website.

SECTION 6. RESPONSIBILITIES

- 6.1 The President's Cabinet is responsible for the execution of this policy. The faculty, staff, and students have a responsibility to be aware of and follow this policy.

SECTION 7. REVIEW STATEMENT

The College shall review all policies on a regular basis with a time frame for review to be determined by the Board of Governor's Human Resources, Bylaws and Policy Committee. Upon such review, the Committee may recommend the policy be amended or repealed.

Attachments: None.

Distribution: Members of the Board of Governors and the President's Cabinet of Pierpont Community & Technical College

Revision Notes: The proposed revisions reorganize policy provisions pursuant to PP-1000.B, insert applicable statutory and regulatory references, remove references to Fairmont State University, and clarify the review process.