

INTELLECTUAL PROPERTY POLICY

Scope

This policy applies to intellectual property that is created in whole or part with Earlham resources, by any or all of the following persons:

- A. Employees of Earlham in any capacity, whether on a full- or part-time basis;
- B. Persons receiving an appointment with Earlham, whether or not they are considered Earlham “employees” and whether or not their appointments involve compensation;
- C. Persons admitted to study at Earlham, whether on a full- or part-time basis; and
- D. All other persons who create intellectual property using Earlham resources in whole or part, whether or not they have an employment or student relationship or other relationships with the Earlham.

Purpose

The purpose of the Earlham intellectual property policy is to clarify issues related to the ownership, use, and sale of intellectual property created by Earlham personnel, i.e. students, faculty and/or staff.

Earlham fosters an intellectual environment that encourages creativity and innovation. This policy wishes to continue to promote this intellectual environment while managing institutional resources for the benefit for all constituents and stakeholders. Through this policy, Earlham seeks to promote these goals and recognize applicable state and federal laws.

Definitions

Intellectual property (IP) refers to any copyrightable or patentable work and covers all types of intellectual property such as inventions, discoveries, trade secrets, service marks, writings, art works, musical compositions and performances, software, literary works, architecture, and other types not listed here, regardless of whether they may be protected by patent, copyright, trademark, trade secret or other law.

Copyrightable work includes original works of authorship fixed in a tangible format including syllabi and other course materials, books and other literary work, articles, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, software, websites, or other material that qualifies for protection under United States copyright law.

A "*creator*" is the person or group who authors, creates, or invents works of authorship, copyrights, patents, know-how or other intellectual property rights.

Incidental IP is any intellectual property conceived or developed with incidental use of institutional resources.

The phrase *institutional resources* refers to institutional funds, facilities, equipment and personnel.

Patentable work is any new and useful discovery, process, machine, device, manufactured product, composition of matter, or other invention that qualifies for protection under United States patent law.

Scholarly and artistic works are works of research and/or creativity that are considered as evidence of professional advancement or accomplishment at Earlham. Examples include publications, dramatic works, musical compositions, sound recordings, choreographic works, visual artworks, photographs, motion pictures, multimedia products, software, and products of science.

Works for hire refer to works prepared by an employee within the scope of employment. (Note that the law recognizes that the copyright for works for hire rest with the Institution. Materials created by faculty for their courses and for scholarly publications, however, have been considered an exception since the Institution provides very little control and direction for their development.)

Substantial use of institutional resources indicates extensive use of resources beyond what is ordinarily made available to employees. For example, this might be a reduction in teaching load for faculty, use of Earlham facilities for personal projects, access to the time and expertise of Earlham personnel, and/or other usage of the human, financial, material, and technological resources of the Institution.

Supported IP is any intellectual property conceived or developed with substantial use of institutional resources.

Ownership of Intellectual Property

Intellectual property of a scholarly or artistic nature shall be the sole and exclusive property of the creator unless a specific contract with alternative provisions has been negotiated prior to the creation of the property. The latter may be desirable when the production of intellectual property involves “substantial use” of institutional resources. In this case, the College’s Academic Dean, on behalf of Earlham, is responsible for negotiation with the creator.

In cases where employees (with or without the participation of students) create intellectual property for an agency outside of the institution and make “substantial use” of institutional resources, prior negotiation to determine whether Earlham owns a share of the IP will be carried out by the College’s Academic Dean on behalf of Earlham. In general, the agency will control the distribution of the intellectual property, while copyright ownership will remain with the creators. In situations where an external agreement with

a third party such as a funding sponsor includes obligations regarding intellectual property, a decision will be reached consistent with the prior agreements.

In the case where Earlham commissions a piece of work with a person within or outside of the Institution, ownership is determined by a written contract prepared prior to the start of the project.

Policy with respect to pedagogical materials seeks to balance the needs of all faculty members and Earlham as an institution. Materials created for pedagogical purposes, such as syllabi and tests, are considered to be owned by the person who authored them. However, the Institution and its personnel are permitted to use or modify such materials for internal educational and administrative purposes, including reporting to accreditation agencies. Excluded from the understanding in this paragraph are works published by an established publishing house and sold to students through a vendor. In addition, in selected cases (for example, cases that involve substantial use of institutional resources) Earlham may negotiate a different understanding than is identified here; such an understanding must be negotiated prior to the creation of the property and should be initiated by Earlham.

Works for hire that would not customarily be considered of an artistic, software or scholarly nature, nor created for pedagogical purposes, shall be considered jointly owned by the creator and Earlham.

Intellectual property created by an Earlham employee outside of work time, outside of the scope of the employee's job responsibilities, and without the use of institutional resources is the sole property of the creator even though the work may be similar to that produced as part of the employee's institutional responsibilities.

With respect to students, intellectual property created by students is considered the property of the student. Earlham, however, reserves the right to use such material, with appropriate discretion and student consent and attribution, in promotion of the Institution. Intellectual property created by student(s) and employee(s) jointly is considered to be jointly owned by the creators. The employee(s) and the student(s) shall have decision-making powers in regard to permissions and sales of jointly created property.

Procedure

The creator should notify the institution of creation of marketable intellectual property created with use of institutional resources through the [Earlham Intellectual Property \(IP\) Early Disclosure Statement](#). The form should be filed with the Office of Sponsored Programs and Foundation Relations (OSP). Further, such notification should be provided when the creator is embarking on work with external sponsors so agreements regarding ownership and public disclosure can be negotiated in advance.

OSP will forward documentation to the College's Academic Dean for review. Upon review

of disclosure documentation, the Academic Dean will determine whether the intellectual property is a Supported IP or an Incidental IP and shall further determine the legal Inventor(s) consistent with United States patent law. The Academic Dean may choose to engage the assistance of patent counsel.

In instances when the creator and Earlham share ownership of intellectual property rights, what expenses Earlham will cover to develop the property will be determined in negotiation with the College’s Academic Dean, and counsel as pertinent. In situations in which it is deemed Earlham holds no ownership of the intellectual property, the creator is free to pursue development of their intellectual property at their own discretion.

Fund Distribution for Earlham-owned Intellectual Property

When the College’s Academic Dean determines that Earlham owns a share of the intellectual property, all initial revenue (100%) from the sales or the rights of the intellectual property will go to Earlham to cover expenditures associated with the development, patent filing, copyright registration, and any other continuing costs associated with licensing and other commercialization of the intellectual property in order to recover all expenses in full and support future innovation. After initial institutional expenditures have been recovered, shared net revenues will be distributed as follows:

<p><i>Supported IP</i> Any invention created using substantial institutional resources and time, or for the work of Earlham.</p>	<p>75% net revenue to the Earlham. 15% goes to the creator’s department. 10% goes to the creator(s) to be shared equally in the case of more than one inventor unless otherwise negotiated.</p>
<p><i>Incidental IP</i> Invention created using some institutional resources and time, but not directly, created for Earlham.</p>	<p>20% net revenue goes to Earlham. 80% net revenue goes to the creator(s) to be shared equally in the case of more than one inventor unless otherwise negotiated.</p>

Non-Disclosure Agreements

Maintaining confidentiality of intellectual property can be key during the development stages. When involving non-Earlham vendors or non-creators in the commercialization, marketing, and/or evaluation period, intellectual property may be safely disclosed outside the Institution under the protection of a Non-Disclosure Agreement (NDA). This is because disclosures made under an appropriate NDA are not considered public disclosures, unless the recipient of the information breaches the NDA. When an employee wishes to disclose an invention to an external researcher associated with a company or other for-profit organization, or directly to the company or organization itself, they should have a confidentiality agreement signed that states the obligation of the recipient not to use the intellectual property for any other purposes than to evaluate it. An [Earlham Non-](#)

[Disclosure Agreement](#) template may be found on the [Grants and Sponsored Research webpage](#) maintained by the Office of Sponsored Programs and Foundation Relations (OSP). Executed NDAs should be returned to the OSP.

Responsible party. Responsibility for this policy lies with the College's Academic Dean with support from the OSP. The President, CFO, and College's Academic Dean, are the only institutional officers with authority to sign on behalf of Earlham for matters related to Intellectual Property.

Dispute Resolution. Questions or disputes regarding the interpretation of this policy shall be mediated by a mutually agreed upon third party.

Policy review. This policy is to be reviewed every three years. Review will be initiated by the OSP.

Distribution. This policy is posted to the Earlham College website on the [Grants and Sponsored Research webpage](#) which is accessible via the Academic Dean's Faculty Resources page.

Revision approved by the Academic Affairs committee of the Earlham College Board of Trustees, with support of the college faculty on June 5, 2021.