

Swarthmore College Intellectual Property Policy

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<1>This is Swarthmore's policy about the rights to intellectual property (IP) *produced* by members of the Swarthmore College community. For policy about *use* of intellectual property, e.g., fair use of copyrighted material of others, see Section II.A.12 of the Faculty Handbook or <http://www.swarthmore.edu/library/campuspolicies/copyright.html>

<2>Definitions of key terms are given at the end of this policy document [before the Addendum].

I. Policy Principles.

<3>This policy is guided by the following principles:

<4>Swarthmore College wishes to encourage the creation and wide dissemination of knowledge, new ideas, inventions, and educational materials.

<5>Swarthmore College is a community of creative thinkers and therefore the College recognizes that intellectual property is created by individuals, or groups of individuals. Academic freedom, including the freedom to choose how to disseminate creations, has higher priority than possible financial rewards, to the individuals or to the College. Specifically, the College will not be driven in its approach to intellectual property by a desire to develop new sources of revenue.

<6>In addition, the College does not want to claim intellectual property in cases where making that claim may stifle or put procedural roadblocks in the way of creative endeavors or the dissemination of scholarly work.

<7>An important way for the College to encourage creation and dissemination of intellectual property is to provide various types of production and dissemination support. In return, when it provides substantial support, the College is entitled to recoup costs, be granted certain usage or ownership rights, and receive a share of any financial returns.

<8>The College does have a claim to intellectual property in which it has an identity or functional interest. The College has an *identity interest* in IP that is more integral to, and reflects more directly on, the identity of the College than on the identity of the individuals who create it. In particular, it has an identity interest in items disseminated beyond the College, such as the catalog, institutional webpages, the alumni bulletin, admissions brochures, and campaign materials. (What is meant by institutional webpages is elaborated later.) The College has a *functional interest* in IP that is used or intended to be used to ensure the effective functioning, coordination and management of ongoing

operations. For example, it has a functional interest in administrative and personnel procedures, including software, and internal handbooks and reports. (It may also have an identity interest in the latter two examples.)

<9>Therefore, ownership of any IP produced with only normal support (see the definitions) and in which the College does not have an identity or functional interest shall default to the creator. Ownership of any IP in which the College does have an identity or functional interest shall default to the College, regardless of level of support.

<10>The College has the right to protect its good name and therefore will have a say in the dissemination of any intellectual property that suggests endorsement, for instance, by the use of the College name or logo.

<11>When community members working on a group project negotiate IP rights among themselves, they are under an obligation to recognize fairly each other's contributions, and the College should attempt to ensure that this obligation is met.

<12>The College recognizes that even when IP is clearly the property of individuals, those individuals may wish to transfer rights to the College in exchange for help in developing, disseminating, and protecting their creations. The College will readily consider such requests. Such requests are especially recommended when the IP is created by a group.

<13>Conversely, in some cases government legislation, regulations and case law dictate that IP ownership resides with the College, but the College stands willing to transfer such rights or parts of such rights back to individuals or their designees, to the extent allowed by law, if to do so is consistent with the policies herein explained.

<14>Similarly, grant sponsors will often have positions on how IP created under their grants should be assigned. The grant applicant, along with the College, should attempt to align the grant conditions with the College policies herein explained, but the conditions specified in any grant, if accepted, shall apply.

<15>The College expects that intellectual property policy will evolve, as its mission evolves and as the types of intellectual property evolve. As the policy evolves, consideration will be given to equalizing the traditions of intellectual property rights in different parts of the College community.

II. Implications for Faculty, Staff, and Students.

<16>The extent to which the College has an identity or functional interest in the IP produced by community members varies across segments of the community and particular units within academic and administrative divisions.

<17>For faculty, the College does not have an identity or functional interest in the traditional products of their teaching and scholarship. (For elaboration of traditional products, see the definitions.) To be sure, the College has an interest in the quality of their work, but it has no functional need to manage faculty IP directly – indeed, to attempt to do so would be counterproductive. Moreover, faculty IP is more integral to the identity of the faculty than to the identity of the College. Therefore, ownership of faculty scholarly works, whether for internal use only or disseminated, and whether of a research or pedagogical nature, defaults to them. However, the College does have an identity or functional interest in faculty administrative work, e.g., committee reports and departmental records. The College also has a negotiable ownership interest in faculty works that require more than normal support, as discussed later.

<18>For staff, the extent to which the College asserts ownership of the IP they produce has depended on the traditions of the staff member's specific affiliation, and these differences can generally be justified on the basis of the principle of identity or functional interest. For example, College librarians sometimes undertake professional activities of a scholarly nature, in which the College does not have a functional or identity interest. Such IP defaults to the librarians. On the other hand, in almost all cases, the College does have a functional interest in the work of ITS Staff. For instance, the College must have the rights to control the computer code produced by ITS staff in order to guarantee the smooth administrative functioning of the institution. Such IP belongs to the College. When staff work in a support role for faculty engaged in traditional faculty works, and the staff role falls within normal support for faculty, ownership of the IP produced will default to the faculty.

<19>For students, the College has no identity or functional interest in their traditional IP unless they are in the paid employment of the College. While the quality of student works obviously contributes to the College's reputation, in almost all cases the College has no functional need to manage student creations and these creations are more integral to the student's identity than to the College's identity. Therefore student creations default to the student. When the student is employed in a staff role, IP policies for staff in the sector of employment shall apply. When the student is employed by a faculty member (for instance, as part of a summer research project), the student may be an assistant, in which case policies for staff working with faculty apply. However, the student may be, or become, a collaborator (see the definitions), in which case IP policies for faculty apply.

<20>*Student Notes and Other Class Records.* Most student notes are a distillation of class activities, and as such are the student's IP. However, at times student records may be so complete (e.g., verbatim notes, a videotape of class) that they are effectively a recording of a performance, and performances are copyrighted. The College and faculty encourage students to take written class notes of any degree of thoroughness *for their own use or to share with classmates*, and in any event notes for this purpose are appropriate under fair use guidelines when there are copyright concerns. However, transcription of course materials for a) other purposes, such as dissemination and sale, or b) in any medium other than writing, even for personal use, requires permission and

agreement on ownership through the deliberative determination process described later. See also *Embodiments of Courses as Swarthmore Courses*.

III. Determination of IP Rights.

<21>In many cases application of the foregoing principles gives one party (either the creator or the College) ownership of the IP. In such cases that party shall have all ownership rights, specifically the right to decide all dispositions and the right to receive all income. Other cases are more complex and require deliberative determination of responsibilities, rights and benefits as well as a formal designation of ownership.

<22>*Deliberative Determination Not Required.* Those cases handled by default in the previous section (Implications for Faculty, Staff, and Students) require no deliberation.

<23>*Deliberative Determination Required.* In some cases, for instance, those involving unusual support by the College to individuals or novel group collaborations, deliberative determination of IP ownership and associated matters is required. In such cases, potential IP development is best reported to the College before it is well underway, so that an agreement on ownership, responsibilities, rights and benefits can be reached. Here are stated the principles that determine when IP must be reported, and how agreements will be reached.

<24>Creators should report, as soon as the situation is reasonably clear, on the production or planned production of any IP that meets one or more of the following conditions.

1. Creating the IP would involve more than normal support.
2. Its creation would involve unusual or novel circumstances (example: a class working together to create a scholarly web resource), or substantial collaboration among members of two or more different parts of the community (e.g., faculty, students and staff creating and performing an opera), or institutional collaboration (e.g., the Trico Library Consortium).
3. The creator intends to seek a patent or other commercialization for which the process of commercialization involves substantial cost and effort, and the creator wishes the College to consider providing some or all of that support.
4. The IP would be created under a government or private sponsor grant that specifies IP rights. (A grant, such as an NSF grant, is different from outside employment, which is discussed later.)

<25>Where IP ownership defaults either to the creator or to the College, there is no need for reporting. Thus faculty need not report most traditional products of their teaching and scholarship. (As an example of an exception, an invention may require reporting, say, under #3.)

<26>Staff do not need to report any IP created in their normal work. Only when there are unusual projects for which supervisors have authorized special efforts or resources will reports be necessary.

<27>Students do not report IP created for classes, such as papers, videos, lab reports and computer code, or work done when hired by administrative offices or as faculty assistants.

<28>The College official designated to receive reports (whether the creator be faculty, staff or student) will be, at least initially, the Provost, and is hereafter referred to as the Provost. However, staff members should also make sure that their supervisors are aware of any plans reported. The Provost may choose to prepare a special form, or a set time of year, for such reports.

<29>From time to time, the Provost may request the reporting of additional types of IP situations, not yet envisioned by this policy, if such situations are appropriate for deliberative determination in the spirit of this policy. Conversely, if the resolution of certain situations has become routine, the Provost may declare that those situations should continue to be resolved in the same way directly by those involved and need not be reported.

<30>If creators who are required to report IP projects do not do so, then ownership of the IP created defaults to the College. When in doubt whether a project needs to be reported, a community member should make a preliminary inquiry with the Provost. (This paragraph is included solely to provide an incentive to proceed on IP issues in the informal, collegial and timely way that this policy intends throughout.)

<31>In the case of a group IP project, all those in the group shall be named in the report, and if the report contains an initial proposal for the disposition of rights and proceeds, all members of the group shall sign. In any event, the Provost shall endeavor to ensure that the contributions of all group members are fairly represented in the agreement between the College and the group.

<32>The Provost or the Provost's designee will consult promptly with the creators of reported works to reach agreement on all relevant issues, such as a) ownership, b) who will seek patent or copyright registration, if any, c) ideas for dissemination, ranging from open use to licensing or ownership transfer, d) division of support and development costs, and e) the distribution of potential proceeds. In making these determinations, the College will attempt to treat cases promptly and consistently. In order to do this, the College shall keep a record of all IP decisions and any trends in these decisions. Initially, determinations should be guided, but in a nonbinding way, by the Guidelines for Agreements submitted by the Intellectual Property Task Force along with this policy at the time the policy is presented for faculty and Board acceptance. [These Guidelines appear within the Addendum to this document]. The guidelines, and later the record of IP decisions, will be made available to all community members. Eventually, after more

experience, this initial policy may be replaced with a more prescriptive policy. It is definitely expected that the policy will evolve.

<33>*Review Procedure in Case of Disagreement.* Should the Provost and the creator of a work not be able to reach agreement, a Review Committee shall make the determination. Initially Review Committees shall be chosen ad hoc (no standing committee). One member shall be chosen by the Provost and one by the creator; these two members shall then choose the third member. Similarly, if a group doing an IP project cannot work out an ownership proposal among themselves or with the Provost, or a member in the group expresses concerns to the Provost, a Review Committee shall be constituted. In this case, if the group cannot agree on the choice of a Review Committee member, then the Provost shall choose two members, who will again choose a third member. In any event, Review Committees shall have the authority to consult as needed inside and outside Swarthmore to make their determinations, subject to approval to avoid excessive expenses.

<34>Whether the Provost and the creator reach accord on their own, or whether a Review Committee is needed, in each case, an agreement shall be put in writing and signed by all concerned. (Note: throughout this discussion, “report” refers to the notification the creator gives the Provost, whether it is a simple announcement of intended IP production or is instead a detailed proposal including plans for IP disposition; “agreement” refers to the decision between the College and the creator.)

<35>If at any later point in the process, circumstances change, or a disagreement arises about the meaning of the written agreement, the Provost and the creator shall endeavor to resolve the problem. If they cannot, a Review Committee will again be convened. In either event, a revised document will be produced and signed.

<36>If the creator and a Review Committee cannot reach an agreement, the Review Committee shall report this in writing to the Provost, who shall decide what further steps to take, keeping in mind established grievance procedures.

IV. Further Matters

<37>*Time spent on IP production not for the College.* IP developed by a community member as part of outside employment, or on one’s own time, is not governed by this policy. For instance, a report provided in a consulting role is outside employment. (Scholarly work done under a grant is not outside employment, and thus needs to be reported if any of conditions 1-4 earlier apply.) Outside employment is limited by the College’s longstanding policy on Concomitant Employment (Faculty Handbook, Sect III.A.9 and Staff Handbook, “Conflict of Interest” in Ch. 15). For instance, a faculty member proposing to create or teach an online course as a freelancer for an online education provider should make sure to follow the Concomitant Employment policy. For another example, a staff member who produces fundraising materials for a local nonprofit must not take work time to do this.

<38>*Use of Swarthmore's Name or Logo with IP Products.* When community members produce intellectual property in which the ownership resides with the member or the member's designee, the members may present themselves as affiliated with Swarthmore College, but they may not imply that Swarthmore endorses the product in any way, without a written agreement permitting such endorsement. For instance, Swarthmore's logo, which is trademarked, may only be used by community members in customary ways, unless permission is granted. It may not be used without permission for anything disseminated outside the College that goes beyond one's routine work or is sold for profit. For instance, writing letters about College business is routine work. For faculty, binding articles sent to other scholars is routine work. The College logo may be used in these cases; indeed, such use is often customary. On the other hand, selling software one has produced is not routine work. Writing books is routine work for faculty, but as these are sold for profit, the Swarthmore logo may not be used without permission. Restrictions on use of the logo apply as well to anything else that might be taken to imply endorsement, such as the prominent use of photographs of Parrish Hall.

<39>*Embodiments of Courses as Swarthmore Courses.* It is possible to embody courses for dissemination, in whole or in part, in ways that uniquely identify them with Swarthmore and may portray a unique Swarthmore quality. In such cases, the College's good name is at issue, as well as the identity interests of the College and anyone who appears in the embodiment. (Examples: A videotape archive of a course which shows the students and their comments places the course at Swarthmore and gives the students as well as the faculty member an identity interest. If the physical facilities are identifiable, or if the course is an Honors seminar and the taping highlights the special Honors seminar aspect, the College has some identity interest as well. However, a videotape of uninterrupted faculty lectures, with the faculty member posed against a nondescript blackboard, does not uniquely identify the course with Swarthmore, or any institution.) The intent by anyone to create an embodiment that is likely to be uniquely identifiable must be reported for deliberative determination, whether or not the project is reportable under conditions 1-4. If the embodiment is primarily of lecture material, the default is that the project may go ahead as planned and the IP will belong to the faculty member, but the College will share in revenues when more than normal support is provided. (The last example in the middle of this paragraph, if done with only normal support, would not need to be reported and full ownership rights would automatically rest with the faculty member.)

<40>*IP created by consultants.* When the College has an identity or functional interest in the IP created by consultants or any others outside the community hired for a specific task, the College will stipulate by contract the ownership of any IP created during the completion of that task. (In the absence of a contract, IP created by contractors defaults under the law to them.) For the purpose of IP policy, consultants are not community members and are not covered by other paragraphs of this document.

<41>*Responsibility for Knowledge of One's IP Status.* It is incumbent on every individual community member that s/he understand fully the nature and extent of the College's identity or functional interest in the products of his or her work, and therefore

understand when the College will assume ownership of IP he or she produces. For employees, the obligation for ensuring such understanding rests initially with the individual's supervisor and should be documented, perhaps within an employment letter for new hires. Similarly, for students working with faculty, the faculty member has the obligation before commencement of the work to ensure an understanding about ownership of any IP produced. In both cases, the College is committed to a work environment in which there is frank and open dialogue to achieve an understanding of and agreement on these IP ownership issues, both as a general matter and in regard to specific cases that may arise.

<42>*Acknowledgement of help.* Even when IP is the work of one person, that person almost always has help. A faculty member may have depended on an AA for administrative support, or a librarian to find references, or a student hired to check answers, or an ITS staff member to develop web skills. The creator should always give appropriate credit to all those who helped, and also to all funding sources.

V. Definitions

<43>*Community members.* Faculty, staff, and students.

<44>*Creator.* One person, or two or more collaborators, who develop a piece of intellectual property, or plan to do so.

<45>*Collaborators.* Two or more people who share in the creative aspect of IP development. Collaborators work on an equal or near-equal basis, not in that they necessarily do equal amounts of work, but rather in the sense that they have similar freedom in developing their parts of the project and their contributions are valued in similar ways. Note: In a group project, the group may be larger than the set of collaborators; there may be others with secondary, less-creative roles.

<46>*Intellectual property (IP).* Creations of the mind to which law allows various ownership rights so that the creators have incentive to develop and disseminate those creations. The two main sorts of property rights, especially for the work done at academic institutions, are *patents* and *copyright*. Generally speaking, patents are available for inventions whereas copyright is available for works of authorship. (Some sorts of IP of more recent vintage may be eligible for both patents and copyrights. for instance, computer program. In any event, what may be patented or copyrighted is determined by law.)

<47>*Normal support* for a community member is whatever sort of resources is regularly provided to that sort of community member in that department at that time. Costly, exceptional, individually dedicated resources are generally not normal support. For instance, if an ITS staff member works on a special software project under a special budget request to the College for one-time money, that is not normal support to that staff member or to the ITS department. Similarly, if a faculty member gets one-time money,

from the budget or the Provost, that money is not normal support unless it is funding that is regularly offered (e.g., the current annual offering of research funds up to \$1000, and competitively available funding for curriculum development and for second-semester sabbaticals). One-time funding to help a newly hired science faculty set up a laboratory *does* count as normal support, because it is regularly provided in science departments at this time.

<48>Currently, normal support for a faculty member would include salary, an office, a basic computer, routine clerical services, access to the network and to site-licensed software, and occasional help from library and ITS staff. Funding and staff provided by outside sources (for instance, grants) is not considered when determining whether the College is providing only normal support. It is fully expected that the boundary between normal and special (non-normal) support will change over time. [Further examples of normal and special support at the current time are provided at the end of the Addendum.]

<49>*Traditional products of faculty academic work.* Related to teaching: lecture notes and other faculty-produced course notes (whether in summary or verbatim form, whether privately held by the faculty member or distributed to the class, whether paper or electronic), problem sets, syllabi, websites for classes. Related to scholarship: What is traditional varies greatly across disciplines. Examples of traditional faculty works that are copyrightable include journal articles, books, Web pages, artistic works in any medium, videos, photos, and computer code. Examples of traditional faculty works that are patentable include mechanisms, chemical compositions, biological entities, engineering systems, and sometimes computer code and mathematical models and algorithms. (Note: Copyrighted material will rarely need to undergo a deliberative determination, whereas patentable products often will. While assignment of copyright, say of a book to a publisher, is a form of commercialization, it need not be reported under condition #3 in the deliberative determination section because it is an easy process for which help from the College is rarely requested. The patent process, however, requires a long expensive application and legal effort, for which the creator may well seek College support.)

<50>*Institutional webpages.* These webpages include pages about the College as a whole (e.g., the front page), pages that facilitate the College's interactions with the outside world (Admissions pages, Development pages) and pages that facilitate the functioning of administrative subdivisions (Registrar pages, Provost Office pages, and academic department pages that deal with the department as a whole rather than the work of individual faculty). Institutional webpages do not include pages put up by individual community members about academic work or about other IP in which they hold ownership under this policy. For instance, course pages, whether posted under a course management system (Blackboard) or put up directly, belong to the faculty member who puts them up.

<51>The College also allows community members to put up personal pages. In allowing this, the College becomes their Internet Service Provider (ISP, or OSP, for Online Service Provider). All personal pages posted with the College as ISP are the property of the individuals. However, their usage is subject to the College's guidelines of good behavior

– see Computer Guidelines and Policies at http://www.swarthmore.edu/its/faculty_staff/fs_index.htm. Also, as an ISP, the College has certain obligations under the Digital Millennium Copyright Act. For instance, under certain conditions, after a complaint from a copyright holder, the College may have to deny internet access. These obligations are explained at <http://www.swarthmore.edu/library/campuspolicies/copyright.html#DMCA>. In any event, these are College *liability* obligations. They are not IP rights. They do not confer ownership of personal webpages to the College.

– end of policy statement to go in College Handbooks –

Addendum to the Intellectual Property Policy

<52>This addendum contains the Guidelines for Agreements referred to in the Intellectual Property Policy statement, which are meant to serve in a nonbinding way as initial “case law.” It also contains special recommendations on IP issues surrounding student work with faculty (right after the Guidelines), further examples of normal and special support (at the end), and remarks on a miscellany of topics.

<53>**Authority to Make Dispositions of College IP.** For those situations where IP ownership resides by default with the College (i.e., there is no deliberative determination), the administration needs to create (if it doesn't exist) and make adequately known the procedures for deciding on the disposition of College owned IP, including statements as to the authority of various administrators and supervisors to make such decisions.

<54>**Guidelines for Agreements.** In many cases where deliberative determination is required, ownership should not alone determine all responsibilities, rights, and benefits. We now turn to our initial guidelines for agreements on these issues. In these guidelines the level of support plays an important role.

<55>*IP Produced with More than Normal Support and Which Would Otherwise Default to the Creator.* Such additional support can take many forms, for instance, the purchase of special equipment and supplies, extra staff labor, or the fees and efforts needed to obtain patents. In any event, additional support involves extra costs beyond the College's normal costs. Ownership of IP produced with extra support may stay with the creator. However, for its willingness to take a risk the College is entitled to recoup its extra costs and share in any profits. Specifically, any proceeds from the IP shall go first to recoup extra costs, and shall be divided between the College and the creator on a prorata basis according to who paid those costs. After that, the default is that 25% of income shall go to the College and 75% to the creator.

<56>The division of income agreed upon may vary, both before costs are recouped and after, depending on the relative input and risk of the College and the creator. Other arrangements are also possible for ownership, and are encouraged in the case of a group

project, as discussed later. Other arrangements are also encouraged in cases where the income takes complicated forms (e.g., part license fees, part consulting fees, part stock options); for instance, College ownership in such a case will make it easier to meet the then difficult administrative obligation that all income be reported and divided as agreed.

<57>By long tradition, faculty are not required to create any specific academic IP product. However, if a faculty member agrees to a request to produce a specific IP product, the default is that the College will be the owner, since the College has thereby shown an identity or functional interest. The default split for any income, after costs are recouped, will be 25% to the College and 75% to the creator. Again, other arrangements are possible, and would be spelled out in the necessary agreement between the College and the faculty member.

<58>When a staff member creates marketable IP in which the College has an identity or functional interest, the patents or copyright should stay with the College, but the good work of the staff member should be recognized in some meaningful way. Example: A staff member who is a web developer, in order to meet an assignment to build a top level website for the college, proposes to go about it by making a general tool for efficient production of a collection of webpages, a tool that has market value to other colleges. Such a proposal would need to be authorized by the supervisor, and as it would likely require extra time and effort (a form of more than normal College support for the project), a report would need to be filed with the Provost and an agreement reached. The default for the agreement is that the College would be the owner, and would receive all income if the product is commercialized; the creator would receive some recognition and benefit (many forms are possible) as part of the agreement.

<58A Added after President's Staff discussion on 9/9/03> The previous paragraph describes a situation where IP is needed (top level web pages) in which the College has a functional interest, but the staff member creator proposes a generalized solution (a tool for creating webpages) that would create IP with a functional value outside the College as well. A similar situation (both internal and external value is generated if more effort is made) can arise with regard to identity interest. A dean in charge of handling a type of student life problem could propose to prepare a paper (or book, or video) explaining how to handle that sort of problem. Both the College and the dean have an identity interest in such a work, and their relative interests vary depending on the extent to which the specifics of the cases are not masked (placing the events clearly at Swarthmore) versus the extent to which the personal ideas of the dean are put forward. When the relative strengths of the College's interests and the outside interests in a proposed project are unclear, the creator should always discuss the proposal with a supervisor, and this may lead to a report to the Provost, for decisions must be made whether to go ahead with the project in the generalized form and, if so, how to distribute IP rights. Often the proposal would involve more than normal support, so that a report to the Provost would be required, but even if only normal support is needed, a report may be advisable.

<59>*Options for Development.* On occasion, a creation at Swarthmore will be so successful that it may be best to seek outside help, or set up a new organization to handle

it. The creations might be patentable inventions, copyrightable material such as online courses, or educational activities that can expect to receive continuing supporting grants. There are a wide variety of ways to pursue such development. To the extent that the product was developed with College support of the sort that warrants ongoing income to the College by the guidelines above, the College may wish to become a partner in a business, or a licensee. On the other hand, it may wish to become completely separated from the business to protect against losses and liability. Such decisions will be made on an individual basis. The point is: spinning off a business is an option that will be considered. The creator of said product should have substantial input in determining how to proceed.

<60>*Projects with Many Creators.* In the case of class projects or other projects with many collaborators, those involved should consider transferring ownership to the College even when ownership can clearly stay with them under the guidelines above. To do so will simplify administration and increase the chances that the IP produced will remain available as the creators come and go. When such a transfer is made, proceeds should be distributed as they would have been distributed had the ownership remained with the creators (with any additional costs to the College from making the transfer added to the costs to be recouped by the College).

<61>**Faculty Work with Students.** The IP Policy states “for students working with faculty, the faculty member has the obligation before commencement of the work to ensure an understanding about ownership of any IP produced.” This obligation is important because of the unequal status of the participants. In most cases of student-faculty work (e.g., summer research grants) students may simply be assistants, not collaborators, but in any event it is incumbent on faculty to judge the student contribution fairly. To this end we make several recommendations.

1. Faculty are urged to provide a copy of the College IP Policy to any student being considered for any work together that might result in IP.
2. The student and faculty member should sign a letter of understanding about IP in advance of commencement of work, as opposed to having only an oral agreement or no discussion. This letter can be very broad and need make no promises; a sample is provided below.
3. At least for the first year or two after the IP Policy takes effect, faculty are urged to report to the Provost on work with students more broadly than required under Conditions 1-4 of the section on “Deliberative Determination Required”. While there should be no need for deliberative determination when these conditions don’t apply, there is nonetheless value in assuring that both faculty and student have agreed beforehand on the understanding of IP rights. We recommend reporting *all* employment of students in projects where IP is to be created, including employment as part of outside contracts that otherwise don’t fall under the IP Policy. In all cases the report could take the form of a copy of the letter between faculty and student. Or, where college funds are being used, as under divisional research grants, the application form, properly augmented, may serve

as sufficient notification. Other automatic notification procedures might be developed.

<62>Sample letter: From dates X to Y the supervising faculty member F and student S will undertake a project on Z. Appropriate acknowledgement shall be given to all participants in any written or verbal presentation of the project. The following sorts of IP may be developed during the project:.... Whether the student will share in rights to any IP developed depends on the nature and extent of the student's contribution, in short, on whether the student becomes a collaborator as defined in the Swarthmore College IP Policy. The determination of rights will be made by the faculty member at the end of the project period in consultation with the student, with review possible in accordance with the IP policy of Swarthmore College.

<63>Note that if the student does become a collaborator, reporting is *required* under Condition 2 of the section on "Deliberative Determination Required".

<64>**Reconsideration of Policies.** Where the case might be made that it is tradition, rather than identity or functional interest, that has led to vesting of formal IP rights with the College rather than with the creator, consideration may be given to whether tradition should be changed. In any event, supervisors in departments where all IP has been considered the property of the College have the option to allow a staff member to develop IP in which the College does not have an identity or functional interest. To the extent that such a project adds to the quality of the staff member's work and to the welfare and reputation of the College, supervisors are encouraged to consider such projects. For instance, a staff member might be encouraged to prepare an article or conference presentation, over which the staff member would then hold ownership.

<65>**Bayh-Dole Act of 1980.** This act vests in educational institutions the ownership of patents developed at such institutions through government grants. Prior to this law, it was uncertain who, if anyone, could own such patents. The purpose of the law was to stabilize the situation, so that someone would have the rights and would thus have the incentive to develop the patents and disseminate the products. The purpose was not to lock out the creators. In cases where Swarthmore community members develop patentable inventions under Bayh-Dole conditions, the College will endeavor to the full extent allowed by the law to transfer rights so as to follow its own policy for patents.

<66>**Archiving of Digital IP.** The ownership of IP is determined by the principles already discussed, and is therefore independent of whether that material is stored in tangible or electronic form. Thus, community members may, and often will, own IP that resides on an office computer or the College network, even though the computer and network belong to the College. However, the nature of electronic networks sometimes makes it difficult or unwise to expunge electronic materials. For instance, when a professor creates electronic course materials through a course management system, those materials may be backed up indefinitely. Therefore, by using the College network or computers to create or store IP, creators grant the College the right to store the materials.

However, when such IP belongs to the creator, the College will not use it as intellectual property without permission, including should the creator leave the College.

<67>Work for Hire. Under the current US Copyright law (1976), any work done by an employee, even a faculty member, may be work for hire, and the law says that the copyright of a work for hire belongs to the employer. (See below for definition of work for hire in the law.) However, the College considers work done by community members to belong to them in cases of normal support where the College does not have an identity or functional interest, as explained above. If need be, the College will transfer its rights in writing, so that the right of ownership by the community member is clear. At the present time, such a need is only likely to arise if a community member wishes to make a contract with a commercializer, and the commercializer wants proof that the community member has standing to make a contract, that is, that the community member is the owner. Other than that, the College's Policy statement should suffice.

<68>Definition of Work for Hire. The United States Code says that, when a work is a "work for hire" then the employer owns it, where Title 17, Chapter 1, Section 101 defines work for hire as

- (1) a work prepared by an employee within the scope of his or her employment; or
- (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a "supplementary work" is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an "instructional text" is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

<69>Item (1) is quite broad, and makes no exclusions for faculty. Hence the possible need to assign rights to faculty members for works that by our guidelines would automatically be theirs.

<70>Further examples of normal support and special support. It is instructive to begin with a few historical examples, as these show how the definition of normal support can change.

1. In 1980, a computer in one's office was not normal support. Now it is.
2. In 1995 the availability of video production and editing equipment in order for students and faculty to produce videos was not normal support, but now it is normal support to be able to produce short videos occasionally.

<71>Now for some examples as of Spring 2003.

3. *Internet 2* is a very fast second-generation internet, available only to academic institutions, and at high cost (minimum \$20,000/yr). At this time access to Internet 2 would not be considered normal support.
4. It would not be normal support for the College to provide staff to record in digital form all the lectures of a course in order to create a fully Web based course. However, it would be normal support to provide for the recording of one or two lectures. It would be normal support in a film production course to provide support for all the digital course work of the students.
5. A faculty member creates a large collection of interviews as fieldwork and wishes to have these transcribed to form the core of a published book. It would not be normal support if the College pays to make all the transcriptions. (If the transcriptions are paid out of a research grant, then the College has only provided normal support for the book project.)

– End of Addendum –