

POLICY: 6Hx28:5-09.1



Responsible Executive: Executive Vice President, Administrative Services

Policy Contacts: Chief Financial Officer

Specific Authority: 1001.64, F.S.

Law Implemented: 1001.64, F.S.

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12-20-2005

Copyright and Trademark Ownership

Policy Statement:

Valencia College recognizes that an engaged, creative faculty and staff are vital to the advancement of the scholarly, academic, and public educational mission of the learning college. For this reason, the College encourages the creation of copyrightable materials (“Works”). Such Works serve as evidence of the College’s commitment to learning and of the professional stature and respect due to those involved in that process. This Policy recognizes and acknowledges that issues of intellectual property rights may arise from time to time as a result of creative efforts by members of the Valencia community. The Policy addresses certain recurring issues of ownership and use with respect to such rights.

I. Scope of Policy

This policy governs the respective ownership rights of the College and all of its employees, both academic and non-academic, in copyrightable material produced within the scope of employment or otherwise arising out of the participation of individuals, including students, in the activities of the College. While the College will not assert its ownership interest in scholarly and academic Works created by members of the faculty who use generally available College resources, the College does assert ownership of copyrightable Work where significant College resources are utilized in the creation of the Work or in other circumstances as required pursuant to an agreement with a third party or where the Work is a *work made for hire*. Generally available resources include one’s office, office computer, telephone (excluding long-distance charges), library and other similar resources.

This Policy is specifically applicable to the creation of technology-mediated courseware in any form and format, including but not limited to video and Internet-based materials. However, this Policy is *not* intended to affect the compensation of faculty and other College personnel involved in the *delivery* of instruction independent of the ownership of the courseware that may underlie such instruction.

II. Ownership Principles and Standards

College faculty, students, and staff routinely create intellectual property that is subject to copyright protection.

However, copyright protects only the original expression of facts and ideas that have been fixed in a tangible medium of expression such as a written work, computer software, video, photographs, painting, or other item of tangible (even if virtual) expression.

Copyright protection does not protect the underlying facts or ideas in and of themselves, because facts and ideas exist independent of the effort or contribution of the author to fix them in tangible form. Under the federal Copyright Act of 1976, original works of authorship are automatically protected by copyright simultaneously with their fixing in a tangible form of expression. The owner of the copyright to a Work has the exclusive right to reproduce it, display, perform, or distribute it to the public, and make adaptations or derivative Works based on the original. This Policy is designed to delineate the identity of the owner of the Work as well as set forth a framework for the sharing of value that might arise from the creation of a Work.

In cases where the provisions of this Policy state that the College cedes copyright ownership to the author(s), it is the intention that such ownership will be ceded to the author(s) by operation of this Policy without requiring further action by the College.

As a general rule, the author of a Work is the owner of the copyright. It is the general policy of the College that Works that are created on an individual's own independent initiative outside the time, place, and scope of employment or activity within the College are owned by the author.

Conversely, under the work made for hire doctrine of the Copyright Act, the author, and, therefore the owner, of the copyright in Works created by persons within the scope of their employment is the employer rather than the individual creator. Therefore, unless modified by this Policy or by the specific terms of a written agreement signed by the faculty member or other employee or covered individual and the President or his or her designee, as a matter of law, Works created by College faculty members in the course of their teaching and research and by other personnel in the course of their employment (including students working in conjunction with faculty), are the property of the College.

However, since a fundamental principle of the College as an academic organization is to encourage the development and widest possible dissemination of scholarly Work produced by members of the College community, and consistent with longstanding academic tradition, except as described below, **the College cedes copyright ownership to the faculty member who writes or develops a scholarly or academic tangible or**

virtual Work (including books, papers, lecture notes, articles, and similar materials) where such Work is created by a faculty member either using his or her own resources or using College resources that are generally available to the College faculty. In such cases the faculty member is entitled to determine, consistent with the College's Use of Name and Conflict of Interest policies, how the Work is to be disseminated and to keep any net income it produces. Resources generally available to College faculty include the standard use of College laboratories, office desktop computers, networks, materials or equipment, but do not include released time from regularly assigned duties, direct investment by the College of funds or staff, or the purchase of special equipment for the project, use of multimedia production personnel and facilities, or extraordinary use of computing resources.

The College does **not** cede ownership in the following situations:

A. Assigned Projects and Tasks.

The College retains ownership of the copyright to Works created:

1. by faculty members as part of an assigned project or task, where the assignment explicitly states that the work will be owned by the College;
2. by staff members in any work they perform for the College; and
3. by student employees in the course of any assigned duties.

B. External College Agreements.

Ownership of the copyright to works commissioned or developed by a faculty member or other employee pursuant to an agreement that the College has with an entity outside of the College will be governed by the terms of such agreement. If the agreement does not specify ownership by the outside entity, ownership shall vest in the College. All such agreements must be approved in writing by the President or his or her designee.

C. Institutional Works.

Unless the parties agree in writing to the contrary, the College shall own the copyright in a Work if the College:

1. provides resources that are generally not available to the College faculty or will make or has made a significant investment in the development of the work through the provision of extraordinary allowances or substantial financial, personnel, technology, facilities, or other resources beyond that which is generally provided faculty in the ordinary course of instruction and research (whether in money or money's worth, and whether or not supported by outside sources under contract); or

2. enters into a written agreement with the developer(s) that makes provision for copyright ownership;

Unless the parties agree in writing to the contrary, the College shall own the copyright in a Work in the following categories:

3. Computer programs, when the programs are primarily created to perform utilitarian tasks.
4. Data bases and similar collections of information which are obtained primarily on behalf of campuses or departments rather than individuals, or which involve issues of privacy.
5. Collaborative works by persons working as members of the Valencia community, when numerous individual original contributions are indistinctly merged, as a practical matter, into a new and distinct work fixed in a tangible medium of embodiment, and the individual creators have not entered into an agreement with respect to joint authorship.

III. **Revenue Distribution**

The identity of the owner of a Work does not dictate the manner in which revenues derived from that Work may be distributed among those involved in its creation, distribution and use. Unless otherwise agreed in writing, the College shall share with the creator(s) the net income (that is, the gross income less all costs incurred by the College in the development, production and distribution of the Work) received from commercialization or exploitation of Works owned by the College in accordance with the following formula. The change in distribution formula will only affect net revenues above the triggering amount, whenever such revenues are received.

	Cumulative Net Revenue
Developer/Creator	90%
College	10%

IV. **Intellectual Control**

Where the College owns the copyright in a Work, the College grants the creator(s) a royalty free, non-exclusive license to reproduce and use the work for his or her own noncommercial academic or scholarly purposes, subject to the College's policies on Conflict of Interest and Use of Name. Use or distribution of such Works outside of the College, or distribution to colleagues, whether within or outside of the College, for their use outside of the College, must be in accordance with guidelines established by the College.

Faculty creator(s) of Works owned by the College have the right to update, correct, edit, or otherwise revise Works that become dated or that will be in need of revision within a particular period. It is the policy of the College that such rights be agreed upon and incorporated into a written agreement that is entered into prior to the creation of the Work.

Regardless of whether such an agreement has been entered into, if the College believes a revision is necessary and the creator(s) fail to make the revision in a timely manner or if the revision made does not, in the College's opinion, meet customary standards as determined by the College, the College may employ other persons to revise or update the Work. In the latter instance, the creator(s) may request that his or her name(s) be removed from the Work, and such request will be honored by the College.

V. Disclosure

The creator(s)/developer(s) of any Works shall promptly disclose to the Office of the VP for Academic Affairs any copyrightable materials covered by this policy that may be within the ownership rights of the College.

VI. Transfer of Ownership

Where the College retains ownership of a Work, it may, upon request, transfer ownership to the creator(s) or developer(s) of the work by written assignment signed by the President or his or her designee. In such cases, unless otherwise agreed to in writing, the College retains a royalty free, non-exclusive right to reproduce and use such works for its purposes.

VII. Third Party Materials

It is the policy of the College that all faculty, students, and employees comply with the requirements of law, specifically including state and federal copyright and privacy laws. Because liability may arise from incorporating into a work copyrighted material owned by third parties and images and voices of individuals, it is the responsibility of the creator(s) or developer(s) to obtain in writing all permissions and releases necessary to avoid copyright infringement and invasion of the personal rights of others, regardless of the ultimate ownership of the created work.

VIII. Particular Provisions Applicable to Courses of Instruction Approved for Valencia Credit

A. Intellectual property rights arising in courses approved for Valencia College credit ordinarily belong to their individual creators in accordance with the general principles expressed in Article I of this Policy; but rights may vest in Valencia to the extent that a course (or some portion of it) is created, acquired or developed

by Valencia under Article I, or when the course (or some portion of it) falls within the exceptions set forth in Article II.

- B. With respect to each such course (and whether the rights in that course belong to an individual creator or to Valencia), every member of the College community at large (including students, faculty, staff and administrators) shall enjoy a permanent nonexclusive, royalty free license to make all traditional, customary or reasonable academic uses of the immediate content of that course (the License).
 - 1. The "immediate content" of a course includes both the ideas and the expression arising ex tempore as the course is actually taught and delivered to students in the classroom (or otherwise at an assigned time or place); and this is so even when a permanent record of the delivery of the course is simultaneously made, as in the case (for example) of a videotaped recording of a lecture. To this extent "the immediate content" of the course is subject to the License.
 - 2. But works which are created outside the classroom (or otherwise beyond the immediate temporal setting in which a course is taught or delivered) - works (for example) such as books, texts, articles, notes for lectures, outlines, photographs, videos, films, recordings, audiovisual works and the like - are not part of "the immediate content" of a course, even if they are created expressly for the purpose of being assigned or used (in whole or in part) in the actual teaching or delivery of a course. Rights in these works are not subject to the License created by this Policy, though of course they remain subject to other more general legal or customary principles applicable to fair use, whether in the academy or elsewhere.
- C. The License shall be presumed to spring into existence automatically, by virtue of a course's approval for credit by Valencia with the consent of any individual rights- holder; no additional formality shall be required. No royalty shall be payable for the License, sufficient consideration for which shall be deemed to reside in the mutual benefit realized by Valencia and the consenting rights- holder, as well as by the individual members of the College community.
- D. The License shall include a particular right in students duly enrolled in a course to take class notes for their personal use; but notes in a course shall not be taken or disseminated for commercial purposes unless approved by the instructor.
- E. The License also shall include a right in Valencia to offer the course, or to develop and offer derivative courses of instruction, in both conventional and non-conventional settings (including courses intended for use in internet distance education projects), whether at Valencia or elsewhere. The License shall continue to be available to Valencia even if the faculty member in whom individual rights otherwise vest should leave Valencia.

- F. No claim of rights in teaching style or the like will be recognized under this Policy; but individual instructors may claim personal rights of privacy against non-consensual commercial exploitation of their name, likeness or private personality.
- G. A willing instructor who creates a highly original or singular course ordinarily may expect a preference (as against the claims of others) with respect to any assignment to teach that course (whether in conventional or unconventional settings) from time to time; but no continuing entitlement is implied as against reasonable administrative considerations to the contrary, including the particular demands or prerequisites of the curriculum.

IX. Teaching Materials and Student Works

When a student creates works independently, using only resources available in common to all students such work is owned by the student. However, work created by a student(s) when working for pay or academic credit, or voluntarily working on faculty projects or college or externally sponsored projects is subject to the provisions of this policy. In all cases the college and faculty shall have a non-exclusive, royalty-free, perpetual license to use, display, copy, distribute, and prepare derivative works (with appropriate attribution) of such materials for educational and administrative purposes and as examples of their students' work.

Creators of reusable teaching and classroom materials for Valencia courses, such as curriculum guides, problem sets, exercise solutions, laboratory manuals etc., shall own these materials unless they are subject to a prior agreement or provisions of this policy governing their ownership. In all cases the college shall have a non-exclusive, royalty-free, perpetual license to use, display, copy, distribute, and prepare derivative works (with appropriate attribution) of such materials for educational and administrative purposes.

X. Provision for Declaring Extraordinary Exceptions

The Vice President for Academic Affairs, in collaboration with the Chairs of the college's governing councils as deemed appropriate, may declare additional exceptions to these principles prospectively, on just and reasonable terms, when a particular transaction or category of work appears to require extraordinary treatment. Works created specifically for or in the context of the emerging digital or internet environment, and particularly when intended directly for use in distance education ventures in which the College proposes to invest its own singular identity, may justify extraordinary treatment more often than do works in traditional media. Exceptions limited to compulsory non-exclusive licenses from an individual creator to Valencia, accompanied by suitable provisions for royalty payments by Valencia, will appear just and reasonable more often than will appropriations of a creator's entire intellectual property rights in a work.

XI. Moral Rights

The moral rights of each individual creator will be respected to the extent practicable in every case contemplated by this Policy; and in no case will the College fail to recognize an individual creator's entitlement to acknowledgment, attribution or other appropriate credit, to the fullest extent practicable.

XII. College Name and Identity

- A. Intellectual property rights arising in Valencia College's name, logos and other impedimenta of identity belong to Valencia. Such rights may be licensed from time to time upon suitable terms and conditions approved by the President or delegates, taking into full and appropriate account the teaching and other missions of the College.
- B. Members of the Valencia community may identify themselves as such from time to time, with such indicia of their status as is usual and customary in the academy; but any use of Valencia's name, logos or impedimenta of identity shall be reasonably calculated to avoid any confusing, misleading or false impression of particular sponsorship or endorsement by Valencia, and when necessary shall include specific disclaimers to that end.

XIII. Effective Date; Prior Works

- A. This Policy shall take effect upon approval by the District Board of Trustees of the College.
- B. Intellectual property rights in works created prior to the effective date of this Policy shall be treated in accordance with the principles articulated herein, to the extent that such treatment is practicable, just and reasonable.

XIV. Dispute Resolution

This Policy shall be administered by the Vice President for Academic Affairs, who will provide advisory interpretations, in collaboration with the Chairs of the college's governing councils as deemed appropriate, upon the request of any member of the College community. Disputes concerning the interpretation and application of this Policy shall be resolved by the Vice President for Academic Affairs. The decision of the Vice President for Academic Affairs may be appealed to the President. The decision of the President is final and binding.

Policy History:

Adopted 8-27-75; Amended 12-13-78; Amended 12-15-82; Amended 11-18-92; Amended 12-20-05; Formerly 6Hx28:4-34; Formerly 6Hx28:04-30