

## INTELLECTUAL PROPERTY POLICY

FAQ

11/20/08



# EMERSON COLLEGE

**Question 1:** Who owns the rights when faculty, staff and/or students collaborate in creating a work, such as Emerson Stage productions or a TV or film production?

**Answer:** Creative works can have more than one “owner.” You might think of a collaborative production as a bundle of sticks, with different people owning one or more sticks. In the commercial world, a producer or other entity often gathers all the “sticks,” through licensing agreements or other legal contracts, so he or she controls all the rights to exhibit and distribute the collaborative product.

In the case of creative works here at the College, we look to the category of the creator (faculty, staff, or student) and then to the portions of the policy that govern that category. Staff rights are analyzed under Section 3.1, faculty under Section 3.2, and student rights under Section 3.3. It is possible, of course, that creators outside the College may also have rights. For example, in an Emerson Stage production, the playwright or his or her publisher generally owns the script, and the College uses it under a license that may limit the use of script in certain ways. Similarly, the College might license the right to perform music from a composer, or from a clearinghouse such as ASCAP or BMI.

**Question 2:** I am a staff member who has written occasionally for a College publication. Do I own the copyright to these pieces I've written?

**Answer:** If you write for a College publication as part of your College duties, then the College owns the copyright. However, if you ask, the College may, but is not required to, grant you a non-exclusive license to use the work. If your writing for the College publication is outside the scope of your College duties, the College does not own the copyright just because you are a staff member. However, ownership rights might be governed by a separate agreement between you and the College publication.

**Question 3:** During work hours, I (a staff member) sometimes post questions and information to professional email discussion lists, blogs, and other online forums as a way of contributing to my field and/or to fulfill my job responsibilities at Emerson. Does the College have copyright on these messages, and should it be consulted if someone asks to reprint part of a message?

**Answer:** Technically the College owns the copyright, but as a practical matter the College is extremely unlikely to assert its rights under the circumstances you describe or to require you to obtain the College's consent to reprinting. The College does, of course, expect such postings to be appropriate and for

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employees to distinguish between their personal opinions and official College positions where recipients are likely to confuse the two.

**Question 4:** Staff members, as part of their professional development responsibilities, sometimes participate in the profession at large by writing and presenting. If a staff member wishes to submit an article to a professional publication or allow a presentation to be included in a conference packet, does the College hold copyright over those works?

**Answer:** The answer depends on whether the staff member created the article or does the presentation as part of his or her duties for the College. For example, did the employee do the writing during his or her normal working hours? Was his or her supervisor aware of and supportive of the project as part of his or her duties? Was attendance at the conference paid for by the College? If the answer to one or more of these questions is yes, then the College owns the copyright. However the Vice President responsible for the unit may be willing to share or release the College's rights upon request.

**Question 5:** Might the "non-exclusive royalty-free license" in student work have a chilling effect on what students are willing to turn in as an assignment?.

**Answer:** The College's license does not apply to student work if it is a confidential educational record, such as a course assignment. With respect to other work, we hope and expect that our students will understand that their primary task here is education. We think it unlikely that a student will sacrifice a present opportunity to excel for speculative future commercial rights.

**Question 6:** If the College uses a student's work for public relations purposes under the College's non-exclusive license, who is responsible for making sure that third party material can be used for those purposes? What a student can use under "fair use" principles does not necessarily match what permissions would be need for a public relations piece.

**Answer:** If the College decides to use student work for the College's educational, promotional, or public relations purposes, the College is responsible for determining whether that further use is legally permissible. However, that does not relieve the student of responsibility for insuring that his or her contribution does not violate or infringe on any copyright, any right of privacy, or any other right of any person, and that the student work is not libelous, obscene, or otherwise contrary to law.

**Question 7:** When might Emerson put its name on a student work under Section 3.3(d)?

**Answer:** The College might do so if the work is a published thesis project or is funded by a significant donation.

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**Question 8:** With respect to Section 3.2 (b) (faculty rights in work created with significant College equipment) “significant college equipment” may be vague. Is an expensive software program (InDesign...) “significant”?

**Answer:** “Significant College equipment” is merely a descriptive heading. The equipment that the College considers significant is itemized in 3.2(b).

**Question 9:** When might the College claim rights in a faculty member’s work?

**Answer:** The College claims a non-exclusive royalty-free license to use a faculty member’s work for the College’s educational, promotional, and public relations purposes in only two circumstances: when the work has been created with certain listed significant College equipment or staff (Section 3.2(b)), or when the College has provided specialized financial support, such as special assignment contract. The College believes this is appropriate given the College’s financial investment in these resources. There are also laws, and internal College policies, that limit ability of the College and its employees to use the College’s non-profit, charitable assets for commercial and business purposes.

**Question 10:** Why does the policy hold students and faculty responsible for copyright infringement regardless of whether they know that they are committing infringement?

**Answer:** The policy is written this way because copyright law allows the owner of the infringed copyright to recover statutory damages for infringement, even if the infringer did not act willfully.