

## **MIDDLEBURY POLICY ON INTELLECTUAL PROPERTY RIGHTS**

### **I. Principles and Definitions**

The purpose of this Intellectual Property policy (this “policy”) is to protect and celebrate the work of members of the Middlebury Community, to establish understood guidelines with respect to ownership and use of Intellectual Property, and to demonstrate Middlebury’s commitment to sharing the Middlebury Community’s expertise for the public good. This policy outlines the rights, responsibilities, and opportunities of Middlebury Community members with regard to Intellectual Property created as part of work or study with Middlebury or with the use of Middlebury resources.

#### **(a) Principles.**

- (1) Middlebury wishes to support and sustain its tradition of rigorous academic pursuit leading to the creation, dissemination, and preservation of knowledge, inventions and scholarly works for the benefit of the Middlebury Community and the world. Middlebury approaches Intellectual Property in a way that recognizes and honors the traditions of how institutions of higher education support scholarly work, and creates incentives to do such work, while ensuring that it is preserving the appropriate Intellectual Property rights Middlebury needs to function in an evolving world. Consistent with this academic tradition, Middlebury’s Intellectual Property policy affirms that ownership of scholarly work created by members of the Middlebury Community typically remains with the creator of such work.
- (2) An important way for Middlebury to encourage scholarly work and innovations is to provide institutional support in the development, production and dissemination of creative works. Academic freedom includes the freedom to choose what work to carry out and how to disseminate the results. Middlebury’s approach to Intellectual Property is intended to promote academic freedom and the broad dissemination of scholarly work and innovations.
- (3) Middlebury does not distinguish between creative and scholarly works created by faculty, staff, or students. All members of the Middlebury Community are treated equally under this policy, though some kinds of work done by Middlebury Community members may fall under designations of specific interest for Middlebury and thus be subject to different Middlebury ownership guidelines.

#### **(b) Definitions.**

For purposes of this policy, the following terms have the following meanings:

- (1) “Middlebury” means all educational and research programs owned or governed by or on behalf of the President and Fellows of Middlebury College, in existence today or formed or acquired in the future, including Middlebury College, Middlebury Language Schools, Middlebury C.V. Starr Schools Abroad, Middlebury Bread Loaf School of English, Middlebury Bread Loaf Writers’ Conferences, Middlebury School of the Environment, and the Middlebury Institute of International Studies at Monterey.

- (2) “Intellectual Property” and “IP” mean intellectual property existing anywhere in the world, including rights in, to, and arising under (i) patents, patent applications and inventions (“Patent Rights”), (ii) trademarks, service marks, trade dress, domain names, uniform resource locators (URLs) and other network or electronic designations or social media identifiers (together with the goodwill associated therewith), (iii) works of authorship, including copyrights, (iv) computer software (in object code or source code format) and related files, libraries, data and other information, and (v) trade secrets and other confidential information.
- (3) “creator” means any person covered by this policy who (i) creates a work of authorship qualifying for protection under applicable copyright law, (ii) individually or jointly with others makes an invention and meets the criteria for inventorship under applicable patent laws and regulations, or (iii) otherwise creates or develops Intellectual Property.
- (4) “Middlebury Community” refers to (i) all Middlebury faculty, including full-time, part-time, visiting, and affiliated faculty of Middlebury, (ii) all Middlebury staff, including full-time and part-time staff and administrators of Middlebury, and (iii) all Middlebury students.

## II. Determination of Intellectual Property Ownership

### (a) *General Rule.*

**Subject to applicable law, any IP created or developed by members of the Middlebury Community shall be owned by the creators of such IP.**

### (b) *Exceptions to General Rule.*

Notwithstanding subsection (a) above, Middlebury shall own such IP, and the creator(s) hereby assign, and shall assign, all IP rights to Middlebury, when:

- (1) Middlebury has an *identity* or *functional interest* in the IP.

For the purposes of this policy, *identity interest* is defined as an interest in IP that is more integral to, and reflects more directly on, the identity of Middlebury than on the identity of the individuals who create it. For the purposes of this policy, *functional interest* is defined as an interest in IP that is used or intended to be used to ensure the effective functioning, coordination and management of ongoing operations of Middlebury. For example:

- (A) Middlebury has an *identity interest* in works related to Middlebury’s identity, including, without limitation:
  - publications disseminated beyond Middlebury, including brochures, videos, web sites and other materials designed for the recruitment of students;
  - official institutional web pages;
  - multi-media elements of Middlebury’s official online and social media presence;
  - alumni affairs publications;

- materials designed for fundraising and institutional advancement; and
- Middlebury logos, trademarks, service marks, domain names and social media identifiers.

(B) Middlebury has a *functional interest* in works related to ongoing operations, including, without limitation:

- administrative and personnel handbooks, policy manuals and other documents;
- training and procedural manuals;
- committee and task force reports;
- institutional proposals for external funding;
- self-studies for external review or re-accreditation processes;
- institutional planning documents;
- software, digital learning platforms, interfaces, databases, specialized processes and other innovations used for operational purposes; and
- maps, architectural drawings, technical and engineering documents and other information relating to Middlebury facilities, properties and assets.

(2) Such IP is created or developed in connection with a specific, institutionally-defined project.

(3) Creation or development of the IP was funded as part of an externally sponsored program under an agreement that *requires* that IP ownership rights be allocated to Middlebury or to another entity specified by the funder. If, under the legal requirements applicable to a government-funded project (e.g., the Bayh-Dole Act), the relevant government agency may approve the transfer of the IP rights, subject to any rights of the agency under the applicable law or otherwise, Middlebury will inform the agency that it seeks to release its rights and will cooperate with the creators to obtain agency approval to transfer IP rights to the creators.

(4) The IP was created or developed with substantially greater use of Middlebury resources than would normally be provided in support of the creators' employment duties or student activities, as applicable. This might occur through disproportionate use of staff time, student resources, networks, equipment, direct funding, or other Middlebury resources. If in such a situation the creator and Middlebury mutually agree that ownership should remain with the creator or be shared by Middlebury and the creator, then Middlebury and the creator must enter into a written agreement regarding ownership of the IP at an early stage of its development, generally before the use of extra Middlebury resources begins, and ownership will then be determined by the terms of such agreement (as further described below).

**(c) IP Ownership Agreements.**

Notwithstanding subsections (a) and (b) above, where Middlebury and the creator of the IP have entered into a written agreement regarding the ownership of the IP, ownership and any assignment of IP rights obligations will then be determined by the terms of such agreement. Such agreements may involve the offering of non-exclusive, worldwide, royalty-free licenses for use by the creator or Middlebury, and/or the offering of creative commons licensing for broader use.

**(d) Other Middlebury Policies.**

Though ownership of instructional and scholarly materials and other IP created or developed by the Middlebury Community that fall outside of the Middlebury ownership rights described in subsection (b) or (c) above remains with the creator, the rights of those individuals to create, develop, distribute, use and otherwise exploit those materials and other IP remain subject to all other applicable Middlebury policies, including [Middlebury's Consulting and Outside Employment policy](#), Middlebury's [Trademark and Logos policy](#), and policies dealing with conflicts of interest.

**(e) *IP Created through Partnerships, Collaborations and International Work/Study.***

Intellectual Property may be created or developed through collaborations or partnerships by the Middlebury Community with other individuals and institutions. In those cases, the members of the Middlebury Community and the collaborating individuals or entities should sign an agreement that describes how Intellectual Property ownership and rights will be handled. It is important to recognize that such agreements should be made in advance of the start of a project and that they may be subject to institutional, state, U.S., and international laws and regulations.

Most of the Intellectual Property created or developed by Middlebury Community members as part of work or study with Middlebury Schools Abroad and any Middlebury programs with international collaborators or operations outside the United States, remain as the property of those individuals as described in this policy; however, there are exceptions to this rule, including, without limitation, those instances in which IP is to be owned by Middlebury as described in this policy. Additionally, some exceptions to individual ownership may apply when necessary to comply with applicable, institutional, state, U.S. and international laws and regulations.

Middlebury Community members studying or working with an international partner institution or an unrelated institution, organization, or entity, should review this policy and the Middlebury Conflict of Interest Policy, and investigate the Intellectual Property policies of that institution, organization, or entity before committing to study or work there, as they may be subject to those policies. Similarly, staff and students from international partner institutions or unrelated institutions, organizations, or entities will be subject to Middlebury's IP policies when they are doing work as part of a Middlebury course of study or work.

**(f) *Institutional Support for Commercialization of IP Owned by Middlebury Community Members.***

Middlebury Community members who wish to pursue the commercialization of their Intellectual Property rights, including Patent Rights, through Middlebury, may provide the Office of the Provost with written notice of such proposed commercialization, which notice shall include a non-confidential description of such Intellectual Property rights. The Intellectual Property Committee will then determine whether additional information or disclosure is required with respect to such Intellectual Property and, if so, may require the applicable Middlebury Community member to enter into a non-disclosure agreement with Middlebury with respect to such information. Following the Intellectual Property Committee's review of the Intellectual Property and additional information and disclosures (if any) and evaluation of the commercial potential of the Intellectual Property, the Intellectual Property Committee will make a recommendation to the Provost regarding Middlebury's support of and role in the protection and commercialization of the Intellectual Property. Whether

Middlebury will provide assistance in the protection and commercialization of such IP will be made at the sole discretion of the Middlebury Provost. If Middlebury elects to provide assistance in the protection and commercialization of the IP, the owner of the IP rights and Middlebury shall negotiate in good faith an agreement governing the rights and responsibilities to protect the IP rights, to further develop, market and commercialize the IP rights and an equitable sharing of royalties or other financial returns from the IP rights in recognition of their respective contributions and responsibilities.

**(g) Questions.**

Questions regarding the interpretation of the above-described Intellectual Property ownership determination framework should be directed to the Intellectual Property Committee as defined in the “Administration” section below.

### **III. Middlebury Access and Use**

Middlebury is committed to sharing the expertise of Middlebury Community members in support of Middlebury’s educational purposes. To do so, Middlebury retains, and the applicable creator(s) hereby grant to Middlebury, a royalty-free and non-exclusive license and right to archive and exhibit innovations that are the Intellectual Property of creators under this policy for long-term preservation and non-commercial uses in support of education and scholarship.

### **IV. Administration**

**(a) Office of the Provost.**

This policy will be administered by the Office of the Provost. Interpretations of and rulings with respect to the terms and conditions of this policy will be made by the Provost, following consultation with the Intellectual Property Committee. Any matters that involve the Provost as a creator under this policy will be determined by an ad hoc committee of the Middlebury Board of Trustees.

**(b) Intellectual Property Committee.**

In implementing this policy, the Middlebury Board of Trustees will, in consultation with the Provost, appoint an Intellectual Property review committee (the “Intellectual Property Committee”) consisting of members of various constituencies within the Middlebury Community. The Intellectual Property Committee will have an Executive Committee designated by the Board of Trustees.

The Executive Committee will meet at least semi-annually to discuss and make recommendations to the Provost on matters regarding (i) changes or amendments to this policy, (ii) general guidance to the Middlebury Community regarding the interpretation of, and procedures described in, this policy, and (iii) other issues relating to the matters described in this policy as requested by the President, the Middlebury Board of Trustees or the Provost. Meetings of the Executive Committee will be open to the Middlebury Community.

The full Intellectual Property Committee will be convened and meet as needed in response to disputes arising under this policy, and additionally from time to time as requested by the Executive Committee or the Office of the Provost. Both the Executive and full Intellectual Property Committees will keep regular minutes of meetings and provide such minutes to the Provost.

***(c) Resolution of Disputes and Conflicts.***

Disputes relating to this policy and Intellectual Property created or developed by the Middlebury Community will be referred to the full Intellectual Property Committee, the President and the Vice President of Human Resources (collectively, the “Adjudicating Committee”) for review and resolution. When addressing a dispute, the Adjudicating Committee shall investigate the dispute, which investigation shall include soliciting feedback and information from the General Counsel of Middlebury, who shall serve as an advocate on behalf of Middlebury (or, in the absence of the General Counsel, an individual appointed by the President to serve as an advocate on behalf of Middlebury) and the creator. Resolution of all disputes will be made by the Adjudicating Committee, subject to the approval of the President. The decision of the Adjudicating Committee, subject to the approval of the President, shall be final.

***(d) Approval and Modification.***

This policy has been approved by the Middlebury Board of Trustees. It may only be modified, restated or repealed with the approval of the Middlebury Board of Trustees.