

Franklin W. Olin College of Engineering Proposed Intellectual Enterprise Policies

I. Intellectual Property, New Ventures and Copyright Policy

Principles

This Intellectual Property, New Ventures and Copyright Policy is based on the following ten principles:

1. The policy should encourage creative and entrepreneurial activity, and catalyze the teaching of creative thinking and entrepreneurship.
2. The policy should help attract and retain the types of students, staff, and faculty we wish to have at Olin.
3. The policy should foster good will towards the College and encourage philanthropy.
4. The policy should be fair.
5. The policy should distinguish as little as possible between faculty, staff, and students since faculty, staff, and students will work closely in teams.
6. The policy should safeguard an open and non-secretive atmosphere on campus.
7. The policy should safeguard the tax-exempt status of the College and minimize legal risks.
8. The policy should contribute to the College's financial health; for example, by operating efficiently and by providing opportunities for growth of the endowment.
9. The policy should promote the dissemination of ideas and promote the public good.
10. The policy should be as simple as possible.

Terms of Policy

This Intellectual Property (IP), New Ventures (NV) and Copyright (C) Policy (collectively, IP/NV/C) comprises the following principles; a brief rationale for each is provided:

Ownership and Control

Except as limited by legal or contractual obligations, members of the Olin community own and control the intellectual property¹ resulting from their work. Normally, Olin College is provided a nonexclusive, nontransferable, irrevocable, paid license to use this intellectual property for internal, non-profit purposes directly related to its educational and research mission. When the provision of this license to Olin would materially impair wider use of the intellectual property, the College will waive these rights at the justified request of the inventor. Similarly, except where limited by legal or contractual obligations, members of the community are the owners and controllers of their entrepreneurial ventures.

Rationale

Although most intellectual property has little tangible value, the perceived value of newly created intellectual property and businesses to inventors, authors, artists and entrepreneurs is often high. Recognizing this “fact of life” about intellectual property and early entrepreneurial ventures, a creator-centered ownership and control policy will ultimately produce the highest level of invention, entrepreneurial activity, education, and good will (and thus philanthropy) towards the college. Copyrights are traditionally owned and controlled by their author. Here all forms of intellectual enterprise have similar status.

Provision of rights of use for non-profit purposes to Olin College is consistent with the spirit of open community cherished at Olin and assures that individual successes will appropriately benefit the community without cost to the inventor. It assures that teaching and research may continue to progress while intellectual property ownership is granted to students, staff and faculty on particular aspects of work they perform while at Olin College. In certain circumstances (for example, a publisher that insists on exclusive copyright), a means is provided for the College to waive its rights if doing so would result in wider use of the intellectual property.

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Intellectual Property includes patents, copyrights, trade secrets, trademarks, mask works, and certain biomaterials.

Revenue

Each member of the Olin community that creates IP/NV/C which generates income is asked to voluntarily donate a portion of this income back to Olin. This donation is in addition to fees for legal or contractual obligations, both to external parties and possibly to Olin, if technology licensing services are provided. The College will establish and disseminate a suggested donation schedule for various levels of income, yet the determination of actual donation level will be made by the inventor, author, artist, etc. As with personal philanthropy, donations from intellectual property or new ventures will not be considered during evaluations or promotions.

Rationale

This policy posits that the creators of intellectual property and new ventures are the best judges of what share of the royalties or profits would be most fair to donate back to the College. This policy takes advantage of our small size and strong sense of community to fully embrace the philanthropic ideal. Instead of mandating royalties, it trusts members of the community to live what we teach and, if they are fortunate, to give back what the College deserves (and perhaps more).

In exchange, Olin does not require detailed accounting of College resources used to create IP. Limits on the use of Olin resources are set through the conflict of commitment and use of facilities policies. The lack of a mandated donation allows community members to judge for themselves whether an extraordinary amount of the College's resources were responsible for financial success, or whether an idea was generated totally separate from College activities.

By putting decisions in the hands of creators, the College also avoids the divisive issue of how students, staff, and faculty might be treated differently. Students, for example, may create IP in a course project and it is not clear what claim the College has on their creative output. Faculty, while being employees, are not expected at other Colleges to share royalties on text books and artwork, despite often using College facilities and time for their creation. Finally, the staff is usually expected to assign all financial rewards to the College, under the 'work for hire' philosophy. But in an environment such as Olin's where faculty, staff, and students try to work seamlessly in teams, there is little moral justification for treating them differently and a great deal of harm that may result from doing so.

Support Services

The College should offer technology licensing services (TLS) for the purposes of promoting intellectual property generated at Olin. These services can be provided by a self-sustaining office at Olin, or through a contractual agreement with an outside supplier, for example, by outsourcing. The services of this office should be offered at reasonable cost. Fees charged by this office in exchange for services will be determined on a case-by-case basis.

Federally-Funded Inventions

Compliance with the Bayh-Dole Act: When an invention is conceived in the course of federally-funded research, the Bayh-Dole Act removes Olin College's authority to assign ownership (title) of patents to inventors. This law requires inventors to disclose to the College, and the College to disclose to the government sponsor, all inventions believed to be patentable and of commercial value, made in whole or in part, whether solely or jointly with others, during the course of federally-supported research or activity.

Further, according to Bayh-Dole, the College may elect title to inventions made under government sponsorship; if it does not, the title will automatically vest with the government. The College may not assign rights to the inventor; only the government can assign these rights. In all cases, the government retains a nonexclusive, nontransferable, irrevocable, paid, worldwide license to inventions made under federal research, as well as other rights outlined in the law.

In the spirit of Olin's general policy of giving as much control over the use of intellectual property to inventors as possible, the College will normally consult with and follow the wishes of the inventor in making decisions regarding intellectual property arising from work under government sponsorship. If the inventor wishes to obtain title to the property directly from the government, the College will not elect title, allowing it to pass to the government with a request that the government transfer title to the inventor. If the inventor does not wish to request title in this way, and the College decides that the invention is likely patentable and of commercial utility, the College will bear the costs of prosecuting and licensing the patent, and arrange for royalty sharing with the inventor. The College will normally grant an exclusive license to the inventor under fair terms, unless such action directly impedes wider use of the patent.¹

As in all other cases when the College agrees to bear costs of prosecuting and licensing intellectual property, the terms of the royalty sharing will be determined with the intent that the College will recover the costs of patent prosecution and license administration. This recovery is designed to prevent losses to the College, rather than as a profit-making venture. Therefore, as in all other cases, the inventor is encouraged to voluntarily donate a portion of gains from the invention to the College.

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Bayh-Dole expressly forbids the College to license inventions for defensive reasons.

Rationale

The intent of these policies is to provide ownership and choice for inventors. Olin's approach to compliance with Bayh-Dole is intended to maintain this intent within the limits of the law. Choices are even greater for inventions not discovered under government sponsorship. Instead of requiring creators of IP at Olin to use the College's technology licensing services (TLS), a free-market system will apply. The College may wish to slightly subsidize an on-campus TLS, resulting in somewhat lower profits (but not losses), in exchange for a greater volume of work and a greater ability to publicize the College's creative output and leverage the College's name. Outsourcing these services is another option.

Disclosure

In order for the College to comply with obligations arising under federal laws, faculty, research staff, and students are required to report all inventions that were made, in whole or in part, jointly or with others, during the course of any federally-supported research or activity. For inventions not subject to Bayh Dole, and except as constrained by legal or contractual obligations, members of the Olin community are strongly encouraged to disclose intellectual property in a timely manner, either by filing for patent protection, declaring a copyright, or by placing their creative work in the public domain. Alternatively, intellectual property may be pursued as trade secrets in a new venture. Specific laws governing disclosure and protection of intellectual property resulting from government-sponsored research will be obeyed.

Rationale

A principal goal of Olin is the dissemination of knowledge and the promotion of the public good. Keeping new ideas hidden is a disservice both to the creator and to the public at large.

Sponsors

While Olin should try and retain inventor ownership of IP for sponsored work, sponsors may insist on contracts that assign IP to the sponsor. Subject to Olin's ability to do so, such contracts can be granted but must include a nonexclusive, nontransferable, irrevocable, paid, royalty-free license for the inventors and Olin College to use the IP for non-profit purposes consistent with the educational and research mission of the College. Furthermore, if the IP is unused by the sponsor for a number of years specified in the assignment contract, the sponsor-inventor relationship is reversed: ownership of the IP reverts to the inventors, with a nonexclusive, nontransferable, irrevocable, paid, royalty-free license being granted to the sponsor. The assignment should also specify a royalty paid on for-profit use of the IP. For both scenarios described, the sponsor/inventors should grant to the inventors/sponsor a royalty on for-profit gains at least as generous as that enjoyed by the sponsor's employees.

New ventures may require external sources of capital. It is common for inventors to assign equity in the venture to gain these resources. Members of the Olin community are directed to assign no more than 80 per cent equity in new ventures to others. This assignment assures that the inventor will retain value and maintain the opportunity for

personal gain and philanthropic donations. In special cases, the maximum possible percentage of the assignment may be altered by agreement between the inventors and the Provost/Dean of Faculty of Olin College.

SCOPE Projects

All IP made as a result of a SCOPE project shall belong to the sponsor, except for federally-funded projects subject to Bayh-Dole. Olin requests that sponsors, when possible and as required by law, name the students and faculty advisor contributing to a project as inventors on any patent application covering any inventions arising out of the project.

Rationale

One of the advantages of this IP policy is its attractiveness to potential sponsors. By taking the College out of the licensing equation, sponsors can negotiate simple contracts and retain IP rights. At the same time, we would like sponsors to act towards the College in a similar way we expect members of the Olin community to act. We expect and encourage sponsors to voluntarily reward inventors who do work under contract, and to not “sit” on IP generated under a sponsorship. The policy also protects Olin inventors from depletion of their equity by investors.

II. Conflict of Commitment Policy

Because a range of experiences, both on campus and off campus, can contribute to the vitality of all members of the community, Olin College encourages community members to pursue external activities as long as those activities do not detract from the College's mission. The following Conflict of Commitment policy is meant to help ensure that this overarching principle guides external activities. Each section of the policy is organized in two parts: a more detailed principle behind that section of policy, and a description of what members of the community are expected to do.

1. Priorities and Consultation

Principle: For Olin to succeed, members of the community must primarily be dedicated to the College's mission. While most of us are good at identifying potential conflicts of commitment, it is difficult to judge the impact of our own conflicts objectively. Thus, disclosure and consultation with others is vital.

Expectations: All members of the Olin community, for example, students, staff, faculty members and administrators, are expected to be primarily dedicated to the College's mission. All members of the community are expected to meet with their advisors or supervisors whenever any external activity has the potential of interfering with a primary commitment to the mission of the College. The meeting should include a full disclosure of the potential conflict and a consultation regarding the best course of action.

2. Appearance of Conflict

Principle: Many difficulties occur when a third party perceives that a member of the community is not respecting agreed upon policies. Often such perceptions are based on few facts and are objectively inaccurate. Disclosure helps to minimize such misperceptions, helps individuals self-police their own activities, and also helps create an atmosphere of mutual trust.

Expectation: Even when there may only be the possibility of an appearance of conflict of commitment, members of the community are expected to disclose potential conflicts and consult with their advisors or supervisors. When in doubt, disclose and consult.

3. Time Responsibilities

Principle: The time consumed by external activities must not be allowed to adversely impact commitment to the College. Such conflicts can occur overtly, for instance when a community member is not on campus and not fully participating in the College's mission, or subtly, for instance when a community member is on campus but spending too much energy on external activities and is thus distracted from investing energy in the College's mission.

Expectation: By default, full time faculty, staff and administrators are expected to spend the time agreed upon with supervisors devoted to activities directly related to the College's mission, and to choose hours of work at the college that are sufficiently conducive to work with others. Supervisors and employees will reach agreement upon this workload and work schedule at the time the employee is hired and will review this agreement thereafter as necessary. Students are expected to attend classes and to spend the hours per week indicated in the college catalog on their studies. In addition, employees funded in part or in total with sponsored programs through Olin are expected to devote the percentage of effort committed in the award to that project.

Variations to these time expectations will occur regularly, but must be negotiated explicitly with an appropriate advisor or supervisor. Whenever possible, such exceptions should be reflected in the job description of the community member and disclosed to the community, for example a part-time appointment, a joint appointment with Babson, other colleges or institutions, or significant funded time dedicated to other ventures.

4. Confidentiality

Principle: An atmosphere of openness is vital to the functioning of the College. While external activities can be beneficial to the College, the confidentiality they sometimes require can damage our educational atmosphere.

Expectation: Confidential discussions about external activities should be avoided in public areas of the College. This includes all classrooms and laboratories, the library, and all public spaces, hallways, eating areas and lounges, including the dormitory lounges. Students and faculty should also be sensitive to the exclusionary nature of confidential discussions about external activities held in dormitory rooms and academic offices where uninvolved parties often come to visit without appointments. The best places to have confidential discussions about external activities are in the hatchery space, behind closed doors in small conference rooms, or off campus.

5. Roles and Equity

Principle: Members of the Olin community have specific relationships due to their roles relating to the College's mission. External activities where the same community members have different power and economic relationships can create conflicts both within the group of individuals and between the group and uninvolved parties.

To mitigate such difficulties, the following guidelines should be followed:

- 1) All members of the community who have equity or control in entrepreneurial ventures involving other members of the community must disclose this information in writing and consult with their dean, supervisor or advisor. A form for such disclosure is available in the Office of Sponsored Programs.

- 2) Faculty, administrators and staff should be particularly sensitive to their dual roles as educators and business partners in entrepreneurial ventures, and place their role as educators above that of business partner. Faculty, administrators and staff are expected to consult with their deans or supervisors if difficulties occur and to resign from entrepreneurial ventures if conflicts between their business and educational role cannot be resolved.

III. Policy on Use of Facilities

Laboratory, shop, computer and other facilities at Olin have been created primarily to further the educational mission of the College. Because external and personal projects can contribute significantly to the vitality of community members, Olin encourages the use of facilities for such projects, as long as such use does not adversely impact the primary mission of the College and does not adversely impact the legal standing of the College as a tax-exempt organization.

The following policy has been created to ensure that facility use occurs according to these principles.

1. Safety

Some Olin facilities are dangerous. No one may use any dangerous facilities without first being trained and certified by the facilities supervisor or their delegates. No one may use dangerous facilities alone.

2. Individual Facility Policy

Use of specific facilities is contingent on obeying the specific policies of those facilities.

3. Time and Materials Compensation for Personal and External Activities

Use of facilities for personal and external projects is encouraged, but such use is of lower priority than college work and must never interfere with use of facilities for college related work. Community members using facilities for personal and external projects are expected to purchase their own consumable materials or explicitly ask permission to borrow materials from college supplies and replace them as soon as possible. Members of the community are also expected to compensate the school for wear and tear on equipment, etc. The extent of this compensation depends on the extent of the facility use. For the minimum use, community members are expected to leave facilities better off in some way than when they began, for instance by leaving some materials or tools for others to use and/or by leaving the facilities better maintained than when they started. For more significant use, community members are expected to pay for time, at a rate established by the College.

Scrap materials may be used for constructing personal or external activity items, but because scrap materials are also useful for college work, new materials should be purchased as soon as possible to more than compensate for the loss of scrap. When in doubt as to whether something is scrap, ask a staff or faculty member in charge of the facility.

4. Creation of Illegal Items, or Items for Illegal Use

Olin facilities should not be used to create illegal items or items for illegal use (for example: drug paraphernalia, lock picks, fireworks, firearms, explosive devices, eavesdropping devices, code-breaking devices, etc.). Besides being a violation of law, such use is a violation of the student honor code and the employment expectations for faculty and staff. When in doubt as to the legality of creating an item, ask explicit permission from a member of the staff or faculty member supervising the facility you wish to use.

5. Creation of Items Reflecting Poorly on the College

The use of Olin facilities to create items that will reflect poorly on the College should occur, if it occurs at all, only after careful consideration of harmful repercussions. While Olin's facilities are private, academic freedom urges us to keep the choice of limiting expression in order to safeguard communal reputation a personal one. This is a serious responsibility. Please think things through, and if in doubt, consult with others.

6. Reporting of Violations

Violations of this policy should be reported to the supervisor of the appropriate facility and to the Provost/Dean of Faculty of Olin College.

7. Revocation of Privilege

If violations of this policy are reported, the Provost/Dean of Faculty may convene a hearing panel to evaluate the case and make recommendations for remedy to the Provost/Dean of Faculty. The Provost/Dean of Faculty may revoke or abridge use privileges of the violator.