



Intellectual Property

Policy RC001

Volume 12, Research and Creative Activity

Responsible Administrator: Vice President for Academic Affairs

Responsible Office: Academic Affairs

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Policy Statement

It is the mission of the Fashion Institute of Technology (“FIT”) to prepare students for professional excellence in design and business through rigorous and adaptable academic programs, experiential learning, and innovative partnerships. To this end, FIT is a place where students and faculty cross traditional disciplinary boundaries to stimulate innovation, partner with creative industries worldwide, and develop innovative design and business solutions. To foster this environment, the overall goal of this Intellectual Property Policy (the “Policy”) is to encourage artistic and intellectual creativity and invention among the students and faculty at FIT.

Reason for the Policy

This Policy aims to establish fair and reasonable ownership policies that are consistent with FIT’s mission, culture, educational objectives, and level of contribution to a particular work. In general, this Policy provides that students and faculty own the intellectual property in their work product subject to certain specified exceptions

Who is Responsible for this Policy

- Office of Academic Affairs

Who is Affected by this Policy

- FIT Students
- Non-FIT Employees

Definitions

Appendix provides definitions for the terms used in this policy.

Principles

- **Ownership of Intellectual Property Rights**

The Students or Faculty who create the Work own the Intellectual Property Rights to that Work, including Work done in the classroom or as part of course Work. This general principle is subject to certain exceptions. Employees do not own the Intellectual Property Rights to Work they create in connection with their employment at FIT, but rather FIT owns all such Intellectual Property Rights.

Non-Employees do not own the Intellectual Property Rights to Work they create in connection with their activities at FIT, but rather FIT owns all such Intellectual Property Rights.

- **Exceptions to Ownership of Intellectual Property Rights**

The following lays out instances in which FIT's general rule that the Students and/or Faculty that create a particular Work own the Intellectual Property Rights in that Work would not apply, in whole or in part.

- **Course-Related Sponsored Work**

Student contests and student projects that are industry-sponsored and created in the course of academic classroom activities are important components of teaching and learning at FIT. When a company or other outside entity sponsors such contests or other projects, including when this Work is done in the classroom (or elsewhere) but in conjunction with a course, the Student(s) and/or Faculty that create the Work, (see above) own the Intellectual Property Rights associated with the Work, but may be required to waive, license, and/or assign certain specified rights by signing an Assignment of Rights and Waiver, as described below.

For each sponsored contest or project, the terms of that contest or project replace the general rule contained in this Policy. As such, the Student and/or Faculty may, in some instances, be required to wholly assign their Intellectual Property Rights in the Work to the sponsor as part of an agreement with the sponsor which includes appropriately compensating the Student and/or Faculty.

In addition, Students or Faculty may be required to waive any privacy or moral rights to the Work. In the case of Students who do not wish to waive their rights, these Students may achieve the learning outcomes of the course but will not be required to share their Work with the industry sponsor. In the case of Course-Related Sponsored Work, where the Creator creates the Work and the Sponsor owns it, FIT will have no claim to income derived from that Work. For more specificity as to Student or Faculty participation in contests and industry-sponsored projects, please refer to the FIT Student Contests and Industry Sponsored Projects Policy.

- **Special Projects**

An outside entity may engage FIT independently or in collaboration with third-party entities to perform research and development in certain areas or to solve certain problems within industries in which FIT has demonstrated specialized knowledge or expertise. These projects are distinct from Course-Related Sponsored Work because they are not associated with a particular course. For special projects, the Students and/or Faculty will be required to enter an agreement before joining the project, which in general, will require the assignment of the Intellectual Property Rights associated with the Work to the outside entity and/or FIT.

- **Government-Sponsored Work**

With respect to Sponsored Work sponsored by a governmental entity or any of its agencies, FIT owns the Work. If FIT elects not to own the Intellectual Property Rights, the governmental entity shall own the Intellectual Property Rights in that Sponsored Work.

- **FIT-Sponsored Work**

With respect to Work sponsored by FIT, FIT owns the Intellectual Property Rights in that Sponsored Work. FIT Sponsored Work includes Work that is authorized or approved by FIT, is specifically created under the direction or control of FIT, or is commissioned by FIT. The Creator of the Work may be required to sign an Assignment of Rights in order for FIT to acquire or confirm ownership of the Intellectual Property Rights in that Work. In the case of Work authorized or approved by FIT, FIT's approval of the Work triggers FIT ownership of the Intellectual Property Rights in that Work. Two specific subcategories of FIT-Sponsored Work created by Faculty, along with Intellectual Property ownership presumptions:

- **Course of Study, Syllabi, and Other Faculty-Created Course Work**

- FIT owns the Intellectual Property Rights in the Course of Study for each course FIT commissions. The Faculty who creates a course that is commissioned by FIT owns the Intellectual Property Rights in the Syllabus and other material the Faculty creates for that course.

- **Reproductions**

- FIT owns any material, in the form of media (including without limitation video or audio) which is a reproduction of an FIT course. FIT will not claim ownership in the underlying Intellectual Property Rights within such reproduction, unless FIT already owns the underlying Intellectual Property Rights under any other section of this Policy. With respect to such recordings that are created by Students or Faculty in connection with their courses, FIT permits the use of the material only for their personal use for educational purposes, which, to be explicit, does not include the right to broadcast, disseminate, publicly display, or make Derivative Works from the recording.

- **Work Created Using Substantial FIT Resources**

FIT owns the Intellectual Property Rights in a Work when the Work was created using substantial FIT resources. Use of FIT resources is substantial when it entails use to a degree not ordinarily made available to all Faculty or Students. Resources beyond those ordinarily made available can take many forms, for instance, significant FIT funding, free use of specific FIT facilities outside the classroom, the purchase of special equipment and supplies, Employee labor beyond their normal scope of work, or an unusual reduction of teaching responsibilities. As a matter of clarification, Project Work would not typically fall under this exception because it would not involve the use of substantial FIT resources. Creators are strongly urged to notify the Office of the General Counsel at OGC@fitnyc.edu when they plan to make or have made substantial use of FIT resources in the creation of a Work, and they believe the Work or its associated Intellectual Property is original and has potential monetary value, and the failure to do so creates a presumption that the Work was made using substantial FIT resources, which presumption the Student or Faculty will have the burden to overcome. For your reference, Appendix III provides illustrative examples that may aid in understanding substantial use.

- **Team Work by Faculty and/or Students where Identity of Project Resides with FIT**

Where material is created in the course of a research or other collaborative project where development has been by a team such that the identity of the project resides with FIT rather than with particular individuals, FIT owns the Intellectual Property in the Work. The Creators may be required to sign an Assignment of Rights in order for FIT to acquire or confirm ownership of the Intellectual Property Rights in that Work.

- **Associated Material**
Material closely associated with a Patent or Trade Secret is owned by FIT under this Policy, such as copyrightable material created to effectuate an invention (e.g., software, fashions, designs) or to supplement an invention (e.g., documentation). This does not apply to Traditional Works of Scholarship reporting on the research that led to the creation of such materials.
- **Assignment of Rights and Waivers**
There are several instances where FIT and/or sponsors of Work require Students or Faculty to agree to certain terms in connection with their participation in a contest or sponsored project. With respect to ownership rights, the Student or Faculty may be required to waive and/or assign certain ownership rights, which, for example, can include relinquishing the ownership of rights to the Work to FIT or to the sponsor as a requirement for participation. An Assignment of Rights and Waiver, which will be provided in connection with the Sponsored Work or special project may acknowledge that the Students or Faculty are relinquishing certain rights, which may include the right:
 - to know, before or after, if FIT or the sponsor is using their Work;
 - to approve FIT's or the sponsor's use of their Work;
 - to sell their Work to anyone else in the future;
 - to own the Work and associated Intellectual Property Rights; and/or
 - to receive any monetary compensation for use of the Work.
- **Preexisting Intellectual Property Rights and Obligation to Cooperate**
With respect to Works and associated Intellectual Property Rights that are owned by FIT or other sponsors, Individuals involved in a Work are required to (i) before becoming involved in creating a Work, notify the Office of the General Counsel at OGC@fitnyc.edu of any preexisting Intellectual Property Rights owned by the Individual or known by the Individual to be owned by others that are germane to the right to use, develop, commercialize, license, or modify the Work and related Intellectual Property Rights, and (ii) cooperate and not interfere with FIT or other sponsor in having full, unrestricted, and unimpaired ownership rights to the Work and associated Intellectual Property Rights including the right to use, sell, license, perfect or confirm ownership, pursue patent applications, or other ownership rights. Interfering with the rights of FIT includes situations such as when a patent application is pursued for the same or trivial variations of an invention that is owned by FIT. Individuals are required to abstain from using preexisting Intellectual Property Rights, owned by that Individual or a third party, in a Work until they disclose those rights to FIT and have obtained FIT's approval to use those rights in the Work. Sponsors should also disclose preexisting Intellectual Property Rights
- **Use Rights**
With respect to Work owned by Faculty or Students, FIT has Use Rights to the Work (and the associated Intellectual Property Rights) for educational, scholarship, exhibition and marketing purposes (including marketing FIT and its courses and programs), and other noncommercial purposes. FIT also has the right to sublicense its Use Rights to the Work and associated Intellectual Property Rights. With respect to Work owned by FIT, the Students or Faculty that create the Work (and associated Intellectual Property Rights) have limited Use Rights to the Work, comprising the right to use their own Work in their portfolios to promote themselves and their Work, and for other non-commercial and scholarly purposes. As part of this limited Use Right, Students or Faculty using their own Work in their portfolios, where FIT owns the Intellectual Property in that Work, must signify FIT's Intellectual Property ownership of that Work. If the Policy is violated with respect to a

particular Work, FIT may in its discretion revoke Use Rights from a Student or Faculty with respect to that particular Work.

- **Monetization**

- **FIT-Owned Work**

- For Work owned by FIT, income derived from commercialization of that Work will be divided as follows. First, FIT will be reimbursed for its expenses in relation to the creation and commercialization (including licensing) of the Work or related Intellectual Property (including expenses relating to patenting or registering, maintaining, and enforcing the Intellectual Property). Second, the remainder of the income will be divided, with 50% going to the Creators of the Work and 50% going to FIT. The portion that goes to FIT will be placed in an account to be utilized at the discretion of the President of FIT to support education and research at FIT.

- **Sponsor-Owned Work**

- With respect to Work other than Course-Related Sponsored Work for which the Intellectual Property Rights belong to the sponsor, any income that would be due to Faculty, Staff, or FIT in connection with the Work would be determined by agreement prior to the commencement of the project for the Work.

- **Use of FIT Trademark**

The FIT Trademark and the FIT name shall not be used for personal or commercial gain in connection with any Work or any activities outside of FIT such as by offering products or services under any FIT Trademark. This means that Faculty, Students, and Employees must avoid the appearance that they are acting on behalf of FIT, or that FIT sponsors or endorses, such activities. Individuals are permitted to identify themselves as Students, Faculty, or Employees of FIT.

- **Advice and Interpretation**

Students, Faculty, Employees, and Non-Employees may request advice as to the terms of this Policy and interpretation of the meaning of this Policy from the Office of the General Counsel, the Vice President of Academic Affairs (“VPAA”), the Vice President (“VP”) for Enrollment Management and Student Success, and/or the United College Employees of FIT (“UCE”).

- **Dispute Resolution**

Persons seeking a resolution of disputes arising over the application of this Policy and the ownership of Intellectual Property Rights shall submit a written request to the VPAA, who shall refer the matter to an ad hoc committee comprised of at least three (3) members. The composition of the ad hoc committee will be appointed as detailed in the Composition of Ad Hoc Dispute Committee table (see Related Documents) for each category of Individual with a dispute to resolve. Where Individuals in a dispute are from multiple categories, the ad hoc committee shall be comprised of one member of each committee member category listed for all categories of Individuals in the dispute.

The Office of the General Counsel will attend the ad hoc committee meetings to provide clarification of this Policy but will not participate in determination of the recommended decision. This ad hoc committee shall report its recommended decision for resolution of the dispute to the VPAA. The VPAA shall render a determination in a timely manner, and such determination shall be final. The ad hoc committee and VPAA shall make every effort to resolve the dispute by the end of the next full semester (i.e. Fall or Spring) following the one in which the dispute is brought.

- **Conflict of Interest**
Please review FIT's Employee Code of Ethical Conduct policy for further information on principles pertaining to conflicts of interest (see Related Policies section). Please note the Employee Code of Ethical Conduct policy does not apply to Students or Non-Employees.
- **Collaboration**
This Policy is not intended to advise against the sharing of information and collaboration among Individuals and/or entities, but certain relevant implications of such activity should be understood. In the fields of patent and Trade Secret law, the disclosure of information such as patentable ideas or other commercially significant information, without a confidentiality obligation, can have legal implications. Care should be taken to maintain confidentiality in such situations. In addition, the acts of collaboration or the sharing of thoughts and information with peers or other Individuals can lead to co-ownership of a Work and associated Intellectual Property Rights. The Individuals and/or entities should enter into a mutual agreement with respect to the ownership and control of Intellectual Property Rights before engaging in a collaboration. This agreement should include preexisting Intellectual Property Rights that the Individual intends to bring to the collaboration.
- **Intellectual Property Agreement**
It should be understood from the Policy that FIT may require Individuals to enter into a written Intellectual Property agreement.
- **Infringement**
If infringement or other violation of any Intellectual Property Rights in any Work or any FIT Trademark is suspected, report it to Office of the VPAA.
- **Modification**
Modification of this Policy is subject to approval of the UCE.

Responsibilities

N/A

Procedures

N/A

Violations

N/A

Related Policies

- [Employee Code of Ethical Conduct](#) (includes Conflict of Interest)
- [Student Contests and Industry-Sponsored Projects](#)

Related Documents

- Ad Hoc Dispute Resolution Committee (See Appendix I, below)
- Summary of Intellectual Property Ownership (See Appendix III, below)

Contacts

- Academic Affairs**
 227 West 27th Street, Room C913
 New York, NY 10001
academicaffairs@fitnyc.edu
- Office of General Counsel**
 227 West 27th Street
 New York, New York 10001
 (212) 217-4030
OGC@fitnyc.edu

Appendix I: Composition of Ad Hoc Dispute Resolution Committee

| Individual | Committee Member 1 | Committed Member 2 | Committee Member 3 |
|---|--------------------|--|--|
| Full or part time classroom Faculty | Appointed by VPAA | Appointed by respective school Dean | Appointed by President of UCE |
| Non-classroom Faculty in Enrollment Management and Student Success | Appointed by VPAA | Appointed by VP of Enrollment Management and Student Success | Appointed by President of UCE |
| Non-classroom Faculty in Academic Affairs | Appointed by VPAA | Appointed by Deans' Council | Appointed by President of UCE |
| Employees | Appointed by VPAA | Appointed by VP of Human Resource Management and Labor Relations | Appointed by President of UCE |
| Non-Employees | Appointed by VPAA | Appointed by respective school Dean or applicable Director | Appointed by VP of Human Resource Management and Labor Relations |
| Students | Appointed by VPAA | Appointed by respective school Dean or applicable Director | Appointed by VP of Enrollment Management and Student Success |

Appendix II: Definitions

- Individuals Covered by the Policy**
 - Creators¹**: Individuals who created the Work in question.
 - Employees**: Employees are any individuals employed by FIT in a capacity other than that of Faculty, and includes administrators, when acting in any role other than a Faculty role, or

¹ For all defined terms, the singular shall include the plural and vice versa.

Students. Employees include individuals working for all related FIT entities, including but not limited to the FIT Foundation and FIT Student Housing Corporation.

- **Faculty:** Faculty includes anyone employed by FIT, holding Faculty rank and when serving in the role of Faculty. For example, Faculty includes visiting Faculty, adjunct Faculty, part-time Faculty, full-time Faculty, instructors, or non-classroom Faculty.
- **Individuals:** All Faculty, Students, Employees, and Non-Employees, when referred to collectively.
- **Non-Employees:** Non-Employees are individuals who are not employed by FIT, who participate in research or creative activity at FIT or research or creative activity carried out under the auspices of FIT. Non-Employees include visiting scholars and researchers who do not have a faculty appointment.
- **Students:** Students includes all credit, non-credit, matriculated, non-matriculated, full-time, part-time, and visiting students at FIT. Note that for some Sponsored Work and Contest Work, students must be matriculated in order to participate.
- **Work Covered by the Policy**
 - **Work:** Work product, in any tangible form, physical or electronic, that is created in connection with activities associated with FIT.
 - **Sponsored Work:** Work sponsored by an outside entity and/or by FIT. In the case of Work sponsored by FIT, “Sponsored Work” also refers to Work authorized or approved by FIT. This includes situations where the individual is being compensated for the Work.
 - **Traditional Works of Scholarship:** Works created by Faculty or Students in the course of their individual scholarly, academic, and artistic pursuits and in the scope of their respective Faculty or Student status at FIT, including instructional materials produced by Faculty for use in the course of classroom and studio activities, works of art or scholarship produced by Faculty or Students in the course of classroom and studio activities, and the like.
- **Intellectual Property and Intellectual Property Rights Covered by the Policy**
 - **Copyright:** Copyright refers to form of protection provided by the laws of the United States for original works of authorship that have been expressed in tangible form, including literary, dramatic, musical, architectural, cartographic, choreographic, pantomimic, pictorial, graphic, sculptural, and audiovisual creations².
 - **Derivative Work:** A Derivative Work is a work based on or derived from one or more already existing works. Common derivative works include translations, musical arrangements, motion picture versions of literary material or plays, art reproductions, abridgments, and condensations of preexisting works. Another common type of Derivative Work is a “new edition” of a preexisting work in which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work. To be

² <http://www.copyright.gov/help/faq/definitions.html>; <http://www.uspto.gov/trademarks-gettingstarted/trademark-basics/trademark-patent-or-copyright>

copyrightable, a Derivative Work must incorporate some or all of a preexisting “work” and add new original copyrightable authorship to that work.³

- **FIT Trademarks:** All Trademarks, Service Marks, Trade Name or Trade Dress owned or controlled by FIT, including FASHION INSTITUTE OF TECHNOLOGY and the FIT corporate name.
- **Intellectual Property:** Intellectual Property refers to creations of the mind, such as inventions, literary and artistic works, designs, and symbols.⁴
- **Intellectual Property Rights:** Copyrights, rights in Trademarks, Service Marks, Trade Name and Trade Dress, Trade Secrets, Patents, rights of publicity, or other Intellectual Property Rights.
- **Patent:** A Patent is a limited duration property right relating to an invention, granted by the United States Patent and Trademark Office in exchange for public disclosure of the invention. Patentable materials include machines, manufactured articles, industrial processes, and chemical compositions. The duration of Patent protection depends on the type of patent granted: 14 years for design patents and 20 years for utility and plant patents⁵. For the purposes of this Policy, Patents includes patent applications and inventions.
- **Service Mark:** A Service Mark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service rather than goods.
- **Trade Dress:** Trade Dress is the overall commercial image (look and feel) of a product that indicates or identifies the source of the product and distinguishes it from those of others. It may include the design or shape/configuration of a product; product labeling and packaging; and even the décor or environment in which services are provided.⁶
- **Trade Name:** A Trade Name is a name used by any commercial enterprise in connection with its business activities. A Trade Name may be a corporate name or an assumed name.
- **Trademark:** A Trademark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others⁷.
- **Trade Secret:** Any confidential business information which provides a competitive edge may be considered a Trade Secret. Trade secrets encompass manufacturing or industrial secrets and commercial secrets.
- **Use Rights:** A non-exclusive, royalty-free, perpetual, and irrevocable license to make, have made, use, reproduce, modify, create Derivative Works of, publicly perform, publicly

³ <http://www.copyright.gov/circs/circ14.pdf>

⁴ <http://www.wipo.int/about-ip/en/>

⁵ <http://www.uspto.gov/trademarks-getting-started/trademark-basics/trademark-patent-or-copyright>

⁶ <http://www.inta.org/TrademarkBasics/FactSheets/Pages/Trade-Dress.aspx>
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⁷ <http://www.inta.org/TrademarkBasics/FactSheets/Pages/Trade-Dress.aspx>
Intellectual Property

display and distribute a Work and Intellectual Property Rights therein (subject to restrictions on the use of FIT Trademarks set forth herein) through any channel or media now or in the future known. How Use Rights apply to Students, Faculty, and FIT is discussed in the “Use Rights” section of this Policy.

Appendix III: Summary Table of Intellectual Property Ownership

This table is provided only for illustrative purposes

| Situation/Role | IP Ownership – General Rule |
|---|--|
| General Rule | “Creator” if Faculty or Student; “FIT” if Employee or Non-Employee |
| Student Course Work (classroom work not involving sponsor) | Student |
| Course-Related Sponsored Work (classroom work involving sponsor; projects or contests) | Creator subject to transfer of rights (in whole or in part) pursuant to terms expressly set forth in one or more related instruments |
| Special Projects | Sponsor and/or FIT |
| Government-Sponsored Work | Government and/or FIT |
| FIT-Sponsored Work | FIT |
| FIT Course of Study | FIT |
| FIT Syllabus | Creator (faculty) |
| Reproduction of FIT Course | FIT owns reproduction |
| Substantial FIT Resources | FIT |
| Team Work by Faculty and/or Students where Identity of Project Resides with FIT | FIT |
| By Agreement | As agreed upon |
| Employees | FIT |
| Non-Employees | FIT |

Appendix IV: Examples

This table is provided only for illustrative purposes

| Type of Work | Ownership |
|--|-----------|
| Scholarly, creative, and encoded works by Faculty, including, without limitation, literary works, works of art, graphics, journal articles, webpages, media (audio, video, and interactive), software and course materials (syllabi, lectures, learning activities, assessments), not involving substantial use of FIT resources or otherwise owned by FIT under this Policy, but created while being paid by FIT. | Faculty |

| Type of Work | Ownership |
|---|--------------|
| Material used by Faculty in the title of an FIT course, in the syllabus of an FIT course, or created for distribution or actually distributed to students in an FIT course, for all educational and research purposes, not involving substantial use of FIT resources, but created while being paid by FIT. | Faculty |
| Material created by Faculty for an FIT publication, to the extent such material is not otherwise owned by FIT under this Policy. | Faculty |
| Material created making substantial use of FIT resources. | FIT |
| Material created by an Employee in the course of employment (including research), e.g., administrative handbooks, public relations materials, official FIT webpages, policies, and audio/visual recordings of FIT events. | FIT |
| Material created in the course of research or other collaborative projects conducted under FIT institutional auspices (including school or department auspices) where the identity of the project resides with FIT (e.g., resulting in a publication of a school or department curricular effort). | FIT |
| Material created in the course of a research or other collaborative project where development has been by a team such that the identity of the project resides with FIT rather than with particular individuals. | FIT |
| Material created as the result of a research project, exception Traditional Works of Scholarship reporting on such results, sponsored by a governmental, corporate, non-profit, or other sponsor where the contract or agreement with such sponsor imposes obligations on FIT with respect to such copyrightable materials. | By Agreement |
| Material or online course created at the direction of, or commissioned by, FIT, including those situations where adjunct Faculty are specifically compensated for the creation of a new course. | FIT |
| Course developed by adjunct Faculty for which Faculty member was specifically paid. | FIT |

| Type of Work | Ownership |
|--|--|
| Material closely associated with a Patent owned by FIT under this Policy, such as copyrightable material created to effectuate an invention (e.g., software, fashions, designs) or to supplement an invention (e.g., documentation), but not to apply Traditional Works of Scholarship reporting on the research that led to the creation of such materials. | FIT |
| Material, in any form of media (including, without limitation, video or audio), which is a reproduction of an FIT course or program. | FIT |
| Student work created in the course of their curriculum at FIT, including class Work, research materials, Works of art or design, music and theses, when there is no sponsor of the Work. | Student |
| Student Work performed within the scope of an employment relationship with FIT or with one of its Employees, or work performed with substantial use of FIT resources. | FIT |
| Student work performed when hired by FIT to perform specific tasks that contribute to a copyrightable Work. | FIT |
| Student Work, when created as part of an industry-sponsored project or contest that is course-related. | Student (however, student may need to waive or assign some or all rights to sponsor) |
| Student Work when created as part of a Special Project. | Sponsor of the Special Project |