

Policy Name	INTELLECTUAL PROPERTY		
Policy #	904	Category	900 RESEARCH
Steward		Date Approved	July 1, 2023
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POLICY

The College values and encourages research, creativity, invention, insight, and innovation and recognizes the contribution and entitlement of those involved. The College encourages participation in incentives that foster creative activity to enhance our abilities to teach, learn, and participate in Applied Research opportunities. Where appropriate, the College will work to ensure that any Intellectual Property (IP) arising from Applied Research will be used to the benefit of the creator or partner and the institution through commercialization.

This policy establishes the ownership of Intellectual Property generated as a result of employment and/or research conducted by employees, students, and external contractors of the College. The purpose of this policy is to provide a clear statement of principles and processes associated with the ownership and entitlement to original copyrighted material, including inventions, techniques, patents, and trademarks. The objective of this policy is to outline guiding principles for the management of IP at the College to avoid potential misunderstandings, delays, and litigations.

PRINCIPLES

This policy applies to intellectual property created by all College employees, students, interns, and external contractors unless there is a written agreement contract approved by the College that provides otherwise.

This policy is subject to any rights and/or obligations detailed in current collective agreements with respect to copyright and ownership of IP.

This policy is subject to applicable federal, provincial, and local laws and statutes, such as the *Copyright Act Patent Act, Trade-Marks Act, Plant Breeders' Rights Act, Integrated Circuit*

Topography Act, the Industrial Design Act, and other laws of general application.

This policy does not apply to intellectual property created in the course of non-College activities that do not make use of College resources, nor funds administered by the College. This includes but is not limited to outside employment or other activity in an area unrelated to College activities, or activity conducted wholly while on an unpaid leave of absence away from the college.

DEFINITIONS

The forms of intellectual property have been defined by the Canadian Intellectual Property Office but are not limited to:

Artistic Works are drawings, paintings, photographs, sculptures, and architectural designs, and are protected by copyright laws.

Applied Research In contrast to basic research, applied research focuses on applied, practical and specific solutions to real world problems. Always working with a partner business or organization the applied researcher is trying to solve a specific problem for the business by applying techniques or products in a novel way, that advances the partner's business or organization.

Commercialization The creation of commercial processes, products, and services derived in whole or in part from IP with the goal of financial return.

Industrial designs are an original shape, form, or some combination applied to a useful article of manufacture. Industrial designs can be protected by registration and are covered by industrial design laws.

Integrated Circuit Products are constructed from a complex series of layers of semiconductors, metals, dielectrics, and other materials on a substrate. Unique three-dimensional configuration of these layers is known as Integrated Circuit Topography that is protected by the Integrated Circuit Topography Act. The protection is achieved by a registration of the 3D design.

Intellectual Property The result of intellectual or artistic activity created by a College Member in a scholarly, professional, student or intern capacity, including but not limited to inventions, processes, designs, word marks, design marks, logos,

slogans, publications (including scholarly publications), educational materials, computer software, integrated circuit topography, original literary and artistic works or performing rights, industrial and artistic designs, new plant varieties, confidential information and know-how that can be protected by IP rights such as patent, copyright, trademark, integrated topography, plant breeders' rights, and trade secrets. IP is treated like any other form of property and can be sold, licensed, or transferred

Invention is a product, process, art of manufacture or composition of matter or any improvement thereof. An invention can be protected by a patent, which once issued, gives the owner the exclusive right to use it, make and sell it. Software (when associated with a product or a process) can also be protected by a patent

Literary Works are written text, essays, publication, novels, poems, musical works, and recordings that are protected by copyright laws

Resources include but are not limited to paid time as a part of one's employment, College owned technology, Learning Management Systems

Software is any code, line of code, lines of code, or algorithms that give computer hardware instructions to execute a task. Software can be either in the form of a source code or an object code. Both source code and object code are protected by copyright. When a source code is part of a machine, it can be protected by a patent

Trademark laws protect distinctive symbols, logos, or images that distinguish one product of a company from the other

Trade Secrets (useful technical information, formulas, market strategies, that are held confidentially) are protected by trade secret laws that are part of tort or contract laws

PROCEDURES

Intellectual Property as a Result of Applied Research

1. Applied research is critical to the Saskatchewan industry and our economy, providing a foundation for productivity, economic growth, commercialization, and competitive advantage. Three hallmarks lie at the heart of applied research.

1.1 Industry-Driven

Industry is fundamentally a partner - in identifying the challenge, in pursuing the work, and in mobilizing the knowledge.

1.2 Moves at the Speed of the Industry

Addressing problems specified by industrial partners to enable them to be more competitive in the near-term: often weeks or months, rather than years or decades.

1.3 Intellectual Property (IP) Remains with Industry

Industry maintains and advances the IP that will allow them to remain competitive.

2. This supports the College employees and students in the engagement of applied research and scholarly activities, including instances of those activities that may result in the creation of intellectual property. The Board supports a knowledge mobilization model for the College that shares and mobilizes new knowledge, and the IP derived from its development, toward real-world implementation, as a strategy to achieve the outcomes and expectations of the vision and mandate of the College.

College Innovation and Discovery:

3. One of the primary goals of the College is to encourage, promote and foster innovation and discovery by its employees, associates, and students, in all fields of which the College is engaged. Where the College is the owner of the IP rights in a work that is worthy of commercial exploitation, the College may promote a revenue-sharing relationship with the creator/s of that work.

Employee Works of Innovation and Discovery:

4. In the absence of any written agreement to the contrary, between the College and an employee, the College shall be the owner of all IP rights in a work created by the employee in the course of employment with the College.
5. In determining whether a work has been created by an employee in the course of employment, the College will consider the following factors, which are not exhaustive:
 - 5.1 whether the employee created the work during prescribed working hours for the College.

5.2 whether the employee created the work on College premises or using College resources and property to do so.

5.3 whether the employee created the work as part of the duties of their position

5.4 whether the College has remunerated or compensated the employee for the work.

6. Where the College owns the IP rights in a work, by agreement with its author/creator or pursuant to the items listed in letters a-c above, the author/creator shall have a non-exclusive right to use the work, provided the author/creator exploits the work only in the course of employment with the College where the author/creator is a College employee, and only in the course of the contractual relationship with the College, where the author/creator is an associate of the College and not an employee.
7. Where an employee creates a work outside the course of employment with the College or during the leave year of a prepaid leave program (without using the College's resources), the employee shall be the owner of the IP rights in the work.
8. Where an employee intends to create a work during professional development, such activity is to be described in the application for the leave. The application for professional development leave will also contain a statement, signed by the employee, his/her immediate supervisor, and the Applied Supervisor Lead (if applicable) which sets out how any net profit from revenue generated by the commercial exploitation of such leave activity, may be shared between the College and the employee. Any application for a professional development or prepaid leave shall be accompanied with, or contain, a statement in the following form:

"In compliance with the College Intellectual Property policy, the College shall be the sole owner of the intellectual property in any work described in this document and created by the applicant. If the work is exploited and generates revenue, the applicant and the College shall share the net profit on revenue generated as follows: [insert agreed-upon formula]".

9. Where a professional development leave is approved, the College shall own the IP rights in any work created and for which work the leave was granted.
10. Where an employee wishes to use College resources to create a work outside the course of employment, the employee shall first inform the College of the creation of the work, so that a mutually satisfactory written agreement covering, among other things, ownership, use and revenue sharing, can be negotiated before the work is developed. In the absence of such a written agreement, the College shall own the IP rights in the work created.

Non-Employee Work:

11. Any agreement between the College and a person who is not an employee of the College, to develop or create a work using College facilities, will be written in a contract. The agreement will state that the College will be the owner of the IP in any work developed or created by the person. This policy may be adapted by written contract between the parties.

Joint Initiatives with Outside Parties:

12. Where the College enters into an agreement with a person or persons for the development of a work in which IP subsists, the parties will ensure that a written agreement sets out their respective rights in the IP in the work, and any terms relating to the sharing of risk and revenue from the exploitation of the work.

Confidentiality Agreements:

13. The College may sign Confidentiality Agreements with third parties seeking to conduct research or business using the College's resources. The College has an approved Confidentiality Agreement template that can be signed on behalf of the College by the Applied Research Lead. Where the third parties wish to amend the template or have the College sign a different Confidentiality Agreement, these documents will be reviewed by the Vice President, Administration and signed on behalf of the College by the President, Vice President, Administration or Presidential delegate. The Confidentiality Agreements are not applicable to students working on research projects (see Section).
14. In instances where students are working with third parties on research projects as part of their course requirements or as volunteers and they are not being paid by the College for their work, the College will not be held responsible for breaches of confidentiality. In cases where the third party requires a Confidentiality Agreement, such agreements will be negotiated between the third party and the students working on the project. The College will provide templates and non-legally binding guidance to both parties.

Collaborative Research Agreements:

15. The College will sign a Collaborative Research Agreements (CRA) with each Client that conducts a research project with the College. The College has an approved CRA template that can be signed on behalf of the Coordinator, Applied Research Centre. Where the third parties wish to amend the template or have the College sign a different CRA, these documents shall be reviewed by the Applied Research Lead (if applicable) and signed on behalf of the College by the President, Vice President, External Relations, International and Research, or Presidential delegate.

Licensing Arrangements:

Product Licenses

16. Where the College acquires a license to use a supplier's product, ownership of the IP in the product being licensed shall be determined according to the provisions of the license. Where the license does not contain any provisions relating to IP ownership, it shall be presumed that the supplier is the owner. Any variations to the license shall be made in writing.

Licensing Agreements

17. Where the College enters into a license agreement with a third party to permit that third party to use materials or property developed or acquired by the College, the license agreement shall be in a form approved by the Coordinator, Applied Research Centre and a copy shall be deposited the Finance and Administration Services Office. The signatory for the College shall be the President or Vice President, Administration.

Student Work:

18. Students will be the owners of the IP rights in the works they create, except in the following situations:

18.1 where the College or partnering institution pays the students for the works they create; in which case the College shall own the IP rights.

18.2 where the students use College resources and facilities to create the works, outside of their course requirements, in which case the students are required to obtain the College's consent for the use of its resources and facilities. It is a condition to the giving of such consent, that the College and the students will enter into an agreement for the creation of the works. The agreement will provide among other things, for the ownership of any IP rights in the works to be created, the exploitation of the works by the students and the College, and the sharing of any revenue by the students and the College from such exploitation.

18.3 where the students use College resources and facilities to create the works within their course requirements, in collaboration with a College or non-College Client.

Research Materials

19. A person wishing to gather research materials other than those specified above must first obtain the prior approval from the College. Where the person has obtained the College's approval, that person will be the owner of any IP rights in the research materials. Otherwise, the College shall be the owner of the IP rights.

Copyright Notice:

20. Where the College is the owner of copyright in any works created according to this policy, or otherwise, it will place the following copyright notice in a conspicuous place in the works: © [year of publication] The College Notwithstanding the above, consistent with the provisions of the Copyright Act (1985), the College will remain the owner of the copyright in all works created in the course of employment with the College, whether or not the work is marked with the copyright notice as described above.

Employee-Owned Work:

21. The adoption and inclusion of employee-owned works in College course materials will be made only with the prior approval of the appropriate College administrator in accordance with the College's Conflict of Interest Policy.

Commercialization of IP:

22. Where the College owns IP rights in a work which it wishes to commercialize, it may consult with the creator(s) on the best means for commercialization.
23. The author/creator of a work in which the College owns the IP rights may, with the College's prior approval, pursue opportunities to exploit the work, and negotiate with third parties on behalf of the College. The College shall always be a party to any agreement resulting from such agreement. The agreement may provide that the author/creator of the exploited work is entitled to share in the revenues, as set out in the terms of the agreement.

The Office of Applied Research Centre:

24. The Office of the Applied Research Centre (ARC) is established to assist staff to deal effectively and efficiently with IP issues and to ensure that there is consistency in the manner in which research issues are addressed and decisions are made. To maximize the benefits to the College from the creation of works in which IP rights may exist, ARC will serve as a resource centre for IP, including license agreements, technology development agreements, and revenue sharing agreements. A copy of any agreement dealing with research and/or IP will be deposited with the ARC.

Use of The College's Name on Created Works:

25. The College has the right to be recognized or acknowledged in, or in association with, any work created in the course of employment/studies, by a college employee, student, or person with whom the College is dealing, or to be disassociated from the work, and for work not created in the course of employment/studies as mutually agreed upon.

Resolution of Disputes

26. If a dispute arises among creators regarding their relative contributions to the creation of IP that cannot be settled by the individuals involved, the advice and assistance of the executive will be sought.

27. Disputes between the creator and the College regarding the provisions of this policy which cannot be resolved through informal means shall be remitted to binding arbitration pursuant to the Saskatchewan Arbitration Act, 1992 or the Collective Agreement where the dispute relates to the application thereof.

Legislative and Collective Agreement References:

Links to Other Related Policies, Documents, and Websites:

- Research
- Research Administration
- Integrity in Research
- Research Involving Human Subjects
- Research Collaboration Agreement
- Conflict of Interest

This policy was developed using policies from the following colleges, Algonquin College, Camosun College, Fleming College, NAIT, Olds College, and Saskatchewan Polytechnic. Their work is gratefully acknowledged.