



## **POLICY ON INTELLECTUAL PROPERTY**

**University Policy No.:** GV0215  
**Classification:** Governance  
**Approving Authority:** Board of Governors  
**Effective Date:** November/00  
**Supersedes:**  
**Last Editorial Change:**  
**Mandated Review:**

**This policy now forms part of the Faculty Framework Agreement as Appendix D**

### **APPLICATION**

This policy applies to intellectual property (IP) created by members of the University in their University-related work and/or using University resources. Members of the University are defined as all:

- faculty members holding one of the following academic appointments at the University:
  - a tenured appointment or an appointment with eligibility for tenure as Assistant Professor; Associate Professor; or Professor
  - Senior Instructor
  - Limited Term appointment with a term of more than one year
  - Artist-in-Residence
  - Lecturer
- adjunct professors and honorary professors
- librarians holding a Regular Librarian appointment (regular or confirmed) or Limited Term appointment as a Librarian and includes an Archivist
- graduate and undergraduate students, and
- post-doctoral fellows and research associate appointees.

This policy also applies to IP created by:

- external research contractors, unless there are written contract clauses that stipulate otherwise and that have been approved by the Vice President Research or delegate and an authorized individual representing the contractor, and
- persons providing services to the University under a contract for services or a written agreement.

This policy applies to the creator and her/his heirs, successors, and assigns and the University's successors and assigns.

## **CONTEXT**

This policy is written within the context of a vital academic community and its values, which include openness, sharing of ideas, collegiality, curiosity-driven research and academic freedom.

The University recognizes its role in generating benefits for society through disseminating its research findings and creative activities, and where appropriate, encouraging the application of its research and creativity in tangible ways. This policy is a vehicle by which the application of research and creative results are encouraged and facilitated.

Accordingly, the policy is designed to promote a supportive climate for the development of IP and the provision of services based on mutually beneficial partnerships that respect the interests of researchers and creators, the University, and the wider community.

In establishing this policy, consideration has been given to: the current thinking on IP within universities and at the federal level; the historical practices of this University; and the standards and traditions in diverse academic disciplines.

See [Appendix A](#) for definitions of terms used in this policy.

## **OBJECTIVES**

The primary objective of this policy is to facilitate the development, protection, dissemination and commercialization of IP through a supportive framework that is respectful of the culture and balances the interests of the University and of its research and creative community. The policy shall:

- express and fulfill the University's obligation of encouraging knowledge transfer for the social and economic benefit of society;
- recognize and uphold the principles of scholarly integrity and academic freedom in the commercialization of IP for the protection of the University and its community;
- provide a framework for the development of mutually beneficial partnerships, and a supportive climate and incentives for innovation, entrepreneurship and revenue generation in research and creative development;
- increase opportunities for funding and leverage that could be used to provide additional independent research and employment opportunities for the University community, especially young faculty and students;
- provide for the availability of professional advice from an early stage to the University research and creative community with respect to the development and

protection of IP, contractual issues, and the associated rights, obligations, and liabilities;

- provide a basis for setting out the sharing of costs and benefits between the University, external partners, and the University's research and creative community, and when such sharing is in dispute, provide an effective dispute resolution mechanism;
- ensure that issues of liability relating to the University and its researchers and creators are made clear.

## **STATEMENT OF PRINCIPLES**

### **1.0 Communication and Dissemination**

This article reinforces the University's commitment to academic freedom, particularly with respect to freedom of communication, and deals specifically with the right of University members to publish, communicate and disseminate the results of their creative and research activities.

The University will seek to preserve the rights of the creator to determine the extent and the timing of the communication and publication of the results of creative and research activities when dealing with third party arrangements respecting IP. The University will not enter into arrangements that restrict University members from communicating the results of such activities without the permission of the creator. Further, the University will not compel any creator to engage in commercialization of IP.

### **2.0 Contributions**

IP is frequently the result of collaborative or cooperative activities between or among University members. This article deals with the relations between or among several creators of a single work or property.

The University is committed to the Tri-Council position that authorship of published work includes all those who have materially contributed to, and share responsibility for, the contents of the publication, and only those people, and expects compliance with this policy statement by members of this University.

Standards for the discipline, where they exist, should be applied when determining proportionate contributions to a scholarly or creative work. In the event of commercialization, all intellectual contributors to the work should be entitled to share in the proceeds in proportion to their contributions, unless the entitlement to share within the framework of this policy has been willingly waived through informed consent or previously agreed to through a written arrangement.

University members should consult with the Office of the Vice President Research to ensure that rights to IP arising from the collaboration are clearly understood.

In cases where the University and the researchers or creators form a partnership for purposes of commercialization, the IP rights will be covered by contractual arrangement. Any assignment, waiver, or modification of rights in favour of the University or the Innovation and Development Corporation (IDC) requires informed consent.

Student theses, projects, graduating papers and artistic productions are special cases of scholarly work. Students are the primary authors of their creations, but the work is carried out under the supervision of faculty members. Publications or works coming from student research or creative activity must acknowledge appropriately all contributors to the work. The appropriate Dean and the departmental Chair, in consultation with the Dean of Graduate Studies or the Office of the Vice President Research (OVPR), is responsible for ensuring that there is a process to address the students' interest with respect to: the protection of their IP; the freedom to publish results in open literature; and the discussion of the research or creation in internal venues. Students should not be involved in research or creative activities that conflict with, or jeopardize, their progress toward meeting their degree requirements.

### 3.0 **Ownership**

It is recognized that University research and creative activity may produce artistic creations suitable for copyright, research for the public good, and inventions that may have commercial applications and be patentable. Accordingly, the University is committed to balancing any ownership rights it may obtain under the *University Act* with the desirability of providing incentives to creators for the commercialization of their innovations, creative works, and inventions.

#### **The creator owns the IP, unless:**

- 3.1 The regulations of the sponsor of grant or contract research require different IP ownership provisions.
- 3.2 The University and University member have entered into a written agreement to share ownership of the IP.
- 3.3 The IP comprises course materials that are being commercialized; in which case, the University and the creator will have 50:50 ownership.
- 3.4 The IP is the result of a written agreement with a University member or a contract for services; in which case, the University shall retain ownership rights and control of the IP. This clause shall not apply to any undergraduate or graduate student where the work is part of their progress toward meeting their degree requirements.

**In the event of the death of the creator, the IP owned by the creator is treated in the same way as any other personal property owned by the creator.**

#### 4.0 **Disclosure**

In its promotion and support of research and scholarship, the University seeks to provide a stimulating environment for its research and creative community and to share with society at large the benefits of new knowledge or works. An effective method of IP disclosure makes it possible for the University to provide expert advice and support services at an early stage, to lobby for funding and show accountability, to respond to inquiries from third parties interested in collaborative research, and to report to government as required.

All persons covered by this policy are required to disclose their IP.

For scholarly publications and much of the creative activity by faculty, disclosure shall be through the annual updated curriculum vitae.

Where IP is anticipated to be commercially viable, it shall be disclosed by the University member on a confidential basis at as early a stage of development as possible to the University. In this manner, the University shall ensure that it has the first opportunity to offer its services through the OVPR and the IDC as the vehicle for commercialization. In order to protect eligibility for patent, the confidential disclosure of patentable IP should be made within three months after the creation of the IP; confidentiality must be maintained until such protection is secured.

In addition, University members shall disclose at the earliest opportunity any requests from third parties for commercial development of course materials. The terms and conditions for the development of such commercialization shall be determined by the Vice President Academic in accordance with this policy and in consultation with the appropriate officers of the University.

#### 5.0 **Commercialization**

The University seeks to protect the interests of the University and its members when undertaking the commercialization of IP by applying the following conditions.

##### 5.1 **Protection of IP and the Name and Reputation of the University and its Members**

The University seeks to protect its name and reputation and that of its members by entering into commercialization agreements that:

- adhere to ethical principles;
- provide mechanisms for protection of the IP in the event of misuse;
- control the use of the names and trademarks involved by the for-profit partner;
- stipulate means of quality control for the content of the IP;

- provide flexibility in joint ventures to ensure that the University and its members can enter into multiple relationships for its IP without violating prior agreements;
- require legal review to avoid violation of the University's tax exempt status;
- retain the right to produce and publish research that is derived from the ideas and material contained in any joint venture.

When the University is not involved in the commercialization, the University expects the University member to adhere to these principles.

## 5.2 Revenue Sharing

In meeting its role as a research and educational institution, the University strives to provide incentives for the pursuit of research and creative activities. Revenue sharing is one such incentive. This article sets out the principles governing the sharing of revenues accruing from IP.

The University supports the principle that the revenue accruing from IP should be shared fairly and proportionately between the creator(s) and the University in relation to the contributions of the University and the creators. The contributions of the University may include but are not limited to the following:

- provision of paid release time (over and above any academic leave or professional development leave) for the development of IP;
- provision of remuneration over and above regular salary for the development of IP;
- provision of space, facilities, and equipment for the development of IP over and above normal infrastructure requirements;
- the expansion of the commercial potential of a piece of IP by University or IDC action;
- the ratio of liability assumed by the University, IDC, and the creator;
- the negotiation of any contractual agreements with external research or development partners.

The University's share of net revenues accruing from the commercialization of IP is as follows:

- when the University's technology transfer services (IDC and OVPR) have been utilized for commercialization of the IP, the terms of revenue sharing (for IP other than course materials) shall be negotiated by the Vice President Research or delegate, in consultation with other parties as appropriate, in accordance with the guiding principle of net benefits following the contributions of all parties;
- when the University indicates an interest in commercializing the IP,

but the University member chooses to commercialize elsewhere, the University shall normally claim 20% of net revenues that result from the commercialization to reflect the University's infrastructure investment and to ensure a return on investment to support further research and creative activity. This clause shall not apply if the University has indicated in writing that it has no interest in commercializing the IP or the net revenues concerned are less than \$5,000 in a calendar year;

- the University and University member shall receive equal shares of the net revenue resulting from commercialization of course materials (see 3.3).

### **5.3 Use of Revenues Accruing to the University**

All net revenues accruing to the University from the commercialization of IP shall be deposited in a special fund to promote and support the University and its research, creative activity, and future IP development. The Vice Presidents shall make recommendations to the President concerning the use of the fund.

### **5.4 Accounting**

For the purposes of determining net revenue, either the University or the creator may require the other to provide an accounting of all revenues received and expenses incurred with regard to IP covered by this policy.

### **5.5 Documentation**

Where necessary, the University and the University member shall sign and execute any documentation and complete any procedures that are necessary to give effect to the commercialization of IP.

## **DISPUTE RESOLUTION**

All disputes under this policy are subject to review by a three-person panel, composed of one member to be appointed by the appellant(s), one member to be appointed by the Vice President Research, and a third member (who shall be Chair) to be chosen by the two appointed members. The panel shall follow procedures consonant with natural justice and administrative fairness. It shall conduct a hearing and may require oral and/or written submissions. An advisor may accompany any party to the appeal. Its decision shall be final.

## **EFFECTIVE DATE**

With regard to members of the Faculty Association, the Policy comes into effect on the date when it is approved by both the Faculty Association and the University Board of Governors (the date of whichever approval is later). With regard to other persons, this

Policy comes into effect on the date when it is approved by the Board of Governors. It does not supersede any arrangements or agreements made prior to this policy by members of the University.

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## **APPENDIX A - DEFINITIONS**

### Net Revenue

*The revenue accruing from the IP less the expenses incurred in its commercialization. The determination of net revenue varies in different situations and shall be decided on a case by case basis in relation to the type of revenue (e.g. equity or royalty) and accepted accounting procedures in the relevant field.*

### Creator

A person who creates the intellectual property.

### Intellectual Property

The result of intellectual or artistic activity, created by a member of the University in a scholarly, professional or student capacity, that can be owned by a person. Specifically, this includes inventions, publications (with the exception of scholarly publications, regardless of the media used for their communication), educational materials, computer software, works of art, industrial and artistic designs, as well as other intellectual property rights (creations) that can be protected under legislation including patent, copyright or trademark laws, or through a trade secret agreement.

### Informed Consent

Consent given by an individual who has received the information necessary to allow a considered judgment, who has adequately understood the information, and who has arrived at a decision of consent without having been subjected to coercion, undue influence, inducement, or intimidation.

### Contract for Services

A contract for services includes a contract between the University and a University member which covers assignments that are extra-to-load.

### University

University of Victoria.

### Infrastructure



Specialized research facilities and services of the University, including the University's research laboratories, major capital equipment, and technical facilities and services. Specialized facilities and services do not include the use of offices and office equipment, limited office services, personal computers, the library, or other services commonly available to all University community members.