

## Intellectual Property Policy

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<b>Approval Authority</b> Board of Governors	
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### 1 Purpose

The University must be a place where ideas can flourish. The University is a body dedicated to the pursuit and development of knowledge. Its role is to enable and encourage the activities of teaching, research, and development, serving the public by making available the fruits of intellectual inquiry. By virtue of this stimulating environment, Members of the University community engage in discovery and discourse. Academic freedom assures both the openness and responsibility of comment and criticism on all intellectual matters. Scholarship demands not only its own pursuit but that its results be shared with the world. The University has a responsibility to educate and to broaden the knowledge of the wider society supporting its goals.

The University recognizes its unique role in the production of knowledge within society. It must use this role to produce benefits for society through publicizing its research findings and, where appropriate, encouraging the application of its research in tangible ways. This policy is a vehicle by which the application of research results are encouraged and facilitated. The policy gives a high degree of flexibility to the Creator in this exploitation. Simultaneously, it encourages the disposition of Intellectual Property in ways which will assure that the maximum benefit can accrue to the Creators, the University, and the Members of society-at-large without whose participation the Intellectual Property could not be generated.

The University's resources are made available to every Member of its community in order to encourage the development of ideas. Inventive, scholarly, and creative activity are the happy result of such a supportive milieu. Intellectual Property is the material or communicable result of all intellectual activity: artistic, scientific, or practical.

The ownership of Intellectual Property and all rights pertaining to ownership are vested in its Creator unless qualified by law or written agreements to the contrary. Such rights are defined by copyright, patent, industrial design and trademark laws. Their application is

determined by specific terms of agreement between employees and employers, contracts and licenses, and professional regulation.

Creators of Intellectual Property who are Members of the University community own their works. At the same time, if they have used University facilities and support in creating Intellectual Property, the University has a right to share in the net revenues earned from commercializing the property.

This Intellectual Property policy exists both to protect and to further the goals of the University of Calgary. In freely assigning ownership of Intellectual Property to its Creators, this policy supports and encourages the extraordinary creative and inventive endeavors of its community. By identifying terms and conditions which qualify the University's interest in Intellectual Property, the policy seeks to assist in the effective dissemination of knowledge. Finally, this policy expresses the commitment of the University to maintaining an atmosphere conducive to the growth and development of ideas and their material outcome.

This Intellectual Property policy is an integrated policy that addresses all the potential results of scholarship. By not separating issues of patent from issues of copyright, this policy recognizes the equal value of all research endeavour.

## 2 Scope

This policy applies to Intellectual Property created by University Members in the course of their University-related scholarly and creative activities. Scholarly activities include teaching but not administrative duties. The policy does not apply to Intellectual Property created in the course of non-University-related activities, such as outside employment, or to Intellectual Property created by others but used by University community Members in the course of their scholarly and creative activities.

## 3 Definitions

In this policy:

- a) "Academic Staff" includes both teaching and non-teaching Board appointees, part-time or full-time, with or without definite term appointments. Academic Staff also includes Adjunct, Professor Emeritus and other honorary appointees when carrying out their professorial duties.
- b) "Creator" means the originator of Intellectual Property and includes artists, authors, designers, inventors and other similar designations as defined in law and used in practice.
- c) "Fellows" include persons admitted to work within the University, who enjoy privileges of access to and use of University facilities and services for independent study.
- d) "Intellectual Property" means the material or communicable result of scientific, humanistic, literary, and artistic Endeavour. It includes, but is not limited to, works in the form of scientific discoveries and inventions, designs, patents, trademarks, books, monographs, papers, paintings, drawings and sculpture, performances, computer software, and lecture and conference presentations. In the text, individual items of Intellectual Property are referred to as works or properties.
- e) "Project Employees" (Trust Employees) include persons paid from funds held and administered by the University in special purpose (non-budget) accounts.

- f) "Support Staff" includes persons covered by the University/AUPE Collective Agreement and persons designated as "exempt."
- g) "Sponsor" means a government department or agency, a private foundation or charitable organization, a business or corporation, or a private individual which provides grant or contract funds to the University to assist with the costs of research carried out by University Members.
- h) "University" means the University of Calgary.
- i) "University Member" or "Member" means a Member of the University community, including all Academic Staff, Support Staff, students, Fellows of the University, and Project Employees.

#### 4 Policy Statement

##### Communication and Dissemination

- 4.1 The University is an open environment for the pursuit of scholarly work. Academic freedom and critical inquiry imply the responsibility of communicating the findings and results of intellectual investigation. As such, the communication and dissemination of this knowledge applies to Intellectual Property and its use.
- 4.2 This article reinforces the University's commitment to academic freedom and deals specifically with acceptable internal or externally imposed limits on the right of University Members to publish, communicate and disseminate the results of their scholarly activities, particularly in relation to the terms and conditions of grants and contracts for research.
- 4.3 The University will not, without the agreement of the Creator, enter into arrangements which restrict its Members from communicating the results of scholarly activities.
- 4.4 In dealing with Sponsors, 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 scholarship. Accordingly, the University will not enter into third party arrangements which will preclude the dissemination of the results of research without the permission of the Creator.
- 4.5 When premature disclosure of results might prejudice the interests of a research Sponsor, the University, with the Creator's consent, may agree to delay the release of the results in the following circumstances:
  - a) where Sponsorship is in the form of a grant, the Sponsor may request and receive the courtesy of an advance copy of any publication by the Creator;
  - b) where Sponsorship is in the form of a contract with the University, the University is prepared to agree to a delay in publication (a period of confidentiality). This period may vary but will not exceed twenty-four months. The date of termination of the period of confidentiality must be identified.
- 4.6 Conditions of confidentiality which affect activities for academic credit (course work, thesis research) must have the consent of the student and must conform to the academic regulations of the faculty. In the case of thesis research, conditions of confidentiality must not limit the University's freedom to select examiners.

## **Creators**

- 4.7** Intellectual Property is frequently the result of collaborative or cooperative activities between or among Academic Staff, students, and other University Members. This article deals with the relations between or among several Creators of a single work or property.
- 4.8** An individual who has made a substantial intellectual contribution to the development of Intellectual Property is regarded as a Creator. To qualify as a Creator, an individual must have contributed sufficiently to the work to take public responsibility for its content and the individual's contribution must be critical to its main conclusions.

## **Agreements Between/Among Creators**

- 4.9** The University encourages Creators involved in the joint creation of Intellectual Property to discuss and determine between/among themselves the way in which Intellectual Property related issues will be handled. In cases where commercialization is potentially involved, the appropriate outcome might be a written agreement. In determining the applicable arrangements, the co-Creators should have regard for this and other relevant policies including those dealing with conflict of interest, integrity in scholarly activity, and professional ethics. In cases where the co-Creators include students and supervisees, faculty have special responsibility to ensure that all concerned are informed of the relevant policies and considerations and that the resulting arrangements are fair and equitable.

## **Disputes Between/Among Creators**

- 4.10** In the case of disputes that cannot be settled by the individuals involved, advice and assistance of the Faculty Dean, or administrative equivalent may be sought. If the dispute is not resolved by these informal means, the University will assist in dispute resolution through a mediator appointed by the Vice-President (Research).
- 4.11** The mediator will receive written information regarding Intellectual Property disputes. The mediator will meet with the complainant to clarify the facts and to advise as to informal and formal means of resolving the dispute. If appropriate, the mediator will arrange a meeting with the other individual(s) involved. The purpose of the meeting will be to inform the individual(s) involved in the complaint, to determine facts, and to advise as to informal and formal means of resolving the dispute. The mediator will encourage use of informal means for resolution, taking into account other relevant University policies. If informal means of resolution fail or are inappropriate, the mediator will inform the individuals of the formal procedures available. If mediation does not resolve the dispute, the University encourages and will assist the individuals involved in arbitration.

## **Ownership**

- 4.12** While patent, copyright, and other Intellectual Property legislation may give an employer ownership rights in Intellectual Property created by employees in the course of their employment, such arrangements are inconsistent with the University commitment to the open exchange of ideas and the publication, dissemination, and

communication of the results of scholarly activity. Accordingly, at the University of Calgary the Creator of Intellectual Property is the owner of Intellectual Property that is the result of the Creator's scholarship. However, there may be exceptions, as follows:

- a) The University is the owner of Intellectual Property produced by a Creator as a result of a contract between the University and an outside Sponsor under which rights to or ownership of the Intellectual Property are conveyed to the Sponsor or another party, and where the Creator has agreed in advance to the arrangements;
- b) The University is the owner of Intellectual Property which is the result from work assigned by the University pursuant to a contract of employment;
- c) The University is the owner of Intellectual Property which results from the performance of a contract for service, agreement, or commission in which the University and the Creator have agreed that the Intellectual Property will be University owned.

**4.13** Owners of Intellectual Property may voluntarily assign or transfer any interest in the Intellectual Property to the University, including assignments made to enable the University, at its discretion, to transfer ownership to others.

**4.14** Where the University is the owner of Intellectual Property, it may assign or transfer any interest in the Intellectual Property to the Creator.

**4.15** The University will not make agreements which affect a Creator's ownership rights without the Creator's consent.

### **Commercialization**

**4.16** The nature and scope of University scholarly activity is such that industrially useful and/or commercially valuable Intellectual Property is sometimes the result. Indeed, there is a societal expectation that University scholarly activities will include activities which, applied, lead to useful outcomes. When this is the case, the University encourages the University Members concerned to consider and, where appropriate, undertake commercialization of the results of their scholarly activities.

### **Right to Commercialize**

**4.17** Creators are free to commercialize Intellectual Property resulting from unSponsored activities without involving the University. However, Creators who intend to commercialize Intellectual Property resulting from internally or externally Sponsored activities must inform the University and make arrangements with or through the University to conform with any relevant Sponsorship conditions, and for revenue sharing, if applicable.

### **Continuity**

**4.18** Under certain circumstances it may be necessary to pursue commercialization of Intellectual Property created by the combined efforts of several University Members. With longer-term projects, it is possible that some of the original participants will no longer be University Members. In order to assure efficient and timely commercialization, the University encourages participants in projects which have a commercial objective to enter into an agreement which authorizes an appointed

person (normally the principal investigator) to make decisions concerning commercialization. The agreement would not diminish the rights of co-Creators to share in commercial revenues but would be used to expedite commercialization arrangements.

#### **Obligation to Disclose Commercialization**

**4.19** The Creator of Intellectual Property will disclose to the University any proposed paid assignment, sale, license, or exploitation for profit of any Intellectual Property that is covered by the revenue sharing guidelines. The Creator and University will discuss and determine ownership and revenue sharing according to this policy. Disclosure is not required for works placed in the public domain or for assignments or licenses to publishers which do not involve a fee or royalty. The disclosure is made to the Vice-President (Research) or his delegate and copied to the head of the Creator's department for information.

#### **Use of University's Name and/or Resources**

**4.20** The University has the right to be consulted and to approve or disapprove any use of the University's name, facilities, or resources in any commercial arrangement. In some circumstances, the University may also require that it be a party to the arrangements as a condition of any use or approval.

#### **Intellectual Property Agreements**

**4.21** If the University exercises its right to revenue sharing, the Creator and the University will negotiate an Intellectual Property agreement. The agreement will establish the respective rights and interests of the Creator and the University.

#### **Disputes**

**4.22** When the Vice-President (Research) receives a disclosure in a case where the University's right to an interest is unclear or in which negotiations do not result in agreement on revenue sharing, the matter will be determined according to the procedure stated in Article 10.

#### **Revenue Sharing**

**4.23** This article provides guidelines for determining when revenue sharing with the University applies. Revenue sharing is based on the principle that whenever University and/or other public resources are used to produce and commercialize Intellectual Property, a portion of the resulting revenues should be returned to the University to be used to support further scholarly activity.

#### **Circumstances in which Revenue Sharing Applies**

**4.24** Normally, the Creator and the University will share in the net revenues resulting from the commercialization of Intellectual Property when:

- a) the costs of the activities giving rise to the property were specifically funded by grants received by the University or by contracts between external Sponsors and the University;

- b) the costs of the activities giving rise to the property were specifically funded by grants from the University's endowments, special purpose funds, or specific budget allocations;
- c) the property was created using the 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;
- d) the University actively participates in commercialization of Intellectual Property, including the development, financing, manufacture, license, and sale of the property.

#### **Circumstances in which Revenue Sharing does not Apply**

**4.25** Normally, the University will not share in the net revenues resulting from the commercialization of Intellectual Property when:

- a) the Intellectual Property was created as the result of unSponsored activities and without using the University's specialized facilities and services;
- b) the Intellectual Property was created in the course of outside professional activities or non-University activities in accordance with the University's Outside Professional Activity policies;
- c) the Intellectual Property is placed in the public domain or assigned for publication without consideration in the course of the normal dissemination of knowledge in the field. Speaker's honoraria, travel expenses, payments for out-of-pocket expenses, etc., are not considered as income from commercial activity;
- d) the University has made a prior agreement to forgo revenue sharing.

**4.26** Revenue sharing may apply regardless of whether the Intellectual Property is Creator or University owned.

#### **Third-Party Shares**

**4.27** Unless there is another arrangement, third-party shares which are the result of Sponsorship (grant or contract) conditions to which a Creator has agreed will be a first charge against net revenues with the balance being shared between the Creator and the University.

#### **University Revenue Share**

**4.28** This article provides guidelines for determining the University's share when revenue sharing applies. Three broad categories are recognized: commercialization by the Creator which involves the greatest investment of the Creator's time and money and includes commercialization through Creator established companies; commercialization involving the University; and commercialization through a third party, which includes commercialization through Innovate Calgary, usually without any financial investment on the part of the Creator.

#### **Commercialization by the Creator**

**4.29** The University will have a negotiated share of not more than 25 percent and not less than 10 percent of net revenues, taking into account the investment made and risk

assumed by the Creator, the expenses of commercialization, and the extent to which University resources were used in the creation and development of the work. Alternatives to sharing based on net revenue, such as a royalty, an equity interest, or a lump sum payment, will be considered.

#### **Commercialization through the University**

**4.30** The Creator and the University will have equal shares of net revenues.

#### **Commercialization through a Third Party**

**4.31** Of the negotiated net revenue received, the University will have a negotiated share of not more than 50 percent and not less than 25 percent, taking into account the extent to which University resources were used in the creation and development of the work, the contributions of the Creator and the University in arranging third-party involvement, and the extent to which the Creator and the University invested in the evaluation and protection of the work.

#### **Use of University's Revenues**

**4.32** This article deals with the University's use of its share of net revenues from the commercialization of Intellectual Property. Other arrangements may be made to accommodate unusual cases or Creators who wish to direct their share of commercial revenues to an agreed use within the University.

**4.33** Normally, the University's share of revenues from the commercialization of Intellectual Property will be distributed as follows:

- a) Forty percent to a fund for the enhancement of the University's academic and research programs and resources. The fund will be administered by the Vice-President (Research); funds will be awarded through the University Research Grants Committee or other appropriate peer review bodies;
- b) Forty percent to a fund for the Faculty, Department, and/or other unit in which the work was carried out. The funds will be divided between the Faculty, Department and/or units concerned, in a manner determined by them;
- c) Twenty percent to a fund for the development and commercialization of Intellectual Property, including investment in new ventures, and the evaluation, protection, licensing, development, and promotion of properties arising from University-based work. The fund will be administered by the Vice-President (Research).

#### **University Produced/Distributed Works**

**4.34** This Article applies to the University of Calgary Press, Communications Media, the Bookstore, Faculties, Departments, and University Institutes whenever these organizations produce, manufacture, and distribute works resulting from the scholarly and creative activities of University Members.

#### **Scope of Guidelines**

**4.35** The following guidelines apply to such works as printed and published materials, reproductions of works of art, and recorded materials in various media (audio or video by means of disk, tape, or film, or electronic, whether by reproduction on tape

or disk or maintained on a computer or other central means, and accessible to users through broadcast, cable, computer terminal or similar means) produced, published, and/or distributed by or through the University.

#### **University's Internal Use**

**4.36** The University will have a royalty-free, non-exclusive right to use and re-use within the University any work produced jointly by a Creator and the University, or recorded with the Creator's permission by the University or at the University's expense. Without the consent of the Creator, the University's use and re-use will be limited to the purposes for which the work was produced or recorded.

#### **University's Outside Use**

**4.37** The University will have no right to use or distribute the work, in whole or in part, outside the University without the consent of the Creator in a distribution agreement.

#### **Creator's Use**

**4.38** The Creator will have the right to use and re-use the work within the University for the purpose for which it was made. The Creator will also have the right to use, re-use, or distribute the work outside the University provided that the University's rights are not infringed. The rights of outside use and distribution include the right to commercialize the work, subject to agreement on the recovery of expenses incurred by the University in production and reproduction and the University's right to a share in the net revenues from the sale, rental, or license of the work.

#### **Ownership**

**4.39** In the first instance, a Creator will own the work in accordance with this policy. However, the University may acquire ownership as a condition of any production, publication, or distribution arrangement and in consideration of its financial and resource investment.

#### **Standard Forms**

**4.40** Units of the University ordinarily engaged in production, presentation, and distribution-activities will devise standard forms of agreement according to their own circumstances. Such standard forms will incorporate the general principles expressed in this article, and will set out the circumstances in which the Creator may request or require revisions to the work as its content becomes outdated or in need of significant change.

#### **Mediation**

**4.41** When the provisions of this policy fail to provide adequate guidelines on any matter related to the rights or interests in Intellectual Property and a disagreement results between the Creator and the University, the parties will first try to resolve the dispute through informal means as provided in article 2.3.

## Arbitration

**4.42** If mediation does not resolve the dispute, formal procedures will be followed according to the provisions of the appropriate Bargaining Agreement. If the Creator is not covered by an Agreement, a form of arbitration agreeable to both parties or, an agreement failing, a form in accordance with the Alberta Arbitration Act will be used.

## 5 Responsibilities

### 5.1 Executive Responsibility

- a) The Vice-President (Research) and the Provost and Vice-President (Academic) have executive responsibility for the implementation of this policy.

### 5.2 Policy Review

- a) The Research Policy Committee has responsibility for conducting periodic reviews of the policy and recommending changes as needed, for consideration by the General Faculties Council and the Board of Governors.

### 5.3 Administration

- a) This policy is to be administered by the designated Vice-Presidents, Deans and Department Heads, and such other officers of the University as may be designated by the Vice-Presidents.

## 6 Related Policies

[Code of Conduct](#)

## 7 Related Information

[FAQs: Intellectual Property](#)

## 8 References

[Arbitration Act](#), RSA 2000, c A-43

**9 History**

May 28, 1987	Approved by the General Faculties Council.
January 28, 1988	Approved and adopted by the Board of Governors.
May 19, 1988	Amended by the Board of Governors.
January 1992	Following consultations with Dean's Council, the Research Policy Committee, and the Intellectual Property Committee, the President appointed an ad hoc committee to review the University's Intellectual Property Policy. The committee was composed of five Members of the Academic Staff, two nominated by the Research Policy Committee and two nominated by the Intellectual Property Committee plus a Chair.
September 1992	The review committee invited all faculties, TUCFA, AUPE, and a variety of officers, committees, individuals and organizations to make oral and/or written submissions. The invitation was also extended to all Members of the University through advertisements placed in the Gazette. Written responses were examined and oral presentation heard in early 1993.
September 1993	The review committee reported to the President. The report was referred to the Research Policy Committee and copies of the report were also circulated to faculties, to coordinate responses from those within the faculty, a number of University committees, offices, and officers, as well as to those who had made previous submissions. The results of this second University-wide consultation were considered by the Research Policy Committee at meetings in October and November.
December 1993	Recommendations formulated for action by the University Planning Committee (UPC). UPC accepted the report and proposed revised policy (with the minor changes suggested by the Research Policy Committee)
January 1994	UPC recommended that GFC approve the proposed revised policy.
March 1994	GFC approved and recommended the same to the Board.
April 29, 1994	The Board of Governors formally approved and adopted the proposed revised policy.
January 1, 2020	Editorial Revision. Updated format and links. Also updated position titles, where applicable, as well as updated UTI reference to Innovate Calgary.