

TYPE:	Employment-Related
TITLE:	Intellectual Property
NO.:	EMPL-306
RESPONSIBILITY:	Chief Administrative Officer and Executive Vice-President, Academic
APPROVED BY:	Durham College Leadership Team
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1. Introduction

Durham College (DC) cultivates innovation, invention, creativity and discovery among its employees and students. By encouraging the creation of intellectual property, DC promotes a vibrant educational and research culture that enhances academic and intellectual growth.

2. Purpose

This policy and procedure create a framework around intellectual property development, ownership and protection.

3. Definitions

Refer to [Durham College's Standard Definitions](#).

4. Policy statements

- 4.1. Should any part of this policy conflict with a signed agreement between DC and/or the creator(s) of intellectual property and/or one or more third parties, the provisions of the signed agreement will prevail.
- 4.2. DC, its employees and students shall acknowledge legitimate contributions to the creation of intellectual property.
- 4.3. Creators of intellectual property who are bound by confidentiality requirements will maintain confidentiality regarding the disclosure of works until DC advises them that the information may be released.
- 4.4. Unless otherwise mutually agreed, DC shall have the exclusive intellectual property rights, title and interest in works that a creator creates, authors, produces or develops and:
 - is commissioned by the College;
 - is produced pursuant to an employee's normal administrative or professional duties with the College;

- is produced utilizing the College's resources, proprietary information, data, material and/or facilities; or
- has resulted from the College's government-funded research.

4.5. Creators shall act diligently to ensure that any work created for DC or for which DC owns intellectual property rights does not violate the rights of any third party.

5. Procedure

5.1. Employee Creator

5.1.1. Where an employee creates a scholarly work

- that was not commissioned by the College;
- outside of her/his/their normal administrative or professional duties with the College;
- that did not utilize the College's resources, proprietary information, data, material and/or facilities; or
- did not result from the College's government-funded research

the employee creator will be the intellectual property owner in such work. Examples include but are not limited to, copyright in textbooks, articles, theses, and peer-reviewed articles.

5.1.2. Where an employee creator wishes to use DC resources, proprietary information, data, material or facilities to create a work outside her/his/their normal administrative or professional duties, the employee creator is first required to inform the College of such, so that a mutually satisfactory written agreement covering, among other things, ownership, use and revenue sharing of the work, can be negotiated before the work is developed. In the absence of such notification and written agreement, the intellectual property rights in the work created will be owned by DC, and the employee creator hereby assigns its rights, title and interest in such work to DC and waives moral rights in the work.

5.1.3. An employee creator who, alone or in association with others, creates works using DC's resources, proprietary information, data, material or facilities shall disclose, in writing using the appropriate form, the subject matter to the Executive Vice-President, Academic and the Chief Administrative Officer (CAO). Disclosure must be made as soon as it can reasonably be concluded that a protectable subject matter will be created, and sufficiently before any publication, presentation, or other public disclosure to allow time for possible action that protects intellectual property rights.

5.1.4. Where DC owns the intellectual property rights to a work created by an employee creator, either by agreement or pursuant to this policy, DC grants the employee creator a non-exclusive, royalty-free, revocable and

limited right to use the work only during the course of employment with, and for the benefit of, DC.

- 5.1.5. Employee creators hereby grant DC a worldwide, non-exclusive, royalty-free, irrevocable, and unlimited license to reproduce, copy, have copied, distribute and otherwise use, in any format, such works for College purposes including, but not limited to, educational, promotional, research, and academic review purposes.
- 5.1.6. The adoption and inclusion of employee-owned works in DC course materials will be made only with the prior approval of the appropriate College administrator and in accordance with the College's Conflict of Interest policy and procedure.

5.2. Student Creator

- 5.2.1. Where a student creator creates a scholarly work, including work created during her/his/their educational programming with DC, the student creator shall own the intellectual property rights in such work. Examples include but are not limited to, dissertations, papers, articles, theses, projects and works.
- 5.2.2. Unless otherwise mutually agreed and provided herein, student creators shall own the intellectual property rights in a created work, except when:
 - DC pays the student creator for the work;
 - the student creator uses DC's resources, proprietary information, data, material or facilities to create the work outside of course requirements; or
 - the student creator is participating in work-integrated learning, including, but not limited to, field placement, co-op, internship, preceptorship or a work term.
- 5.2.3. Student creators grant DC a worldwide, non-exclusive, royalty-free, irrevocable and unlimited license to reproduce, copy, publish, distribute and otherwise use, in any format, such works for DC purposes including, but not limited to, educational, promotional, research, and academic review purposes.

5.3. Documentation

- 5.3.1. Creators agree to assist and execute any documentation which may be required by DC to carry out the intent of this policy and procedure, including any assignment or consent agreement.
- 5.3.2. Where DC enters into an agreement with a third party, such as another post-secondary institution or other organization that provides for or contemplates the development of a work in which intellectual property rights subsist, DC will ensure that written agreements are in place to

manage the parties' intellectual property rights in the work.

5.4. License and Licensed Materials

5.4.1. All license agreements between DC and a third party regarding the use of DC's intellectual property shall be approved by the CAO and the Manager, Risk Management.

5.4.2. In cases where a creator uses licensed material owned by a third party in the creation of a work, the creator shall ensure that he/she/they have the right and authorization to use such licensed material and agree not to remove, alter, or obliterate any copyright notices or proprietary rights information present on the licensed material.

5.5. Notices

5.5.1. Where DC is the copyright owner of intellectual property rights in a work, DC may place the following copyright notice on the work: © [year of publication] The Durham College of Applied Arts and Technology.

5.5.2. DC has the right to be recognized and acknowledged in, or in association with, any work created by a creator with whom DC is otherwise dealing, or to be dissociated from a work, and for work not created in the course of employment/studies as mutually agreed upon.

5.6. Trademarks

5.6.1. Creators shall obtain prior written authorization from DC to use DC's trademarks in works.

6. Roles and responsibilities

6.1. The Chief Administrative Officer and Executive Vice-President, Academic are responsible for implementing this policy.

6.2. Creators are responsible for maintaining confidentiality where bound, executing documentation as needed, respecting the intellectual property rights of others and providing disclosure on the creation of intellectual property as required.

7. Accessibility for Ontarians with Disabilities Act considerations

Accessibility for Ontarians with Disabilities Act (AODA) standards have been considered in the development of this policy and procedure and it adheres to the principles outlined in the College's commitment to accessibility as demonstrated by the Multi-Year Accessibility Plan.

8. Non-compliance implications

Failure to comply with this policy may damage internal and external relationships, financial loss, property damage, reputational harm, legal action and/or a diminished ability to achieve the mission of the College.

9. Related forms, legislation or external resources

- Academic Employees Collective Agreement
- Copyright Act (Canada)
- Patent Act (Canada)
- Trademark Act (Canada)