

<b>TYPE:</b>	Employment-Related
<b>TITLE:</b>	Intellectual Property
<b>NO.:</b>	EMPL-306
<b>RESPONSIBILITY:</b>	Chief Administrative Officer and Vice-President, Academic
<b>APPROVED BY:</b>	Durham College Leadership Team
<b>EFFECTIVE DATE:</b>	March 2017
<b>REVISED DATE(S):</b>	
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## 1. Introduction

- 1.1. Durham College encourages, promotes and fosters creativity, innovation and discovery among employees and students in all fields of endeavour in which the College is engaged. By encouraging the creation of intellectual property, the College will advance a vibrant educational and research culture that promotes academic and intellectual growth.
- 1.2. In situations where the College is the owner of intellectual property that is worthy of commercial exploitation, the College's intention is to promote a revenue-sharing relationship with the creator or creators of the intellectual property.
- 1.3. Durham College will ensure that proper agreements and processes are in place to manage joint intellectual property based on each party's relative contribution to the development of the intellectual property.

## 2. Purpose

- 2.1. The purpose of this policy is to create a framework around the management, protection and ownership of intellectual property.
- 2.2. The policy outlines the College's position on ownership of intellectual property and identifies the rights and responsibilities of employees, students and third-parties as appropriate, with respect to intellectual property.
- 2.3. Further, the policy describes the College's position on potential transfer, application, and commercialization of intellectual property that is created through applied research by employees and students independently or with third-parties.

## 3. Definitions

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

## 4. Policy statements

### 4.1. Documentation

The College and the creator will agree to provide or sign such documentation, which may be required to carry out the intent of this policy.

### 4.2. College ownership of intellectual property

4.2.1. Except as may be otherwise mutually agreed to between the College and an employee, a work commissioned by the College or produced pursuant to the employee's normal administrative or professional duties with the College, or produced utilizing the College's resources and/or name and goodwill, will be and will remain the property of the College. Other works produced by an employee will be and will remain the property of the employee.

4.2.2. Unless otherwise agreed, intellectual property resulting from government-funded research will be the property of the College.

4.2.3. Unless otherwise agreed, intellectual property created by an employee utilizing College resources or property outside of normal administrative or professional duties will be the property of the College.

4.2.4. Where the College owns the intellectual property rights in a work, the creator will have a non-exclusive right to use the work, provided the creator exploits the work only in the course of employment with the College, where the creator is an employee, and only in the course of the contractual relationship with the College, where the creator is an associate of the College and not an employee.

### 4.3. Employee work

4.3.1. Where an employee creates a work outside of the course of employment and not as part of their duties for the College, without the use of College resources or property, and without remuneration or compensation for the work from the College, the employee will be the owner of the intellectual property.

- 4.3.2. Where an employee creates a scholarly work, such as a textbook intended for students or a peer-reviewed journal article, the employee will be the owner of the intellectual property. College does not claim ownership of copyright in books, articles, theses, peer-reviewed articles and similar works which are intended to disseminate the results of academic research or scholarly study. For these works, all copyright will remain with their creator(s). Creators hereby grant to the College, a non-exclusive, royalty-free, irrevocable, right and license to reproduce, copy, have copied, distribute and otherwise use, in any format, such works for College purposes including educational, promotional, research, academic review, and other non-commercial purposes.
- 4.3.3. Where an employee creates a work during the leave year of the Prepaid Leave Plan, without using the College's resources in doing so, the work will belong to the employee unless otherwise agreed to by the parties.
- 4.3.4. Where an employee wishes to use College resources to create a work outside the course of employment, the employee will first be required to 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 notification and written agreement, the intellectual property rights in the work created will be owned by the College.
- 4.3.5. Every application by an employee for a Professional Development Leave will contain a full description of the proposed professional development activity. It is the College's intention to encourage employees to create works of innovation and discovery. Accordingly, the application for Professional Development Leave will also contain a statement, signed by the employee and their supervisor, which sets out how any net profit from revenue generated by the commercial exploitation of such professional development activity, will be shared between the College and the employee. Where a paid Professional Development Leave is approved, the same principles related to intellectual property rights for any work created and for which work the leave was granted will apply as is the case for a full-time employee not on paid leave.
- 4.3.6. 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.

#### 4.4. Student work

- 4.4.1. Where a student creates a scholarly work, the student will be the owner of the intellectual property. Such works include those of students created in the course of their education, such as dissertations, papers, articles, theses, and projects. For these works, all copyright will remain with their creator(s). Creators hereby grant to the College, a non-exclusive, royalty-free, irrevocable, right and license to reproduce, copy, have copied, distribute and otherwise use, in any format, such works for College purposes including educational, promotional, research, academic review, and other non-commercial purposes.
- 4.4.2. Students will be the owners of intellectual property in works they create, except in the following situations:
  - a) Where the College pays students for their work (examples include work-study programs and applied research projects);
  - b) Where the students are participating in an experiential learning opportunity with a third party, including field placements, co-operative work placements, applied research projects, and internal research fund projects. Unless otherwise agreed, the owner of the intellectual property is the third party;
  - c) Where the students who created the work transfer the ownership of the copyright to the College for valuable consideration;
- 4.4.3. Students will be the owners of intellectual property in works they create where they use College resources and facilities to create the works, outside of their course requirements, through participation in extracurricular activities including entrepreneurship services, Student Association student clubs, and the like. In these cases, students will be required to obtain the College's consent to the use of its resources and facilities.

#### 4.5. Joint initiatives with third-parties

- 4.5.1. Where the College enters into an agreement with a person, persons, another post-secondary institution or other organization that provides for or contemplates the development of a work in which intellectual property subsists, the parties will ensure that a written agreement sets out their respective rights in the intellectual property in the work, and any terms relating to the sharing of risk and revenue from the exploitation of the work.

4.5.2. In externally-sponsored or contract research activities or applied research activities, ownership of intellectual property rights may be determined in whole or in part by the funding agency or external sponsor, or by the terms of the contract. All College staff participating in such research activities must be made aware of any intellectual property ownership stipulations of the contract by the principal investigator, or by any other designated leader of the research project.

#### 4.6. Licensing arrangements

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

4.6.2. Where the College enters into a licensing agreement with a third-party to permit that third-party to use materials or property developed or acquired by, or collaboratively with the College, the licensing agreement will be in a form approved by the Vice-President, Academic or designate and the Manager, Insurance and Risk Management.

#### 4.7. Classroom recordings

4.7.1. Where the College and faculty determine that picture-taking or the audio or video recording of academic-related activities is necessary for educational purposes or where required to accommodate persons pursuant to the *Ontario Human Rights Code*, the relevant faculty and students will be notified of the recording in advance. Recordings of lectures made by students shall not be shared, reproduced or uploaded to any publically accessible web environment or used for any purpose not specifically authorized by the faculty member and will remain the property of the faculty member.

4.7.2. The College will own the content of the intellectual property recorded on audio or video tapes/discs developed or created in classroom activities by employees, except material obtained for approved research projects being undertaken by the employee. If the College wishes to use such recording for other purposes, it will obtain the written consent of all persons seen or heard in the recording.

4.7.3. The College acknowledges and respects the performing rights of all performers of literary, dramatic or musical works and agrees to obtain their consent to the recording of their performances. The College will use audio and video recordings solely for educational purposes. If the College wishes to use such recordings for any other purpose, it will obtain written consent from all persons who are seen or heard in the recording.

#### 4.8. Copyright notice and use of name

4.8.1. Where the College is the copyright owner in any works created pursuant to this policy, or otherwise, it will place the following copyright notice in a conspicuous place in the works: © [year of publication] The Durham College of Applied Arts and Technology.

4.8.2. Use of the College's name will only be made in accordance with the requirements as set out by the College in each case.

4.8.3. 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 an employee, student, or person with whom the College is otherwise dealing, or to be dissociated from the work, and for work not created in the course of employment/studies as mutually agreed upon.

#### 4.9. Moral rights

4.9.1. The College will take steps to respect the creator's moral rights. The creator has the right to request, where reasonable in the circumstances, to be given recognition for the work by name or by pseudonym, to remain anonymous, or to choose not to be associated with any modification of the work that is perceived to be damaging to their honour or reputation. The College will respect the moral intention of the creator of the work through consultation with the creator, but may extend or modify the work if not in conflict with the moral intention of the creator.

#### 4.10. Disclosure

- 4.10.1. Employees who alone or in association with others (within or outside of the College) create intellectual property utilizing College time, resources, facilities, or name that may be protected (for example, registered as a patent, industrial design, integrated circuit topography or a trademark) are responsible for disclosing, in writing, the subject matter to the Vice-President, Academic or designate and the Chief Administrative Officer. Disclosure must be made when it can reasonably concluded that a protectable subject matter has been created, and sufficiently in advance of any publication, presentation, or other public disclosure to allow time for possible action that protects rights to the intellectual property for the creator(s) and the College. Such disclosure must include the nature of the intellectual property, the names of all co-creators, the source of funding for the research project out of which the intellectual property emerged, and any other relevant information.
- 4.10.2. Creators and others with knowledge of the intellectual property and bound by confidentiality requirements will maintain confidentiality regarding the disclosure until the College advises them that the information may be released.
- 4.10.3. Employees who have created intellectual property for commercialization purposes will take all reasonable steps to prevent public disclosure of the intellectual property, including presentation of the intellectual property at conferences or public meetings or through social media, discussion of the intellectual property with family, friends, and colleagues, and documentation of the intellectual property in grant applications. Any potential disclosure should first be discussed with the Dean of the Office of Research Services, Innovation and Entrepreneurship.

#### 4.11. Compliance with Third-Party Agreements and Applicable Law

- 4.11.1. Creators will comply with the terms and conditions of all contracts with third parties that relate to the intellectual property (e.g., sponsored research agreements, licensing agreements) and with applicable laws. Creators who are bound by confidentiality agreements will maintain confidentiality regarding the disclosure until the College advises them that the information may be released.

#### 4.12. Trademarks

- 4.12.1. Ownership of trademarks will be determined in accordance with this policy, including trademarks created by the College as well as those created by creators and used or proposed to be used in association with goods or services related to the business of the College; and/or related to or resulting from or associated with intellectual property owned by the College.

- 4.12.2. All goods, packaging and promotional materials for goods and/or used in connection with services and bearing trademarks owned by the College will bear or include the appropriate trademark notice as required by the College.

#### 4.13. Commercialization

- 4.13.1. Where the College owns intellectual property rights in a work, the College may choose to commercialize it, and may consult with the creator(s) on the best means for commercialization. The creator of a work in which the College owns the intellectual property 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 will always be a party to any resulting agreement. The agreement will provide that the creator of the intellectual property is entitled to share in the revenues contemplated under the terms of the agreement.
- 4.13.2. In the event that intellectual property is commercialized, the College will first be reimbursed for all costs, including intellectual property development costs, patenting and protection costs, marketing costs and other commercialization costs.
- 4.13.3. Net proceeds resulting from the commercialization will be shared as follows:
- a) Where there is an agreement between the College and the creator, the College and the creator will share the proceeds in accordance the terms of the agreement; or
  - b) If an agreement was not signed prior to the commercialization of the intellectual property, the College will be entitled to 50 per cent of the proceeds and the creator will be entitled to 50 per cent of the proceeds.
- 4.13.3. The creator may choose to enter into an agreement with the College to assign all rights to the intellectual property to the College. In this case, the College will be responsible for all costs relating to the commercialization of the intellectual property, including legal, protection, and marketing costs. Any sharing of the proceeds will be agreed upon in writing.
- 4.13.4. The College may choose to enter into an agreement with the creator to assign all rights to the intellectual property to the creator. In this case, the creator will be responsible for all costs relating to the commercialization of the intellectual property, including legal, protection, and marketing costs. Any sharing of the proceeds will be agreed upon in writing.



## **5. Procedure**

This section is not applicable.

## **6. Roles and responsibilities**

6.1. The Chief Administrative Officer and Vice-President, Academic are responsible for interpreting this policy, providing advice to managers and employees and resolving disagreements.

## **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 Accessibility Plan (ADMIN-203).

## **8. Non-compliance implications**

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

## **9. Communications plan**

- A message will be posted on ICE alerting employees when new or revised policies and procedures are added to ICE.
- A message will be posted on MyCampus alerting students when new or revised policies and procedures are added.

## **10. Related forms, legislation or external resources**

- Copyright Act (Canada)
- Trademark Act (Canada)
- Patent Act (Canada)