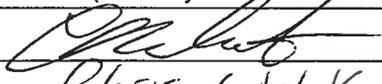


<b>Policy #</b>	(formerly 151) AC205
<b>Approved by:</b>	
<b>Name:</b>	Chris Whitaker
<b>Title:</b>	Vice President, Academic
<b>Approval Date:</b>	September 20, 2013
<b>Policy Holder:</b>	Vice President, Academic
<b>Administrative Contact:</b>	Associate Vice President, Academic Operations
<b>Replaces Policy Dated:</b>	June 28, 2007
<b>Review Date:</b>	June 28, 2018

## Intellectual Property

### Purpose/Rationale:

Humber College Institute of Technology & Advanced Learning (hereafter referred to as “the College”) supports creativity, innovation and invention among its students, faculty, support and administrative staff.

The intent of this policy is to assure that any intellectual property (hereafter referred to as “IP”) produced will be utilized and developed for the benefit of the creators, the College, and the public. The rights and responsibilities regarding IP are covered in this policy.

**This document is available in alternate format on request.**

### Scope:

College personnel are covered to the extent that their creative work involves the use of College resources such as space, facilities, equipment, staff, or funds, as stipulated for the particular circumstances described in this policy.

### Definitions:

College personnel: refers to College faculty, support and administrative staff, students, visiting faculty, contractors, consultants and all other persons whose primary work affiliation is with the College, whether compensated by the College or not.

Experiential educational programs: refers to field experience, mandatory program projects, co-op, work term, internships and, for the purposes of this policy, work study students.

Gross Royalties: refers to cash or cash proceeds received by the College, whether from the sale of equity or obtained in licensing transactions, milestone payments or royalty payments.

IP: is any form of knowledge or expression created by one's intellect that can be legally protected. Types include:

- **Copyrights:** Copyrights include, without limitation, all creative works, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, and any other materials that may be copyrightable under Canadian law. (Copyrightable material shall include educational or research software, but shall not include software other than educational or research software.)
- **Industrial Designs:** An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. It may be, for example, the shape of a table or the shape and ornamentation of a spoon. The design must have features that appeal to the eye. ([Canadian IP Office, Industry Canada](#))
- **Integrated Circuit Topographies:** Integrated circuit topographies are now considered a form of IP. Recognizing the growing impact of integrated circuit technology in virtually all fields of industry, and the need to protect Canadian innovations in this technology both nationally and internationally, Canada has introduced protection for integrated circuit topographies. Topographies are innovative, three-dimensional circuit designs used in many different products. Examples of such products are automobiles, industrial robots, cameras, spacecraft and computers. ([Canadian IP Office, Industry Canada](#))
- **Patents:** Patents include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) or other material that is patentable under Canadian law, as well as all software that is excluded from "copyrightable material" (whether or not patentable under Canadian law).
- **Trademarks:** Trademarks include a word, a symbol, a design (or a combination of these features), used to distinguish the wares or services of one person or organization from those of others in the marketplace or any other feature that is considered a trademark under Canadian law.
- **Trade secrets:** Trade secrets are ideas or know-how (business methods, processes, machines, formulas, patterns and techniques) that are kept secret from one's business competitors.
- **Invention:** Invention means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

**Net Royalty Income:** refers to gross royalties received by the College, in the form of cash or cash proceeds, whether from the sale of equity or obtained in licensing transactions, milestone payments or royalty payments, unless otherwise agreed, less commercialization costs of the Research Office (including but not limited to billed costs for protection of IP, marketing, legal fees and other licensing costs).

## **Policy:**

### 1. **Protectable IP**

#### 1.1 Determination of Rights to Protectable IP

The College will assert ownership rights to protectable IP, except copyrightable IP, developed under any of the following circumstances:

- a) Development was funded by an externally sponsored research program or by any agreement that allocates rights to the College.
- b) Development was funded or partially funded by one or more sector partner(s).

- c) Development required use of College resources (e.g. facilities, equipment, funding) or more than minimal use of College personnel.<sup>1</sup>
- d) The creator was assigned, directed, or specifically funded by the College to develop the material.
- e) Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under Canadian law.

The creator of protectable IP retains his or her rights, and the College shall not assert ownership rights, except as outlined above. Creators are encouraged to seek the advice of the Research Office in determining whether the subject matter is protectable.

## 1.2 Disclosure

College personnel, who alone or in association with others (within or outside the College) create IP, with any use of College resources, that may be protected (registered as a patent, industrial design, integrated circuit topography or a trademark) except for copyrightable IP (see Section 2) are responsible for disclosing the subject matter to the College. Disclosure must be made when it can be 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 IP for the creator(s) and the College.

## 2. Copyrightable IP

### 2.1 Determination of Rights to Copyrightable IP

The creator of copyrightable IP will retain his or her rights, and the College shall not assert ownership rights, except as outlined below. However, all creators will be expected to grant to the College perpetual, irrevocable, non-exclusive, worldwide, royalty-free licenses for copyrightable material that is developed for College courses or curriculum, so that the College's continued use of such material for educational purposes will not be jeopardized.

The College will assert ownership rights to copyrightable IP developed under any of the following circumstances:

- a) Development was funded as part of an externally sponsored research program under an agreement which allocates rights to the College.
- b) College personnel were assigned, directed, and/or specifically funded by the College during the course of employment to develop material, and the College has negotiated an understanding and/or formal contract with the creator.
- c) The material was developed by administrators or other non-faculty employees in the course of employment duties and constitutes work as a condition of employment under Canadian law.
- d) The material was developed with extraordinary or substantially more use of College resources than would normally be provided for the creator's employment duties. This might occur as disproportionate use of staff time, networks, equipment, or direct funding.

### 2.2 Disclosure

College personnel are not obligated to disclose the creation of copyrightable material, even when the product might have commercial value, unless the material was developed under one of the qualifying conditions listed above in section 2.1, in which

case, the creator is responsible for timely disclosure.

3. Commercialization

3.1 If College personnel decide to pursue commercialization of their invention, they must contact the Research Office to initiate this process.

3.2 College personnel who wish to pursue the commercialization of their independently developed and owned IP through the College may offer such IP to the College by disclosing the IP to the Research Office.

4. IP Developed in Joint Initiatives with Outside Parties

Where the College enters into an agreement with an outside party (person(s), institution(s), or business(s)) that may result in the generation of IP, the parties will ensure that a written agreement sets out their respective rights to the IP in the work and any terms relating to the sharing of risk and revenue from the exploitation of the work.

5. IP Developed Under Sponsored Research Agreements

Ownership of IP developed pursuant to an agreement with any sponsor will be governed by the provisions of that agreement. Sponsored research programs funded by private sponsors will generally provide for the College to retain title to all IP that arises in the course of the research program with the sponsor retaining an option to acquire commercialization rights through a separate license agreement. Government and non-profit sponsors generally allow rights to IP that arise from the research program to vest with the College, subject to certain retained rights held by the sponsoring agency.

6. IP Developed Under Experiential Education Programs

For the purposes of this policy, work completed by College personnel in experiential education programs will be considered by the College to be bound by copyright laws and policies as they relate to the organization in which the experiential learning takes place.

7. Waiver of Return of Rights

Since the College aims to encourage creativity, it reserves the right to allow some flexibility in applying this policy on a case-by-case basis. The College may, at its sole discretion, waive, transfer, or license to the creator its rights to any IP when such action does not conflict with obligations to other interested parties. This could occur for instance, if the costs of protecting and developing the IP are not likely to be matched by anticipated income. If at any time the College shall terminate its effort to seek protection of IP, or to discontinue commercial development, the inventor shall, upon filing a request with the College and completing appropriate transfer of rights, be free at his or her expense to seek a patent or copyright, and / or develop, license, and otherwise use the material, subject to the College's rights to reimbursement of incurred costs and sharing of future royalties, in amounts to be negotiated between the College and the creator on a case-by-case basis.

8. Income Distribution

IP owned by the College shall be distributed according to the following:

- a) 50% Creator(s) (personal)
- b) 30% Creator's school or equivalent department (for support of research and other creative activity)

- c) 20% College (Research Office funds for discretionary support of research and other creative activity)

In the event of joint creators, the payments made to the creators under the above schedule shall be divided equally among the creators, except as may be otherwise agreed to by the creators and approved by the Research Office.

In the event the College receives consideration other than monetary consideration in connection with any license, such as equity, such consideration shall be considered "Gross Royalties" and shall be apportioned according to the above schedule. Any equity received by the College may be held by the College until such time that the College decides to liquidate such equity. The College has the sole right to determine the disposition of IP in which it has equity. Payments for research or contributions of equipment shall not be considered Gross Royalties but shall be the sole property of the College.

The College may postpone the distribution of Net Royalty Income when future expenses relating to the applicable technology, such as patent prosecution costs, or an infringement suite, are reasonably anticipated.

9. College Personnel Equity Participation

College personnel who are planning to direct or participate in a research program sponsored by a company in which they hold equity must disclose their equity position, and agree to periodic review of their participation in the project, by the Dean of Research or her/his designate. The purpose of such review is to assess potential conflicts between company sponsored research and other research programs in the creator's laboratory and to monitor compliance with College policies.

10. Conflict Resolution

The Research Office will handle questions regarding the application, interpretation or implementation of the policy, or regarding disagreement among creators concerning assignment of rights or sharing of royalties. Disagreement with any determination made by that Office may be directed to the appropriate Vice President or his/her designate for a final determination.

11. Use of the College Name, Mark, or Insignia

Use of the College name, seal or logo on letterhead and business cards is standardized and regulated by the Marketing and Communications Department.

The College name, seal, and logo may not be used without the approval of the Director of Marketing and Communications:

- a) in conjunction with any private or commercial enterprise;
- b) in tandem with the advertisement of any product; or
- c) by any individual or group promoting itself.

Any questions regarding the use of the College name seal, or logo should be referred to the Director of Marketing and Communications.

**Endnotes:**

<sup>1</sup> The College has rights to patentable material derived from research carried out with any use of College resources. However, patentable material developed independently by the creator outside of normal duties associated with the creator's position and with no use of College resources is vested with the creator and/or with the organization whose resources were used, such as a hospital.

**Acknowledgments:**

The College's policy on IP was adapted from George Brown's policy on IP and is used with permission. It is also recognized that George Brown's policy was adapted from material prepared by Tufts Computing and Communication Services Department, Tufts University and from material prepared by Steven J. McDonald, Associate Legal Counsel for Ohio State University. The policy was amended in 2008 using the IP policies at Seneca College, BCIT, Niagara College, Humber College and The University of Waterloo as resources.

**References:**

Humber Copyright Policy

**Appendices:**

None

**Related Procedure:**

IP Procedure