
POLICY ON INTELLECTUAL PROPERTY
APPROVED – June 5, 2014

Preamble

The University of Guelph (the “University”) is one of the most research intensive universities in Canada, and has a long history of high-quality, innovative research that changes lives and improves life. The University is committed to enabling and supporting the people and partnerships that advance the quality, pre-eminence and societal value of the University’s research and creative endeavors.

It is recognized that in the course of research, new Intellectual Property will be created that may be commercially valuable and that may require patent or other protection in order to reach its full potential. Accordingly, the goal of this Policy is to encourage the creation of Intellectual Property and to facilitate its development and commercialization, while preserving the principles of academic and intellectual freedom.

No Personnel will be obliged to engage in the commercial exploitation of the results of their University Activities or to provide commercial justification for it, except as required in any grant application, award, or Contract.

The fundamental principle of this Policy is that, subject to the specific exceptions set out herein, Intellectual Property is owned by those who create it.

This Policy replaces the Inventions Policy (1991), the Copyright Policy (1989) and the Software Creation Policy (1989). It does not replace or supersede any other policy or collective agreement.

This Policy is effective as of May 1, 2014 and is not retroactive. This Policy applies to all Personnel.

Section 1: Definitions

- 1.1 “Commercialization” means the patenting, marketing, manufacturing, sale, distribution, licensing, sublicensing, transferring, granting of rights of use or leasing of Intellectual Property or products or services covered by, claimed by, or incorporating Intellectual Property.
- 1.2 “Contract” means a written agreement between the University and a Personnel and/or a third party. Contract shall also mean the terms or conditions under

which funding is provided to the University to support the Personnel's University Activities.

- 1.3 "Copyright" means the rights granted under the Copyright Act, RSC 1985, c-42, as amended from time to time.
- 1.4 "Creator" means the person or persons who creates, conceives, designs, discovers, develops, invents or authors Intellectual Property.
- 1.5 "Intellectual Property" means any result of intellectual or artistic activity and includes, but is not limited to Works, Tangible Research Property, software, databases and database layouts, Inventions, industrial or artistic designs, trademarks, trade names, domain names, integrated circuit topographies, know-how and trade secrets, whether or not registerable or registered or protected under the law.
- 1.6 "Invention" means the rights associated with any patentable or potentially patentable idea, discovery or know-how and any associated or supporting technology that is required for development or application of the idea, discovery or know-how.
- 1.7 "Moral Rights" means the Canadian statutory rights of an author of a work in which Copyright subsists to be associated with the work and to prevent the distortion, mutilation or modification of the work to the prejudice of the honour and reputation of the author.
- 1.8 "Net Revenue" equal those gross receipts that the University is entitled to retain from Commercialization activity, less: (i) the University's out-of-pocket costs and fees associated with securing, maintaining and enforcing intellectual property protection such as patenting and litigation expenses, (ii) out-of-pocket costs incurred by the University in the licensing of the intellectual property and (iii) any out-of-pocket expenses in making, shipping or otherwise distributing Tangible Research Property.
- 1.9 "Personnel" means one or more individuals carrying on the University Activities, paid or unpaid and who is/are not a Member as defined in the Collective Agreement between the University of Guelph and the University of Guelph Faculty Association. Personnel include but are not limited to, Professor Emeriti, staff, students, sessional lecturers, post-doctoral fellows, volunteers and adjunct faculty. In the absence of a Contract governing new Intellectual Property created during their visit, visiting scientists and visiting students are considered Personnel for the purpose of this Policy.
- 1.10 "Principal Investigator" means the Personnel who is identified as principally responsible for the performance and supervision of research associated with a Contract.

- 1.11 “Tangible Research Property” means plant germplasm, cell lines, organisms, proteins, plasmids, DNA/RNA, chemical compounds, transgenic animals and other materials useful for research or for commercial purposes for which patent applications are not filed or, if filed, do not issue.
- 1.12 “University Activities” means activities which are carried on by Personnel in the course of their employment or association with the University, or using University funds, facilities, equipment or other resources.
- 1.13 “Work” means original literary, dramatic, musical and artistic work and includes every original production in the literary, scientific or artistic domain, whatever maybe the mode or form of its expression such as websites, books, texts, articles, monographs, glossaries, bibliographies, cartographic materials, modular posters, study guides, laboratory manuals, correspondence course packages, interactive textbooks, course work delivered on the Internet, including distance education, multimedia instructional packages, syllabi, tests and work papers, lectures, musical and/or dramatic compositions, choreographic works, performers' performances, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, computer programs, live video and audio broadcasts, programmed instructional materials, drawings, paintings, sculptures, photographs, and other works of art.

Section 2: Copyright

- 2.1 Copyright belongs to Personnel who create Work, even if it is produced during the course of their University Activities , except in those cases where:
- (a) there is a pre-existing Contract that assigns the ownership rights to the University or to a third party; or
 - (b) the Work is produced according to Section 2.2.
- 2.2 No Personnel shall claim any rights, and the University reserves to itself the ownership rights in any Works that are:
- a. encompassed within section 2.1(a) above;
 - b. produced by Personnel at the specific request or direction of the University;
 - c. produced by Personnel employed for the express purpose of creating or producing Works, or where there is an explicit requirement in a Personnel’s job description for this responsibility;
 - d. an assessment, grading, report or correspondence produced pursuant to Personnel’s University Activities;
 - e. Works provided to a Personnel to assist him/her in carrying out his/her duties and modified by the Personnel, such as a laboratory manual; or

- f. produced and designed to assist in the day-to-day administration of the University's affairs.
- 2.3 Personnel shall not be required to waive their Moral Rights.
- 2.4 In the event that Work is the creation of more than one Personnel, the provisions of this Policy shall apply on a pro rata basis to all the Creators of the Work, unless a written agreement among the Creators, or a Contract states otherwise.
- 2.5 Where a Work is owned by a Personnel, Personnel may enter into an agreement with the University, at each party's discretion, for the performance of commercialization activities such as evaluation, marketing and negotiation of licenses. The Creator(s) will be entitled to receive seventy-five percent (75%) of Net Revenues received by the University as a result of successful commercialization of a Work owned by a Personnel.
- 2.6 The University may, at any time, elect to terminate or relinquish its rights in any Work. In the event that the University or assignee relinquishes its rights in any Work, all Intellectual Property rights shall revert back to the Creator(s). In the event that any Creator is deceased, the rights shall revert to the estate of that Creator.
- 2.7 All Personnel who own Copyright pursuant to this Policy hereby grant to the University:
- (a) a nonexclusive, royalty-free, irrevocable and non-transferable license to use such works in other, non-commercial teaching and/or scholarly, research or creative activities of the University, subject to copyright requirements of academic journals and other vehicles of scholarly publication; and
 - (b) in the case of written works submitted as partial fulfillment of the requirements for completing a degree at the University, the non-exclusive right to reproduce, translate, and/or distribute the written work worldwide in print and electronic format and in any medium, including but not limited to audio or video.

This license shall not apply to a Personnel's personal documents, including unpublished lecture notes, course notes, lab notes or any work-in-progress.

Section 3: Inventions and Tangible Research Property

- 3.1 Inventions and Tangible Research Property belong to Personnel who create the Invention or Tangible Research Property, even if it is produced during the course of their University Activities, except in those cases where:
- (a) there is a pre-existing Contract that assigns the ownership rights to the University or to a third party; or
 - (b) the Invention or Tangible Research Property is created according to Section 3.2.
- 3.2 No Personnel shall claim any ownership, and Personnel hereby assign ownership to the University in any Inventions or Tangible Research Property that is:
- a. encompassed within section 3.1(a) above;
 - b. produced by Personnel at the specific request or direction of the University; or
 - c. produced by Personnel employed for the express purpose of creating or producing Inventions or Tangible Research Property, or where there is an explicit requirement in a Personnel's job description for this responsibility.
- 3.3 Prior to proceeding with a patent application or Commercialization activity, Personnel shall provide written disclosure to the University of any Invention made by him/her. Such disclosure shall assert whether ownership of the Invention is claimed by Personnel according to this Policy and the Personnel's intention to pursue Commercialization independently or with the assistance of the University. If the University fails to challenge in writing the assertions of the Personnel within three (3) months of the receipt of disclosure of the Invention, the University shall be deemed to have accepted as accurate the assertions set out in the disclosure. Failure by a Personnel to disclose an Invention shall not terminate or waive any potential claim by the University regarding Intellectual Property rights.
- 3.4 Subject to section 3.3, where Personnel own an Invention or Tangible Research Property according to this Policy, they may, at their sole discretion, make arrangements for protection and Commercialization at their sole expense and benefit.
- 3.5 Where an Invention or Tangible Research Property is owned by Personnel, Personnel may enter into an agreement with the University, at each party's discretion, for the performance of commercialization activities such as evaluation, patent protection, marketing and negotiation of licenses. The Creator(s) will be entitled to receive fifty percent (50%) of Net Revenues as a result of commercialization of an Invention or Tangible Research Property by the University.

- 3.6 Where an Invention is owned by the University, Personnel may enter into an agreement with the University, at each party's discretion, for the performance of commercialization activities such as evaluation, patent protection, marketing and negotiation of licenses. The Creator(s) will be entitled to receive fifty percent (50%) of Net Revenues as a result of Commercialization of an Invention by University.
- 3.7 Where Tangible Research Property is owned by the University according to Section 3.2, University reserves to itself all ownership rights and revenues.
- 3.8 The University reserves to itself and Personnel shall grant a fully paid-up, non-exclusive, royalty-free, irrevocable and non-transferable license to use any Personnel-owned Invention or Tangible Research Property made, discovered or developed using the University's facilities, support personnel, support services, equipment or materials, for academic and research purposes.
- 3.9 In the event that an Invention or Tangible Research Property is the creation of more than one Personnel, the provisions of this article apply on a pro rata basis to all the Creators unless a written agreement or Contract states otherwise.
- 3.10 The University may, at any time, elect to terminate or relinquish its rights in any Invention or Tangible Research Property. In the event that the University or any other assignee relinquishes its rights in any Invention, all Intellectual Property rights shall revert back to the Creator(s). In the event that any Creator is deceased, the rights shall revert to the estate of that Creator.

Section 4: Additional Items

- 4.1 The Principal Investigator has the duty to inform any collaborators or co-investigators, including all Personnel involved in the research, of the terms of any Contract governing the research, including terms related to ownership or Commercialization of Intellectual Property.
- 4.2 The name "University of Guelph" and abbreviations thereof, and the logos of the University of Guelph and their component parts, are trademarks and service marks of the University and are owned by the University. Personnel will take all reasonable and practicable steps to ensure that the name of the University and such other trade-marks and service marks are not used in connection with Intellectual Property without the prior written agreement of the University. No statement made by a Personnel with respect to Intellectual Property may, in any way, imply approval, promotion or use of such Intellectual Property by the University without the prior written agreement of the University. Notwithstanding the foregoing, nothing shall prevent Personnel from stating his/her employment, rank and title in connection with Intellectual Property.

- 4.3 This Policy is effective as of its implementation, and all Contracts between a Personnel and the University made prior to this date will be governed under the terms of those Contracts and the applicable policies in place at the time of the Contract.
- 4.4 Subject to Section 5, the Vice-President (Research) is responsible for making such determinations as are necessary under this Policy.

Section 5: Dispute Resolution

- 5.1 It is recognized that disputes may arise between the University and Personnel with respect to Intellectual Property and the implementation of this Policy. When disputes arise, every effort shall be made by all parties acting in good faith to resolve disputes at the lowest possible level.
- 5.2 If a dispute cannot be resolved informally, the matter will be referred to the Vice President (Research) (or his/her delegate), who will consult with others as appropriate and issue a written decision.

Section 6: Policy Review and Procedures

- 6.1 The Vice President (Research) is authorized to develop and up-date procedures to aid implementation of the Policy.
- 6.2 Amendments to the Policy require the approval of the Board.
- 6.3 The Board of Governors will review this Policy at least every five (5) years.