

## **1. INTRODUCTION**

George Brown College seeks to encourage creativity, innovation and invention among its faculty, students, and staff. The college invests in this endeavor by making available its own facilities, equipment, personnel, and information resources. The college also actively seeks specific support for creative activity from external sources, both public and private. Frequently, inventions, discoveries, and creative works that are developed by individuals at the college will have commercial and / or scientific and scholarly value. The intent of this policy is to provide incentives that foster creative activity, and to help assure that any intellectual property produced will be exploited for the benefit of the creators, the college applied research enterprise, and the public. To help meet these policy objectives, the college makes available, through the Office of Applied Research and Innovation, technical and legal assistance in procedures necessary to protect ownership of intellectual property and to aid in its commercial development.

### **1.1 Purpose of Policy**

The specific aims of this policy include the following:

- Encourage creativity among the faculty, students and staff;
- Increase the likelihood that ideas, innovations, inventions, and creative works produced at the college are used to benefit the public;
- Protect the traditional rights of scholars with respect to owning the products of their intellectual endeavors;
- Assure compliance with the provisions of contracts with external sponsors; and provide that, whenever possible intellectual property is introduced for commercial development, the creator(s) and the college share any net profits;
- Outline the process for disclosure of inventions by faculty, students and staff to the college;
- Encourage collaborative applied research projects with external partners and provide guidelines for sharing intellectual property, royalties, licensing agreements etc. with external partners.
- Encourage the commercialization of intellectual property that arises from research and innovation at George Brown College.

### **1.2 Changes to this Policy**

The college reserves the right to change this policy from time to time. Proposed changes normally will be developed by the Office of Applied Research and Innovation, in consultation with the appropriate stakeholders. Changes to the college's IP policy are approved by the Academic Excellence Committee, the College Council, the Academic Students Affairs Committee, and the Board of Governors.

## **2. ADMINISTRATION OF INTELLECTUAL PROPERTY**

The Office of Applied Research and Innovation will be responsible for the day-to-day management of all college intellectual property issues, and shall be empowered to negotiate the college's rights under these policies.

## **3. WHO IS COVERED: COLLEGE PERSONNEL**

This policy covers college personnel including faculty, administrators, office and technical staff, students, visiting scholars, contractors, consultants and all others whose work or study affiliation is with the college, whether compensated by the college or not.

### **3.1 Scope of Coverage**

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 sections 6.2 and 7.2 for all intellectual property<sup>1</sup>.

## **4. WHAT IS COVERED: INTELLECTUAL PROPERTY**

All intellectual property produced at the college by college personnel, and / or which arises from joint initiatives with outside parties, such as industry or sector partners, are covered by this policy.

### **4.1 What is Intellectual Property?**

Intellectual property (IP) is any form of knowledge or expression created by one's intellect that can be legally protected. It is the product of the act of creation, such as: inventions; creative works; technical information; prototypes; drawings; specifications; know-how, electronic or paper documents; software (including source code and object code); industrial designs; multimedia or audiovisual materials; photographs; and curriculum and teaching materials. Individuals and/or institutions can own IP in the same way they can own physical property. An owner of IP can control and receive payment for its use. IP may be registered (see below), through an appropriate national registry office, affording it a certain level of protection for a period of time (varies by the kind of IP). IP may be licensed (giving someone conditional permission to use the item subject to compensation) or assigned (transferring ownership to another person for compensation).

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<sup>1</sup> As a condition of affiliation with the college, members of the college community are bound by all college policies, including this one.

## 5. IP PROTECTION

College owned IP may be protected, developed or commercialized at the college's option and expense. There are six main types of IP protection under Canadian law: copyrights, industrial designs, integrated circuit topographies, patents, trademarks and trade secrets.

### 5.1 Types of IP Protection

**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. To be eligible for registration with the Industrial Design Office, your design must be original.<sup>2</sup>

**Integrated circuit topographies:** Integrated circuit topographies are now considered a form of intellectual property. 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.<sup>3</sup>

**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.

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<sup>2</sup> Canadian Intellectual Property Office, Industry Canada,  
<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00253.html>

<sup>3</sup> Canadian Intellectual Property Office, Industry Canada,  
<http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/wr00423.html>

**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.

## 6. PROTECTABLE INTELLECTUAL PROPERTY

### 6.1 Responsibility for Disclosure of Protectable Intellectual Property

College personnel, as per section 3, who alone or in association with others (within or outside the College) create IP that may be protected (registered as a patent, industrial design, integrated circuit topography or a trademark) except for copyrightable (see section 7 ), with any use of college resources, 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 publications, 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. Creators are encouraged to seek the advice of the Office of Applied Research and Innovation in determining whether the subject matter is protectable. See section 10 for disclosure process.

### 6.2 Determination of Rights to Eligible Intellectual Property

Except as outlined below, the creator of protectable intellectual property retains his or her rights, and the college shall not assert ownership rights. The college will assert ownership rights to protectable intellectual property developed under any of the following circumstances:

- Development was funded by an externally sponsored research program or by any agreement that allocates rights to the college.
- Development was funded or partially funded by one or more sector partner(s)
- Development required use of college resources (e.g. facilities, equipment, funding) or more than minimal use of college personnel.<sup>4</sup>
- The creator was assigned, directed, or specifically funded by the college to develop the material.
- Material was developed by administrators or staff in the course of employment duties and constitutes work for hire under Canadian law.

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<sup>4</sup> The college has rights to patentable material derived from research carried out with any use of George Brown 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.

## **7. COPYRIGHTABLE INTELLECTUAL PROPERTY**

### **7.1 Responsibility for Disclosure of Copyrightable Intellectual Property**

In contrast to historical business practice, the tradition of academic institutions is to give staff the right to retain ownership of their copyrightable products. This policy protects that traditional right and staff 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 in the next section (7.2). In this case, the creator is responsible for timely disclosure. However, staff are encouraged to disclose any copyrightable material that has commercial value to the extent that they may wish assistance in copyright protection and marketing in exchange for profit sharing with the college. See section 10 for disclosure process.

### **7.2 Determination of Rights to Copyrightable Intellectual Property**

Except as outlined below, the creator of copyrightable intellectual property will retain his or her rights, and the college shall not assert ownership rights. However, creators will be expected to grant non-exclusive, royalty-free, perpetual licenses to the college for copyrightable material that is developed for college courses or curriculum, so that the college's continued use of such material for educational purposes would not be jeopardized. The college will assert ownership rights to copyrightable intellectual property developed under any of the following circumstances:

- Development was funded as part of an externally sponsored research program under an agreement which allocates rights to the college;
- A staff member was assigned, directed, or specifically funded by the college to develop the material, and the college has negotiated an understanding or formal contract with the creator;
- 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;
- 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.

## **8. DISCLOSURE**

### **8.1 Disclosure Process**

Intellectual property disclosable hereunder shall be disclosed to the Office of Applied Research and Innovation. IP is disclosed by completing and submitting the Disclosure

Form to the Office of Applied Research and Innovation. The form describes of the details of the invention including:

- Names of all creators and contributors to the creation;
- A description of the creation and the research done to create it, as well as identifying what the creator thinks makes the creation unique;
- A list of all funding sources that were used to complete the research.

The Office of Applied Research and Innovation will meet with the creator to review the disclosure. During this meeting the Office of Applied Research and Innovation will gain an understanding of the invention by asking questions to determine what the creation does, how it works, what it can be used for, what the creator feels is “novel” about the creation, and what future development of the creation the creator plans to pursue. Following the preliminary evaluation of the potential IP the creation will be assessed to determine if it is ready to commercialize or whether further research is required before the invention can hold any commercial value.

## **8.2 Commercialization**

If the college personnel decides to pursue commercialization of his or her invention, the Office of Applied Research and Innovation will start the following process:

This Office will:

- Complete a review of registration and protection and marketability of the intellectual property and prepare a recommendation for the Vice President, Academic regarding the protection and the commercialization of the intellectual property;
- Be responsible, working with creators, for obtaining patent, copyright, or other protection of intellectual property owned by the college hereunder, and for marketing and licensing of all such intellectual property rights;
- Set-up and manage individual expense and income accounts for intellectual property that is vested in the college under this policy.

## **8.3 Commercialization of Independently Developed Intellectual Property**

College personnel who wish to pursue the commercialization of their independently developed and owned intellectual property through the college may offer such intellectual property to the college by disclosing the intellectual property to the Office of Applied Research and Innovation. The Office will evaluate the commercial potential of the intellectual property and make a recommendation to the Vice President, Academic regarding the acceptance of the intellectual property. Acceptance of such intellectual property by the college will be made at the sole discretion of the college and will require creator(s) to accept all provisions of this policy, including the assignment of rights and income distributions.

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**9. INTELLECTUAL PROPERTY 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 intellectual property, the parties will ensure that a written agreement sets out their respective rights to the intellectual property in the work, and any terms relating to the sharing of risk and revenue from the exploitation of the work. In the case of contract research where GBC is paid for research services by an outside party, the outside party retains all of the IP. A generalized model to guide the development of IP agreements for collaborative research with an outside party is as follows:

<b>Type of Collaboration</b>	<b>Resources</b>	<b>IP owned (%)</b>	
		<b>Outside Party</b>	<b>College</b>
A. An outside party involves GBC to assist with a research project for which IP has already been developed.	GBC contributes resources.	50 - 100	0 - 50
B. Research project that is co-developed by the college and an outside partner.	Both parties contribute resources.	50	50
	Only GBC contributes resources.	0-25	75-100
	Only partner contributes resources.	75-100	0-25
C. GBC involves an outside party to assist with a research project for which IP has already been developed.	Outside party contributes resources.	0 - 50	50 -100

**10. INTELLECTUAL PROPERTY DEVELOPED UNDER SPONSORED RESEARCH AGREEMENTS**

Ownership of intellectual property 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 intellectual property 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 nonprofit sponsors generally allow rights to intellectual property that arises from the research program to vest with the college, subject to certain retained rights held by the sponsoring agency.

## **11. WAIVER OR 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 intellectual property 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 intellectual property are not likely to be matched by anticipated income. If at any time the college shall terminate its effort to seek protection of intellectual property, 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.

## **12. INCOME DISTRIBUTION**

### **12.1 Net Royalty Income**

Unless otherwise agreed, Net Royalty Income shall mean gross royalties received by George Brown 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, less commercialization costs of the Office of Applied Research and Innovation (including but not limited to billed costs for protection of intellectual property, marketing, legal fees and other licensing costs).

### **12.2 Distribution of Net Royalty Income**

With respect to intellectual property owned by the college hereunder Net Royalty Income shall be distributed (usually annually) as follows:

- 50% Creator(s) (personal)
- 30% Creator's Department or equivalent unit (for support of research and other creative activity)
- 20% college (Office of Research and Innovation funds for discretionary support of research and other creative activity)

In the event of joint creators, the payments made to the inventor 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 Office of Applied Research and Innovation.

In the event the college receives 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 intellectual property in which it has equity. Payments for research or contributions of equipment shall not be considered Gross Royalty Income 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 suit, are reasonably anticipated.

### **12.3 College Personnel Equity Participation**

College policy on conflict of interest allows college personnel to receive equity in return for their contributions to companies as founders or consultants, as long as the college personnel discloses his or her equity position and is otherwise in compliance with the college *Conflict of Interest Policy*. In the event the college personnel receives equity from the company, and the college has negotiated as licensor a royalty bearing license, or an option for such a license, with respect to intellectual property, the college personnel shall agree to waive his or her share of Net Royalty Income received by the college and the college shall retain it.

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 Director of Applied Research and Innovation or her or his designee. 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.

### **12.4 Conflict Resolution**

The Director of Applied Research and Innovation is responsible for the administration of this policy. The Office of Applied Research and Innovation 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 Vice President, Academic or his or her designee for a final determination.

## **13. USE OF GEORGE BROWN NAME, MARK, OR INSIGNIA**

Use of the college name, seal or logo on letterhead and business cards is standardized and regulated by the Communications and Marketing Department. Any questions regarding the use of the college name, seal, or logo in circumstances other than the ones listed above should be referred to the Director of Communications.

In particular note that the George Brown college name, seal, and logo may not be used:

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

*George Brown's policy on Rights and Responsibilities Regarding Intellectual Property 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.*