



<b>Policy:</b>	<b>E-3.5</b>
<b>Approved By:</b>	<b>College Executive Team</b>
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<b>Policy Holder:</b>	<b>President</b>

## **COMMERCIALIZATION OF INTELLECTUAL PROPERTY**

### **Purpose / Rationale**

The purpose of this policy is to establish principles and processes related to the commercialization of original copyright material and intellectual property including inventions, patents, and trademarks. It is designed to promote the development of intellectual property and the provision of services based on partnerships that respect the interests of creators, the College, and the wider community. This policy is intended to encourage equitable and mutually beneficial arrangements between the College and creators of intellectual property through which innovation and commercialization of intellectual property may be realized.

### **Scope / Limits**

1. This policy applies to intellectual property created by all College members and by external research contractors, unless there is a written agreement contract approved by the College that provides otherwise.
2. This policy is subject to any rights or obligations that are specified in current Collective Agreements with respect to ownership and use of intellectual property.
3. This policy is subject to applicable federal, provincial, and local laws and statutes, such as the *Copyright Act*, *Patent Act*, *Trade-Marks Act*, *Plant Breeders' Rights Act*, *Integrated Circuit Topography Act*, the *Industrial Design Act*, and other laws of general application.
4. This policy does not apply to intellectual property created in the course of non-College activities that does not make use of College resources, nor funds administered by the College. This includes but is not limited to outside employment or other activity in an area unrelated to College activities, or activity conducted wholly while on an unpaid leave of absence away from the College.

### **Principles**

1. Camosun College values creation and innovation and encourages individuals to create innovative works and inventions and related entrepreneurial activities by members of the College community, including students.
2. The College has an obligation to disseminate the products of innovative and inventive activity within a framework of respect for copyright and patent principles in a manner which benefits the creators, the College, and the wider community.
3. The College will clarify and establish guidelines that address ownership, disclosure, commercialization and revenue sharing, and dispute resolution.

## A. DEFINITIONS

1. “**Commercialization**” means the creation of commercial processes, products, and services derived in whole or in part from intellectual property with the goal of financial return.
2. “**Courseware**” includes textbooks, instructional websites, or other instructional materials, created in either hardcopy or electronic format by a College member in the course of employment with the College or arising from research, scholarly and/or creative activities.
3. “**College Faculty**” means College employees who are members of either the Camosun College Faculty Association or the British Columbia Government Employees Union.
4. “**College Employees**” means persons employed by the College including full-time, part-time, and casual and term employees, who are not members of the Camosun College Faculty Association or the British Columbia Government Employees Union.
5. “**College Member(s)**” includes College Employees, Faculty Members and students.
6. “**College Resources**” means College facilities, the College’s physical structures, classrooms, research laboratories, equipment, technical facilities, services and personnel, and College services, including the administration of funds received by the College in the form of grants, contracts or any other support provided by the College, affiliated agencies, or partners, or external sponsors.
7. “**Creator(s)**” means the author, inventor, initiator or developer of the intellectual property, including co-creators.
8. “**Overhead**” is based on 10% of gross revenue for a project. In situations where a project is funded by sources that do not allow for overhead expenditures, there will be an “overhead-due” amount equal to 10% of gross project revenue for which this 10% was not previously collected. In the event that a project results in commercialization, “overhead-due” shall be called **overhead** and considered a direct cost.
9. “**Direct Costs**” means the College’s costs and fees, including overhead as well as legal fees and agents’ fees, associated with the acquisition, management and/or commercialization of the intellectual property directly by the College or by its technology transfer agent, including costs of evaluating the intellectual property, obtaining and maintaining intellectual property protection, preventing unauthorized use or infringement, prototype development, and negotiating and administering licenses or other agreements with third parties, and may include costs incurred prior to the initiation of commercialization. Direct costs may also include research funds where such funds have been provided through research or related grants administered by the College.
10. “**Intellectual Property**” means the result of intellectual or artistic activity created by a College member in a scholarly, professional, or student capacity, including but not limited to inventions, processes, designs, word marks, design marks, logos, slogans, publications (including scholarly publications), educational materials, computer software, original works of art or performing rights, industrial and artistic designs, new plant varieties, confidential information and know-how that can be protected by intellectual property rights such as patent, copyright, trademark, integrated topography, plant breeders’ rights and trade secrets.
11. “**Publication**” means making intellectual property available to the public by way of speech, print, paper, and electronic or other means.

12. **"Release Time"** means time paid for by the College provided to Camosun members away from their regular teaching or other duties.
13. **Revenue"** includes all revenues derived in whole or in part from Commercialization of intellectual property, which includes but is not limited to proceeds from royalties, profit-sharing, lump sum payments, and monies from the sale of equity shares.

## **B. OWNERSHIP OF INTELLECTUAL PROPERTY GUIDELINES**

### **1. College Faculty**

College faculty own the copyright or patent in all works that may be copyrighted or patented that have been prepared or created as part of their assigned duties unless

- a) the College Faculty is hired or agrees to create and produce a copyrightable or patentable work product for the College; or
- b) the College Faculty is given release time from their usual duties to create and produce a copyrightable or patentable work product; or
- c) the College Faculty is paid, in addition to their regular rate of pay, to produce a copyrightable or patentable work product.

### **2. College Employees**

The College owns the intellectual property in all works created by College Employees unless otherwise provided for at law or by a written agreement approved by the College.

### **3. Students**

Students own intellectual property in works developed as part of their normal course requirements, subject to any employment or other obligations between the student and the College, or any external parties that sponsor or support the student in the development of the intellectual property. The College shall have a right to use works developed by students in perpetuity for institutional, commercially non-competitive purposes and may retain prototypes or other original work developed by students using College resources.

College members may voluntarily assign or transfer their interest in intellectual property to the College to enable the College to assist with commercialization, or for other purposes mutually agreed to; and the College, may accept such assignment or transfer and thereafter may transfer or license its ownership or interest to third parties.

If the College owns the intellectual property and elects not to pursue commercialization, then the College may, in its sole discretion, agree to transfer its interest in the intellectual property to the creator(s), subject to such terms and conditions as deemed appropriate by the College.

### **Specific Guidelines**

When students or other supervised persons are involved, the person in the supervisory position is obligated to inform the students or other supervised persons of the intent to commercialize and advise them of all relevant policies with the goal of achieving arrangements that are fair and equitable.

If commercialization is anticipated and there is more than one creator, a written agreement among the Creators regarding ownership and revenue sharing should be concluded before negotiations related to commercialization are commenced with third parties.

## **C. DISCLOSURE**

Once commercialization intent is known, college employees are required to inform their Dean, Director, manager, or supervisor in writing when they are engaged in developing intellectual property using College resources. This is an indication of the College's desire to support and encourage the development of intellectual property and in recognition of its obligation to account for its resources.

Furthermore, Creators who intend to commercialize intellectual property that has been developed using College resources must disclose such intention to the Office of Oriented Research and Innovation, whether the Creator intends to Commercialize his/her intellectual property independent of, or with the support of, the College.

### **Specific Guidelines**

Disclosure must be in writing and must occur prior to the commencement of any commercialization activities, including discussions with third parties.

## **D. COMMERCIALIZATION AND REVENUE SHARING**

The College supports the principle that the revenue from commercialization should be shared fairly and proportionately between the Creator(s) and the College in relation to the contributions of the parties.

The College has the right to a share of revenue earned from commercialization of intellectual property developed using College resources.

### **Specific Guidelines**

Creators are free to commercialize intellectual property they own without involving the College where no College resources were used in the development of the intellectual property. Creators may request the College's assistance in commercializing, or may decide not to commercialize of their intellectual property.

The procedures for the commercialization of intellectual property with commercial potential developed using College Resources, and the subsequent sharing of any Revenue realized, is outlined in Policy Support, E-3.5.1 Procedures for the Commercialization of Intellectual Property (see link)

The College and/or its designate shall be responsible for the reporting and the administration of the proceeds of commercialization provided to Creators and other third parties, as applicable.

For the purposes of determining the allocation of revenue, either the College or the Creator may require the other to provide an accounting of all revenues and funds received and expenses incurred with regard to intellectual property covered by this policy.

### **1. Courseware**

The procedures for the Commercialization of Intellectual Property (E-5.1.1) do not apply to the commercialization of courseware in instances where revenue generated is less than

\$5,000 in a calendar year. In such cases the Creator shall retain all such revenues. The College shall be entitled to 50% of all revenues in excess of \$5,000 generated in a calendar year.

## **2. Use of the College's Share of Revenue**

The College's share of revenue from commercialization of intellectual property shall be administered under the authority of the Vice-President, Business Development and may be used to support further research and the general operation of the College. It shall be distributed as follows:

- a) 40% to the Creator's department or school (to be used at the discretion of the Dean)
- b) 60% to be further subdivided as follows:
  - i. 30% to the Office of Oriented Research and Innovation; and
  - ii. 30% to general College revenue.

## **E. RESOLUTION OF DISPUTES**

If a dispute arises among Creators regarding their relative contributions to the creation of intellectual property that cannot be settled by the individuals involved, the advice and assistance of the Faculty Dean and/or other administrative equivalent will be sought.

Disputes between the Creator and the College regarding the provisions of this policy which cannot be resolved through informal means shall be remitted to binding arbitration pursuant to the *British Columbia Commercial Arbitration Act* or the Collective Agreement where the dispute relates to the application thereof.

## **F. GENERAL**

All College Members are eligible to access the College's technology transfer related resources to support the commercialization of their intellectual property in accordance with the procedures and guidelines set out in *Procedures for the Commercialization of Intellectual Property* (see link).

Creators are encouraged to disclose their intent to commercialize as soon as possible after the decision to commercialize the intellectual property has been made, or as soon as research or other creative results demonstrate applications of a commercial potential. Creators should be aware that publication may introduce deadlines for proprietary protection of intellectual property.

The College shall make all reasonable efforts to maintain the confidentiality of any proprietary and/or business information of Creators when discussing intellectual property and commercialization plans with College personnel and the staff of the technology transfer agent. Creators shall make all reasonable efforts to maintain and not disclose proprietary or business information of the College.

Creators must consult with and obtain the approval of the Office of Oriented Research and Innovation before using the College's name, logo, facilities or resources in connection with any commercial arrangement with respect to the commercialization of intellectual property.

## **G. Links**

### **Supporting Forms and Documents**

[E-3.5.1 Assignment of Intellectual Property Rights Form](#)

[E-3.5.2 Procedures for the Commercialization of Intellectual Property](#)

### **Related Policies**

[E-3.4 Copyright](#)

[O-5.11 Standards of Conduct](#)

[O-6.1 Freedom of Information and Protection of Privacy](#)