

ARTICLE 14. INTELLECTUAL PROPERTY

(Note: This entire article is new, and therefore strikethrough and underlining have not been used).

14.1 Definitions

- 14.1.1 “Author” means one or more Members who have written or created a Work.
- 14.1.2 “Commercialization” or “Commercialize” means a complex of activities with the goal of financial return.
- 14.1.3 “Copyright” means the rights described in the *Copyright Act* (Canada), as amended from time to time, as it applies to Works as defined in this Article.
- 14.1.4 “Creator” means one or more Members who have created Other Intellectual Property.
- 14.1.5 “Direct Costs” means the reasonable costs and fees (including but not limited to legal fees and agents’ fees) associated with the acquisition, management and Commercialization of Other Intellectual Property, including costs of evaluating it, obtaining and maintaining Intellectual Property protection, preventing unauthorized use or infringement, prototype development funds, negotiating and implementing licences or other agreements with third parties, but does not include university research office or other overhead costs incurred prior to the initiation of Commercialization. Where a Non-Member or Non-Members have contributed to creating Other Intellectual Property, Direct Costs will be reduced pro-rata based on the extent of the Creator’s contribution as compared to the contribution by the Non-Member(s).
- 14.1.6 “Intellectual Property” means Works or Other Intellectual Property.
- 14.1.7 “Net Revenue” means the amount received with respect to the Creator’s contribution to the Other Intellectual Property from Commercialization of Other Intellectual Property (by the Creator if Commercialized by the Creator or by the University if Commercialized by the University), less Direct Costs (which may be carried forward from year to year to offset gross revenue) incurred in the Commercialization, and includes but is not limited to, proceeds from royalties, profit-sharing, lump sum payments and sale of equity shares.
- 14.1.8 “Other Intellectual Property” means any result of intellectual activity that can be owned by a person (excluding Works) and includes, without limitation, inventions (whether or not patentable), industrial designs, trademarks and integrated circuit topographies, as those terms are defined by the applicable legislation.
- 14.1.9 “University Resources” means the University’s physical structures, research laboratories, capital equipment, technical facilities, services and human resources. University services include the administration of funds and support received by the University in the form of grants, contracts or other support provided by the University or external sponsors.
- 14.1.10 “Works” means all original literary, dramatic, musical and artistic works, performances, communication signals and sound recordings capable of Copyright protection under the *Copyright Act* (Canada).

14.2 Works

Author is the owner of Copyright; exceptions

- 14.2.1 The Author of the Work shall be the owner of Copyright in the Work notwithstanding that it was produced wholly or partly in the course of regular University duties and/or making use of University Resources, subject to the following:
- (a) Provided that the University advises the Member of his/her right to consult the Association prior to the execution of any agreement, the University shall own Copyright in works resulting from an additional appointment, such as those prepared by a Member for distance, extended or continuing education, or other Works (other than substantive course material normally delivered by a Member) beyond the Member's normal workload for which the Member receives compensation in addition to his/her salary rate pursuant to a written agreement. Such appointments are voluntary;
 - (b) The University and Author shall jointly own Copyright in any computer program or software that is embedded in an invention, jointly owned by the University and the Author such that the computer program or software is required for the use and/or Commercialization of the invention. Such computer program or software shall be subject to the provisions of Section 14.3 of this Article (Other Intellectual Property);
 - (c) The University or a third party may own or have a licence to use Copyright in Works written or created pursuant to a written agreement with a third party, provided the University advises the Author of his/her right to consult with the Association prior to the Author's execution of a written agreement and obtains the Author's prior written consent;
 - (d) The Author may voluntarily assign or licence his/her interest in a Work to the University, provided the University advises the Author of his/her right to consult with the Association prior to the execution of the assignment or licence.

Agreement to share revenue and/or costs

- 14.2.2 Provided the University advises the Member of his/her right to consult with the Association prior to entering into an agreement, the University and the Member may enter into an agreement, to be executed prior to the commencement of the Work, to allow for the revenue sharing and/or recovery of costs incurred by the University arising from providing the Member with University funds, services, facilities, support and/or technical personnel above and beyond the University Resources normally provided to Members for the creation of the Work. Such agreements shall be voluntary. The cost recovery shall be derived from the Net Revenue generated by the Work.

Limited University right to use IP in Works

- 14.2.3 Where an Author has copyright over Works created in the course of performing his/her regular University duties, the University has a non-exclusive, royalty-free, indivisible and non-transferable right to use such Intellectual Property for archival and internal non-commercial, administrative, educational and/or research purposes for eighteen(18) months commencing the date the University gives the Author notice (except in sub-section 14.2.3(c) below) that it is exercising its right as described herein or such longer period as agreed to by the Author. This use:

- (a) Does not imply a right to transfer, licence, or Commercialize such Works, but the University has the right to use such Works for internal educational purposes;
- (b) Does not extend to lectures, course notes, laboratory notes, or laboratory manuals, regardless of format or method of delivery, individual course websites created by a Member, examinations created by a Member, and other Works prepared by a Member and intended for use only by the students registered in the Member's course except that:
 - (i) In multi-section courses or laboratories where more than one Member created the Work, or the Work was created for more than one section of a multi-section course, and due to exigent circumstances arising from the Member's inability to deliver the entire course, the University may continue to use the Work in the Member's faculty or school for the balance of the academic year, and a maximum of one further academic year;
- (c) Does not apply to Works in progress (which includes drafts and preliminary versions and other forms of creative activity that have not been accepted for publication), except that nothing in this sub-section shall affect or diminish the provisions of sub-section 14.2.3(b)(i);
- (d) Is subject to the Copyright requirements of academic journals and other vehicles of scholarly dissemination and the University shall not interfere with the Member's right to enter into an agreement to publish or otherwise disseminate such Works.

Rights retained by the Author

14.2.4 Where the University owns Copyright in the Work, the Author shall retain:

- (a) The right of first refusal to revise, rework or otherwise edit or amend the Work when reasonably necessary as determined by the University. The Author may, on his/her own initiative, request the opportunity to revise the Work;
- (b) The right to be identified with the Work unless the Author, at his/her sole discretion elects, in writing, not to be identified with the Work;
- (c) The right to use any course material in his/her teaching and research at this or another University, or educational institution, provided that the Author does not transfer, licence, or sell such course material without the prior written consent of the University;
- (d) The right of first refusal to teach courses based on the Work, subject to satisfactory performance.

No obligation to Commercialize

14.2.5 The Author has no obligation to Commercialize a scholarly work or to provide commercial justification for it.

No obligation to disclose intention

14.2.6 The Author is not required to disclose to the University his/her intention to publish or otherwise disseminate a Work owned by the Author.

Revenue from Commercialization of Works

14.2.7 Subject to 14.2.1(d) and 14.2.2, the University shall not be entitled to revenue earned from Commercialization of a Work owned by the Author.

Moral rights

14.2.8 The University shall endeavour to protect the Member's moral rights and shall not enter into any agreement with a third party waiving the moral rights of a Member without advising the Member of his/her right to consult with the Association prior to the Member executing any agreement and obtaining the Member's written consent.

Right to consult with the Association

14.2.9 Prior to signing an agreement with the Author to waive the Author's right, title or interest to Work, the University shall advise the Author of his/her right to consult with the Association. When the University has entered into such an agreement with the Author, it shall inform the Association of the date of the agreement and the name of the Author.

Right to publish without undue delay

14.2.10 The University shall not impose conditions without just cause on an Author that restrict the rights of an Author to publish the results of his/her research without undue delay, except with the Author's consent.

Works created outside regular University duties

14.2.11 The provisions of this Article do not apply to Works created outside regular University duties without making use of University Resources. Copyright to such Works belongs unconditionally to the Author.

14.3 Other Intellectual Property

Joint ownership; exceptions

14.3.1 The University and Creator shall jointly own Other Intellectual Property created during the course of regular University duties and/or using University Resources subject to the following exceptions:

- (a) The University or a third party may own or have a licence to use Other Intellectual Property created pursuant to a written agreement with a third party, provided that the University advises the Creator of his/her right to consult with the Association prior to the Creator's execution of a written agreement and obtains the Creator's written consent;

- (b) The Creator may voluntarily assign or licence his/her interest in Other Intellectual Property to the University, provided that the University advises the Creator of his/her right to consult with the Association prior to the execution of the assignment or licence. No such assignment or licence shall diminish the Creator's right to revenue sharing under this Article;
- (c) Where the use of University services as defined in 14.1.9 did not have a significant effect on the creation of Other Intellectual Property, the use of such services shall not be taken into account in determining ownership of the Other Intellectual Property.

No obligation to Commercialize Other IP

14.3.2 Neither the Creator nor the University shall have an obligation to Commercialize Other Intellectual Property. Creators have no obligation to modify research to enhance the potential for Commercialization.

Commercialization independently of the University

14.3.3 Creators may Commercialize Other Intellectual Property jointly owned with the University independently of the University, subject to any rights granted to a third party pursuant to a written agreement consented to by the Creator and/or the right of the University and the Creator to revenue sharing and cost recovery pursuant to this Article.

Disclosure of intent to Commercialize

14.3.4 Creators must disclose to the University their intention to Commercialize Other Intellectual Property, whether or not they choose to involve the University in the Commercialization process. The University agrees to keep all such information confidential and not to disclose such information externally, except with the prior written consent of the Creator.

Agreements to Commercialize

14.3.5 The University and Creator may enter into a written agreement to pursue Commercialization of Other Intellectual Property. All such agreements are subject to the provisions of this Article. The University shall advise the Association in writing of the date of the agreement and the name of the Member.

Consultation and notice

14.3.6 The University shall consult with the Creator throughout the Commercialization process and, in addition, shall not sign a Commercialization agreement of any kind with a third party without prior notice to the Creator.

Limited University licence

14.3.7 Creators hereby grant to the University solely for its internal, non-commercial use, a non-exclusive, royalty-free, irrevocable, indivisible, and non-transferable right to any patented device, equipment, improvement, design, development or process arising from Other Intellectual

Property. This use does not imply a right to transfer, licence or Commercialize such Other Intellectual Property in any manner except as otherwise explicitly provided in this Article.

Right to consult with the Association

14.3.8 Prior to signing an agreement with the Creator to waive the Creator's right, title or interest to Other Intellectual Property, the University shall advise the Creator of his/her right to consult with the Association. When the University has entered into such an agreement with the Creator, it shall inform the Association of the date of the agreement and the name of the Creator.

Revenue sharing

Note: See 14.1.5 and 14.1.7 for definitions of "Direct Costs" and "Net Revenue"

14.3.9 Subject to 14.3.11 and 14.3.12, Net Revenue earned from Commercialization of Other Intellectual Property shall be shared between the Creator and University as follows:

- (a) Fifty (50%) percent to the Creator; and
- (b) Fifty (50%) percent to the University;

whether or not the University services are used to Commercialize the Other Intellectual Property. Where there is more than one Creator, the University's share of the Net Revenue shall remain fifty (50%) percent. Where there is a written agreement between the Creators which provides for a different distribution of their share of Net Revenue, the Creators shall provide the University with a copy of said written agreement.

Costs where University Commercializes

14.3.10 Where the University Commercializes Other Intellectual Property, it shall assume responsibility for the costs of pursuing the Commercialization of the Other Intellectual Property.

Revenue shares upon termination

14.3.11 Where the University advises the Creator in writing that it no longer desires to pursue Commercialization, any agreement between the University and Creator pursuant to 14.3.5 shall be terminated. The Creator is free to pursue Commercialization of the Other Intellectual Property on his/her own. In such case, the University and Creator shall share the Net Revenue earned from Commercialization of the Other Intellectual Property as follows:

- (a) Two-thirds (2/3) to the Creator; and
- (b) One-third (1/3) to the University.

Cost recovery and revenue sharing upon abandonment

14.3.12 Where the University has abandoned Commercialization of the Other Intellectual Property for a continuous period of at least two (2) years, the University shall, upon written request from the Creator, terminate any agreement pursuant to 14.3.5 (including any assignment of the Other

Intellectual Property), and the Creator is free to pursue Commercialization of the Other Intellectual Property on his/her own, subject to the recovery of Direct Costs by the University from Net Revenue. In such case, the University and Creator shall share the Net Revenue earned from Commercialization of the Other Intellectual Property as follows:

(a) Two-thirds (2/3) to the Creator; and

(b) One-third (1/3) to the University.

Other IP which is not governed by this article

14.3.13 Except for 14.3.4 (Disclosure), the provisions of this Article do not apply to Other Intellectual Property created outside regular University duties without making use of University Resources. Where the use of University services as defined in 14.1.9 did not have a significant effect on the creation of Other Intellectual Property, the use of such services shall not be taken into account.

14.4 Disputes

14.4.1 Disputes regarding the interpretation, application and /or violation of the provisions in this Article shall be processed through the Article 32 Grievance Procedure as a grievance starting at Stage 3 in accordance with the provisions of Clause 32.3.3.3.

14.5 Estate

14.5.1 Where a Member or former Member has Intellectual Property rights pursuant to this Article, the rights of the Member, upon his/her death, shall be governed by the applicable legislation.

14.6 Headings

14.6.1 Headings and sub-headings in this Article are included for ease of reference and are not substantive provisions, nor are they to be considered for interpretive purposes.