

**RE05****Intellectual Property**

Classification:	Research
Responsible Authority:	Director, Applied Research Office
Executive Sponsor:	Senior Vice President, Academic
Approval Authority:	Algonquin College Executive Team
Date First Approved:	2005-02-23
Date Last Reviewed:	2022-12-20
Mandatory Review Date	2024-12-20

**PURPOSE**

To establish the ownership of intellectual property (IP) on the creation and development of works within the College, as identified in any agreements and supplementary documents.

**SCOPE**

All employees, volunteers, and students and associates (persons who are not employees or students of the College) who engage in projects using the College's employees, students and/or resources. Note this policy does not apply to the licencing of teaching materials which is covered under policy AA33.

**DEFINITIONS**

<b>Word/Term</b>	<b>Definition</b>
ARO	Applied Research Office
Client	A College department or employee or third party (an external company, agency, person, or organization) that seeks to and/or does collaborate on research projects through the Applied Research Office.
Collaborative Research Agreements (CRA)	Collaborative Research Agreements (CRA) are written agreements between Clients and the College that delineate the terms and rights and responsibilities of each party in a research project undertaken collaboratively between the College and the Client.
Confidentiality Agreements	Confidentiality Agreements are executed between the College and a third party to protect the IP of both parties. They may also be called a Non-Disclosure Agreement (NDA).
Copyright	Copyright means the right to produce, reproduce and copy works. Only the copyright owner has the right to decide when and how the work is to be copied. Copyright protection is automatic once the work is created, and applies whether or not a copyright statement appears on the material. For the purposes of this policy, copyright means, in relation to a work, the sole right to produce or reproduce the work or any substantial part of the work in any material form, including without limitation, in electronic form and to communicate electronic copies of the work.

Word/Term	Definition
Intellectual Property (IP)	Means any form of knowledge or expression created by one's intellect that can be legally protected, including technical information, inventions, models, drawings, photographs, specifications, prototypes, computer software, curriculum and teaching materials and other creations that can be protected under patent, copyright, trademark, integrated circuit topography, plant breeders rights and industrial design laws. For the purposes of this policy, confidential information having a commercial value is to be considered Intellectual Property
Licensing Agreements	Licensing Agreements relate to written agreements between the College and third parties, in which the College grants the third parties the right to use materials proprietary to the College (or proprietary to others, and in which the College has licensing rights) upon terms and conditions set out in the written agreements.
Moral Rights	<p>Whether or not the College owns the IP rights of a work, and in particular the copyright therein (pursuant to the Copyright Act, 1985), it will take steps to respect the moral rights of the authors or creators of the work. Specifically, it is understood that the author or creator has the right to request, where reasonable in the circumstances, to be given recognition of the work by name or by pseudonym; to remain anonymous; or to choose not to be associated with any modification of the work that is perceived to be prejudicial to his/her honour or reputation.</p> <p>The author or creator's moral right to the integrity of the work is infringed only if the work is distorted, modified or mutilated, or used in association with a product service, cause, or institution, to the prejudice of the author or creator's honour or reputation.</p> <p>Moral rights may be waived in whole or in part, but they cannot be transferred to others.</p>
Product Licenses	Product Licenses relate to licensing agreements between suppliers of proprietary products and materials, and the College, in which the College is granted the right to use those proprietary products and materials upon the terms and conditions set out in the product licences.

**POLICY****1. College Innovation and Discovery**

One of the primary goals of the College is to encourage, promote and foster innovation and discovery by its employees, associates, and students, in all fields of endeavour in which the College is engaged. Where the College is the owner of the IP rights in a work that is worthy of commercial exploitation, the College may promote a revenue sharing relationship with the creator or creators of that work.

**2. Employee Works of Innovation and Discovery**

- 2.1.** In the absence of any written agreement to the contrary between the College and an employee, the College shall be the owner of all IP rights in a work created by the employee in the course of employment with the College.
- 2.2.** In determining whether a work has been created by an employee in the course of employment, the College will consider the following factors, which are not exhaustive:
  - 1.** whether the employee created the work during prescribed working hours for the College;
  - 2.** whether the employee created the work on College premises, or using College resources and property to do so;
  - 3.** whether the College has remunerated or compensated the employee for the work.
- 2.3.** Where the College owns the IP rights in a work, either by agreement with its author/ creator, or pursuant to Section 2.2 above, the author/creator, shall have a non-exclusive right to use the work, provided the author/creator exploits the work only in the course of employment with the College, where the author/creator is a College employee, and only in the course of contractual relationship with the College, where the author/creator is an associate of the College and not an employee.
- 2.4.** Where an employee creates a work outside the course of employment with the College or during the leave year of a prepaid leave program, without using the College's resources, the employee shall be the owner of the IP rights in the work.
- 2.5.** Where an employee intends to create a work during a professional development, such activity is to be described in the application for the leave. The application for professional development leave will also contain a statement, signed by the employee, his/her immediate supervisor and the Director, ARI, which sets out how any net profit from revenue generated by the commercial exploitation of such leave activity, may be shared between the College and the employee. Any application for a professional development or prepaid leave shall be accompanied with, or contain, a statement in the following form:

*In compliance with the College Intellectual Property policy, the College shall be the sole owner of the intellectual property in any work described in this document and created by the applicant. If the work is exploited and generates revenue, the applicant and the College shall share the net profit on revenue generated as follows: (insert agreed-upon formula). Where a professional development leave is approved, the College shall own the IP rights in any work created and for which work the leave was granted.*

- 2.6.** Where an employee wishes to use College resources to create a work outside the course of employment, the employee shall first inform the College of the creation of the work, so that a mutually satisfactory written agreement covering, among other things, ownership, use and revenue sharing, can be negotiated before the work is developed. In the absence of such a written agreement, the College shall own the IP rights in the work created.

### **3. Non-Employee Work**

Any agreement between the College and a person who is not an employee of the College, to develop or create a work using College facilities, will be written in a contract. The agreement will state that the College will be the owner of the IP in any work developed or created by the person. This policy may be adapted by written contract between the parties.

### **4. Joint Initiatives with Outside Parties**

Where the College enters into an agreement with a person or persons for the development of a work in which IP subsists, the parties will ensure that a written agreement sets out their respective rights in the IP in the work, and any terms relating to the sharing of risk and revenue from the exploitation of the work.

### **5. Confidentiality Agreements**

- 5.1.** The College may sign Confidentiality Agreements with third parties seeking to conduct research or business using the College's resources. The College has an approved Confidentiality Agreement template that can be signed on behalf of the College by the Director, Applied Research Office. Where the third parties wish to amend the template or have the College sign a different Confidentiality Agreement, appropriate review will be conducted by individuals delegated as per the College's Board of Governors Policy BG II-06 - Delegation of Contract Signing Authority. This policy identifies individuals with authority to legally bind the College and must sign all agreements that could result in Arising IP. These Confidentiality Agreements are not applicable to unpaid students on research projects. (see Section 5.2).
- 5.2.** In instances where students are working with third parties on research projects as part of their course requirements or as volunteers and they are not being paid by the College for their work, the College will not be held responsible for breaches of confidentiality. In cases where the third party requires a Confidentiality Agreement, such agreements will be negotiated between the third party and the students working on the project. The College will provide templates and non-legally binding guidance to both parties.

### **6. Collaborative Research Agreements**

The College will sign a Collaborative Research Agreements (CRA) with each Client that conducts a research project with the College. The College has an approved CRA template that can be signed on behalf of the College by the Director, Applied Research Office. Where the third parties wish to amend the template or have the College sign a different CRA, these documents shall be reviewed by individuals delegated as per the College's Board of Governors Policy BG II-06 - Delegation of Contract Signing Authority. This policy identifies individuals with authority to legally bind the College.

## **7. Licensing Arrangements**

### **7.1. Product Licenses**

Where the College acquires a license to use a supplier's product, ownership of the IP in the product being licensed shall be determined according to the provisions of the license. Where the license does not contain any provisions relating to IP ownership, it shall be presumed that the supplier is the owner. Any variations to the licence shall be made in writing.

- 7.2. Licensing Agreements** Where the College enters into a license agreement with a third party to permit that third party to use materials or property developed or acquired by the College, the license agreement shall be in a form approved by the Director, Applied Research Office and a copy shall be deposited with the Applied Research Office and the Finance and Administration Services Office. The signatory would be delegated as per the College's Board of Governors Policy BG II-06 - Delegation of Contract Signing Authority.

## **8. Student Work**

- 8.1.** Students will be the owners of the IP rights in the works they create, except in the following situations:

- a. Where the College pays the students for the works they create, in which case the College shall own the IP rights;
- b. Where the students use College resources and facilities to create the works, outside of their course requirements, in which case the students are required to obtain the College's consent for the use of its resources and facilities. It is a condition to the giving of such consent, that the College and the students will enter into an agreement for the creation of the works. The agreement will provide among other things, for the ownership of any IP rights in the works to be created, the exploitation of the works by the students and the College, and the sharing of any revenue by the students and the College from such exploitation;
- c. Where the students use College resources and facilities to create the works within their course requirements, in collaboration with a College or non-College Client.
- d. Students will retain rights to feature created materials as part of their portfolio and to cite their involvement in projects on their curriculum vitae (CV).

## **9. Research Materials**

A person wishing to gather research materials other than those specified in Section 10, must first obtain the prior approval of the College. Where the person has obtained the College's approval, that person will be the owner of any IP rights in the research materials. Otherwise, the College shall be the owner of the IP rights.

## **10. Copyright Notice**

Where the College is the owner of copyright in any works created according to this policy, or otherwise, it will place the following copyright notice in a conspicuous place in the works:

© [year of publication] Algonquin College of Applied Arts and Technology

Notwithstanding the above, consistent with the provisions of the Copyright Act (1985), the College will remain the owner of the copyright in all works created in the course of employment with the College, whether or not the work is marked with the copyright notice as described above.

### **11. Employee-Owned Work**

The adoption and inclusion of employee-owned works in College course materials will be made only with the prior approval of the appropriate College administrator in accordance with Policy HR 12 *Conflict of Interest*.

### **12. Commercialization of IP**

**12.1.** Where the College owns IP rights in a work which it wishes to commercialize, it may consult with the creator(s) on the best means for commercialization.

**12.2.** The author/creator of a work in which the College owns the IP rights may, with the College's prior approval, pursue opportunities to exploit the work, and negotiate with third parties on behalf of the College. The College shall always be a party to any agreement resulting from such agreement. The agreement may provide that the author/creator of the exploited work is entitled to share in the revenues, as set out in the terms of the agreement.

### **13. Applied Research Office**

The Applied Research Office (ARO) is established to assist staff to deal effectively and efficiently with IP issues and to ensure that there is consistency in the manner in which research issues are addressed and decisions are made. To maximize the benefits to the College from the creation of works in which IP rights may exist, ARO will serve as a resource centre for IP, including license agreements, technology development agreements, and revenue sharing agreements. A copy of any agreement dealing with research and/or IP will be deposited with the ARO.

### **14. Use of Algonquin's Name on Created Works**

The College has the right to be recognized or acknowledged in, or in association with, any work created in the course of employment/studies, by an Algonquin employee, student, or person with whom the College is dealing, or to be disassociated from the work, and for work not created in the course of employment/studies as mutually agreed upon.

**PROCEDURE**

<u>Action</u>	<u>Responsibility</u>
<b>1. Disclosure of IP</b>	
<b>1.1</b> Disclose the developed IP, that is or may be owned by the College, to ARO prior to any public disclosures.	Employee, student, volunteer
<b>1.2</b> Register and acknowledge the disclosure in writing to the disclosing party within ten (10) working days.	Director, ARO
<b>2. Exploitation of Intellectual Property (IP)</b>	
<b>2.1</b> Work with the disclosing party and any third parties involved to determine the commercialization pathways to exploit the IP.	Director/Project Manager, ARO

**SUPPORTING DOCUMENTATION**

None

**RELATED POLICIES**

AA33 Licensing of Teaching Materials  
 AA34 Copyright  
 AA47 Scholarly Activity  
 HHR02 Professional Development Leave  
 HR12 Conflict of Interest  
 RE01 Research Administration  
 RE02 Integrity in Research and Scholarship  
 RE03 Research Involving Humans  
 RE09 Commercialization  
 BG II-06 - Delegation of Contract Signing Authority

**RELATED MATERIALS**
[Collective Agreements](#)
**TEMPLATES IN SUPPORT OF POLICY RE 05: INTELLECTUAL PROPERTY**

The two templates in support of this policy are available from the Applied Research Office:

1. Mutual Non-Disclosure Agreement Template
2. Collaborative Research Agreement Template