

Policy History
Policy No. RS5
Approving Jurisdiction: Board of Governors
Administrative Responsibility: Provost and Vice President, Academic
Effective Date: June 27, 2019

Intellectual Property Procedure

A. DEFINITIONS

1.	Assignment:	The transfer of all or part of the IP rights from the one party (normally the owner) to another party.
2.	Background IP:	All IP first conceived and reduced (actually or constructively) to practice outside of the scope of a project and know-how, such as IP owned, directly or indirectly, or licensed by a party prior to the commencement of the project.
3.	Commercialization:	Activities undertaken to assign or license IP to external parties for the purpose of wider dissemination, further research and development, and/or commercial deployment leading to reputational benefits and revenue for the University or the University Member (or both).
4.	Confidential Information:	Information that must be safeguarded and protected from unauthorized disclosure by a receiving party. It includes trade secrets, personal information, business information, proprietary information, and health information.
5.	Consideration:	In the context of agreements, means the bargain or exchange between the parties. Examples include money paid in exchange for something, such as permission to use IP in certain ways (as in a Licensing Agreement or when a student receives income under an employment contract with the University), and exchanges of promises, such as the promise of release time from usual duties granted by the institution, given in exchange for the creation of teaching materials.
6.	Creator(s):	Person(s) who create IP and who qualifies as creator(s) pursuant to the relevant law: e.g. an “inventor” under the Patent Act, or an “author” under the Copyright Act.
7.	Course of Employment:	As used in relation to ownership of IP (notably the Copyright Act), refers to whether the work product in question is connected in some manner to the University Member’s general and ancillary duties as an University employee, including whether the work product is a component of the employee’s job description or the production of such work product resulted from the performance of the employee’s duties. The preceding is a description rather than a definition, as the phrase requires a highly fact-dependent and contextual analysis for a given situation.

8.	Faculty Member:	A member of the Kwantlen Faculty Association.
9.	Foreground IP:	All IP first conceived or first reduced to practice (actually or constructively) under a project agreement.
10.	Independent Effort:	With respect to IP, means that IP was created by a University Member outside of their employment with the University and without using University Resources.
11.	Infringement:	Breach of another person's IP rights.
12.	Intellectual Property (IP):	<p>A collective term for property arising as creations of the human intellect and protected by legal rights in:</p> <ol style="list-style-type: none"> The Patent Act, which concerns useful inventions (meaning any new or useful art, process, machine, manufacture or composition of matter, or any useful improvement thereof). The Copyright Act, which concerns a large variety of works, including literary (i.e. written), musical, dramatic, and artistic (paintings, sculptures, etc.) works, and performances, broadcasts, and sound recordings; as well as moral rights. The Trade-Mark Act, which concerns distinguishing marks used in connection with specific products and services, so that one may know the source or origin of the product or service. Integrated Circuit Topography Act, which concerns the design of interconnections for making integrated circuit topography and the integrated circuit products that incorporate those designs. Industrial Design Act, which concerns certain original configurations, shapes, patterns or ornamentation which are applied to a useful article of manufacture and which appeal to the eye. Plant Breeders Rights Act, which concerns new crop or plant varieties. <p>For the purposes of this Policy, the term IP will exclude the following rights sometimes included in the term IP: confidential information, personality rights, privacy, and domain names.</p>
13.	License:	The grant of the right to use an IP right, usually granted by the owner (called licensor) to another party (called licensee). A license does not transfer title to IP right, as in the case of an Assignment, but it may limit the remaining rights of the owner to use the IP. Licensing ought to be subject to a variety of terms and conditions specified in the Licensing Agreement.
14.	Licensing Agreement:	An agreement between the licensor (usually the owner of IP) and the licensee that permits the latter to use the IP in certain ways, subject to terms and conditions or benefit from rights.
15.	Material Transfer Agreement:	A contract that governs the transfer of one or more materials from the owner or authorized licensee to another party for research purposes. Materials may include cultures, cell lines, plasmids, nucleotides, proteins, bacteria, transgenic animals, pharmaceuticals and other chemicals.
16.	Public Disclosure:	Any written or oral disclosure of any data or information to any person not under a contractual or fiduciary obligation of confidentiality.
17.	Student:	A person who is registered in credit courses at the University or has commenced studies in non-credit courses at the University and has maintained his/her eligibility to register.

18.	University Member:	A member of the University community, and includes University employees, students, and post-doctoral fellows.
19.	University Property/Resources:	Has the same meaning as given the term in Procedure HR1.
20.	Usage Rights:	Mean, depending on the context, one of the following: (a) The exclusive rights granted to the creator or owner of IP, by the applicable IP law. For example, a patent gives the patent holder(s) the exclusive right to make, use or sell any product or process that incorporates the patented invention. (b) The statutory rights granted by the applicable IP law to non-owners of IP to use IP without the IP's creator's or owner's prior permission. E.g., fair dealing is a user right granted to non-owners of copyrighted works to use copyrighted works in certain circumstances. (c) The rights granted to a non-owner under an agreement to use IP, such as a Licensing Agreement

B. PROCEDURES

1. Background

- a. British Columbia's *University Act* gives the University the power to require, as a term of employment or assistance, that a person assign to the Board of Governors an interest in specific IP or other proprietary right resulting from an invention made through use of specified University supports or made in the course of or connected to that person's duties or employment.
- b. The *Collective Agreement between Kwantlen Polytechnic University and Kwantlen Faculty Association* has provisions for ownership and mutual licensing of specific forms of IP created by Faculty Members during their employment with the University. The *Terms and Conditions of Employment for Administrative Employees* addresses ownership of IP associated with the University created by administrative (including excluded) employees. The *Collective Agreement between the University and the BC Government and Service Employees Union* contains no explicit provisions specific to IP.
- c. The federal *Agreement on the Administration of Agency Grants and Awards by Research Institutions* requires that the University shall comply with its responsibilities in accordance with all relevant Tri-Agency policies, including policies specific to IP.
- d. Specific to copyright, the Canadian *Copyright Act* provides for the ownership of copyright to be vested in the employer when works are created in the course of employment, except where agreement to the contrary exists, such as the *Collective Agreement between Kwantlen Polytechnic University and Kwantlen Faculty Association*. Canada also adheres to two international copyright conventions; the Berne Convention and the Universal Copyright Convention. Under these conventions, persons protected by copyright under the Canadian Copyright Act are entitled to standards of copyright protection in over ninety countries.

2. General

- a. The University encourages all University Members to clarify, plan, and formalize provisions related to ownership, protection, disclosure, utilization, and disposition of IP at the very outset of any undertaking that may result in IP. Having clarity at the outset will help identify the most effective strategy to achieve desired outcomes for the University, University Members and external collaborators. It will also reduce the potential for conflicts or misunderstandings.
- b. The University designates the Office of the Associate Vice President, Research as a resource for University Members on IP related to research and scholarship.
- c. The University designates the Office of the Vice Provost, Teaching and Learning as a resource for University Members on IP related to teaching and learning.
- d. The Office of the University Librarian (copyright@kpu.ca) serves as a resource on copyright compliance, in accordance with the Copyright Compliance Policy.
- e. The University designates the Office of the Associate Vice-Provost, Open Education as a resource for University Members on open educational resources.
- f. Students can also find resources on IP matters on the Student Rights and Responsibilities portal (www.kpu.ca/srr).

3. Ownership

- a. Ownership of IP created by University Members will be determined in accordance with the University Act, the relevant statutory, regulatory, and common law, and the applicable agreements (e.g. collective agreements and employment agreements) with the University.
 - i. Students
 - 1) Students own the IP that they create (including assignments, projects, papers, theses, dissertations, and examinations submitted to the University for evaluation) during their term at the University for which they have not received any Consideration, such as employment income.
 - 2) Where Students are employed by the University or perform work under an agreement with the University, and the Student creates IP in the course of that employment or engagement, IP ownership will be determined in accordance with the relevant law and the terms of their agreement. See subsections ii. through vii. below.
 - ii. Faculty Members
 - 1) The ownership of patents and copyright created or developed by Faculty Members shall be resolved in accordance with the Collective Agreement between Kwantlen Polytechnic University and Kwantlen Faculty Association, especially Article 18.02 as of the effective date of this Policy.
 - 2) The ownership and use of trademarks, industrial designs, integrated circuit topographies and plant breeders' rights created or developed by Faculty Members may be resolved in keeping with the principles established in the Collective

Agreement at Article 18.02.

iii. Support Staff

- 1) As of the effective date of this Policy, the Collective Agreement between the University and the BC Government and Service Employees Union does not have any provisions specific to IP, which by operation of law means that, generally, IP developed by employees in the course of their employment is owned by the University.

iv. Administrative Employees

- 1) For greater certainty, Administrative Employees includes excluded employees.
- 2) As of the effective date of this Policy, the *Terms and Conditions of Employment for Administrative Employees* provide (at Article 30, effective November 2018) that the University owns IP created by employees who are not Faculty Members that is designed, written, created, constructed or invented in any of the specified ways unless otherwise agreed in writing by the President of the University.
- 3) For Administrative Employees covered under the *2010 Policies Concerning Working Conditions, Salaries, Benefits and Retirement Provisions for Administrative Employees* (Administrative Work Conditions), the provisions of Article 19 titled Copyrights under Part II: Working Conditions shall be used to determine ownership of copyrighted materials.

v. Other Employees

- 1) For all other employees (e.g. employees on casual service contracts and post-doctoral fellows), unless their employment agreements set out terms concerning IP, by operation of law, generally, IP developed by these employees in the course of their employment is owned by the University.

vi. Contractors

- 1) Any contractor providing goods or services to the University must warrant them to be free of any Infringements of IP.
- 2) Procurement agreements with contractors must include all necessary Usage Rights to the IP associated with the supplied goods and services.

vii. Visiting Scholars

- 1) Ownership and Usage Rights to IP developed at the University by visiting scholars such as researchers, educators, or students from other organizations shall be clarified through a written agreement prior to their arrival at the University.

viii. Collaborations

- 1) Given that IP frequently results from collaborations amongst University Members, or amongst University Members and external persons, the University encourages all

parties to sign a written agreement amongst themselves at the very outset, clarifying respective rights and responsibilities related to both Background IP and Foreground IP in accordance with this IP Policy framework and applicable laws.

- 2) For greater certainty, the University makes no claim to ownership of Background IP belonging to other individuals or organizations that collaborate with the University.
- 3) To avoid Infringement, agreements between the University and other parties should grant Usage Rights to Background IP as may be necessary to facilitate collaboration.
- 4) Confidential Information belonging to the University and/or other parties may be protected through Non-Disclosure Agreements in a form approved by the Office of General Counsel.
- 5) Research materials belonging to the University and/or other parties may be protected through Material Transfer Agreements in a form approved by the Office of General Counsel.
- 6) Funding organizations may require specific IP provisions as a condition of providing funding. University Members who choose to pursue such funding must ensure that any written agreement complies with this IP Policy framework in addition to requirements identified by those funding organizations.

- b. For greater certainty, the University makes no claim to IP owned by University Members prior to their studies or employment with the University, or created through Independent Effort.

4. Recognitions

- a. All Creators should receive appropriate recognition for their contributions. The recognition will be consistent with the norms appropriate to their discipline and/or sector.
- b. Specifically, the Integrity in Research and Scholarship Policy and Procedure addresses recognitions in the context of research and scholarly activities.
- c. University Members who create IP have the right to summarize their non-confidential work on their resumes, portfolios, or curriculum vitae.
- d. University Members who invent are required to be recognized as Inventors on any application filed to patent their invention.

5. Protection and Disclosure

- a. University Members are encouraged to secure protection of IP they create prior to making any Public Disclosure. This applies whether the IP is owned by the University or by the University Members.
- b. The University will be responsible for the protection and enforcement of any IP that it owns, including all costs of registration, maintenance, and bringing infringement actions.
- c. University Members are responsible for the protection and enforcement of any IP that they own, including all costs of registration, maintenance, and bringing infringement actions.

d. Copyright

- i. Pursuant to the terms of the Copyright Act, copyright protection is automatic for eligible works in Canada. Eligible works includes computer software and compilations, including databases.
- ii. While a notice is not required to enforce copyright in Canada, the University encourages University Members to follow the notice provisions set out in Universal Copyright Conventions by marking their copyrighted works with the international copyright symbol ©, the date of first publication (or date of creation for an unpublished work) and the name of the copyright owner(s), e.g.: "© 2019, Kwantlen Polytechnic University".
- iii. University Members are encouraged to submit a copy of their copyrighted work in an appropriate repository operated or endorsed by the University, such as Kwantlen Open Resource Access (KORA) or Kaltura. University Members may note that submitting to an open repository may limit the author's ability to publish the same work in another medium. University Members are encouraged to consult with the Office of the University Librarian to determine and label with appropriate open licenses (e.g. Creative Commons) to enable wider reuse of their work while imposing certain conditions on its reuse.
- iv. University Members are encouraged to consult with the Office of the University Librarian to determine and label works which contain or are derived from Traditional Knowledge of Indigenous Peoples, as set out in Articles 11 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples, as such works may likewise be subject to restrictions on reuse.

e. Patents

- i. Unlike copyrights where protection is automatic, patent protection for inventions in Canada and many other jurisdictions is possible only through successful registration with the appropriate agency.
- ii. Inventors should be aware that Public Disclosure, such as publication (including posting to a publicly available website) or presentation of an invention triggers deadlines for registration.
- iii. University Members who invent are encouraged to file an Invention Disclosure Form with the University to be considered for patent protection.

6. Utilization and Disposition

- a. University Members must ensure that appropriate Usage Rights have been secured for any IP they use for University purposes (e.g. teaching materials, software licenses etc.).
- b. The University may license or assign IP it owns to other organizations through a written agreement while preserving rights of University Members associated with that IP, and fulfilling all related legal commitments and obligations.
- c. Regardless of ownership, in accordance with University's Collective Agreement with the Kwantlen Faculty Association, both the University and the Faculty Members who create

copyrighted materials enjoy certain perpetual rights to use these materials, as well as amend and update them, as currently provided for in Articles 18.02(b)-(c).

- d. University Members are free to license or assign any IP they own while preserving the rights of the University associated with that IP, and fulfilling all related legal obligations and commitments.
- e. Specific to trademarks, the usage of University-owned trademarks is governed by the Use of Institutional Name, Coat of Arms, Crest, Logo, Seal and Other Graphic Images Policy (GV6).

7. Publication and Dissemination

- a. The University is committed to the open exchange of ideas and to the right of University Members to publish, communicate, and disseminate their research and scholarship.
- b. University Members are encouraged to publish (with appropriate delay to allow for IP protection where needed) while ensuring compliance with all applicable University policies, commitments, and obligations.
- c. University Members are encouraged to create and adapt open education resources, publish in open access outlets (including by submitting pre-prints to KORA or another open repository, as permitted by scholarly journals or as required by funders) and adopt open science practices (e.g. pre-registering hypotheses and data analysis plans or sharing research data or materials in an open repository) to maximize access and impact.

8. Commercialization

- a. University Members are free to commercialize IP they own in accordance with the following:
 - i. All University Members must comply with the University's Conflict of Interest Policy framework. They must minimize any potential for real or perceived conflict of interest, including by separating their private interests from University work. Any real or perceived conflict of interest must be promptly disclosed to the University.
 - ii. The University may require suitable measures to mitigate such conflicts in accordance with the Conflict of Interest Policy framework.
 - iii. Should the University Member desire to collaborate with the University for Commercialization, including seeking continued access to University Resources, the University Member may be considered on the same basis as any other industry or community partner.
 - iv. The University designates the Office of Associate Vice President, Research as a resource for IP matters in industry and community partnerships.

9. Exceptions

- a. Any exceptions to this Procedure must be approved by the Provost in writing.

C. RELATED POLICY

RS5 Intellectual Property Policy

D. RELATED FORMS AND TEMPLATES

Non-Disclosure Agreements
Invention Disclosure Form
Model Permission Letter
Term Sheet template
Licensing Agreement
Assignment Agreement
General Services Agreements