



## **INTELLECTUAL PROPERTY**

**#3-28**

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Approved:	January 27, 2010	by: Board of Governors
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### **POLICY**

North Island College values innovation, creation, invention, and insight. As an institution rooted in our communities, we seek to advance knowledge and expertise in social and economic activities. The fruits of innovation and research only have merit if they are disseminated. North Island College seeks to encourage research and innovation in an environment that recognizes the contribution and entitlement of those involved.

### **PURPOSE**

The purpose of this policy is to promote innovation and research, and the development of intellectual property by means of a clear statement of principles and processes associated with ownership of and entitlement to original copyright material, including inventions, techniques, patents, and trademarks. It aims to facilitate the growth of community-based and collaborative research based on mutually beneficial partnerships that respect the contributions of the College, creators, and the wider community of which NIC is a part.

### **GUIDELINES**

#### **Limits:**

1. This policy applies to intellectual property created by any College member or by any external research contractor, unless there is a written agreement contract approved by the College that provides otherwise.
2. This policy is subject to any rights and/or obligations detailed in current NIC collective agreements with respect to copyright and ownership of intellectual property.
3. The provisions of this policy are subject to the laws of Canada and British Columbia applicable to the ownership of intellectual property. In the event of a conflict this policy will prevail unless the conflicting rights or obligations arising under the relevant statute, regulation or bylaw cannot (by act of law) be relinquished or waived.

4. This policy does not apply to Intellectual Property created by a College member in the course of non-College activities that does not make use of resources or funds owned or 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.

## **OWNERSHIP**

1. **College Faculty:** College faculty own the copyright or patent in all works they create 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 to create and produce a copyrightable or patentable work product for the College or agrees to undertake such work 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.

In each of these circumstances, a written contract, agreement or letter of understanding must be in place to provide clarity to both parties. The College shall have a right to use works developed by College Faculty under the three exceptions listed above in perpetuity for institutional, commercially non-competitive purposes and may retain prototypes or other original work developed by College Faculty using College resources.

2. **College Employees**

The College owns the intellectual property in all works created by College Employees in the course of their regular and assigned duties 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 to 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.

## **Commercialization, Disclosure, and Revenue Sharing**

1. Where intellectual property has been created or scholarly activity has been undertaken without the use of College resources, the creator is free to commercialize the intellectual property they own without the involvement of the College and they are under no obligation to disclose their activities to the

College. Creators may request the assistance of the College in the commercialization process and/or may choose to assign or share with the College ownership of the property.

2. Where there is intent to commercialize the product of scholarly activity undertaken with the use of College resources, the following rules must be followed prior to the commencement of any commercialization, including discussions with third parties:
  - a. Students or other supervised persons involved in the development of the property must be informed of intent to commercialize by the person in the supervisory capacity. The supervisor must also advise all parties of the relevant policies with the goal of achieving arrangements that are equitable and fair.
  - b. If there is more than one creator, a written agreement among the creators must be concluded. It should cover ownership and revenue sharing and it should be concluded before negotiation with third parties to commercialize begins.
  - c. All College Members covered by this policy are required to disclose their IP in a timely manner and must inform their Dean, Director, supervisor, or manager in writing when they are using College resources in the development of intellectual property. This addresses the responsibility of the College to account for its use of resources, and to allow for institutional support and encouragement of the development of intellectual property.
3. Where intellectual property developed with the use of College resources is commercialized, the College has a right to a fair and proportional share of revenues, constituting not less than 20 percent of the net revenues unless the College formally declares it does not want to be part of the commercialization process. 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. The parties will enter into a Revenue Sharing Agreement.
4. The College's share of revenue from commercialization of intellectual property shall be administered under the authority of the Vice-President, Education and may be used to support further research and the general operation of the College.
5. The College has an ongoing obligation to maintain and respect confidentiality where appropriate.

## **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.

## **GENERAL**

Creators are required to disclose their intent to commercialize as soon as possible after the discovery or creation of the intellectual property, or as soon as research or other creative results demonstrate applications of a commercial potential. Creators should be aware that publication may limit the ability of IP protection and/or introduce deadlines for protection for some jurisdictions.

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 NIC Marketing Office before using the College's name, logo, facilities or resources in connection with any commercial arrangement with respect to the commercialization of intellectual property.

## **DEFINITIONS**

**Commercialization** refers to the creation of commercial processes, products, and services derived in whole or in part from intellectual property with the goal of financial return.

**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. It does not include curriculum as approved by Education Council, which remains the property of the College (see policy 1.06)

**College Faculty** means College employees who are members of the North Island College Faculty Association.

**College Employees** refers to persons employed by the College including full-time, part-time, and casual and term employees, who are not members of the North Island College Faculty Association.

**College Member(s)** includes College Employees, Faculty Members and students.

**College Resources** refers to 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.

**Creator(s)** refers to the author, inventor, initiator or developer of the intellectual property, including co-creators.

**Curriculum** is defined as the framework of any course, including a statement of learning objectives, evaluative tools, course description, and lesson plans. These are distinct from course "materials," which are defined in Policy 1.06 as: "Any instructional or administrative materials, including but not limited to, written materials, artistic material, computer files, software, video or audio tapes, training aids, audiovisual materials or test equipment developed by assignment of an employee or employees of North Island College and the property of North Island College."

**Intellectual Property** denotes 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.

**Publication** means making intellectual property available to the public by way of speech, print, paper, and electronic or other means.

**Release Time** refers to time paid for by the College provided to North Island College members away from their regular teaching or other duties.

**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.

**CROSS-REFERENCE:**

NIC Policy 1-06 Use of North Island College Developed Materials By Other Users

NIC Policy 3-27 Integrity in Research and Scholarship

NIC – North Island College Faculty Association Collective Agreement (1 April 2007 – 31 March 2010): Section 15.5 Copyright; Section 15.6 Patents