



INTELLECTUAL PROPERTY POLICY

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Associated Procedures:

Commercialization of Intellectual Property and Revenue Sharing Procedure

1. POLICY PURPOSE

Intellectual property (referred to herein as “IP”) plays an essential role in the Research and teaching functions of CUE. This policy sets out the principles, rights and responsibilities in relation to the creation, use and ownership of IP in the context of the activities carried out at or relating to CUE.

2. DEFINITIONS

Within this Policy, the following capitalized terms will have the following meanings:

- **Commercialization or Commercialize** - means any activity relating to the legal protection, use, sale, transfer, license, marketing, duplication, or other disposition of IP for generation of profit, including any such activity through a third-party licensee or sublicensee.
- **Costs of Commercialization** - means all direct and indirect costs incurred during Research and development, and Commercialization of the IP, and its related technologies, products, services or processes.
- **Creator** – means a Member of CUE who is the creator, author or inventor, whether alone or jointly with others, of IP as further described in section 4.1 herein.
- **CUE** - means Concordia University of Edmonton.
- **CUE License** - is defined in section 4.3(b) herein.
- **CUE Resources** – means CUE-related resources, which include but are not limited to: (a) release time from regularly assigned duties where the primary purpose of the release time is the creation of IP; (b) direct discretionary investment by CUE of funds, or staff or the purchase of special equipment for the primary purpose of the creation of IP; (c) or use of CUE’s physical structures, Research laboratories, capital equipment, technical facilities including computing resources, services or personnel for the primary purpose of the creation of IP. A reference to “use of CUE Resources” in this Policy does not include:

- the payment of basic salary to CUE employees;
 - the provision of a standard academic or administrative environment to CUE employees in which to perform their normal duties, including office space and furnishings, office computer equipment and software, and any other equipment that is necessary for the performance of normal teaching or academic duties or for the production of Traditional Academic Work; or
 - the payment of overhead costs associated with the CUE's administration of external funds.
- **External Work** - means IP that is created by an employee, contractor, or consultant completely independent of, and separate and apart from, any relationship (whether employment-based, contractual or otherwise) with CUE, any duties and responsibilities to CUE, or any support from CUE, and without the use of any CUE Resources.
 - **Gross Revenue** - means all royalty revenue and other income arising in whole or in part from Commercialization of the IP, or its related technologies, products, services or processes (which shall include profit sharing, upfront and lump-sum payments and monies from the sale of equity shares).
 - **Institutional Work** - means IP created at the request or direction of CUE, under written agreement with CUE, and/or for the primary purpose of CUE's use, exploitation or Commercialization, whether created by an employee, contractor, or consultant. Institutional Work includes, but is not limited to, non-academic research, policies, procedures, manuals, reports, software code or website design materials, guidelines, presentations, all materials created during the lifecycle of course development (such as course architecture, course design and content and digital production), administrative training awareness materials, including materials developed as part of professional development, and other content that is primarily for the administration and operations of CUE.
 - **Intellectual Property or IP** - means any form of knowledge or expression created with one's intellect that can be owned by a person, or to which a person may hold rights, and that can be protected by laws relating to patents, copyrights, trademarks, integrated topography, industrial designs, or any other intellectual property laws. Intellectual Property includes, but is not limited to, such things as inventions, computer software recorded in any format, works of art, works of authorship, databases, Research data, Research tools, audio-visual material, electronic circuitry, biotechnology and genetic engineering products, all other legally protectable products of Research, and know-how.
 - **Intellectual Property Disclosure Form** - means the form used to disclose IP, in the form attached to or linked within the Commercialization of Intellectual Property and Revenue Sharing Procedure.
 - **Member of CUE** – means all academic staff, staff, academic colleagues, administrators, students, visiting or adjunct scholars and professors, fellows and chairs, emeriti, holders of postdoctoral positions, paid and unpaid Research associates and assistants, and any other persons in similar positions at CUE.
 - **Net Revenue** – means Gross Revenue minus Costs of Commercialization.
 - **Policy** - means this Intellectual Property Policy.
 - **Public Disclosure** - means any activity that results in making IP publicly available through any public medium, including (but not limited to) speech, print, paper, and electronic communication, public oral and poster presentations, submission of an abstract for presentation at conferences both within and outside

CUE, submission of an abstract and/or manuscripts to journals, publication of an abstract and/or manuscript in journals and disclosure to third parties outside CUE.

- **Research** – means a process of purposeful inquiry that generates new insights or knowledge involving scholarly, scientific, or creative activities in a field of specialization. It typically results in quantifiable outcomes such as journal articles, books, conference presentations and creative performances that are communicated to a broader academic community, field of practitioners or the public.
- **Traditional Academic Work** – means IP that is not Institutional Work, and which is created by an employee, contractor, or consultant that takes the form of one or more of the traditional kinds of academic output related to Research and publication (such as scholarly publications relating to Research, inventions, scientific discoveries, and technological innovation). For clarity, all works and materials created for courses, including course architecture, course design, course presentation materials, lectures and teaching or laboratory manuals are Institutional Work, and do not constitute Traditional Academic Work.

3. SCOPE OF THIS POLICY

This Policy applies to all Members of CUE, and any IP created in the course of employment or a contract with CUE. This Policy is subject to the provisions of any specific employment agreement or other contract for services. To the extent that there is any conflict or inconsistency between a provision of this Policy and a provision of any specific employment agreement or contract for services, the provision of such employment agreement or contract for services shall govern to the extent of the conflict or inconsistency.

4. DISCLOSURE AND OWNERSHIP

4.1 Creators:

- (a) To be considered a Creator for the purposes of this Policy, an individual must be considered to be a creator, author or inventor of IP pursuant to applicable Canadian intellectual property laws.
- (b) Notwithstanding anything to the contrary contained in this Policy, this Policy recognizes that collaborative or co-operative effort may involve several Creators, or may involve creators, authors, inventors or joint owners who are not subject to this Policy, and whose rights in the IP may prevent licensing, Public Disclosure or Commercialization. The joint contribution by other creators, authors, inventors to IP who are not Members of CUE shall not impact the applicability of this Policy to all aspects of the contributions to IP by Members of CUE.. Each Creator shall use their best efforts to promptly obtain such legal consents and agreements, in writing, as may be required to give effect to this Policy.
- (c) Where there are two or more Creators of the same IP, all references to the rights and obligations of “a Creator” in this Policy shall apply equally and simultaneously to all Creators of the IP in question.

4.2 Disclosure:

- (a) A Creator of IP may decide to publish Traditional Academic Work, and acknowledges that Public Disclosure of any Traditional Academic Work may affect legal protection of the IP related thereto. A Creator of Institutional Work may not publish or make any Public Disclosure of any aspect of same without first obtaining express written consent to same from CUE.

- (b) If CUE or the Creator expresses interest in or seeks to pursue any Commercialization of any Institutional Work or any Traditional Academic Work, the Creator shall promptly make full and complete disclosure of such IP to CUE, using the Intellectual Property Disclosure Form, in accordance with the Commercialization of Intellectual Property and Revenue Sharing Procedure. Full and timely disclosure of the Institutional Work or the Traditional Academic Work to CUE must occur prior to the point that the Creator pursues Commercialization or pursues any Public Disclosure that may affect legal protection of such IP.

4.3 Ownership:

- (a) Any and all Institutional Work and associated IP rights are owned by CUE. CUE controls all rights to this content, including the rights to publish, share or Commercialize the Institutional Work. Any revenue generated from the Institutional Work belongs to CUE.
- (b) If any Traditional Academic Work is created by a Member of CUE using CUE Resources, then the Creator is the first owner of the Traditional Academic Work and associated IP rights (unless such ownership and IP rights have been ceded in whole or in part to a third party or CUE), subject to the following: (1) CUE's right to share in any profits or an ownership stake in any entity created for the purposes of Commercialization, as may be set out in any applicable agreements or procedures, if such IP is Commercialized; and (2) CUE's absolute right to use and modify the Traditional Academic Work under a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license for teaching, educational and non-commercial purposes (the "**CUE License**"). CUE may support the Creator's protection and management of such Traditional Academic Work in its sole discretion.
- (c) Any External Work is owned by the Creator. CUE has no claim to this type of IP, nor any responsibility to provide resources, or assist with IP protection or management.
- (d) In cases where CUE is the owner of IP protected under Canada's *Copyright Act*, the Creator will:
- (i) irrevocably waive any and all Moral Rights in the copyrighted work unless otherwise agreed by the Creator and CUE in writing; and
 - (ii) subject to section 4.2(a) herein, have a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license to use, revise, and modify the copyrighted work for non-commercial purposes only and upon reasonable advance written notice to CUE.
- (e) There shall be a rebuttable presumption that, when IP has been created by a Member of CUE within his/her/their area of Research, the IP was created with the use of CUE Resources, even though some or all of the activity may have actually taken place elsewhere.
- (f) Any Member of CUE asserting any rights in any IP that is, or is based on or copied from, work created, authored, or invented by a third party, must demonstrate, via documentary evidence, that such Member of CUE is entitled to such rights. Subject to the terms of this Policy, in the event a Member of CUE revises or otherwise alters work owned by a third party, such Member of CUE shall only have rights to that IP to the extent such revision or alteration can be separated from the original work.

5. COMMERCIALIZATION

- 5.1 Commercialization Generally:** Neither the Creator nor CUE is required or obliged to Commercialize any IP. In keeping with CUE's scholarly and educational mission and its dedication to the pursuit and

dissemination of knowledge, CUE does not encourage the development of IP solely for profit or personal gain.

5.2 Options for Commercialization: If a Creator wishes to Commercialize Traditional Academic Work, the Creator has two options:

- (a) the Creator may Commercialize independently of CUE under section 5.3; or
- (b) the Creator may Commercialize with the assistance of CUE under section 5.4.

The Creator must make an election to proceed under one of these two options. That election is made in the Intellectual Property Disclosure Form, pursuant to the Commercialization of Intellectual Property and Revenue Sharing Procedure. Decisions regarding Commercialization of Traditional Academic Work shall be made with the consent of all of its Creators and CUE, in accordance with this Policy and the Commercialization of Intellectual Property and Revenue Sharing Procedure.

5.3 Commercialization by the Creator: The Creator may elect to undertake the Commercialization of the Traditional Academic Work independently of CUE, subject to:

- (a) the provisions of the CUE License;
- (b) any revenue-sharing obligations for Traditional Academic Work (section 6);
- (c) any obligations granted to third parties under any applicable funding or other agreements; and
- (d) any rights that CUE may have under the Commercialization of Intellectual Property and Revenue Sharing Procedure.

5.4 Commercialization by CUE: If the Creator elects to Commercialize the Traditional Academic Work with the assistance of CUE, CUE will have the final decision in whether to proceed with Commercialization of the IP. The procedure for making this decision is set forth in more detail in the Commercialization of Intellectual Property and Revenue Sharing Procedure. If CUE decides to Commercialize the Traditional Academic Work, the Creator will provide an assignment of ownership of the Traditional Academic Work to CUE and the parties will begin the Commercialization process in accordance with this Policy and the Commercialization of Intellectual Property and Revenue Sharing Procedure. Any Commercialization of the Traditional Academic Work by CUE will be subject to:

- (a) the provisions of the CUE License;
- (b) any revenue-sharing obligations for Traditional Academic Work (section 6);
- (c) any rights or obligations granted to third parties under any applicable funding or other agreements; and
- (d) any rights or obligations that CUE may have under the Commercialization of Intellectual Property and Revenue Sharing Procedure.

6. REVENUE SHARING

- 6.1 Revenue Sharing:** In the case of Traditional Academic Work, Revenue from Commercialization will be shared as per Sections 6.2 (Commercialization by CUE), 6.3 (Inter-institutional Obligations), and 6.4 (Commercialization by Creator).
- 6.2 Commercialization by CUE:** In the case of Commercialization of Traditional Academic Work through CUE under section 5.4 herein, all Gross Revenue received by CUE from Commercialization of the Traditional Academic Work shall be retained and/or distributed as follows (or as otherwise determined and implemented following written approval of the President of CUE from time to time):
- (a) 100% will be retained by CUE until all CUE's Costs of Commercialization have been recovered by CUE; and then
 - (b) of the remaining revenue:
 - (i) CUE shall receive a 50% share of the Net Revenue; and
 - (ii) the Creator, or the Creators collectively, shall receive a 50% share of the Net Revenue.
- 6.3 Inter-institutional Obligations:** Where Traditional Academic Work is developed jointly by a Creator who is a Member of CUE and a member of another institution and working at the other institution, rights to such IP and revenue shall be shared between the relevant parties in accordance with a definitive written agreement to be entered into by the relevant parties, taking into account the policies of both institutions. The sharing of revenue will normally take into account the relative contributions of the Creator and the institutions. If the other institution is a CUE-affiliated institution, the sharing of ownership and revenue shall be governed by any agreements in place between CUE and its affiliated institutions regarding the management of IP.
- 6.4 Commercialization by Creator:** In the case of Commercialization of the Traditional Academic Work by the Creator under section 5.3 herein, all Gross Revenue received by the Creator from Commercialization of the Traditional Academic Work shall be distributed as follows:
- (a) 50% will be paid to CUE until all of CUE's Costs of Commercialization have been recovered by CUE, with the other 50% being retained by the Creator; and then
 - (b) of the remaining revenue:
 - (i) CUE shall receive a 25% share of the Net Revenue (such amount to be distributed in accordance with section 6.5 herein (CUE's Share)); and
 - (ii) the Creator, or the Creators collectively, shall receive a 75% share of the Net Revenue.
- 6.5 CUE's Share:** In the case of Commercialization of the Traditional Academic Work through the Creator under section 5.3 herein, CUE's share of Net Revenue will be distributed internally as follows for each individual Traditional Academic Work project:
- (a) Income up to and including \$25,000 shall be kept in a research fund administered by the Vice-President Academic and Provost of CUE. The fund will be applied to graduate scholarships, indirect costs of research and the development of IP; and
 - (b) Income over \$25,000 shall be distributed as follows:
 - (i) 75% to CUE's general revenue;
 - (ii) 25% to CUE's fund for supporting Commercialization including costs related to legal protection of IP and other activities.

6.6 Modification of these revenue sharing provisions may be implemented on written approval of the President of CUE.

7. CONSEQUENCES FOR NONCOMPLIANCE

7.1 Failure to comply with this Policy shall be handled according to the applicable collective agreement, employee agreement or other contract (if applicable).

7.2 Non-compliance with this Policy may result in the inability to protect IP, and consequential loss of revenue from Commercialization of such IP. Further, noncompliance may result in liability for the Creator and/or CUE, and infringement of patent rights, copyright or other IP rights. CUE may establish other procedure(s) for determining any consequences for non-compliance with this Policy from time to time.

8. DISPUTE RESOLUTION

8.1 Unless CUE otherwise establishes a procedure(s) for the resolution of disputes that arise under this Policy, if a dispute arises between a Creator(s) and CUE regarding the application of this Policy, the Commercialization of any IP, or any matter covered by this Policy, the dispute shall be resolved through binding arbitration in accordance with the *Arbitration Act* (Alberta) RSA 2000, as amended.

9. AUTHORITIES AND OFFICERS

9.1 The following is a list of authorities and officers for the policy:

- (a) Approving Authority: Board of Governors
- (b) Designated Executive Officer: President and Vice-Chancellor
- (c) Procedural Authority: Vice-President External and International Relations
- (d) Procedural Officer: Associate Vice-President, Innovation

10. RELATED POLICIES AND DOCUMENTS

10.1 The following is a list of related policies and documents:

- (a) Bylaws of the Board of Governors of Concordia University of Edmonton
- (b) Collective Agreement between Concordia University of Edmonton and Concordia University College of Alberta Faculty Association