

	<b>POLICY ON STUDENT INTELLECTUAL PROPERTY</b> #5.6	
<b>CATEGORY:</b> Research	<b>APPROVAL DATE:</b> May 16, 2022	
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<b>APPROVAL:</b> Senate (February 28, 2022), Board of Governors (May 16, 2022)		
<b>SPONSOR:</b> Vice-President, Research and Innovation		
<b>CONTACT:</b> Director, Research Services		
<b>PREVIOUS VERSIONS:</b> N/A		

## 1. Introduction

OCAD University (OCAD U or the University) recognizes that its students embark on research and creative exploration throughout their studies that often result in noteworthy and valuable discoveries, novel expressions of ideas, and bringing to fruition unique and significant inventions. These tangible results of a student’s intellectual and creative activities that can be owned, shared, and protected are collectively referred to as “intellectual property (IP)”. OCAD respects the value of student work and acknowledges that student-created IP merits appropriate attribution or legal recognition.

In order to support student IP generated through activities such as the fulfilment of coursework, creation of capstone or final projects, or through professional practice while enrolled at OCAD U, this policy seeks to articulate the rights and responsibilities of students in relation to the ownership, use, or transfer of knowledge through research and creative practice, whether students are working independently or in collaboration with other members of the larger OCAD U community that includes other students, faculty, staff, and external stakeholders.

OCAD U supports students in the determination of their IP rights by providing educational resources on IP and providing guidance on how the circumstances surrounding their creation of IP (individually or collaboratively) will impact their IP rights. Students may learn more about their IP rights in many ways, such as, but not limited to, through consultation with the OCAD U Office of Research & Innovation (ORI) and the OCAD U RBC Centre for Emerging Artists and Designers, seeking appropriate professional advice, or referring to resources of the Canadian Intellectual Property Office.

## 2. Purpose

Through the Policy on Student Intellectual Property (the Policy), OCAD U commits to providing students with the guidance and resources needed to help them determine how best to manage their IP by:

1. supporting the articulation of an IP policy (governing principles and procedures) that are in keeping with guiding legal principles and best practices,
2. clarifying expectations with regard to the intellectual and creative ownership, publication, attribution, or commercialization of research/ creative practice outcomes;

supported by:

3. establishment of guidelines and document templates that can be shared with internal and external partners, for example in relation to faculty-run research laboratories, partnership agreements, and other forms of collaborative research, and
4. creating educational resources and opportunities to increase awareness of IP rights and responsibilities.

## 3. Scope

3.1 This Policy applies to IP developed and/or created by a student in the following circumstances:

- a. course work and/or program-related research outcomes such as theses/ major research projects;
- b. work developed and/or created by a student using OCAD U facilities and resources but which was not assigned to the student in the course of their employment by OCAD U;
- c. work developed and/or created by a student while engaged as a research trainee under the supervision of a faculty member but which was not assigned to the student(s) as work for hire in the course of their employment by OCAD U or was not generated in relation to the faculty member(s) research project; or
- d. IP developed by OCAD U students for external partners engaged through OCAD U.

3.2 This Policy does not apply to

- a. IP created in the course of non-OCAD U activities that do not make use of facilities, resources, or funds administered by OCAD U, (for example, outside employment, activity in an area unrelated to OCAD U activities, or activity conducted wholly while on a leave of absence from the OCAD U);
- b. IP created by students as part of their employment by OCAD U (for example, a research assistant or a student monitor who is employed to work on a faculty project or to create a poster for the department they work for);
- c. IP created by students prior to their enrollment at OCAD U or after they have graduated from OCAD U; or
- d. IP created solely by one or more Faculty Members and/or Academic or Administrative Staff (i.e., IP created without the contribution or participation of a student).

## **4. Principles**

4.1 OCAD U's education mandate is to support students in their creation of IP, inform students of their rights as creators of IP, in tandem with their responsibilities to other IP owners (fellow students, faculty, and staff), and encourage responsible negotiation of IP ownership.

4.2 OCAD U is committed to knowledge sharing while recognizing the importance of creating IP and its potential commercialization.

4.3 OCAD U supports the creation of a university environment that encourages the generation of new knowledge by faculty, staff, and students, and to provide incentives for intellectual and creative development and innovation.

4.4 OCAD U promotes the protection, dissemination, and commercialization of IP through a framework that balances the interest of the University, its employees, and its students.

## **5. Policy**

5.1 In principle, OCAD U waives all right to, title to, and interest in any of the work of its students past and present, except for work that OCAD U commissions from any student past or present. In most instances, this means that OCAD U makes no claim of ownership over any student or alumni work unless this work was commissioned by OCAD U. There may be exceptions to this waiver when alternative arrangements are requested by a student, for example, a student may wish to engage the University's assistance in commercialization through a written agreement.

5.2 OCAD U supports students in their desire to manage ownership of their work which may take the form of retention, transfer, or sharing of IP.

5.3 All rights to their IP belong to the student or students who, working alone or in collaboration, create the work even if it is produced during the course of study and with the use of the OCAD U's facilities and resources, except in those cases where there is collaboration that would indicate sharing assignment of IP rights to a faculty member(s), or to a third party. Under IP law, IP resides with all "creator(s) regardless of role within the university or externally."

5.4 OCAD U recognizes that is not possible to set absolute guidelines in advance covering all situations. Consequently, OCAD U strongly recommends that students who are involved with other individuals in the creation of IP, for example in a collaborative project or as part of a research lab, develop clear written agreements in advance about the ownership and use of data collected.

5.5 In principle, no contract or written agreement between the OCAD U and a student shall contain a clause waiving moral rights. However, OCAD U recognizes that there may be instances where a student may wish to waive their moral rights within a contract or written agreement with an external party and endeavors to provide appropriate guidance in such instances.

5.6 Where IP is created by or in conjunction with Indigenous communities, policies and guidelines such as, but not limited to, the [First Nations Information Governance Centre document, "Ownership, Control, Access and Possession \(OCAP\): The Path to First Nations Information Governance"](#), shall prevail. Students are strongly encouraged to seek guidance from available resources and Indigenous expertise to ensure that IP agreements made with Indigenous communities are culturally appropriate and reflective of the Indigenous community's values.

5.7 Where IP is created with the intent of open sharing, preliminary arrangements should be made in consultation with all involved individuals who contributed to the creation of IP and be appropriate to the sharing model intended by these individuals (e.g., Creative Commons).

5.8 The status of a student when they are engaged in the creation of a work shall determine how this Policy is applied. For example, if a student creates IP as part of the requirements for completing a course at OCAD U, this Policy applies to the that work; however, if a student creates IP as a research assistant to an OCAD U faculty researcher, this Policy will not apply, rather, IP ownership would be governed by a written agreement between the faculty researcher and research assistant. For example, if a student is working under the supervision of a faculty researcher on a specific project, a written agreement or contract outlining the assignment of IP should be completed ideally before the student begins their work on the project to ensure that the terms of their research assistantship are clear from the outset.

5.9 Other University policies and agreements that are relevant to this: Policy on Research Administration, Policy on Integrity in Research and Scholarship, Policy on Academic Misconduct and the Memorandum of Understanding: OCAD University Policy on Intellectual Property Rights and Appendix A.

5.10 In the event that this Policy comes into conflict with other OCAD U policies, the Senate Academic Policy and Planning Committee (or their designate) shall determine the prevailing policy.

## **6. Role of the Office of Research & Innovation**

6.1 IP often results from collaborative or co-operative efforts among staff, students, other OCAD U members, and external entities. In such cases, students and faculty are encouraged to discuss the handling of IP issues with staff of the ORI and/or the Office of the Dean of Graduate Studies. Reference should be made to relevant OCAD U policies and regulations. If commercialization is anticipated and there is more than one individual creating IP, a written agreement among the IP creators should be completed as early as possible and before negotiations for commercialization are commenced with third parties.

6.2 When students being supervised by OCAD U faculty or staff are involved in the creation of IP, the supervisor is obligated to inform the students of the intent to commercialize and inform them that the ORI will advise the students of all relevant polices, with the goal of achieving arrangements that are fair and equitable. Students are advised to always seek independent professional advice from appropriate individuals, especially in cases where commercialization may take place.

## **7. Dispute Resolution**

7.1 In cases where disputes arise among or between students and supervisors over respective rights dealing with IP, the parties shall attempt to resolve the issues in an informal manner, with the assistance of the Graduate Program Director/ Program Chair, Dean, Vice-President Research & Innovation, or their designates.

7.2 The preferred mechanism for dispute resolution is mediation. The ORI can arrange this service when needed.

## **8. Exceptions**

8.1 In order to operate academic and other university programs, a student grants OCAD U a non-exclusive, free, irrevocable license to store, copy, markup and/or use such works submitted to OCAD U as a part of a course assessment, project, critique, exemplar, exhibition, research, or other activity and provide those works. These activities include the administration and improvement of student services and academic programs at the OCAD U. The license includes storage, copy, and distribution within contractual relationships between the OCAD U and third-party vendors for services employed in the context of teaching and learning.

8.1.1 OCAD U will maintain the privacy of student personally identifiable information(PII) in accordance with the [Freedom of Information and Protection of Privacy Act \(FIPPA\)](#), especially works which contain personal details or narratives such as process journals or sketchbooks.

8.1.2 The License excludes distribution to persons or organizations outside the University community. Any such licensing and/or distribution activity would be authorized only by an additional license from the owner(s).

8.2 Exceptions to the policy may include those aspects of the policy varied through contract negotiation or collective agreement. This means that there may be instances where a student (and co-creators, where present) may decide to enter into an agreement with a third party that assigns complete or partial ownership of generated IP to the third party. This is to say, there is flexibility within this policy to accommodate alternative IP ownership arrangements determined by students to best suit their needs. In cases where the student is not the sole owner of the IP in question, for example they are working under the supervision of a faculty researcher or in collaboration with stakeholders within and external to the university, and they wish to enter in alternative arrangements not addressed by this policy, all owners of the IP in question should be in agreement.

## **9. Interpretation**

9.1 With respect to questions of interpretation or application of this Policy, these shall be referred to the President, whose decision shall be final.

**References:**

Canadian Intellectual Property Office  
Simon Fraser University - Intellectual Property Policy  
Brock University – Ownership of Student-created Intellectual Property Policy  
Emily Carr University of Art + Design – Intellectual Property  
Concordia University – Policy on Intellectual Property  
University of Waterloo – Intellectual Property Rights  
NSCAD University – NSCAD Students Intellectual Property Rights Agreement  
Ryerson University – Intellectual Property Guidelines

## Definitions

- a) "Academic Staff" refers to technicians, academic counsellors, and teaching assistants as per Article 28 of the OCAD University Faculty Association Memorandum of Agreement.
- b) "Commercialization" means the assignment, licensing, manufacturing or production of IP as well as the protection of IP, including, but not limited to, obtaining patent protection and copyright registration, with the goal of financial return.
- c) "Copyright" means, in the simplest terms, means "the right to copy." In general, copyright means the sole right to produce or reproduce a work or a substantial part of it in any form. It includes the right to perform the work or any substantial part of it or, in the case of a lecture, to deliver it. If the work is unpublished, copyright includes the right to publish the work or any substantial part of it.

Copyright also applies to performers' performances, sound recordings and communication signals, though the applicable rights may differ somewhat. For example, the copyright in a sound recording consists of the sole right to publish the sound recording for the first time, to reproduce it in any material form, to rent it out and to authorize any such acts. (Source: Canadian Intellectual Property Office)

- d) "Direct Costs" means the University's costs and fees (including legal fees and agents' fees) associated with the acquisition, management and commercialization of the IP, including costs of evaluating it, obtaining and maintaining IP protection, preventing unauthorized use or infringement, prototype development funds, negotiating and implementing licenses or other agreements with third parties, but does not include the University's research office or overhead costs incurred prior to the initiation of Commercialization.
- e) "External Partner" means an individual or organization that operates outside of the auspices of OCAD University.
- f) "Faculty" are those who teach within the OCAD U credit curriculum, Maximum-Load or PartialLoad, and who have one of the following appointments:
  - f.1 Sessional;
  - f.2 Teaching-Intensive Stream;
  - f.3 Contractually Limited Term Appointment (CLTA);
  - f.4 Continuing;
  - f.5 Probationary; or
  - f.6 Tenured.
- g) "Intellectual Property (IP)" means any result of intellectual, design, literary or artistic activity giving rise to a copyright, patent, trade-mark, industrial design or trade secret that accrues to intellectual property by statute, application, or registration, or other rights accruing under this Policy, whether or not protected by statute, including:
  - a. Inventions, arts, processes, machines, compositions of matter and improvements;
  - b. Original literary, dramatic, artistic, and musical works as well as sound recordings, performer's performances and communication signals, including but not limited to: publications, notes, books, texts, articles, monographs, glossaries, bibliographies,

cartographic materials, modular posters, study guides, laboratory manuals, correspondence course packages, interactive textbooks, websites, course work delivered on the Internet, including distance education, multimedia instructional packages, course syllabi, tests and work papers, course lectures, public lectures, choreographic works, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, computer software, computer programs and code of all types, layouts, interfaces, applications and tools, all databases and database layouts, live video and audio broadcasts, programmed instructional materials, drawings, paintings, sculptures, photographs, works of visual art and music (including any software which expresses the said notes, manuals, artifacts or works), and productions (including sound, video, film, hypertext multimedia);

- c. Proprietary information, trade secrets and know-how;
- d. Industrial designs, architectural designs, environmental designs and artistic designs;
- e. Tangible research property including research data, and databases, integrated circuit topography, engineering drawings, engineering prototypes and other property which can be physically distributed, whether or not any such property is registrable or registered, or the subject of applications for registration;
- f. And all other products of research or discovery which are protected by law, including by a statutory regime, or which may be licensable.

The fundamental rules guiding intellectual property (IP) rights are outlined by: Canadian law including the Patent Act, the Copyright Act, the Industrial Design Act, the Trade-marks Act, as well as the Integrated Circuit Topography Act and the Plant Breeders' Rights Act.

h) "MOA" means the Memorandum of Agreement between OCAD University and OCAD University Faculty Association.

i) "Moral Rights" means the author or performer's right to claim authorship and to protect the integrity of a work under applicable law, including:

- a. the right of attribution of authorship,
- b. the right not to have authorship falsely attributed, and
- c. the right of integrity of authorship, including but not limited to the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the author's or performer's work which would be prejudicial to the author's honour or reputation.

j) "Patent" refers to an invention. An invention is eligible for patent protection if it is:

- new (first in the world),
- useful (functional and operative), and
- inventive (showing ingenuity and not obvious to someone of average skill who works in the field of your invention).

The invention must also be:

- a product (example: a door lock),
- a composition (example: a chemical composition used in lubricants for door locks),
- a machine (example: a machine for making door locks),
- a process (example: a method for making door locks), or
- an improvement on any of these.



- k) “Publication” means making IP available to the public by way of speech, print, paper, electronic or other means.
- l) “Research Trainee” refers to individuals supervised by a faculty advisor within the context of a research project.
- m) “Sponsor” means any third party not covered under this Policy, including but not limited to an individual, corporation, partnership, not-for-profit, charitable organization, association or postsecondary institution, who provides support to the research and/or creative activities carried on by persons covered by this Policy, whether the support is provided in cash or in-kind.
- n) “Student” means any person taking one or more courses at the University, either full-time or part-time, in any program of study, including special students. For clarity, a student is a person who is registered in a University course of study and/or engaged in any academic work that leads to the assigning of a mark, grade or statement of performance by the appropriate authority within the University and/or entitled to a valid student ID card who is between sessions.
- p) “University Resources” include but are not limited to OCAD University’s physical structures, research laboratories, capital equipment, technical facilities, services and personnel. OCAD University services include the administration of funds received by OCAD University in the form of grants, contracts or other support provided by OCAD University or external sponsors.
- q) “Works” include but are not limited to: books, texts, articles, monographs, cartographic materials, modular posters, course work, tests and work papers, lectures, musical and/or dramatic compositions, choreographic works, performers’ performances, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, computer programs, live video and audio broadcasts, drawings, paintings, sculpture, photographs, and other works of art.