

Policy Number:	GC-4100-2013
Policy Title:	Intellectual Property Policy
Policy Owner:	Vice President General Counsel and Public Affairs
Effective Date:	March 6, 2013

1. Purpose:

Mohawk College values academic excellence, inquisitiveness and curiosity. The Intellectual Property Policy reflects these values and seeks to encourage creativity and innovation, openness, and the sharing of ideas among staff and students.

Patents, inventions and creative works developed by individuals at Mohawk may have commercial as well as scientific and scholarly value. This policy defines the ownership, dissemination, and commercialization of Intellectual Property developed at Mohawk.

Since operating and research funds at Mohawk College come mainly from the governments of Ontario and Canada, this policy also helps to ensure that any intellectual property produced at Mohawk will be utilized for the benefit of Ontario and Canada.

2. Application and Scope:

This policy applies to all College personnel, whether compensated or not, including staff in the Academic and Support Staff bargaining units, sessional and part time staff, administrative staff, contractors, consultants, volunteers, students employed by the College, students conducting research as a requirement for their academic program, and all other persons who engage in projects using the College's employees, students, facilities, and/or resources.

This policy extends to third parties who participate in collaborative research projects and/or joint initiatives, such as industry or sector partners; however, if any part of this policy conflicts with provisions of a signed agreement between the College and a creator of Intellectual Property, or between the College and a third party, the provisions of the signed agreement will prevail.

Intellectual Property covered by this policy has the meaning defined in the "Definitions" section below. This policy does not apply to IP created in the course of non-College

activities that do not make use of the College's employees, students, facilities and/or resources.

3. Definitions:

- a. **Assigned Tasks:** Job-related activities such as the preparation of reports, assignments, laboratory manuals, examinations, business processes, training material and computer programs written to support the College's on-going operations. Assigned Tasks would not normally include Scholarly Works (as defined below).
- b. **Author:** A person who generates the actual form (words, pictures etc.) of a work eligible for copyright; and the authors of a scholarly work, for example, a paper to be submitted for publication in a scholarly journal, comprise all individuals who have made a significant scholarly contribution to the work. A significant contribution is one that contributes to the original content of the article. This may for example, take the form of narrative, data analysis or design of the research protocol.
- c. **Collaborative Research:** Research undertaken by any member of the College in cooperation with another researcher from inside or outside the College.
- d. **Commercialization:** The assignment, licensing, manufacturing or production of IP, including but not limited to, obtaining patent protection and copyright registration with the goal of financial return.
- e. **Computer Program:** A set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer in order to bring about a specific result. (Source: *Canadian Copyright Act*)
- f. **Conflict of Interest:** A conflict of interest, whether perceived or actual, exists when a member of the College is or is perceived to be in a position to use research, knowledge, authority or influence for personal or family gain or to benefit others to the detriment of the college (Reference should be made to Policy Number M-1306-M1979)
- g. **Contributor:** A person or agency who contributes to a scholarly work. Contributions include, but are not limited to: ideas, expression, form, design, computer code, criticism, financial support.
- h. **Copyright:** For the purposes of this policy, "copyright", in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part

thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof...and to authorize such acts. (Source: *Canadian Copyright Act*)

- i. **Informed Consent:** Consent given by an individual who has received the information necessary to allow a considered judgement, who has adequately understood the information, and who has arrived at a decision of consent without having been subjected to coercion, undue influence, inducement or intimidation.

Intellectual Property: all patents, trademarks, copyrights, industrial designs, integrated circuit topography, inventions, trade secrets, confidential information, know-how, domain names, and all applications and registrations therefore, whether issued or pending, all rights to apply for the same anywhere in the world, and all other intellectual property rights.

- j. **Inventor:** Generally, anyone who contributes to the formulation and ultimate expression or reduction to practices of an invention is likely a proper inventor, although each case must be determined separately. Simply following instruction is not sufficient to make one an inventor.
- k. **Moral Rights:** The right of the author or creator of a work to the continuing integrity of the work, and the right to be (or not to be) associated with the work as its author by name, under a pseudonym or the right to remain anonymous. The integrity of the work is infringed (and hence moral rights may be asserted) where the work is distorted, modified or mutilate, or used in association with a product, service, cause or institution, to the prejudice of the creator's rights, honour, or reputation. The owner of moral rights in a work can be distinct from the owner of the work.
- l. **Publication:** Making IP available to the public by way of speech, print, paper, electronic or other means. In this sense, "publication" means "putting the public in possession of an invention by way of speech, talk, paper, drawing, photograph, printed work, tape, video recording or other electronic means, or any other disclosure given or distributed, except on a confidential basis."
- m. **Patent:** A right conferred by the government through the Patent Act to exclude others from practising a particular art, process, machine, manufacture or composition of matter
- n. **Scholarly Work:** A work eligible for Intellectual Property protection under Canadian law which is created in the course of research at the College.
- o. **Trade-mark.** A word, symbol or picture – or combination of these – used to distinguish goods or services of one person or organization from those of competitors. [Source: A Guide to Patents, Industry Canada]

4. Principles:

Mohawk's decisions and actions with respect to Intellectual Property must reflect the values and behaviours described in the [Employee Code of Conduct](#) .

5. Accountability and Compliance:

Mohawk's Vice President General Counsel and Public Affairs office is responsible for monitoring compliance with the policy and updating it as required.

6. Rules:

1. General:

Parameters for ownership and the distribution of revenues resulting from the commercialization of Intellectual Property created at Mohawk College are established in this policy.

Except where stipulated, this policy provides that ownership of IP created at Mohawk College rests with the creator of the IP.

2. Administration:

Responsibility for administration of all College Intellectual Property issues resides with the Vice President General Counsel and Public Affairs office. The Vice President General Counsel and Public Affairs office will assist Mohawk personnel in the following ways:

- a.** Respond to questions regarding the application, interpretation, and implementation of this policy;
- b.** Review all written disclosures of Intellectual Property in a timely manner;
- c.** Serve as a resource in the commercialization process, in co-operation with or via referral to external partners, agents, legal and business experts, to review the patentability, registerability and marketability of the IP; to obtain patent, registration, copyright or other protection of the Intellectual Property; to assess the commercial strategies available; to negotiate licensing and other agreements with third parties; and to gain access to venture capital;
- d.** Assist in the writing of grant applications for prototype, development, or other funding;

- e. Manage Intellectual Property precedents, including confidentiality agreements, license agreements, and revenue sharing agreements.

3. Moral Rights:

Whether or not the author is the owner of the copyright in the work, the *Copyright Act* recognizes that he/she has "moral rights" in the work. These "moral rights" are legally enforceable and permit the author or creator of the work to prevent anyone, including the owner of the copyright, from using the work in association with a product, service, cause or institution or from altering, distorting, mutilation or changing the work in a way which prejudices the reputation or honour of the author or creator.

Moral rights may be waived in whole or in part, but they cannot be transferred to others. Whether or not the College owns the Intellectual Property rights in a work and in particular the copyright therein, it will take steps to respect the moral rights of the authors or creators of the work. These steps will include giving recognition to the author or creator for the work, if the author or creator so requests, or allowing the authors or creators to remain anonymous.

4. Ownership:

Except as stipulated below, ownership of rights in IP created in the course of research activities belong to the creator(s). The exceptions are:

- a. The material was developed in the course of teaching, to support classroom curriculum, or to support the delivery of curriculum, or college programs and services;
- b. The material was developed with funding from an externally sponsored research program or contract. In funded or sponsored research activities, ownership of IP rights may be determined in whole or in part by the regulations of the sponsor or the terms of the contract. Participants of the research activities must be made aware of any such stipulations of the contract by the leader of the research project;
- c. The material was developed in the course of College professional/work duties or as a negotiated understanding and/or formal agreement with the College under which the College owns the copyright of the material.

Owners of IP rights in scholarly works created in the course of research activities grant the College a non-exclusive, free, irrevocable, indivisible, and non-transferrable licence to use, for academic purposes, all works created by an author.

5. Communication and Dissemination

Mohawk College has an interest in maintaining the unrestricted dissemination of knowledge and information produced by members of the College community. The College encourages faculty and other personnel to publish the findings of their research. However, creators of IP should be aware that publication may introduce deadlines for proprietary protection of IP, for example, in filing patent applications.

The College will obtain the consent of the creator before entering into third-party agreements which would preclude or restrict the creator's ability to communicate the results of research.

6. Disclosure and Commercialization:

College personnel who have developed IP and intend to pursue commercialization or other opportunities must inform the Dean of his/her Department (for faculty members) or supervisor (for other employees), in advance and in writing, of the nature of the IP, and the intentions for it. This person must then forward the information to the Vice President General Counsel and Public Affairs. Mohawk personnel are not obliged to involve the Vice President General Counsel and Public Affairs in the commercialization process.

Disclosure must be made in advance of any publication of the details of the IP, in order to allow time for possible action to protect the rights to the IP for the creator and the College.

7. Commercialization Process

- a.** A creator who elects to commercialize his/her IP must disclose such election to the Vice President General Counsel and Public Affairs as described above.
- b.** The decision to commercialize IP rests with the creator, except where the IP was created in the course of performing assigned responsibilities, or under the terms of a sponsored or funded research project.
- c.** If the creator chooses to pursue commercialization, this may be done alone or with the support of the Vice President General Counsel and Public Affairs.
- d.** Should the creator choose to request College assistance, the Vice President General Counsel and Public Affairs will determine within two months of receiving the request for assistance in commercializing, whether an investment of College's resources in commercialization is warranted. If the College declines to invest, the creator may pursue commercialization alone. If the Vice President General Counsel and Public Affairs decides that the College should proceed, the creator will be required to make an assignment to the College of all rights

in and to the IP. Following any such assignment, the College will commence commercialization activities and commence obtaining protection of the IP within six months of receipt of the assignment or it will assign the rights back to the creator. If the College fails to make reasonable efforts to commercialize the IP for any six-month period of time, the College will assign its rights back to the creator, if so requested by the creator. The College must give reasonable notice to the creator, and in any case, notice of not less than one month, if the College decides that it will not pursue or maintain the protection of IP.

8. Income Distribution

With respect to patentable Intellectual Property owned by the College which the College has decided to license or otherwise sell, net income will be distributed as follows:

- a. 75% Creator(s)
- b. 25% College (split evenly as general College funds and funds for the relevant faculty)

All intellectual contributors to a work are entitled to share in the proceeds in proportion to their contributions, unless the entitlement to share has been willingly waived through informed consent. A share of the proceeds could also be granted to other parties such as the College or financial sponsors, at the discretion of the intellectual contributors.

Net income is calculated as gross income less direct costs.

9. Joint Initiatives and Student Work

Mohawk College embraces collaboration and encourages involvement in our community, with local industry, and with other post-secondary institutions.

Mohawk College acknowledges that ownership of Intellectual Property rights for materials developed as a joint initiative or under a sponsored research agreement is governed by the provisions of that agreement.

Prior to the undertaking of any joint initiative, it is recommended that a standard agreement is signed based on the principle that College researchers retain ownership of their work. Where that is not possible, an agreement may stipulate that the College or the sponsor owns some or all of the IP resulting from the research. For example, the College may own the IP while the sponsor has an exclusive right to license the IP; or the sponsor may have an option for a license in core markets.

Where the College enters into a collaborative research project with an outside party, the research team must be aware of any obligations imposed by the terms of the

agreement. All collaborative research at the College will be undertaken in a climate of informed consent.

Intellectual Property in student educational projects vests in the students involved unless subject to third-party rights.

10. Use of College IP

a. Classroom recordings

Permission to make audio or video recordings of academic related activities for educational purposes must be obtained from the appropriate professor(s) and students, in accordance with the *Ontario Human Rights Code* and *The Freedom of Information and Protection of Privacy Act*, before making such recording. Permission shall not be withheld unreasonably.

The College shall own the Intellectual Property rights in all audio and video recordings developed or created in classroom activities by College staffs except for approved research projects conducted by students, outside third parties or by College personnel outside the course of employment or non-College mandated purposes.

The College acknowledges and respects the rights of all presenters and participants in classroom activities. In the event the recording is being done for the benefit of the College, the College will obtain the consent of such performers and participants to the recording of their performances and activities, where required by law or College policy. In the event the recording is being done as part of a project by a student or others and the identity of students or others might be disclosed by the recording, responsibility for obtaining consents may be imposed on the party seeking to do recording.

Any classroom recordings made by the College will be normally be used for educational purposes only. Where the College wishes to use such recordings for any other purpose (e.g. promotion of the College), it will obtain written consent from all persons who are seen or heard in the recording.

b. Copyright Notice

Where the College is the owner of copyright in any works created pursuant to this policy, or otherwise, it shall place the following copyright notice in a conspicuous place in the works: © [year of publication] Mohawk College of Applied Arts and Technology

c. Use of Mohawk 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 a College staff member, student, or person with whom the College is otherwise dealing, or to be dissociated from the work, and for work not created in the course of employment/studies as mutually agreed upon. Use of the Mohawk name, seal or logo on promotional materials is standardized and regulated by the department responsible for marketing and communications. Any questions regarding protocol for the use of the Mohawk name, seal or logo should be referred to the VP of this department.

Unless prior approval has been obtained from the VP responsible for marketing and communications, the Mohawk College name, seal and logo must not be used a) in conjunction with any private or commercial enterprise; b) in tandem with the advertisement of any product; and c) by any individual or group promoting itself.

11. Dispute Resolution

The Vice President General Counsel and Public Affairs will handle questions regarding the application, interpretation, and implementation of this policy, or regarding disagreement among creators concerning assignment of rights or sharing of royalties. Conflicts may arise which have no allegations of wrong-doing; College personnel may simply have incompatible perceptions of the meaning of this policy.

In general, conflicts are best dealt with at an informal level. If a conflict cannot be resolved informally, the matter may be submitted to the Vice President General Counsel and Public Affairs for an administrative decision. Disagreement with any determination made by that Office may be directed to the Vice President, Academic, or his or her designee, for a final determination.

7. Policy Revision Date:

Annually from date of approval

Reviewed by Vice President General Counsel and Public Affairs

8. Links:

In compiling this policy, Mohawk College has referenced Intellectual Property Policies developed by other institutions including, but not limited to, George Brown College, Humber College, The University of Waterloo, The University of British Columbia, and Simon Fraser University.

The following websites contain more information on Intellectual Property:

1. Copyright Act of Canada; <http://laws-lois.justice.gc.ca/eng/acts/C-42/>
2. Association of Canadian Community Colleges; Intellectual Property Toolkit; <http://www.accc.ca/xp/index.php/en/agreement-types>
3. NSERC; http://www.nserc-crsng.gc.ca/NSERC-CRSNG/Policies-Politiques/ip-pi_eng.asp
4. "Universities and Regional Economic Development: The Entrepreneurial University of Waterloo"; by Allison Bramwell and David Wolfe, Munk Centre for International Studies, University of Toronto, June 2005; www.utoronto.ca/progris
6. Harvard University; <http://www.techtransfer.harvard.edu/royaltysharing.html>
7. MIT Draft Report of the Ad Hoc Faculty Committee on Intellectual Property and Conflict of Commitment, January 2001; <http://web.mit.edu/comittees/ip/policies.html>
8. "Intellectual Property in the 21st Century"; by Ruth Corbin, PhD, LLM for the Conference Board of Canada, February 2000; <http://www.conferenceboard.ca>