

# Frequently Asked Questions for Faculty

## What is the policy based on?

According to section 68 of the *Post-secondary Learning Act* (Alberta), the college owns all intellectual property created by its employees unless the college chooses to give up its rights. The same is true for all employers and employees in Canada, according to the courts. Our policy strikes a balance between the college's legitimate interests in intellectual property and recognition of the effort and intellectual resources contributed by faculty, as well as conventions among Canadian colleges. Our policy incentivizes faculty to create intellectual property while ensuring that its value is maximized for the public as a whole, in keeping with the college's mandate as a public institution of higher learning.

## What is intellectual property?

Intellectual property is any form of creative effort that can be protected through a trademark, trade secret, patent, copyright, industrial design, integrated circuit topography, or plant breeders' rights.

## What can be copyrighted?

Most of the intellectual property created by faculty is protected by copyright. In Canada, a work does not need to be registered or have a copyright symbol on it (©) to be copyrighted. A work is protected by copyright as soon as it comes into existence, provided that certain requirements are met. These can become quite technical, and there are numerous court cases about how to evaluate them in a given situation.

However, the most relevant requirements for faculty are that a work (1) must be fixed; (2) must be an expression of an idea, not an idea or fact itself; and (3) must be original, involving a more-than-trivial exercise of skill or judgment. Consider how these requirements apply in the following examples:

- A lecture that is neither written down nor audio- or video-recorded is not copyrighted because it is not fixed (requirement 1).
- A PowerPoint slide that states "The earth is round" is not copyrighted because it simply states a fact (requirement 2). Facts cannot be copyrighted.
- An idea for a children's story about a big red dog named Clifford is not copyrighted because it is simply an idea (requirement 2). But the published children's story itself is copyrighted because it is *the expression* of an idea; it is fixed (requirement 1) and involves more than a trivial exercise of skill or judgment (requirement 3). By contrast, the courts have decided that an editor who reviews the story for spelling and grammar only exercises a trivial

amount of skill or judgment, so the editor cannot claim copyright over the edited version of the story.

### **I've created intellectual property. Do I own it or does the college own it?**

This requires answering two questions: (1) Does the policy apply to the intellectual property? (2) If it does, who owns the intellectual property?

If you create intellectual property in the course of your employment, on commission from the college, or using college resources, such as personnel, materials, equipment or funding, the policy applies.

If the policy applies, then the college owns the intellectual property *unless* (1) you enter into a written agreement with the college that says you own the intellectual property; (2) the intellectual property is an original work of scholarship, such as a journal article, textbook or other academic publication, or a conference paper or presentation; or (3) the intellectual property is a lecture material that you developed only for your personal use in the performance of your duties. Lecture materials include presentation slides, lecture notes, lecture recordings, practice assignments, and handouts.

Examples of intellectual property owned by the college include course alignment frameworks, course outcomes, course outlines, curricula, interim and final exams, and reading lists created by a person in their capacity as a college employee.

This is consistent with the previous version of our policy (the "Intellectual Property and Copyright Ownership" policy), but adds greater detail and examples to avoid confusion.

### **What are moral rights?**

Moral rights are a type of legal rights that you have with respect to works that you create. Moral rights include the right to the integrity of the work (e.g. the right not to have someone paint over top of your own painting) and the right, where reasonable in the circumstances, to be associated with the work as its author. You can also choose to not be named as the author of a work, or to be named by a pseudonym.

Even if the college owns the copyright in a work that you create, you retain the moral rights unless you choose to waive them. This is consistent with the previous version of our policy (the "Intellectual Property and Copyright Ownership" policy).

### **How does the policy impact my research?**

The college does not intend to prevent faculty from using their research results in future research, or to unduly interfere with a faculty member's ability to publish those research results (although often times funding agreements stipulate how research results may be used and published). If you create intellectual property through research that you conduct in the course of your

employment, on commission from the college, or using college resources, you must disclose it to the Associate Vice President Research in a timely manner. This allows the college to evaluate how the intellectual property should be owned – by the college, by you, by an industry partner, or in some combination – and to remain in compliance with its research contracts and obligations as a publicly-funded institution.

### **What happens when I leave the college?**

When you leave the college, it is your responsibility to ensure that the intellectual property you created – if it is owned by the college according to the policy – is transferred to the college. This preserves consistency in programming and course instruction. Faculty are hired in part to contribute to program and course development (see “Instructor Role Description” available on myHorizon), and the college has the right to retain the resulting work products.