



POLICY AND PROCEDURES

INTELLECTUAL PROPERTY AND COPYRIGHT OWNERSHIP

Code: 6.16

Category: Administrative

Effective Date: September 21, 2004

SUBJECT: INTELLECTUAL PROPERTY AND COPYRIGHT OWNERSHIP

POLICY: Subject to the terms of this policy, Lethbridge College will be the owner of Copyright and Works and the owner of Intellectual Property created by an Author in the course of their employment with the College, on behalf of the College or with the assistance of Lethbridge College.

PREAMBLE:

The development of a vibrant and enriched academic and learning environment requires the commitment of staff to the production of academic learning materials in many forms. Books, video, computer software and audio recordings are only a few of the products staff may create to enhance their personal and professional lives.

The College encourages employees to create new learning materials and resources for the enrichment and reputation of the institution. At the same time, the College wishes to ensure the ownership of the Copyright and Intellectual Property is clear.

It is the intention of the College to support the principles of Intellectual Property and this policy through recognition of employee contributions by ensuring the employees are properly recognized as the Authors of most Works and Intellectual Property created within the College environment.

One of the purposes of this policy is to encourage Employees to enter into agreements with the College prior to the creation of Works or Intellectual Property in circumstances where the Employee wishes to have an ownership interest.

DEFINITIONS

College Support: Shall include the specialized knowledge and skills of support and technical staff, hardware and software resources, illustrations, editorial and instructional design services, financial support, production and reproduction services, internal facilities of any type in which materials can be created, and Lethbridge College name and reputation.

Copyright: Has the same meanings, definitions and restrictions as defined by the Canadian *Copyright Act*. In relation to a Work, this 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thereof in any material form whatever, to perform the Work or any substantial part thereof in public or, if the Work is unpublished, to publish the Work or any substantial part thereof in any format.

Employee: Shall mean any person who is employed by the College or any individual who provides services to the College on a contract basis.

Employee Work(s): Work or Intellectual Property produced by an Employee that is related to employment, study, or curriculum at the College.

Intellectual Property: All material, products, inventions, discoveries and the products of research which are capable of protection pursuant to any law of Canada or any other country or which may be licensable.

Author: The individual who has created or is in the process of creating a Work or Intellectual Property.

Intended Author: An individual who intends to create a Work or Intellectual Property.

Personal Work(s): Work or Intellectual Property created by an Author that is not related to employment, study or curriculum at the College and where the College has not provided the Author with any type of College Support.

Student: Any person registered in a College course.

Work(s): Any architectural, artistic, choreographic, cinematographic, dramatic, literary, musical, scientific, technical or other work in which copyright may subsist under the Copyright Act, but excludes lecture notes, diagrams, recordings that are teaching tools for:

1. the personal use of the Author in the performance of their duties, or
2. for distribution to students at the College

Intellectual Property Officer: Person or persons appointed by the College to be responsible for administration of College policies relating to copyright, including this policy. In the absence of appointment of a specific person to be the Intellectual Property Office, the Vice President, Corporate and International Services shall be the Intellectual Property Officer for the purpose of this policy.

GUIDELINES:

1. Intellectual Property and Copyright Ownership:

The ownership of Copyright and ownership of Intellectual Property may be vested with the College, the Author or Jointly. The purpose of this policy is to clarify ownership where no written agreement exists dealing with ownership; and to encourage advance agreements being entered into which specifically deal with the ownership of Copyright and Intellectual Property. The existence of a prior written agreement can avoid misunderstandings, disputes and even litigation.

a. Copyright and Intellectual Property Vested with Author

The College recognizes that an Employee is the sole owner of a Copyright and Intellectual Property of a Personal Work created outside the scope of their employment with the College, on their own initiative and time, and without College Support.

b. Copyright and Intellectual Property Vested with the College

- i. The College will be the sole owner of Copyright for all Work (see Definitions section for the definition of a Work and in particular for those things which are excluded from the definition) and the sole owner of all Intellectual Property that is:
 1. Employee Work(s) or is otherwise created in the course of an individual's employment with the College;
 2. Specifically commissioned by the College; or
 3. Created in whole or in part with the assistance of College Support, unless there is an agreement to the contrary in writing.
- ii. An individual who intends to use College Support in whole or in part to create a Work or Intellectual Property has the responsibility to identify his intentions to the College in writing prior to commencing use of College Support in any way. The College and an individual may enter into an agreement in writing whereby the College authorizes College Support with ownership of the Copyright or Intellectual Property remaining with that individual. **If no written agreement is entered into and College Support is used, with or without the knowledge of the College, then the College shall be the sole owner of the Copyright for the Work and the sole owner of the Intellectual Property.**

The inadvertent use of laptop computers owned by the College not involving the use of sophisticated software provided by the College, the minimal use of secretarial services or the exchange of information between Employees in the normal course of a collegial environment may, in the discretion of the College, not be considered College Support; in a particular case; however, a prior agreement is encouraged in all cases involving any use of College Support in the context of ownership of Copyright or Intellectual Property.

- iii. For the purposes of this policy, the development of a course from the curriculum development planning stage through to the course outline / syllabus planning stage shall be deemed to be made or undertaken in the course of the individual's employment with the College.
- iv. When a Work or Intellectual Property is to be created on behalf of the College by persons who are not Employees or Students, a written agreement shall be entered into between the College and the person stipulating ownership of the finished product. In most cases, the College shall require the person to assign ownership to the College, and the College may also require the person to waive his or her moral rights in their Work.
- v. The College recognizes that Students generally own the Copyright to Works and Intellectual Property they produce in the course of their study, with or without College Support. The College may, with the consent of the Student, use materials produced by Students as examples for future classes or for other educational purposes. A Student Release Form for the purpose of obtaining the consent of the Student is attached hereto as Attachment "6.16".

- vi. The College shall be the sole owner of the copyright to Works and Intellectual Property produced by a Student when compensation is provided to the Student by the College, unless there is an agreement to the contrary in writing.

c. Proposal for Sole or Joint Ownership

- i. Prior to the creation of a Work or Intellectual Property, an Intended Author may wish to negotiate sole or joint ownership of Copyright. This could occur, for example, in instances where an Intended Author believes that only a portion of the Work or Intellectual Property will be created in the course of their employment with the College, or where only minimal College Support will be required.
- ii. An Intended Author who wishes to have sole or joint ownership in a Work or Intellectual Property should submit a proposal to the Intellectual Property Officer prior to the commencement of a Work. The Intellectual Property Officer shall submit any proposal to the Vice President, Corporate and International Service of the College for consideration. Ownership of the intended Work shall be determined in advance of creation of the Work.
- iii. Upon receipt of the proposal the Intellectual Property Officer will initiate a meeting between the College and the Intended Author for the purpose of reviewing the proposal.
- iv. Any agreement between an Intended Author and the College resulting from such a proposal shall be reduced to writing and signed by both parties.

d. Dispute as to Ownership

- i. In the event that there is a dispute over ownership of Copyright or Intellectual Property, upon the request of either the College or the Author or the Intended Author, the Intellectual Property Officer will initiate a meeting for the purpose of determining if the dispute as to ownership can be resolved.
- ii. The Intellectual Property Officer, may with the consent of the Author or the Intended Author and of the College, arrange to have an independent person mediate any dispute.
- iii. In the event that a dispute is solved by agreement between the Author or Intended Author and the College, any such agreement shall be reduced to writing and signed by both parties.
- iv. In the event that a dispute cannot be resolved, both the Author or Intended Author and the College shall be entitled to pursue their rights to determine ownership of the Copyright or the Intellectual Property.

2. Moral Rights

- a. The College acknowledges that the Author of a Work has the right to the integrity of a Work, and where reasonable in the circumstances, the right to be associated with the Work as its Author by name or under a pseudonym and the right to remain

anonymous. These rights are created by the Copyright Act and are known as moral rights.

- b. Where the College requires revisions to a Work created by an Author who is still a College employee, the Author will be given the first opportunity to make the revisions (as part of his or her employment.) If the Author is unable or fails to perform these revisions, the College may assign this task to others.
- c. The College may ask the Author to waive his or her moral rights in a Work on terms to be negotiated by the College and the Author.

3. Release of Copyright Material

- a. The Intellectual Property Officer will be the initial representative of the College, responsible for reviewing and recommending use by others of any Work for which the copyright is owned by the College or of any Intellectual Property owned by the College.
- b. Where Copyright in a Work or Intellectual Property is jointly owned, the College and any other owners must agree upon any terms and conditions for use by others of the Work or Intellectual Property.

4. Rights of the Parties When Joint Ownership.

- a. Where joint ownership of Copyright or Intellectual Property applies, the College shall have the right:
 - i. To have the College's name appear on the Work or any resulting product;
 - ii. To use, produce and reproduce the Works or portions of the Works for use in college facilities for non-commercial purposes without compensation to the Author, unless otherwise agreed;
 - iii. To use or produce in the College facilities any resulting product for non-commercial purposes without compensation to the Author, unless otherwise agreed.
- b. In all cases where joint ownership of Copyright applies, the College agrees that the Author shall have the right:

To have the Author's name appear on the Works or any resulting product.

- c. Production of a Work is not to be commenced if there is a dispute as to ownership of the Copyright.
- d. Commercialization of Intellectual Property should not be commenced if there is a dispute as to ownership of the Intellectual Property.
- e. Any agreement between the College and an Author or Intended Author with respect to ownership of Copyright or Intellectual Property shall take into account the following:
 - i. Recovery of costs incurred by the Author or Intended Author and by the College;

- ii. The value of College Support
- iii. The division of royalties or other income between the Author or Intended Author and the College.
- iv. Who shall execute agreements for distribution or publication of the Works on behalf of the Author or Intended Author and the College.
- v. The manner in which revenue from the Work shall be recorded.

5. Income Sharing Arrangements When Joint Ownership.

- a. The recovery of costs and the divisions of royalties or other income derived from the commercialization of any Work or Intellectual Property shall be determined by negotiation between the Author or Intended Author and the College and reduced to a written agreement signed by both parties.
- b. The College shall maintain records of all such revenue sharing agreements.

6. Warranties and Indemnities.

- a. The Author of a Work for which the Copyright is vested either jointly or solely in the College shall pledge in good faith and sign an acknowledgement that at the time of creation:
 - i. The Work was original and does not violate any existing Copyright; and
 - ii. The Works contain nothing libelous.
- b. The Author of Intellectual Property where ownership is vested either jointly or solely in the College shall pledge in good faith and sign an acknowledgement indicating that at the time of the creation, the Intellectual Property was original.
- c. The Authors of a Work for which Copyright is vested either jointly or solely in the College and the Author of Intellectual Property where ownership is vested either solely or jointly in the College shall provide the College with a list of any materials incorporated in the Work or Intellectual Property for which consent fees or licenses where required. All such consents or licenses must be obtained prior to use of any such material as required by law.
- d. The Authors of a Work for which Copyright is vested either jointly or solely in the College and the Author of Intellectual Property whose copyright is vested either solely or jointly in the College agrees to indemnify the College against any loss to the College that results from a breach of Section 6a, 6b., 6c or a breach of the Copyright Compliance Policy of the College.

7. Cessation of An Author's Affiliation with the College.

Where an Author's association with the College ceases, the Author's rights and obligations under this policy shall continue unless otherwise provided for in a separate agreement.

8. See Attachment "6.16" – Student Release Form.

REFERENCE:

College Management:	1994 06 07
PACT:	2004 08 17
Academic Council:	n/a
	2004 09 08
Board of Governors:	1994 10 19
	1998 11 23 (amended)
	2004 09 21
Cross Reference:	Copyright Compliance: Policy 6.17

Attachment "6.16"

LETHBRIDGE COLLEGE
Student Release Form
(LC instructor use of student work)

The personal information on this form is collected under the authority of the Lethbridge College Act of Alberta which mandates the provision of programs and services by public colleges, under the authority of the Alberta Freedom of Information and Protection of Privacy Act and under the authority of the Canadian Copyright Act. The purpose of your personal information is to document your authorization for use of your work. This personal information is protected by the provisions of the Freedom of Information and Protection of Privacy Act. If you have any questions about the collection or use of this information, please contact the Copyright Officer, Lethbridge College, 3000 College Drive South, Lethbridge, Alberta T1K 1L6, (403)382-6928.

NAME: _____
(please print)

ADDRESS: _____

PHONE: _____

SUBJECT(S): _____

SIGNATURE: _____

DATE: _____

I understand that my signature authorizes Lethbridge College to use my course work as an example for future classes or other educational purposes (on a non-profit basis).

Do you wish to be acknowledged as the creator of this / these example(s)?

YES____ **NO**____