

TITLE: **POLICY ON INTELLECTUAL PROPERTY**
(Relates to EL 2: Treatment of Staff)
(Relates to EL 5: Asset Protection)

EFFECTIVE DATE: July 1, 2006

PURPOSE:

Red Deer College values learning and is supportive of the research that enhances learning. The primary purpose of this policy is to create a supportive framework which is respectful of the culture of the College, and to balance the interests of the College and of its creative community.

Red Deer College encourages and supports the creative endeavors of its staff and recognizes the creative investment made by those who participate in the development of Intellectual Property. The College acknowledges its responsibility for the equitable disposition and protection of proprietary rights. This document establishes the relationship between the College and its Members related to Intellectual Property developed by Members in the course of their employment. It is based on the Canadian Copyright Act and will be revised to reflect changes in the Act.

The objectives of this policy are to:

- Recognize and uphold the principles of academic integrity in the possible commercialization of intellectual property.
- Outline clearly the ownership rights in any newly created or discovered intellectual property as between the College and its Members and the obligation for related costs and the division of related revenues.
- Provide exclusions for certain types of Intellectual Property.
- Provide for the rights and obligations of the College and its Members in protecting any newly created or discovered Intellectual Property.

DEFINITIONS:

“Creator(s)” is a person or persons who create works of Intellectual Property.

“Development Costs” means all costs incurred, whether by the Member or the College, to create, recreate, or improve the Intellectual Property that are not classified as Operating Costs.

“Ethical Rights” means rights that the Creator of a work has even if the Creator does not own the Intellectual Property. These rights include the right to the integrity of the work,

the right to association with the work as its Creator, and the right to remain anonymous. Ethical Rights may not be assigned but can be waived.

“Infrastructure” includes specialized facilities and services of the College including technical facilities and services, computer services, and secretarial services. For the purpose of this document, Infrastructure does not include use of office space, furniture, desktop computers, normal Internet use, and library materials.

- “Intellectual Property (IP)” means:
- Simply defined is any form of knowledge or expression created with one’s intellect.
- Intellectual Property includes copyright to all original literary, dramatic, musical and artistic works, performances, sound recordings, communication signals, patents, industrial design, trademarks, and integrated circuit topography. The forms of Intellectual Property have been defined by the Canadian Intellectual Property Office. These definitions are subject to change.
 - Copyrights provide protection for literary, artistic, dramatic or musical works (including computer programs), and three other subject-matters known as: performance, sound recording and communication signal.
 - Industrial designs are the visual features of shape, configuration, pattern or ornament (or any combination of these features), applied to a finished article of manufacture.
 - Integrated circuit topographies refer to the three dimensional configuration of the electronic circuits embodied in integrated circuit products or layout designs.
 - Patents cover new inventions (process, machine, manufacture, composition of matter), or any new and useful improvement of an existing invention.
 - Trade-mark is a word, symbol or picture – or combination of these – used to distinguish the wares or services of one person or organization from those of others in the marketplace.

“Intellectual Property Interest” means the percentage interest that the College or Member has in the Revenues from the Intellectual Property after recovery of Operating Costs.

“Member” means any employee of Red Deer College.

“Operating Costs” means annual or periodic costs required to exploit the Intellectual Property and include such expenditures as manufacturing, publishing, packaging, advertising, and distribution.

“Revenue” means earnings received by either the College or Member or other designated entity such as but not limited to a partnership or corporation set up to exploit the Intellectual Property.

“Work” means any original work of authorship fixed in any tangible medium or expression, now known or later developed which can be preserved, reproduced or communicated, directly or with the aid of a machine or device.

POLICY STATEMENT:

Disclosure

A Member will provide confidential disclosure in writing to the College regarding the development of Intellectual Property which may be owned by the College or jointly between the Member and the College and which the Member intends to commercialize. The disclosure is intended to protect the interests of the Member and the College. The College will work with the Member to determine how and when Intellectual Property will be communicated to the public, so as to preserve the rights of the Member and balance the benefits of the Intellectual Property to the College and Member. Intellectual Property is to be disclosed before any commercialization is pursued.

Ownership

The Creator of Intellectual Property retains ownership of Intellectual Property that is the result of the Creator's intellectual efforts. Lectures, including the substance and record of lectures belong to the creator. Exceptions to this ownership include:

- a. The College owns Intellectual Property which is necessarily developed in the course of the work for which the Creator is employed. This includes but is not limited to course outlines, assignments, manuals, course material, examinations, and student records.
- b. The College owns College sponsored products not directly related to teaching. This includes but is not limited to administrative and public relation products such as brochures, promotional materials, and annual reports.
- c. The College owns Intellectual Property, whether produced by a Member or otherwise, if it is produced pursuant to a contract with the Creator in which the Creator agrees that Intellectual Property produced pursuant to the contract will be the property of the College.
- d. When the College Infrastructure is used in the creation of Intellectual Property the College and the Creator will be joint owners of the Intellectual Property and the relative interests of the College and Creator will be defined either by agreement between the College and the Creator
- e. The Creator may assign or transfer interest in Intellectual Property to the College. If the Creator chooses not to commercialize within 3 years, interest in the Intellectual Property will automatically be transferred to the College.
- f. The College may assign or transfer interest in Intellectual Property to the Creator. If the College chooses not to commercialize within 3 years, interest in the Intellectual Property will automatically be transferred to the Creator.

Ethical Rights

The Creator of the Intellectual Property retains the Ethical Rights associated with Intellectual Property that is the result of the Creator's intellectual effort. Ethical Rights will be retained by the Member for a period of five years after which they will automatically be waived.

Creator(s)

Where more than one Member is involved in the development of an Intellectual Property, the Members are responsible for and should specify in advance, and in writing, the manner in which Intellectual Property related issues will be handled.

Commercialization

The College and the Member together will assess the commercialization potential of the Intellectual Property disclosed and will negotiate a commercialization agreement as appropriate. If they are not able to agree then a commercialization agreement will be set by an arbitrator after hearing submissions from both the College and the Member. Commercialization will only be pursued once an agreement has been negotiated.

In negotiating a commercialization agreement, the following options are available:

- The College will own the Intellectual Property until costs are recovered. Once costs are recovered, the Member will own the Intellectual Property.
- The College and the Member will jointly own the Intellectual Property.
- The College or Member will buy out the other party through an agreed upon financial transaction.

Revenue Sharing

Revenue sharing will be determined by the level of involvement of the College and the Member in the development of Intellectual Property. The College and Member will negotiate the division of revenue based on the following principles:

- Revenues for each period (normally annual) will first be used to pay any Operating Costs for that period. If the Revenues are not sufficient to recover Operating Costs, then the shortfall will be added to the subsequent period(s) Operating Costs total. The intent is to ensure that all Operating Costs are paid regardless of the period in which the Operating Costs are incurred.
- Revenues remaining after the payment of Operating Costs will then be divided between the College and Member in proportion to their Intellectual Property Interest
- The Intellectual Property Interest for the College and Member will be in direct proportion to Development Costs incurred by the College and Member. However, in recognition of the value of the idea and/or concepts contributed by the Member in creating the Intellectual Property, the College's Interest will be limited to 50 percent.

Obligation to Others

Employees of the College are required to respect third party Intellectual Property rights. This includes, but is not limited to, CANCOPY and other licensing agreements.

The Member guarantees that the Intellectual Property they have developed is original and eligible for Intellectual Property rights.

Appeals

In cases when a Creator and the College cannot reach agreement on intellectual property through discussion and reconsideration, an appeal process will decide the matter as follows. An Intellectual Property (IP) Appeal Board consisting of the VP

Education, a Faculty Representative, and one other member jointly chosen by the VP and Faculty Representative. The IP Appeal Board will be guided by this policy and by the principles of natural and procedural justice in their decision-making. Such principles include providing a reasonable opportunity to be heard, an explanation of the reasons for opinions or decisions, and the opportunity for rebuttal, fair and impartial judgment, and reasoned and written grounds for the decisions. The IP Appeal Board's decision on the issue will be final.

Administration

The Associate Vice-President, Strategic Planning and Research will administer this policy including:

1. holding confidential records of disclosure
2. negotiating intellectual property agreements
3. negotiating and administering intellectual property agreements with outside agencies.

ACCOUNTABILITY:	President
RESPONSIBILITY:	Associate Vice-President, Strategic Planning and Research
Consultation for Review:	Associate Vice-President, Strategic Planning and Research
Policy Review Date:	May 31, 2008