

SUBJECT: INTELLECTUAL PROPERTY**1. Purpose**

The term “intellectual property” (IP) means different things to different people in different contexts and environments. For example, in a legal sense, the emphasis is on ownership; in this context, IP is concerned with patents, copyrights, trademarks and the like, all of which provide legal protection for something that has real or potential commercial value. In general, common law and certain statutes and acts (e.g., Canadian Patent and Copyright Acts) are the legal means by which IP is defined and through which IP rights can be protected.

A strictly legal framework for and approach to IP rights, based closely on copyright, patent and the like, is not sufficient within an academic community where the emphasis is on the word “intellectual”. Academic community values openness, sharing of ideas, and scholarly activity, and its primary goals are to increase and disseminate knowledge.

Efforts to increase and to communicate knowledge are at the heart of academic endeavours. These endeavours may result in the creation of IP which will have rights conferred by statute and common law in Canada, and which may be eligible for rights in other countries and under international treaties. Within the University community it is important to ensure that such IP rights are properly conferred on all those who are responsible for the development of the IP, while at the same time encouraging the openness and free exchange of ideas that are essential to successful scholarship. This policy requires the contribution of all parties to be appropriately recognized. Except in certain well-defined situations, this policy provides that the ownership of IP rights rests with the creator(s) of the IP. Because of the complex interactions of members of the University in the course of their work, a chief difficulty in implementing such a policy lies in identifying the creator(s), and in determining who should share in any benefits resulting from IP. A substantial part of this policy is concerned with setting out the principles and procedures to be used in such determinations. However, a critical need that cannot be imposed, is the requirement for all parties to discuss and negotiate issues with professionalism and in good faith. Consideration has been given to standards and traditions in diverse academic disciplines. (Please refer to the Glossary of Terms at the end of this Policy).

The parties would like to acknowledge that this policy is largely based upon the Intellectual Policy from the University of Waterloo.

Principles

Except as stipulated below, ownership of rights in IP created in the course of teaching and research activities belong to the creator(s). The exceptions are: · The University normally retains ownership of IP rights in works created as ‘assigned tasks’ in the course of administrative activities.

Owners of IP rights in scholarly works created in the course of teaching and research activities grant the University a non-exclusive, free, irrevocable license to copy and/or use such works in other teaching and research activities, but excluding licensing and 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).

In sponsored or contract 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 in these research activities must be made aware of any such stipulations of the contract by the Principal Investigator, that is, the leader of the research project.

Contributions.

All contributors to scholarly works should receive appropriate recognition for their contributions. Depending on the nature of a contribution, appropriate recognition can take, but is not limited to, one or more of the following forms: · recognition as a creator · recognition through an acknowledgement or citation. The University, because of its capacity as nurturer, facilitator and/or supporter of scholarly works, should be recognized for its contributions to teaching and research activities.

Sharing of Proceeds.

In the event of commercial exploitation of a scholarly work, all intellectual contributors to that work should be 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 in the proceeds could also be granted to other parties such as the University or financial sponsors, at the discretion of the intellectual contributors. Disclosure. Members of the University who have developed IP and intend to pursue commercialization or other opportunities, must inform the Vice Provost Research and Graduate Programs or delegate, in advance and in writing, of the nature of the IP, and the intentions of the researcher(s) for it, so that he/she is aware of the activity and can respond to inquiries from external sources.

Obligations to Others

Members of the University are required to respect third-party IP rights; this precludes using pirated software, photocopied textbooks, and the like.

Collaborative Relationships

Collaborators should specify, in advance and in writing, how the process by which the rights to IP arising out of the collaboration will be determined. The determination of rights should be based on the extent and nature of the contribution, and not on differences in power. Any waiver or modification of rights requires informed written consent.

Contributors

Consistent with the Statement of Principles, all contributors to scholarly works should be recognized, regardless of their status at the University. **Ownership of Works Created by Others:** It is not possible for an individual to have exclusive ownership of a complete work created, in whole or in part, by others, unless IP rights have been willingly waived or assigned under informed consent by the creator(s). It is possible for the University to own exclusively, the work created by individuals.

Recognizing Contributions by the University: In meeting its role as a research and teaching institution, the University strives to provide an environment in which scholars are able to pursue their teaching and research activities. In reporting their work, members of the University should acknowledge the University as the location at which the work was done. In the spirit of collegiality, developers of IP are encouraged to recognize the University's indirect support (such as library resources, computing infrastructure), through a financial contribution.

Use of Scholarly Works on Campus: When the ownership and right to exploit a work resulting from teaching and research activities at the University rests with the creator(s), the University has an irrevocable right to copy and/or use the work for academic purposes royalty free (note: this implies that the material(s) should be sold at reasonable and justifiable costs). This has a number of consequences, including:

- It allows members of the University to make royalty-free, non-commercial use of developments, creations and data that other University members have created, for teaching and research activities. Use will be subject to the presence of appropriate safeguards for IP. It does not permit a member of the University to take a scholarly work and use it to perform consultative or contract work without the express written consent of the creator(s). It does mean that if a textbook, written in the course of teaching and research activities at the University, is specified by (one of) the author(s) as a required course text, the author(s) must declare the conflict of interest arising from the situation.

When a publication is not held by a publisher at arms' length, reasonable efforts should be made to give effect to the "royalty-free use" doctrine adopted in this policy. · It does not allow for a scholarly work to be made available outside the University community without the written consent of the creator(s).

2. Authorship

Application

One of the responsibilities of researchers is the obligation to ensure that their work is published or publicly disseminated in some manner; if this is not done, it is as if the research was never performed. At the University, this responsibility is shared by all material contributors to the work. In reporting scholarly research results, all authors of a publication must examine and accept responsibility for the contents of the publication, and all members of the research team must ensure that appropriate credit be given for work done by all contributors.

This authorship section applies principally to scholarly publications, and should be adhered to by all members of the University, except in situations where adherence would be in conflict with normal practice or policy established by a discipline or professional association. If such a conflict exists, the author(s) should refer the matter to the Vice Provost Research and Graduate Programs or delegate who will determine the policy to be followed in the particular case.

Theses: Theses are a special case of scholarly work. A thesis embodies the results of a student's research program, and, especially at the graduate level, is a substantial and original piece of work. Students are the sole authors of their theses, but the work is carried out under the supervision of a faculty member. Because practices vary between and within disciplines, the amount of involvement of the supervisor in the research may also vary, from the apprenticeship or collaborative team research model, to the virtual independence of the student. Publications coming from the thesis or commercial development of the thesis work must acknowledge appropriately all contributors to the work. IP rights associated with the content of a thesis belong to the student, unless modified or waived through informed consent.

Principles

Authors of a publication comprise all, and only those individuals who have made a significant intellectual or scholarly contribution to the work reported, and without whose contribution the work would not be complete. Authors are normally listed in the order of the significance of their contributions, or in a manner consistent with disciplinary expectations. The University recognizes that attribution of authorship

under these guidelines may differ significantly from attribution in accordance with the legal doctrines of patent or copyright. In exercising the rights conferred by law, authors should be aware that the determination of such rights is not affected by relative merit or the extent of respective contributions.

Interpretation

An interpretation of the principles above would normally mean that: Students are first authors of publications based on their thesis work. · An administrative relationship to the investigator(s) does not merit authorship credit. · Financial support is not sufficient on its own to merit authorship credit. · A contributor's status is not sufficient reason to award or deny authorship credit. · Although the relative significance of contributions is often recognized in academic circles, as it is in this policy, authors should be aware that no such distinction is recognized by legal doctrines of patent or copyright in society at large. The legal determination of IP rights such as patent and copyright is not based on relative merit or the extent of contributions.

3. Collaborative Research

The University encourages researchers to share information and to work in collaboration with others, where this is likely to advance the state of knowledge. However, where collaboration occurs between University researchers and researchers at outside institutions, agencies and companies, conflict may arise between this policy and the way that IP rights are treated elsewhere. Special situations of on-campus collaboration, such as long-term research with changing members of a research team also complicate the allocation of IP rights.

Principles

All collaborative research at the University will be undertaken in a climate of informed consent. Except in the case of an assigned task, the researcher's position at the University must not be contingent on the waiving of rights to IP. Where researchers at the University enter into an agreement which waives, limits or assigns IP rights, that agreement must be reviewed and approved by the Vice Provost Research and Graduate Programs or delegate. In cases where a collaborative research project is under way and an agreement(s) with respect to the sharing of IP rights has been established, no individual may modify the agreement without making a reasonable effort to obtain written informed consent of all other parties to the research. Where established agreements are modified which waive, limit or assign IP rights,

that modified agreement must be reviewed and approved by the Vice Provost Research and Graduate Programs or delegate and, if graduate students are parties to the research, the Associate Dean of Graduate Studies. IP rights should be attributed in accordance with written negotiated agreements among the parties concerned, with due consideration given to Canadian and international law.

Interpretation

Individuals from outside the University working at the University will adhere to policies of the University for work performed on campus. It is the responsibility of the senior University collaborator(s) to inform the individual(s) of this situation. Individuals from the University working at other institutions will adhere to the policies of those institutions for research undertaken there, unless other contractual arrangements are made with the appropriate institution. On-going collaborative research presents a special problem regarding IP rights. For example, a research product may arise from research undertaken by a team whose membership changes over time. The default option presented in this policy will be employed in these situations unless researchers have willingly, through informed consent, entered into an acceptable agreement with different provisions.

Acceptable Limitations under Sponsored Research

In principle, University researchers retain ownership of their work, but where sponsored or contract research is undertaken, it may not be possible to do so. Two firm principles are that University researchers retain initial publication rights to their work, and that they adhere to the academic standards of their discipline.

Guidelines on reasonable limitations/exceptions are: · Members of the University entering into a relationship which will limit their enjoyment of normal academic benefits of their research must enter into it with informed written consent.

In situations where companies or agencies that fund research retain ownership of IP generated by that research, some other academic benefit must be derived. That is, the research must support the generation and dissemination of knowledge in some other way (e.g., by funding labs that directly support other research). Whether any agreement for sponsored research will result in academic benefit to the researcher(s) and the University will be decided by the Vice Provost Research and Graduate Programs or delegate in consultation with the appropriate Dean and Chair.

For graduate students, the agreement must also be approved by the Associate Dean of Graduate Studies. In the special case where a graduate student is employed by a company in which their supervisor has any

direct or indirect involvement, care must be taken to avoid situations of coercion or perceived coercion. It is the responsibility of the Associate Dean of Graduate Studies to ensure that graduate students are made aware of this policy and the surrounding issues.

4. Copyright

Preamble

A substantial amount of material in the following is adapted from the Canadian Copyright Act, Revised 1998. Copyright is a statutory right conferred on citizens of Canada by the Canadian Copyright Act. By means of international treaties, the rights defined in the Canadian Copyright Act extend to nationals of many other countries, and protect works of Canadian nationals in those countries on a reciprocal basis. The kinds of works protected by copyright include architectural, artistic, literary (which include computer programs for purposes of copyright), choreographic, dramatic, engravings, and compilations. Copyright in material created at the University is a property right of the author(s) subject to any modification or limitation set out in this policy, or to any stipulation imposed by contractual obligations to parties external to the University.

Ownership of Copyright

The Canadian Copyright Act provides for the ownership of copyright to be vested in the employer when works are created in the course of employment except where agreement to the contrary exists. In order to give effect to this policy, and to clarify the intention of the University, the University hereby affirms that in such cases, the author is owner of copyright in works created through teaching and research activities except for the following:

- Works created or modified by members of the University as assigned tasks in the course of their normal employment, and which are intended to assist in the operation, administration and/or management of the University's affairs. This includes works created, modified, or adapted as assigned tasks by members of the University in the process of course planning and administration (for example, course outlines, and final examinations). Copyright of teaching materials created by the Member shall remain with the member.

Members of the University may from time to time form groups to carry out research or other projects, the results of which may include "works of joint authorship". In such cases the group members may devise a plan, to share copyright among members of the group, or to share in any proceeds resulting from sale or licensing of the works. The University recognizes the validity of any such plan, provided it is in writing, agreed to through informed consent by all members of the group, and has been deposited in the Vice

Provost Research and Graduate Programs. In the absence of such a plan, revenue flowing from such situations will be determined according to the default rules outlined above.

University License

Members of the University who own copyright in works created in the course of teaching and research activities and where the works have been printed and distributed or made publicly available through, for example, the Library (subject to stipulations in external contracts), grant the University a non-exclusive, royalty-free, irrevocable license to reproduce such works for the purposes of scholarly research, teaching (including distance and continuing education courses) and administration carried on at the University. In the case of computer software, this requirement would normally be met by providing linkable object code for use within the University. The license granted herein does not confer any commercial rights to copyrighted works.

Moral Rights

In the course of using some copyright works, particularly computer programs or certain types of technical treatises, it may be desirable to modify, translate, adapt or otherwise change the works for scholarly objectives. Members of the University who use the copyrighted works of others are cautioned that the grant of license to use such works does not include a waiver of “moral rights” of the original author(s). In the Canadian Copyright Act, moral rights are infringed if a work is, to the prejudice of the honour or reputation of the author, (a) distorted, mutilated or otherwise modified; or (b) used in association with a product, service, cause or institution.

Works in Which the University Owns Copyright

In general, members of the University may make copies of works, or parts thereof, in which the University owns copyright, or has a license to make copies by virtue of the preceding section, for use in teaching and research activities. This permission does not extend to works marked confidential, or to other works which may be designated as exempt from this provision. In all cases where permission to copy University-owned works is not clear, clarification should be obtained from the Secretary of the University. When copies of University-owned material will be accessible to external parties, for example, on the Internet, such copies shall include an appropriate copyright notice, as approved by the Secretary of the University.

Copyright Materials, Including Computer Software

It often becomes desirable to license copyright material, particularly computer software, to external parties. Under this policy, a copyright owner has the following options: Option 1: undertake her or his own licensing and distribution activity in accordance with the ownership and proceed sharing policies of the University; Option 2: engage the services of an external agency to manage licensing and distribution activity in accordance with the ownership and proceed sharing policies of the University; Option 3: request the assistance of the University in the management of licensing and distribution activity. Owners of copyright who select Option 1 or 2 must inform the Vice Provost Research and Graduate Programs or delegate of the licensing and distribution activity, so that he/she is aware of the activity and can respond to inquiries from external sources. Option 3 is administered through the Vice Provost Research and Graduate Programs. In all cases, it is the responsibility of the members of the University initiating licensing and distribution activities to ensure that they have the right to enter into such activities, and that there are no competing claims of authorship or copyright ownership.

5. Patents

Preamble

A substantial amount of material in the following is reproduced from A Guide to Patents by Industry Canada Patent. A patent is a document protecting the rights of the inventor(s) and a repository of useful technical information for the public. Through a patent, the government gives the inventor the right to exclude others from making, using or selling the invention from the day the patent is granted to a maximum of 20 years after the day on which the patent application is filed. The inventor(s) may use the patent to make a profit by selling it, licensing it or using it as an asset to negotiate funding. In exchange, the inventor(s) is (are) expected to provide a full description of the invention so that anyone can benefit from this advance in technology and knowledge. The Canadian Patent Office will publish the application 18 months from the earlier of: a) the filing date in Canada, or; b) the filing date abroad under an international treaty; this date is known as the “convention priority date”. People may then read about, though not make, use, or sell the invention without the permission of the inventor(s). (Note: In Canada, a person may make or use the invention so long as that making or using is for experimental purposes.) Only after the patent has expired may anyone freely make, use or sell the invention.

The rights conferred by a Canadian patent extend throughout Canada, but not to foreign countries. Inventors may apply for patent rights in other countries separately. Conversely, foreign patents do not protect an invention in Canada.

Ownership of Patents Rights to a Patent

The University acknowledges that it has no direct equity in the ownership of any patent developed by a member of the University (notwithstanding that such patent might be intellectually conceived in the course of teaching and research activity), except for: any requirements imposed by contractual obligations arising from any agreement to which the inventor(s) is (are) a party or participant, or, in the case of assigned tasks, where ownership rests with the University (see 39.2). Disclosure: The inventor(s) shall at all times keep the University, through the Vice Provost Research and Graduate Programs or delegate, fully and promptly informed, in advance and in writing, of all publication, issuance, rejection or abandonment of patent applications in Canada or elsewhere. University License: Any invention developed as a result of activity involving University support and/or facilities and/or equipment, shall be subject to a non-exclusive, royalty-free, irrevocable license to the University under all patents arising from the invention, but without the automatic right to exploit commercially, sub-license or sell any product or process which is patented or arises from such patented invention.

Prosecution of a Patent Individually

Preparing and prosecuting a patent application is a complex task. Inventors who choose to prosecute a patent at their own expense should seriously consider hiring a registered patent agent. Through the University: Members of the University may, at their option, submit their proposed invention to the Office of Research for consideration regarding possible financial and developmental assistance. The University retains an absolute right to determine if it wishes to offer any such assistance. If the inventor(s) choose(s) to use the assistance offered by the University, then all patent rights shall be assigned to the University, which shall thereafter deal with such rights, including any further assignment to some specialized external agency, as it deems most expedient for the obtaining of a patent(s) and possible further promotion and/or other development.

From the date of such assignment to the University by the inventor(s), the University and the inventor(s) would thereafter be responsible for the legal and other expenses and costs involved based upon a sharing agreement to be negotiated between the University and the inventor(s). Such agreement would include the understanding that the University and the inventor(s) would subsequently be entitled to recover such expenses and costs, by way of deduction from any proceeds (whether capital or income) which might

thereafter be received with respect to the assigned invention. The net remainder of any such proceeds would then be divided as indicated in the sharing agreement.

Contractual Agreement

Where proposed patents are governed by requirements imposed by contractual obligations from an agreement approved by the Vice Provost Research and Graduate Programs or delegate to which the inventor(s) is (are) a party or participant, any prosecution must follow the requirements as stated in the agreement.

Determination of Inventor

All contributors to inventions should receive appropriate recognition for their contributions. Correctly naming inventors is critical, as a patent may be invalidated if naming is done incorrectly. In relation to the academic setting, patents are not the same as publications, and it is improper simply to name persons who have had some contribution.

Administration

The University and inventor, prior to the transfer of any ownership, shall agree in writing on the general nature and type of patent protection that will be sought by the University. The inventor is entitled to representation from their bargaining unit, legal advisor or others, in these discussions where they are employees of the University. Where this agreement is with a member of the Faculty Association, the Association will be notified which member such negotiations are being entered into.

General authority for the administration of patent procedures is vested in the Vice Provost Research and Graduate Programs or delegate who will be responsible for establishing and implementing such guidelines and procedures as are necessary from time to time.

6. Teaching Materials

Preamble

In the context of this policy, IP generated in the course of teaching activities is generally treated in the same manner as that created through research activities. However, given the inherent nature of an academic community this section of the policy details the principles unique to teaching activities.

Principles

The creation of materials required for course management and administration, such as course outlines, and final exams is considered an assigned task, and copyright for such material is vested in the University. This does not apply to more detailed teaching materials, such as course notes, laboratory manuals, and web-based courses for which the copyright belongs to the creator. However, any of the latter material which has been printed and distributed or made publicly available should also be available for royalty-free use for teaching and research by other members of the University.

Third-Party Copyright

Some materials traditionally used in the classroom may contain copyright material from other sources. It is necessary to obtain clearance from the copyright holder before these materials may be copied.

Conflict of Interest

Conflict of interest exists when students are required to purchase teaching materials in which the instructor has a commercial interest. If the copyright is held by a publisher at arm's length, the instructor(s) must declare a conflict of interest to the appropriate department Chair(s) in accordance with Article 5 of the Faculty Association Agreement. If the copyright is not held at arm's length, the material should be sold at cost.

Distance and Continuing Education

Materials for use in distance and continuing education courses shall be made available to the University under contract(s) with the author(s). The terms of a typical contract will include an exclusive license for use of the materials by the University for distance and continuing education for a specified length of time, and restrictions, if any, on other uses of the materials on campus. Normally, these materials would be subject to the principle described in B. above for detailed teaching materials which have been printed and distributed or made publicly available.

7. Data Management

Preamble

This section of the policy is concerned with the ownership of, and right to use, original data collected or measured in the course of teaching and research activities involving one or more members of the University. It is not concerned with data from external sources used in research at the University, other than to observe the obligation that publications or theses using such data should recognize and fully document their source(s).

Application

In the context of this policy, the meaning of the word data is assumed to include data bases, the results of scientific measurements, the results of surveys, and the results of computational or experimental simulations, together with a documented description of the format or structure of the data set(s) which would allow a non-originator to use them. Where appropriate (e.g., in scientific experimental measurements), such documentation should also include estimates of experimental uncertainties. Note that data bases may be subject to copyright and, as such, the principles raised in this policy may also apply.

Principles

Members of the University have the obligation to protect and preserve, for a reasonable period of time (defined by the norms of the discipline), and to make available to other scholars and noncommercial users, the data on which their work is based. All collaborators in a research project which involves the collection or measurement of data should have equal access to such data for the purpose of scholarship and teaching, and a shared right of ownership of the resulting data set(s). After completion of a thesis, data on which the thesis work was based will normally be made available to other members of the University for royalty-free non-commercial use in teaching and research activities. Notwithstanding the above, members of the University have the collegial obligation to allow the owners(s) of such data a first opportunity to exploit those data for published work. After its publication in the open literature, data on which a work is based should be made available for royalty-free non-commercial use by anyone who requests it. Exceptions to these rules are allowed only when the research is subject to confidentiality requirements due to contractual arrangements with a sponsoring agency, to delays associated with patent applications, or to University policy constraints on research involving human subjects or animals. In the case of contractual limitations, all collaborators must be made aware of, and agree in advance to, such constraints.

8. Other Types of Intellectual Property

Several other kinds of IP are recognized in Canada and other jurisdictions. Among these are trademarks, integrated circuit topographies, industrial designs and plant breeders' rights. Each of these IP classes has different rules and requirements concerning appropriate protection. However, IP of these forms shall be in keeping with the philosophy of this policy. Anyone who has IP that may fit within these classes should contact the Office of Research for advice.

9. Default Arrangements for Revenue Sharing

Preamble

Generally, it is preferable for parties involved in collaborative activities to agree upon the division of any financial or other reward, generated from commercialization, prior to engaging in the research. Recognizing that it is not always possible to reach agreement prior to the commencement of a project, this policy outlines a default mechanism which shall normally prevail if no previous written agreement has been established. This default option is in no way intended to prevent or dissuade parties from forming an agreement at any time. Such agreements should be filed with the Office of Research, and, if graduate students are involved, must be approved by the Associate Dean of Graduate Studies.

Principles

The division of revenue should be in proportion to the intellectual contribution of the researchers, irrespective of their status within the University. In the case where collaborative research has been undertaken without the prior establishment of a written agreement between all parties involved, the division of any financial or other reward generated from commercialization shall be shared equally among those who have made an intellectual contribution to the work. Except when contractual arrangements have been made through informed consent or the University has provided direct support for the development of IP (such as funding, material supplies and equipment, dedicated space, teaching relief time, or staff support), the University assumes no a priori share of revenue, ownership, copyright or other obligations for the rights to IP developed by members of the University. Reimbursement for direct support costs shall be negotiated between the University and the developers of the IP in accordance with University policy and procedures and Faculty Agreement language.

Long-Term Research

Research can often span many years and involve many researchers. The contributors to such long-term research shall share equally the proceeds from the commercialization of the IP involved where no previous written agreement exists. However, where a researcher's involvement with a project has ceased

five years prior to any formal commercialization process, that researcher shall normally have no claim to any revenue from that commercialization process, unless a previous written agreement exists.

10. Changes to Policy

The parties recognize that changes in law or granting agency policy may require changes in this policy from time to time. Any changes to this policy must be negotiated and ratified in accordance with applicable provisions of collective agreements held by individual bargaining units at UNBC and/or applicable Memorandum of Understanding.

11. Dispute Resolution

Unresolved disputes under this policy are subject to review by a three-person panel, composed of one member to be appointed by the appellant(s), one member to be appointed by the Vice Provost Research and Graduate Programs, and a third member (who shall be chair) to be selected from a roster of named adjudicators previously agreed upon by the Faculty Association and University. The panel shall follow procedures consonant with natural justice and administrative fairness. Due to the technical nature of IP, the panel may seek expert opinion as required. It shall conduct a hearing and may require oral and/or written submissions. An advisor may accompany any party to the appeal. The jurisdiction of the panel will include the interpretation, application, or alleged violation of the IP policy, including whether or not the matter falls within the jurisdiction of the panel. The panel may substitute its own decision, may reverse the original decision, or may refer the matter back to the appropriate body for further consideration. The term “appellant(s)” shall be defined to include any member of the University community covered by the IP policy, and/or the parties to this agreement (including the University and Faculty Association). The decision of the panel with respect to application of this policy is binding upon appellants, though further recourse through other mechanisms, including, but not limited to judicial review, is available.

12. Glossary of Terms

The meanings of the terms defined below pertain specifically to this policy and may not, necessarily, reflect the legal definition. Readers should refer to the relevant legal source for complete information.

Assigned Tasks. For the purposes of determining ownership of IP rights, “assigned tasks” are understood to mean job-related duties such as the preparation of memoranda, letters, administrative reports, minutes of meetings, mid-term and final examinations, assignments, and administrative computer programs written to support the University’s on-going operations. Assigned tasks would not normally include scholarly works as defined below.

Author. 1) Legal Concept: “A person who generates the actual form (words, pictures, etc.) of a work eligible for copyright”; 2) Academic Concept: The authors of a scholarly work, for example, a paper to be submitted for publication in a scholarly journal, comprise all those individuals who have made a significant scholarly contribution to the work. [Source: Legal Definition – Oxford English Dictionary, WWW Version 1.1] Collaborative research. Research undertaken by any member of the University in cooperation with another researcher from inside or outside the University.

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, Revised 1988]

Contributor. A person or agency who contributes to a scholarly work. Possible contributions include, but are not limited to: ideas, expression, form, design, computer code, criticism, financial support.

Copyright. “The exclusive right given by law for a certain term of years to an author, creator, composer, designer, etc. (or assignee), to print, publish, and sell [etc.] copies of her or his original work” [Source: Oxford English Dictionary, WWW Version 1.1; for the legal definition see the Canadian Copyright Act]

Create. “To make, form, constitute, or bring into legal existence (an institution, condition, action, mental produce, or form, not existing before)” [Source: Oxford English Dictionary, WWW Version 1.1].

Creators. Persons who bring into being works which are eligible for intellectual property protection (copyright, patent, industrial design, trade marks, etc.) under Canadian and/or international law. By way of illustration, creators would include authors, inventors, breeders, designers, composers, artists, architects, and the like.

Data. In the context of this policy, the meaning of the word data is assumed to include data bases, the results of scientific measurements, the results of surveys, and the results of computational or experimental simulations, together with a documented description of the format or structure of the data set(s) which would allow a non-originator to use them.

Idea “General or ideal form as distinguished from its realization in individuals ... Figure, form, image ... Mental image, conception, notion ... A conception or notion of something to be done or carried out; an intention, plan of action ... Any product of mental apprehension or activity, existing in the mind as an object of knowledge or thought ...” [Source: Oxford English Dictionary, WWW Version 1.1].

Industrial design. Legal protection against imitation of the shape, pattern or ornamentation of an industrially produced object. [Source: A Guide to Patents, Industry Canada ISBN 0-662-20909-5, DSS Cat. No. RG 43-23/1993E]

Informed consent. Consent given by an individual who has received the information necessary to allow a considered judgment, 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. [Adapted from: the Council for International Organizations of Medical Sciences (CIOMS) guidelines]

Integrated circuit topography. The three-dimensional configuration of the electronic circuits embodied in integrated circuit products or layout designs. [Source: A Guide to Patents, Industry Canada]

Intellectual Property (IP) and Associated Rights. IP is a type of personal property which, by virtue of statute (an Act of Parliament) or common law (based on precedence established in court cases), has certain rights associated with it. These rights are personal rights which enables the person who holds them to do something, for example, to exclude others from practicing or doing something with the IP. Notice that the rights themselves are distinct from the IP which gives rise to them. 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. [Source: John R. Rudolph, Gowling, Strathy & Henderson, private letter, June 7, 1996]

Licensing an invention. Allowing a business or individual to manufacture and sell an invention, usually in exchange for royalties. [Source: A Guide to Patents, Industry Canada] Members of the University. Refers to faculty members), staff members, registered students and post-doctoral fellows at the University of Northern British Columbia.

Patent: A government grant giving the right to exclude others from making, using or selling an invention. A Canadian patent applies within Canada for 20 years from the date of filing of a patent application. The patent application is available to the public 18 months after [the first] filing. A patent is granted only for the physical embodiment of an idea or for a process that produces something saleable or tangible. A scientific principle, an abstract theorem, an idea, a method of doing business, or a medical treatment may

not be patented, although reference should be made to a skilled practitioner to verify what is patentable. A patent may be obtained for an improvement to an existing patented invention. However, the original patent may still be in force, and an agreement with the original inventor(s) may be needed before an improved patent can be used. There are four basic criteria for patentability: it must be new; it must be useful; it must show inventive ingenuity, and not be obvious to someone skilled in that area; and be of proper subject matter. [Source: A Guide to Patents, Industry Canada] Prosecution of a patent. All the steps involved in following through on a patent application. [Source: A Guide to Patents, Industry Canada] Registered patent agent. A specialist entitled to prepare and prosecute patent applications. [Source: A Guide to Patents, Industry Canada]

Royalty. “A payment made to an author, editor, or composer for each copy of a book, piece of music, etc., sold by the publisher, or for the representation of a play.” [Source: Oxford English Dictionary, WWW Version 1.1] Royalty-free use doctrine. Implies that the material(s) should be sold at reasonable and justifiable costs. Scholarly Work: A work eligible for intellectual property protection under Canadian and/or international law which is created in the course of teaching, learning or research at the University. A list of scholarly works would include, but not necessarily be limited to: student works submitted for academic evaluation, research reports, papers prepared for publication, books, computer programs, detailed assignments, works of art, experimental data, and other academic data bases.

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] Work of joint authorship. A work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors. [Source: Canadian Copyright Act, Revised 1988]

13. Authority

This policy is issued under the authority of the UNBC Board of Governors.

14. Responsibility

This policy shall become a term and condition of the Faculty Agreement between the Board of Governors, University of Northern British Columbia and the Association.