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Intellectual Property

1. Introduction and Purpose

Loyalist College's vision is to be Ontario's premier community college for applied learning, innovation, and entrepreneurship, demonstrating excellence, sustainability and responsiveness. In order to support this vision, Loyalist personnel, students, and community partners engage in innovative and creative activities that produce intellectual property. A statement clarifying the College's outlook and perspective towards intellectual property rights serves to inform and guide College personnel, students and community partners about these issues.

The purpose of this policy is to outline the College's position on the creation and development of works within the College, and the ownership of the intellectual property rights in those works.

2. Application

This policy serves to define elements of intellectual property and inform College personnel, students and community partners of Loyalist College's perspective on policy, procedures and ownership rights related to intellectual property rights in a work that is worthy of commercialization, the College will engage in a revenue sharing relationship with the creator or creators of that work. In addressing intellectual property, the College is guided by those definitions and practices maintained by Industry Canada's Canadian Intellectual Property Office or its equivalent noted at: http://strategis.ic.gc.ca/se_mrksv/cipo/welcome/welcom-e.html.

3. Definitions

Intellectual Property: Intellectual property, simply defined, is any form of knowledge or expression created with one's intellect and can include: ideas, designs, and creative works and represents the legal rights of their rightful owner. Proof of ownership can be supported in courts with official registration as patents, industrial designs, copyright and trademarks. For the purposes of this policy, intellectual

property includes all the interests and rights to all Canadian and foreign issued patents and pending therefore, all Canadian and foreign copyrights, whether or not registered, rights of publicity, franchises and all technology rights and licenses, including computer software and all proprietary know-how, trade secrets, inventions, discoveries, developments, industrial designs, creative works, research and formulae, whether or not patentable, and all other proprietary information or property relating to works created at or in conjunction or in partnership with the College, and any improvements, updates, enhancements or modifications related to any of the foregoing.

Copyright: Copyright means the right to copy. In Canada, all original creative works are protected by copyright. In general, a copyright is the sole right to produce or reproduce a work or a substantial part of it in any form. It includes the right to perform the work or any substantial part of it or, in the case of a lecture, to deliver it. If the work is unpublished, copyright includes the right to publish the work or any substantial part of it. Copyright provides protection for literary, artistic, dramatic or musical works (including computer programs) and other submit matter known as performer's performances, sound recordings and communication signals.

Industrial Design: An industrial design is the visual features of shape, configuration, pattern or ornament, or any combination of these features, applied to a finished article made by hand, tool or machine. Registration provides protection against imitation and unauthorized use of the design.

Patents: A patent is a right, granted by government, to exclude others from making, using, or selling your invention. The patent is granted to a maximum of 20 years after the day on which it was filed for patent application. The patent also enables the public to view the patented information, but not to use it without permissions.

Trademark: A trademark is a word (or words), a symbol, a design, or a combination of these, used to distinguish goods or services of one person or organization from those of others in the marketplace.

Licensing Agreements: Licensing agreements relate to written agreements between the College and third parties, in which the College grants the third parties the right to use materials proprietary to the College (or proprietary to others, and in which the College has licensing rights) upon terms and conditions set out in the written agreements.

Product Licenses: Product licenses relate to licensing agreements between suppliers of proprietary products and materials, and the College, in which the College is granted the right to use those proprietary products and materials upon the terms and conditions set out in the product licenses.

Moral Rights: Moral rights pertains to an author or creator who has the right to request, where reasonable in the circumstances, to be given recognition of the work by name or by pseudonym, to remain anonymous, or to choose not to be associated with any modification of the work that is perceived to be prejudicial to their honour or reputation.

The author or creator's moral right to the integrity of the work is infringed only if the work is distorted, modified or mutilated, or used in association with a product, service, cause or institution, to the prejudice of the author or creator's honour or reputation.

Moral rights may be waived in whole or in part, but they cannot be transferred to others.

4. Employee Work

Employees shall be the owners of the intellectual property rights in works they create, except where the work is created by the employee in the course of employment with the College.

4.1 In determining whether a work has been created by an employee in the course of employment, the College may have regard to the following factors (which are not exhaustive):

4.1.1 Whether the employee created the work during prescribed working hours at the College.

4.1.2 Whether the employee created the work on College premises, or using College resources and property to do so.

4.1.3 Whether the College has remunerated or compensated the employee for the work.

4.1.4 Whether there is a written agreement giving further clarification.

4.2 Where the College owns the intellectual property rights in a work, the creator or author, as the case may be, shall have a non-exclusive right to use the work, provided the creator or author is an employee, and only in the course of contractual relationship with the College. The creator or author of such a work, but who is an associate of the College and not an employee, may request from the College a non-exclusive right to use the work.

4.3 Where an employee creates a work during the leave year of a prepaid leave program, without using the College's resources in doing so, the work shall belong to the employee unless otherwise agreed by the parties.

4.4 Where an employee wishes to use College resources to create a work outside the course of employment, the employee shall first be required to inform the College of the creation of the work, so that a mutually satisfactory written agreement covering, among other things, ownership, use and revenue sharing, can be negotiated before the work is developed. In the absence of such a written agreement, when College resources are used the College shall own the intellectual property rights in the work created.

4.5 Every application for Academic Professional Development Leave related to IP shall contain a full description of the proposed professional development activity. It is the College's intention to encourage employees to create works of innovation and discovery. Accordingly, the application for Academic Professional Development Leave shall also contain a statement, signed by the employee and their supervisor, which sets out how any net profit from revenue generated by the commercial exploitation of such professional development activity, shall be shared between the College and the employee.

Where an Academic Professional Development Leave related to IP is approved, the College shall own the intellectual property rights in any work created and for which work the leave was granted.

4.6 Nothing in this document on the matter of patents and copyrights supersedes the terms and conditions of Article 13 of the Faculty Collective Agreement.

IP created by the College employees in any of the following circumstances: (i) while on professional development leave, (ii) resulting from a Professional Development Grant unless a written agreement has been made in advance with the creator(s) giving the College the ownership rights to such works.

5. Non-Employee Work

Any agreement between the College and a person who is not an employee of the College, to develop or create a work, shall be in writing and be executed by the parties. The agreement shall provide that the College shall be the owner of the intellectual property in any work developed or created by the person. This policy may be adapted by written contract between the parties.

6. Student Work

Students shall be the owners of intellectual property rights in works they create, except in the following situations:

- › Where the College pays the students for the works they create, in which case the College shall own the IP rights therein.
- › Where the students use the College resources and facilities to create the works, outside of their course requirements, in which case the students shall be required to obtain the College's consent to the use of its resources and facilities. It shall be a condition to the giving of such consent, that the College and the students enter into an agreement for the creation of the works, which agreement shall provide for, among other things, the ownership of any intellectual property rights in the works to be created, the exploitation of the works by the students and the College, and the sharing of any revenue by the students and the College from such exploitation.

7. Joint Initiatives with Outside Parties

Where the College enters into an agreement with a person or persons that provides for, or contemplates the development of a work in which intellectual property subsists, the parties will ensure that a written agreement sets out their respective rights in the intellectual property in the work, and any terms relating to the sharing of risk and revenue from the exploitation of the work.

8. Licensing Arrangements

8.1 Product Licenses

Where the College acquires a license to use a supplier's product, ownership of the intellectual property in the product being licensed shall be determined according to the provisions of the license. Where the license does not contain any provisions relating to intellectual property ownership, it shall be presumed that the supplier is the owner thereof. Any variations to the license shall be made in writing.

8.2 Licensing Agreements

Where the College enters into a license agreement with a third party to permit that third party to use materials or property developed or acquired by the College, the license agreement shall be in a form approved by the Vice-President, Academic, and a copy shall be deposited with the Research Services Office. In the event the College enters into a license agreement with an entrepreneurial unit, the license agreement shall be in a form approved by the Vice-President, Corporate Services.

9. Classroom Recordings

Permission to make audio or video recordings of academic related activities for educational purposes should be sought from the appropriate instructional employee and students as a matter of courtesy before making such recordings, and permission shall not be unreasonably withheld. Such recordings shall only be used for defined educational purpose(s) pursuant to the *Freedom of Information and the Protection of Privacy Act*, or where required to accommodate persons pursuant to the *Ontario Human Rights Code*. If the College wishes to use such recordings for any other purpose, it will obtain written consent from all persons who are seen or heard in the recording.

The College shall own the content of the intellectual property recorded on audio or video tapes/discs developed or created in classroom activities by College employees, except material obtained for approved research projects that are part of a program of academic studies.

The College acknowledges and respects the performing rights of all performers and participants in classroom activities, and agrees to obtain their consent to the recording of their performances and activities. The College will use such audio and video recordings solely for educational purposes.

10. Employee-Owned Work

The adoption and inclusion of employee-owned works in College course materials will be made only with the prior approval of the appropriate College administrator in accordance with College policy on conflict of interest.

11. Commercialization of Intellectual Property

Where the College owns intellectual property rights in a work which it wishes to commercialize, it may consult with the creator(s) on the best means for commercialization. In pursuing successful commercialization, the College shall negotiate the sharing of net revenues with the creator(s) on a case by case basis with the minimum share to creators being 40% of net revenue.

The author or creator(s) of a work in which the College owns the intellectual property rights may, with the College's prior approval, pursue opportunities to exploit the work, and negotiate with third parties on behalf of the College. The College shall always be a party to any agreement resulting there from. The agreement may provide that the author or creator(s) of the exploited work is entitled to share in the revenues contemplated under the agreement, upon the terms set out therein.

12. Disclosure of Inventions

Except for course materials created by employees, all other potentially valuable intellectual property conceived or first reduced to practice by the College employees in the course of their duties, whether or not the intellectual property in question is creator(s)-owned or College-owned, shall be disclosed to the College. Initial disclosure may be done informally. At a later time, if the intellectual property is College-owned, and the College expresses its interest in commercializing, a formal written disclosure will be required.

Disclosure of intellectual property information shall be submitted to the Research Services Office. The Director of Research Services will meet with the creator(s) to examine the disclosure regarding its readiness for commercialization.

Information about intellectual property disclosures shall be kept confidential (i.e. the creator(s) and others having knowledge, shall not make known information about the disclosure to parties that are not bound by appropriate confidentiality agreements with the College until the College advises that such information can be released.

If, after evaluation, the College decides not to commercialize the disclosed intellectual property, it shall offer to assign its ownership interest to the creator(s), thereby enabling the creator(s) to release the information into the public domain or pursue commercialization on their own.

13. Research Services Office

Research Services Office will assist staff to deal effectively and efficiently with intellectual property issues and to ensure that there is consistency in the manner in which such issues are approached, and decisions resulting therefrom are made.

14. Use of the College Name, Mark or Insignia

Use of the College name, seal or logo on letterhead and business cards is standardized and regulated by the College Advancement and External Relations. Any questions regarding the use of the College name, seal, or logo in circumstances other than the ones listed above should be referred to the College Advancement and External Relations.

15. References

Note: Loyalist College's policy on Intellectual Property (IP) was adapted from the intellectual property policy at St. Lawrence College.