

# SENECA COLLEGE OF APPLIED ARTS & TECHNOLOGY

## POLICY AND PROCEDURES

**Policy Title:** INTELLECTUAL PROPERTY POLICY

**Approved by:** Academic Council April 7 2003  
College Executive Committee April 18, 2003  
Board of Governors November 26, 2003

**Effective Date:** December 1, 2003

**Originator:** Associate Vice President Research & Innovation

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### 1. Purpose

The purpose of this Intellectual Property Policy is to outline the College's position on the creation and development of works within the College system, and the ownership of intellectual property rights in those works. Specific relationships will be clearly identified in any detailed agreements and supplementary documents that are developed within this policy framework.

### 2. Commitment

One of the primary goals of the College is to encourage, promote and foster innovation and discovery, in all fields of endeavour in which the College is engaged, by its employees, associates and students. In situations where it is the College's position that it is the owner of the intellectual property rights in a work that is worthy of commercial exploitation, the College will promote a revenue sharing relationship with the creator or creators of that work.

### 3. Definitions

#### (i) Copyright

Copyright means the right to copy. In Canada, all original creative works are protected by copyright. Only the copyright owner has the right to decide when and how the work is copied. Under Canada's Copyright Act, the person who owns the copyright is most often the creator of the work. If the work is created in the course of employment, the employer holds the copyright. Copyright protection is automatic upon the creation of a work, and applies whether or not a copyright statement appears on the material. In general copyright expires 50 years after the death of the author.

For the purposes of this policy, copyright means, in relation to a work, the sole right to produce or reproduce the work or any substantial part of the work in any material form, including without limitation, in electronic form and to communicate electronic copies of the work.

#### (ii) Intellectual Property

For the purposes of this policy, intellectual property includes all of the interests and rights to all Canadian and foreign registered, pending and common law, trade names and trade marks; all Canadian and foreign issued patents and pending applications therefore; all Canadian and foreign copyrights, whether or not registered; rights of publicity; franchises and all technology rights and licences, including computer software and all proprietary know-how, trade secrets, inventions, discoveries, developments, 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.

### **(iii) 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.

### **(iv) Moral Rights**

Whether or not the College owns the intellectual property rights of a work, and in particular the copyright therein (pursuant to the Copyright Act, 1985), it will take steps to respect the moral rights of the authors or creators of the work. Specifically, it is understood that the author or creator 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 his/her 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.

### **(v) Product Licences**

Product licences 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 licences.

## **4. Employee Work**

- (a) In the absence of any written agreement to the contrary between the College and an employee, the College shall be the owner of all intellectual property rights in a work created by the employee in the course of employment with the College.

- (b) 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):
- (i) whether the employee created the work during prescribed working hours at the College;
  - (ii) whether the employee created the work on College premises, or using College resources and property to do so;
  - (iii) whether the College has remunerated or compensated the employee for the work
- (c) Where the College owns the intellectual property rights in a work, either by agreement with its author or creator, or pursuant to paragraphs 3(a) and 3(b), the creator or author, as the case may be, shall have a non-exclusive right to use the work, provided the creator or author exploits the work only in the course of employment with the College, where the creator or author is an employee, and only in the course of contractual relationship with the College, where the creator or author is an associate of the College and not an employee.
- (d) Where an employee creates a work outside the course of employment with the College, without using the College's resources in doing so, the employee shall be the owner of the intellectual property rights in the work.
- (e) 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.
- (f) 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, the College shall own the intellectual property rights in the work created.
- (g) Every application by an employee for a professional development leave 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 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 a professional development leave is approved, the College shall own the intellectual property rights in any work created and for which work the leave was granted.

Any application or request for a professional development leave shall be

accompanied with, or contain, a statement in the following form:

*"In compliance with the College Intellectual Property policy, the College shall be the sole owner of the intellectual property in any work described in this document and created by the applicant. If the work is exploited and generates revenue, the applicant and the College shall share the net profit on revenue generated as follows: (insert agreed-upon formula)"*

## **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. 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.

## **7. Licensing Arrangements**

### **(a) Product Licences**

Where the College acquires a licence 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 licence. Where the licence 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 licence shall be made in writing.

### **(b) Licensing Agreements**

Where the College enters into a licence agreement with a third party to permit that third party to use materials or property developed or acquired by the College, the licence agreement shall be in a form approved by the Associate Vice President Research & Innovation and a copy shall be deposited with the Office of Research & Innovation.

## **8. Student Work**

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

- (a) where the College pays the students for the works they create, in which case the College shall own the intellectual property rights therein;
- (b) where the students use 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.

**9. Classroom Recordings**

Permission to make audio or video recordings of academic related activities for educational purposes should be sought from the appropriate professor(s) 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. Research Materials**

A person wishing to gather research materials other than those specified in section 9, must first obtain the prior approval of the College. Where the person has obtained the College's approval, that person shall be the owner of any intellectual property rights in the research materials. Otherwise, the College shall be the owner of the intellectual property rights.

**11. Copyright Notice**

Where the College is the owner of copyright in any works created pursuant to this policy, or otherwise, it shall place the following copyright notice in a conspicuous place in the works:

© [year of publication] Seneca College of Applied Arts and Technology

Notwithstanding the above, consistent with the provisions of the *Copyright Act (1985)*, the College shall remain the owner of the copyright in all works created in the course of employment with the College pursuant to this policy, or otherwise, whether or not the work is marked with the copyright notice as described above.

## **12. 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 the College Conflict of Interest Policy.

## **13. 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.

The author or creator 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 of the exploited work is entitled to share in the revenues contemplated under the agreement, upon the terms set out therein.

## **14. The Office of Research & Innovation**

The Office of Research & Innovation is established to 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 there from are made. To maximize the benefits to the College from the creation of works in which intellectual property rights may subsist, the Office of Research & Innovation will also serve as a resource centre for intellectual property precedents, including license agreements, technology development agreements, and revenue sharing agreements. The College shall ensure that a copy of any agreements to which it is a party shall be deposited with the Office of Research & Innovation.

## **15. Use of Seneca name on Created Works**

The College has the right to be recognized or acknowledged in, or in association with, any work created in the course of employment/studies, by a Seneca employee, student, or person with whom the College is otherwise dealing, or to be disassociated from the work, and for work not created in the course of employment/studies as mutually agreed upon.