

RYERSON UNIVERSITY
ACADEMIC POLICIES AND PROCEDURES

Policy Name: Policy on Ownership of Student Work in Research
Ref. No.: 63
Academic Council
Approval Date: March 7, 1989 (Research Committee Report #6 Revised)
Status: CURRENT

A copy of the approved document follows.

Note: A general policy, Ref. No. 24 "Copyright and Ownership of Student Works", was approved by Academic Council on May 1, 1979. Ref. No. 63 is an amended version of the relevant aspects of that policy. See other research policies including Ref. No. 28 "Applied Research and Technical/Creative Services", Ref. No. 42 "Research Policy", Ref. No. 51 "Ethics Review of Research Involving Human Subjects", Ref. No. 52 "Ethics Review of Research Involving Animals", Ref. No. 54 "Military Research", Ref. No. 56 "Confidentiality of Research Results", Ref. No. 57 "Private Consulting", Ref. No. 58 "Research Using Biohazardous Materials", Ref. No. 65 "Faculty and Staff Ownership of Research Results", Ref. No. 97 "Scholarly, Research and Creative Activity (SRC), Facilitating SRC in the Context of the Mandate Flowing from University Status", Ref. No. 98 "Research, use of the term at Ryerson", Ref. No. 118 "Principles Governing SRC Conduct/Misconduct", and Ref. No. 130 "Revised Principles Governing SRC Conduct/Misconduct".

Ownership of Student Work in Research Projects

Reference: Patent Policy 1-040, March 1988.
Ad Hoc Committee on Copyright and Ownership of
Student Works: Academic Policy, May 1979.
Ryerson policy on Research, March 1986.

Proposed Policy -- Ownership of Student Work in Research Projects

1. PREAMBLE

1.1 Need for a student ownership policy and its objectives.

The recognition of an individual's fundamental rights in the realm of intellectual property protection (patent, copyright, trademark, industrial design, and trade secret) must of course extend to the educational system, otherwise prejudice to these rights may occur. At the same time, however, students must acknowledge and recognize those situations where the work they produce on research projects may be subject to ownership by others because of contractual conditions.

A student at Ryerson does not fall into the classical case of an employer/employee relationship, where there is an explicit or implied contract of services from one to the other and where one party controls the other in exchange for the performance of duties and payment for same. When an individual is accepted as a student by Ryerson, there is no contract in place other than an implied condition that the student expects to obtain the level of instruction that he/she is paying for, notwithstanding the fact that the education is partially paid for from the public purse. Once the student becomes involved in research projects this relationship changes.

Without a graduate school at Ryerson, student "independent research" is limited to selected courses with a "research" component such as thesis projects and independent studies. More importantly, the absence of a graduate school creates a situation where a student's opportunity to independently develop or create unique (and potentially valuable) work is limited. The majority of undergraduate situations involve advice, direction and some control (eg. course content) from faculty and staff at Ryerson. Individual ownership of intellectual property has at its roots the fundamental requirement of independent original work, not created as a result of an employment or contract to do so.

As a consequence of the above, most research work performed by the student in his/her stay at Ryerson would not reside with the student.

Even when independent work is involved, what must also be considered is the contribution on the part of the Institute towards the value of student work on research projects, as it relates to its commercial potential. The student is being provided with knowledge and skills by the Institute in the first instance and, if in fact Institute resources have been brought to bear on the development of any of this work, this must also be considered.

There is a need to examine a policy which will i) safeguard a student's fundamental, moral and property rights in innovative works in research projects, and ii) provide for ways and means for the Institute to be in a position to develop commercially-viable innovations that have had assistance or have been developed by students.

Finally, the Institute is obliged to recognize the Universal Declaration of Human rights (1948, article 27, para 2: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"). Clearly, the principle that "authors" of creative works have rights worthy of protection, is important.

1.2 Basis for this policy.

This policy will apply if any of the following exist:

1. A student must be registered in a program leading to a degree, diploma or certificate.
2. The student either applies for "work" (see Section 2.3.4) in a research project (defined later) or is formally approached by the Institute (also meaning faculty, chairs, etc.) to "work" on a research project, or originates a research project.
3. A "research project" must be defineable, in advance of its undertaking.
4. There must be an ability to identify the innovative work of the research project, which would become the subject of ownership.
5. Innovative work is that which can be protected by a patent, a trademark, an industrial design, a copyright, or kept as a trade secret.
6. There is an ability to clearly identify the owner or owners of the innovative work.
7. There are to be three recognized categories of innovative works, namely:
 - i) "Free" -- made independently by a student outside his/her duties or assignments in a research project and not made as a result of the use of Institute facilities, resources, equipment, or manpower (hereinafter referred to as facilities)
 - ii) "Dependent" -- made outside the student's normal or contractual work in a research project but which are related to the Institute's interests or have been made as a result of use of the Institute's facilities
 - iii) "Service" -- made as a result of fulfillment of obligations or contractual conditions on a research project

Although these are categories there are possibilities for situations of potential overlap, however, it is the intention of this policy to categorize innovative works according to the three types above.

1.3 Intent of this policy.

It is the intention of this policy to:

- (a) apprise students, staff and faculty of the forms of intellectual property protection;
- (b) inform students, staff and faculty specifically with respect to what constitutes a research project and

original work within the research framework at the Institute;

- (c) provide a mechanism for an equitable arrangement when a student wishes to pursue the commercial development of his/her own work, and, conversely, where the Institute wishes to pursue a development made and owned by a student;
- (d) establish guidelines for sharing of ownership (where applicable) between the i) the student, and ii) faculty and staff members and the institute;
- (e) define those areas exempt from any student ownership, e.g. through contract work, whether via an employment contract or consultancy (or through other means);
- (f) suggest "sharing formulas" for commercial development of innovations, where such instances may also involve third parties;
- (g) provide a fair and equitable basis for a co-operative approach to research which will assist the evolution of innovative work; and
- (h) foster an atmosphere in which students at Ryerson can contribute to the learning environment to their utmost potential.

2. Specifics of the Policy

2.1 Current Policy Re: Copyright and Ownership of Student Work

The issue of copyright and ownership of student works is presently covered by an Academic Policy approved May 1, 1979. The following is an amended version of the aspects of this policy which are relevant to the current policy. It should be noted that the policy of May 1, 1979, applied to the ownership of student work, not to the ownership of research results in particular.

- 1. Copyright and ownership of student-produced work resides with the student except in situations where an arrangement exists between the student and the Institute, or where a contractual relationship occurs, or as defined in Sections 2.1.(5) and Section 3.
- 2. All works are returned to the student other than final exams, except where prior arrangements have been made. Final exams are kept for one calendar year but can be reviewed in appeal situations.
- 3. Multiple choice exams are the property of the instructor.
- 4. Student works submitted for academic credit and/or made using Institute equipment and/or facilities can be retained by various departments/schools for show and

other purposes, provided there is a prior arrangement between the student(s) and the department/school.

5. If creative input into student-produced work is provided by the Institute, then the Institute has a claim to partial ownership, which may be waived under certain conditions.
6. The Institute reserves the right of access to student works provided that the student's proprietary rights are not prejudiced.
7. When students enter into an employment contract with the Institute, no student ownership is possible for work related to the employment.
8. The three-stage appeal process is used in matters relating to infringement of copyright, ownership of work or unwarranted retention of work.

It is the intention of this policy to recognize clauses 1,2,4,5,6,7 and 8 of the above, as they relate to "research projects".

2.2 Current Patent Policy

The current patent policy applies to inventions which employees and students have made related to their Institute duties (studies) and with the use of Institute facilities. A Patent Committee is established which determines the degree of Institute involvement in any invention, if any. Students are required under the Patent Policy to report any inventions made during the course of their study or research; however, there are no explicit requirements on the part of a student to submit inventions made solely on their own. Reference should be made to the Patent Policy for other than claims to student ownership, which is the purpose of this policy.

2.3 Definitions

2.3.1 Forms of Intellectual Property.

(a) Patent

A patentable invention is any new and useful process, machine, method of manufacture or composition of matter, or any new and useful improvement thereof, which is not obvious to someone skilled in the particular field (i.e., which shows "inventive ingenuity").

Among the things which are not normally patentable are an improvement to a known device which would be obvious to a person skilled in the art, a principle, a recipe, a design, a computer program, an idea or a process (or the product of a process) that depends entirely on a person's skill and leads to an ornamental effect.

(b) Copyright

Copyright -- the right to copy -- means that an owner is the person who may copy his or her work or permit someone else to do so. It generally includes the sole right to publish, produce, reproduce and to perform a work in public. Copyright does not protect mere ideas, procedures, discoveries, or facts.

Copyright applies to all original literary, dramatic, musical and artistic works including books, writings, musical works, sculptures, paintings, photographs, motion picture films, dictionaries and encyclopedias. Copyright also applies to mechanical contrivances such as records, cassettes and tapes, and recently to computer programs.

(c) Industrial Design

An industrial design is any original shape, pattern or ornamentation applied to an article of manufacture, such as the shape of a table, the pattern of a fabric, or the decoration on the handle of a spoon. The article must be made or able to be made by an industrial process.

(d) Trade Mark

A trade mark is a word, symbol or design, or a combination of these, used to distinguish the goods or services of a person or organization from the goods or services of others in the marketplace.

(e) Trade Secret

A trade secret is normally a process or formulation. The proprietary nature is simply kept secret, for example, within the company, as a means of providing a competitive advantage over others.

Each of the above has particular applications and the explanation of their use can be simplified by referring to a known product as an example, "FANTASTIK" spray cleaner. The written material on the label is protected by copyright, the shape of the bottle by industrial design, the name by a trademark, and the sprayer by a patent. The cleaning formula would be a trade secret.

Students wishing to obtain further information on the above-mentioned forms of intellectual property protection are advised to consult with any registered patent agent of their choice.

2.3.2 Research Project

What constitutes research has many interpretations, however, the Institute recognizes the following broad characteristics:

-- research will have an innovative dimension

- research will demonstrate relevance to the field
- research will meet recognized standards of discipline rigour, and
- research will enhance the teaching role of the Institute.

For purposes of this policy, a research project is:

A project which is classified as a research project by the Office of Research and Innovation, within the broad context of research at Ryerson and as defined by the Ryerson Research Policy, and consistent with and considering the general guidelines above.

2.3.3 Recognized forms of research.

Recognized forms of research and their relationship to student involvement are:

(a) External Grant Research

External Grant Research is defined as any research conducted as a result of funds provided by external bodies, in cases where direct costs are borne by the granting agency or council, and where (generally) there are no defined deliverables and a lump sum payment is made in advance.

In these cases, a faculty member originates a proposal and formally applies (on behalf of or involving the Institute) to the granting agency, or originates a proposal in response to a general solicitation in a fairly broad area. Research grants are for the purpose of scholarship, and granting agencies generally vest any interests to the Principal Investigator on the project. Students involved in grant research projects as paid assistants will not be entitled to claim any ownership of the work (except as noted in Section 3 later), provided that ownership conditions are stated by the granting agency.

In instances where academic credit is obtained for work and no compensation is received, if the grant stipulates that all proprietary or other developments are retained by the granting agency, then the student can make no claim of ownership. If the granting agency does not stipulate such conditions (which is known in advance in some cases), then there is a basis for a student to claim ownership of his/her own innovations, subject to the mutual agreement of the Principal Investigator and/or the Office of Research and Innovation, in advance of the undertaking.

(b) Contract Research

Contract research is defined as any research conducted for a company, government, organization, or individual, where a formal contract between the Institute and the external party is made and where (generally) there are defined deliverables and payment is made after receipt of invoices from the Institute. Students involved in contract research projects are always paid and are also required to sign non-disclosure agreements. The contract normally assigns ownership of the deliverables to the external party, thus waiving any claims to ownership by the student, except as noted in Section 3 later.

(c) Internally-generated research

Internally-generated research is defined as any research for the pursuit of scholarly knowledge or professional development which has had funds or contributions made from either the Office of Research and Innovation, the applicable Departments, or from any internal source. Normally such research projects are called "seed projects" or "departmental grants", and are specifically awarded to faculty members for the purpose of scholarship or as a means to investigate the potential of a particular topic towards supporting either a research grant proposal or a potential contract with an external party.

When students are involved, their role would ordinarily be supportive, not independent, in nature. A decision must be made at the start of this type of research as to the role of the student in relation to this policy.

(d) Enterprise development

Enterprise development can be any business development service provided to an entrepreneurial client (a company or an individual, for example) based on a formal contract between the Institute and the client. Students working on such projects will be obliged to sign non-disclosure agreements and are paid for their work, thus waiving any claims to ownership, except as noted in Section 3.

(e) Sabbaticals

Faculty who involve students on research projects during their sabbatical term must state to the student the form of the research project being conducted. Other than private consulting (see below), the student will be obliged to conform to this policy based upon their anticipated involvement in the project.

If the student is acting as a private consultant to the faculty member who is on sabbatical, and neither party is using Institute facilities in the conduct of the project, then the student and the faculty member are free to reach their own agreement respecting their individual rights and obligations to each other.

(f) Internship and co-op placement research

Internship and co-op placement research is defined as research conducted for external parties where the student is physically located at the place of business of the external party or where travel to their place of business is required on a regular basis to complete the work, but where the project is being conducted solely for academic credit. (If any payment is being made to the student then the project is contract research.) If there is a thesis involved, the project is classified as a thesis research project as defined below in (g) or (h).

Because third parties are always involved in this case, the Institute will insure that there is an understanding with the third party that the Institute expects the third party to respect and comply with the rights of the student as outlined in this policy. However, students must be advised that these projects are viewed as being similar to apprenticeships in the working world, hence third parties generally will not be receptive to student ownership issues.

(g) Independent thesis research project

An independent thesis research project is defined as a project being undertaken solely to meet the course requirements of the thesis project course, where: i) there is no payment involved to the student, ii) there is no external party involved, and iii) there is no contribution from the Institute other than the minimum required to support the student in the conduct and completion of the project. If these conditions are met then the student is the sole owner of any developments made in the project.

(h) Dependent thesis research project

A dependent thesis research project is defined as a project undertaken with an external party, where the external party is necessary in order that the student may complete the project, or conducted using Institute resources and facilities, or both in combination, where there is no payment being made to the student. In this case the project is being conducted solely for academic credit. The student may claim part ownership, the extent to which is determined by his/her relative input compared to that of the third party and/or the Institute.

If the student is to receive compensation during the conduct of this type of project, the project will either be classified as a contract project, or the parties will reach an agreement as to the respective interests in ownership.

(i) Survey-type projects

If in a survey or data collection project leading to individual academic credit in which a different survey is being conducted by each individual student, so long as the data or information collected by each student is not disseminated to the rest of the class, the data or information belongs to the student. If the data or information is disseminated to the rest of the class, the information is deemed to be made available to the Institute. At this point no claim to the data or information can be by any student, nor the faculty member.

If the faculty member plans to use any of the data or information collected for financial or personal benefit, or if the data or information will be disseminated to any others, this must be announced to the class before the surveys are conducted. The students can then decide, on an individual basis, whether they wish to retain ownership as per this policy, and refer to the appropriate section.

If students are receiving compensation for this type of work, then the project is contract research.

(j) Class, group and team projects

This type of research involves any work or project conducted for academic credit where more than one student is involved.

In all cases where the project is a class project, the results of the work belong to the Institute, and the faculty member accordingly may take steps to disseminate the information (e.g. to the Ryerson library, or to future classes) provided that this dissemination does not result in any financial benefit to the faculty member, or professional benefit where the student(s) input is not acknowledged, nor jeopardize the academic integrity of any such future similar projects.

In all cases where more than 1 student is involved (group or team, but not a class project), the team or group owns the results, and the students are free to reach their own mutual agreement with respect to any innovation resulting from their collective work.

If compensation is received by the class, group or team, then the project is contract research.

Excluded

Private Consulting -- (Private Research)

Private consulting is defined as any research or related activity conducted by a student on his or her own time, not for academic credit, not using Institute facilities, and where

the student himself/herself is directly accountable to any external party for which the work is being performed.

Activities which do not fall into any category in Section 2.3.3 will likely fall into Section 2.1.

2.3.4 Applicable Student Work

For the purpose of this policy, applicable student work falling into the category of research is noted below.

I. General nature of work

Any research as per Section 2.3.3.

II. Specific categories of work

Categories of work are:

- (a) any design work or development;
- (b) essays, stories, novels, books, articles, surveys, etc.;
- (c) literature reviews;
- (d) computer programs;
- (e) reports of any kind;
- (f) any work involving graphic design, layout, typesetting, etc.;
- (g) patterns, models, prototypes, drawings, etc.;
- (h) business plans, prospectus, financial balance sheets, marketing research, etc.; and
- (i) photographs, videos, films, recordings, tapes, etc.

2.3.5 General Definitions

General definitions for words and wording contained in this policy are available upon request by asking for Schedule A, (available from the Office of Research and Innovation). The intention is to eliminate the potential for mis-interpretation of words or wording contained here.

The following are defined in Schedule A:

Contractual conditions, independent, control, employment, Ryerson community, Institute facilities, right of access, moral and property rights, innovative/innovation, Z development, employer/employee relationship, academic credit, proprietary rights, deliverables, external party, student input, assignment, performance clauses, royalties, due diligence, and creative input.

3. Ownership Conditions

In this section, explicit conditions are provided for student claims to ownership.

3.1 No claim to ownership. ("Service" innovations)

Student ownership cannot be claimed, in whole or in part, in the following cases:

1. Where any specific written agreement between the student and the Institute (meaning also any designated representative of the Institute) specifically waives any claim to ownership. In this case there must be a mutually satisfactory agreement in place.
2. Where there is an employment contract or employment situation in effect, provided that the "boundaries" of the duties are stated in writing by the "employer". Any work performed within the boundaries of, or directly related to, the duties or the business of the employer, is not subject to student ownership unless there is a written statement to the contrary from the employer.
3. Where there is a contract between the student and the Institute, and between the Institute and an external party, where the student signs a non-disclosure agreement. Any work performed directly related to the contracted tasks is not subject to student ownership unless there is a written statement to the contrary from the external party.
4. Where there exists any written requirement on the part of the student to comply with an external party's request for ownership of an intellectual property development or deliverable as a result of the research activity. However, the agreement must explicitly describe the nature of the intellectual property in question.
5. Final examinations used for research work, in whole or in part, regardless of type and content. (Ryerson retains final exams for a period of one year, after which time the student may take possession.)
6. Any research work resulting from unauthorized use of Institute facilities.
7. Any research work where there is proof of plagiarism.
8. Any research work where the intellectual property rights of any other individual(s) or organization(s) have been violated.
9. Any research work submitted for a monetary prize,

if the Institute is the sponsor or acting in conjunction with an external party, if chosen as one of the prize winners, unless there is a written agreement or statement to the contrary.

3.2 Full claim to ownership. ("Free" innovations)

Full student ownership can be claimed in any of the following cases:

1. Any work related to but clearly outside the "boundaries" of any research project, not being done for academic credit, and not made using Institute facilities or creative input, providing that any external party involved mutually agrees. This will normally be judged by the faculty advisor, instructor, or principal research investigator on the project.
2. In any situation where prior written indication is given that the student owns or will own the work performed (including reference to clauses in this policy).

Section 3.2 is not intended to prejudice clauses in Sections 3.1 and 3.3.

3.3 Partial claim to student ownership. ("Dependent" innovations)

A particular research activity either may provide for partial student ownership from the outset, or it may be partly owned as a result of the inability of either the student or the Institute to claim full ownership, whether or not an external party is involved.

Partial ownership can be claimed by the student in the following cases:

1. Where there is prior indication in writing on the part of the Institute, and any external party which may be involved, that partial ownership can be justified and allowed.
2. Where Institute facilities have been brought to bear on a student innovation, with the exception of independent thesis projects as stated in Section 2.3.3 (g).
3. In any instance where the student originates a research activity and must involve the Institute to affect the development of an innovation.
4. For any other condition not covered in Sections 3.1 and 3.2, provided that original student input is demonstrated.

4. Procedures

Procedures with respect to the operation of this policy are presented in this section.

4.1 Intellectual Property Committee

The Academic Council, in close co-operation with the Office of Research and Innovation (ORI), shall establish an Intellectual Property Committee (the IPC) which will implement this policy and receive and review submissions. The IPC will be composed of fourteen (14) individuals: the equivalent of two (2) faculty members from the five (5) Faculties in the Institute; three (3) students from Departments or Faculties particularly affected by a student ownership issue; and one (1) member appointed from within the ORI.

At any time the serving members of the IPC will include four (4) faculty members, two (2) students, and one (1) ORI representative (the "Operating Group"). The Chair will be elected from the total membership of fourteen.

Any nominating party may seek the assistance of Department Chairs for selection.

The IPC will function in the following manner:

Meeting: as required to review submissions and related matters

Decisions: only majority of the Operating Group
(4 of 7) or better, decisions are valid

Term of members: two years, renewable

Submissions: according to Section 4.2 below; in writing, and, if desired, verbally

Communication: in writing, from the IPC Chair, to submitting parties and IPC members

Confidentiality: all IPC members will be required to sign non-disclosure agreements available from the ORI

The ORI will be responsible for informing the Ryerson community and all students of their rights and obligations respecting this policy, through the normal channels available within the Institute.

4.2 Student Submissions to IPC

4.2.1 Student Claiming Pull Ownership ("Free" innovations)

If the student has a legitimate claim to full ownership according to Section 3.2 there is no requirement to make a formal submission to the IPC unless the student wishes to involve the Institute.

In this case the following procedures will apply.

The student shall consult with his/her faculty advisor prior to making any submission, to seek advice and direction to determine the extent to which there is any commercial potential to the innovation. If the faculty advisor has a commercial interest in the innovation, then the student must consult with the department Chair.

The student then makes notice to the IPC via Form 1 (Intellectual Property Development Notice), available from the ORI. The student has the option of indicating the extent to which he/she wishes to have the Institute involved in the further development of the innovation. In this case, the Institute reserves the right of first refusal to develop the innovation in question in conjunction with the student, as per Development Options (Section 4.3) below.

The IPC, in this case, will:

- 1) verify the legitimacy of full claim by the student;
- 2) determine if there is commercial potential and rule on the extent, if any, of future proposed institute involvement, within 30 days of the original notification from the student;
- 3) if the claim to full ownership by the student is legitimate, and there is no interest on the part of the Institute to become involved in future development of the innovation, the IPC will issue a statement to this effect, or a statement indicating the desired interest on the part of the Institute, according to the time frame in (2) above, provided any agreements are made according to Development Options of this policy.

4.2.2 Students Claiming Part Ownership ("Dependent" innovations)

In situations where, after consultation with either the faculty advisor or the department Chair, there appears to be a possible joint ownership of an innovation, a notice to the IPC shall be made by the student outlining a proposed joint ownership of the innovation. Form 1 (Intellectual Property Development Notice, available from the ORI) is used in this case.

The IPC, in this case, will agree to the proposal or offer a counter-proposal, within 30 days of the original submission. If the counter-proposal is acceptable, an agreement can be reached according to Development Options below. If the counter-proposal

is not acceptable, the student may seek an Appeal (see Section 5.1 below).

In this case, the IPC must ensure that the following factors are considered:

the value of the innovation were it to be acquired elsewhere;

the benefits flowing from its use;

the student's duties and position in the research project, and;

the value and originality of the student's input.

If the IPC becomes aware of or is made aware of a situation where a student is involved in activities that fall under the conditions of joint ownership, but where the student had not informed the IPC, the IPC is free to notify the student at their discretion and propose an arrangement. The student may accept the proposal or offer a counter-proposal, after which time the parties are to reach a mutually satisfactory agreement, or seek arbitration (see Section 5.2).

4.2.3 Institute Claiming Full Ownership ("Service" innovations)

In these cases, waivers (Form 2, available from the ORI) will be signed by the student before any research activity was performed, where the student waives any rights to ownership. The student is still free, however, to make a submission to the IPC suggesting a development option be considered, even though the Institute owns the innovation.

The IPC, on behalf of the Institute, reserves the right to make a recommendation that a contribution be made to the student involved in the research, as recognition for his/her involvement in the research project. If the IPC so wishes, the recommendation may involve granting the student part ownership, in which case the IPC will act accordingly as per this policy.

4.3 Development Options

When an Intellectual Property Development Notice is completed and before any steps are taken to file for any intellectual property protection (eg., a patent), or prior to licensing or assignment negotiations of any such innovation, the notice must state whether the student:

- a) intends to commercialize the innovation independently (Option A);
- b) intends to assign all rights to the innovation to the Institute (Option B);
- c) proposes a joint development or commercialization of the innovation (Option C); or,

d) wishes the Institute to develop the innovation (Option D).

Note that royalty arrangements must be involved in any cases of transfer of rights.

4.3.1 Option A -- Independent Development by Students

i) Where the student has full ownership of an innovation.

If the IPC, by Section 4.2.1 above, expresses no right-of-first-refusal interest in the innovation made by the student and the student's claim to ownership is legitimate, the student is free to proceed independently with the further development and exploitation of the innovation. Any financial benefits thereafter derived from the development of the innovation shall be the student's alone.

ii) Where the Institute has full ownership of an innovation.

In cases where the Institute has full ownership of an innovation and a student wishes to exploit it himself/herself, the student in effect is receiving a right from the Institute.

In choosing this option, the student (developer) shall be deemed to have assumed on behalf of him/herself the following obligations:

- (a) To provide the IPC with an annual statement on the same date that the transfer of rights was originally submitted. The annual statement should report all relevant actions taken in respect of the development during the previous 12 months. It should include the names and addresses of all persons using the development under licence and should itemize all direct expenses involved in the intellectual property protection or licensing process as well as all income derived from the innovation.
- (b) To pay to the Institute with the annual report a royalty, in keeping with industry norms (but to exceed 1%), based on sales accrued during the period.
- (c) Provided assignment to any other sponsor is agreed to by the Institute, to inform any sponsor and any person to whom the development is assigned of the foregoing obligations.
- (d) Provided that the sale of the rights to the innovation to a third party is agreed to by the Institute, to pay to the Institute a sum equal to 10% of the net proceeds of sale of the property (sale price less direct expenses incurred).
- (e) To enter into a legally binding agreement with the Institute in the form prescribed by the IPC to reflect the above terms, including applicable performance

clauses.

iii) Where the Institute has partial ownership

The Institute shall consider the transfer of its share to the student on mutually agreeable terms, whereupon Section 4.3.1, sub-section i) comes into effect.

4.3.2 Development Option B -- Assignment to Institute

In this case, the student initially has full ownership of the innovation, this being acknowledged by the IPC. The student must offer the rights to the Institute, and the Institute must agree to accept the rights, in order for this assignment to take place. Form 1 may be used; however, the obligation to describe what rights would be assigned rest with the student.

Here, the Institute assumes full responsibility for obtaining Intellectual Property Protection, the negotiation of a sale or licensing and will take whatever steps are necessary for the commercial exploitation of the innovation, including but not limited to applicable performance requirements. The entire cost of the foregoing may be borne by the Institute or another party or sub-licensee, at the Institute's discretion. The Institute must decide within 30 days of the original offer from the student.

The student shall receive 10% of the net proceeds of a sale of the innovation, or net revenue, after all direct expenses incurred by the Institute have been defrayed.

Once revenue has been generated equal to 10 times the cost of all direct expenses incurred by the Institute, the student shall receive 5% of the further net revenue as a final payment.

4.3.3 Option C -- Joint Development

In cases where it is judged from the original submission (Notice of Development of Intellectual Property) that joint Institute/student ownership exists, or if a split is proposed, the IPC will decide on the proposed split made by the student, within 30 days of the original submission. A minimum 10% Institute ownership is considered reasonable in these cases.

- If the proposed split is acceptable, the Institute and the student shall enter into an agreement to formalize each parties shares, rights, obligations and performance requirements. The cost of the agreement shall be shared according to the proposed share of ownership of the innovation.
- If the proposed split: is not acceptable, the IPC will counter-propose to the student.
- If this counter-proposal is not accepted, the two parties will be obliged to seek arbitration, and abide by the arbitrator's decision (see Section 5.2). The two parties may

also seek to buy out the other under mutually agreeable terms.

4.3.4 Option D -- Independent Development by Institute

i) Where student has full ownership.

Under the right-of-first-refusal condition of Section 4.2.1, the Institute (via the IPC) may decide to wholly undertake the development of an innovation fully owned by the student, and inform the student of the Institute's interest within 30 days of the original submission.

In this case, the IPC will offer the student an agreement stipulating the terms and conditions of the undertaking, which would include proposed royalty or other payments to the student in exchange for the rights to the innovation. This agreement must also stipulate how the Institute will conduct itself in the pursuit of the commercialization of the innovation, including applicable performance clauses.

The student, in this case, is obliged to undertake due diligence in the review of the agreement and decide within 30 days of receipt of the proposed agreement from the Institute.

If the student wishes to not involve the Institute no further actions are necessary between either party.

ii) Where the Institute has full ownership.

So long as the intellectual property rights of any third party within the Institute (i.e., faculty, staff, students) are not prejudiced, in this case the Institute is free to choose its own development plans.

iii) Where there is joint Institute-student ownership.

Here, the IPC will offer the student an agreement stipulating the terms and conditions of a proposed buy-out of the student's share of ownership.

The student is free to accept or reject such an agreement. In the former case, the student transfers his/her share to the Institute (and accordingly would suggest a royalty arrangement) whereas in the latter case, the existing ownership distribution would remain.

5. Other Conditions and Requirements

5.1 Appeals

A student may undertake to launch an appeal if he/she feels that their rights, under this policy or under copyright and other intellectual property protection law, have been violated or prejudiced by the Institute, faculty, staff, or a third party who is connected to the Institute on a research project that the student is involved in. Decisions of the IPC may

also be appealed.

If a decision of the IPC is being appealed, a written appeal must be made to the IPC Chair, and must contain:

- a) reasons for making the appeal;
- b) the names of all parties involved;
- c) what form of retribution, compensation, or action is required, and;
- d) if there are any material changes from any original notice made to the IPC.

The IPC Chair will then form the Appeals Committee, made up from any five (5) IPC members not involved in the Operating Group which was privy to the original submission, provided that at least one (1) student is a member. The Appeals Committee will elect a voting Chair from within their group.

The student is also free to make a verbal presentation to the Appeals Committee, in addition to the written material. The Appeals Committee will then decide within 30 days of the appeal, and report to the IPC Chair. The IPC Chair will then report to the student immediately.

If the Appeals Committee agrees with the IPC, the student must abide by their decision. The option to use the existing academic appeals process is available.

5.2 Arbitration

Arbitration is used only in situations where the student and the Institute cannot agree to terms or any matter relating to the ownership or development of any innovation. Either party may notify the other of the requirement to seek arbitration.

In this case, a non-partisan arbitrator, e.g. lawyer, or mediator, will be brought in to decide the issues. The naming of the arbitrator may be suggested by either party, but the selection must be mutually agreed within 30 days of notice of a requirement to arbitrate. After that period, compulsory arbitration may be sought by the Vice-President Academic.

Costs for the services of the arbitrator will be shared according to the ownership share distribution decided upon by the arbitrator.

5.3 Legal Counsel

Students are advised to seek independent legal counsel, including those practiced in protection of intellectual property, at any time. Costs for this are borne wholly by the student, unless an express written agreement from or with the Institute states otherwise.

5.4 Publication

Only the owner of a development or innovation made from a research project may publish the results or the subject matter involved. Publication on the part of a student of any Institute-owned intellectual property or innovations, or publication on the part of the Institute of any student-owned intellectual property or innovations, is not permitted unless there is an express written agreement to the contrary.

The same conditions apply respecting ownership by any third party involved with the Institute on a research project.

Any faculty member considering publication of a paper, article, etc., is obliged, to undertake the necessary due diligence to prevent release of sensitive material which may be the subject of student ownership in whole or in part.

In cases when joint Institute-student ownership is in effect, publication conditions must be agreed to in advance.

Notwithstanding the above, publication clauses in any contract or agreement are to be considered priority.

5.5 Special Provisions

5.5.1 Student-originated grant or contract research projects.

This provision relates to any situation where a student independently originates and proposes a research project which evolves into a grant research project or contract research project wholly as a result of the activities of the student. The student may be recognized as the principal owner in these cases, subject to an agreement with the Institute, made in advance of the undertaking of the project. The agreement shall stipulate the sharing of developments resulting from the research project according to the relative input of each party. The Institute considers a 10% ownership as a minimum Institute ownership in these cases.

Exceptions to student ownership in these cases would be an express written agreement to the contrary, including but not limited to conditions expressed on the part of the granting agency or potential contractee.

5.5.2 Default provision

Provided that no agreement is already in place, at the completion of a research project, if none of the contracting or involved parties expresses a position with respect to their share of any possible future ownership, equal ownership to the Institute, the student, and the third party will be in effect.

If the third party does not wish to accept or pursue this provision at the end of the project, and states this

position in writing, then the Institute and the student share ownership equally.

Any express written agreement: to the contrary shall supercede the default provision.

5.5.3 Majority ownership rule

Development of any innovation where there is joint ownership by express agreement must respect the wishes of the majority owner. The party with the majority ownership is obliged, however, to undertake their best efforts to commercialize the innovation. At the same time, the minority owner(s) are obliged to co-operate and not unreasonably withhold or delay their input or contribution to the commercialization process. Any prolonged disagreement or negative action may be cause for breach of agreement and/or termination of the agreement.