

## **Article 28**

### **INTELLECTUAL PROPERTY**

#### **PREAMBLE**

- 28.01 The Parties agree that the ownership of Intellectual Property is recognized as an integral part of academic freedom. Subject to the rights of third parties and co-creators, ASMs shall own their Intellectual Property and shall be beneficiaries of commercialization and other exploitation of their Intellectual Property.
- 28.02 Since the primary consideration of the University is to promote teaching, research, and dissemination by ASMs, these activities shall continue to be encouraged. ASMs shall have the ability to publish and disseminate their research results in the public domain in order to contribute to the body of public knowledge in their disciplines.
- 28.03 Third parties, other than co-creators, shall not be granted rights to the Intellectual Property of an ASM without the ASM's Informed Consent. ASMs may, based on Informed Consent, choose to participate in work that is subject to agreements that place constraints on how their Intellectual Property may be disseminated or subsequently used.
- 28.04 Should ASMs choose to license or assign their Intellectual Property Rights, or any part thereof, to a third party, the University shall receive benefits commensurate with the Significant Documented Contribution made by the University toward the creation of the Intellectual Property.

#### **ADDITIONAL DEFINITIONS**

28.05 In this Collective Agreement:

- (a) "Incidental Use of University Resources" means the use of University email accounts or other common information technology and/or communications services (i.e., telephone, fax, internet, Wi-Fi), use of common spaces or services provided freely to all by the University (cafes, lounges, library access, common meeting areas) and the use of personal computers, laptops, tablets, mobile devices and other commonly used hardware and software that has been provided by the University. Incidental Use of University Resources includes use of University resources (i.e. space, facilities, equipment, support personnel) that are freely available to ASMs and for which use by an ASM would not preclude access to, or support from, the resource by other ASMs that would normally be provided by the University.
- (b) "Informed Consent" means consent given by an ASM who has received the information necessary to allow a considered judgement and has been given a reasonable opportunity to consider such information without having been subject to coercion, undue influence, inducement or intimidation.
- (c) "Intellectual Property" includes all data, documents, reports, analyses, tests, specifications, charts, plans, drawings, ideas, inventions, discoveries, creations, schemes, correspondence, communications, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, know-how, trade or other secrets, contracts, financial information, engineering reports, environmental reports, field notes, sketches, photographs, computer programs, records or software, specifications, models, database rights, service marks, scientific or technical advancements, improvements, devices, products, concepts, designs, prototypes, samples, technical information, materials, works of authorship, patterns or other information, and includes the media on which such Intellectual Property is stored, obtained or received.
- (d) "Intellectual Property Rights" means any and all proprietary rights anywhere in the world provided under (i) patent law, (ii) copyright law, (iii) design patent or industrial design law, (iv) semi-conductor chip or mask work or integrated circuit topography law, (v) trade-mark law or (vi) any other statutory provision or common law principle, including trade secret law, which may provide rights in Intellectual Property or the expression or use of such Intellectual Property.
- (e) "Researcher Participation Agreement" means an agreement signed by an ASM and by the University prior to the ASM participating in research that confirms that the ASM agrees to abide by the terms and conditions of Research Agreements.

- (f) “Significant Documented Contribution” means a financial or in-kind contribution of funding by the University toward the conduct of scholarly activity. Such contributions would be beyond Incidental Use of University Resources by ASMs and would be documented prior to the start of the scholarly activity, normally as part of a research proposal or research agreement, or during the disclosure of Intellectual Property by the ASM under this Article. Such contributions would include dedicated or extraordinary use of existing institutional equipment, facilities or support staff for the purpose of conducting the scholarly activity. They would also include the direct and indirect costs of facilities and equipment that are purchased and support staff that are hired specifically for the scholarly activity. Significant Documented Contributions, however, do not include the financial contributions provided to the University by the sponsor of the scholarly activity, including any third-party funding agencies (e.g. NSERC, SSHRC, CIHR, ACOA), nor the indirect costs provided through the Research Support Fund, or similar fund. The University shall not consider the time of ASMs who conduct scholarly activity as part of their normal workload as a Significant Documented Contribution.

## **RESEARCH CONTRACTS**

- 28.06 When an ASM is party to a research or development contract which has explicit provisions for Intellectual Property Rights or revenue sharing from such Intellectual Property Rights, or an ASM has given Informed Consent, by way of a Researcher Participation Agreement or otherwise, for the University to be a party to such a research or development contract, and Intellectual Property is created by the ASM in the course of research or development supported by that contract, the provisions of that contract shall take precedence over this Collective Agreement.

## **COPYRIGHT**

- 28.07 The copyright on all literary works, dramatic works, musical works, artistic works, and computer programmes, or other forms of Intellectual Property produced or created by an ASM is vested in the ASM who created the works.

## **COMMISSIONED WORKS**

- 28.08 When the University specifically commissions the preparation of a particular work by an ASM, the University shall only do so in writing at the time of the commissioning, and, the following conditions shall apply:
- (a) If the work commissioned is not intended for use in a degree, diploma or certificate credit course or program, copyright shall be vested in the University on terms negotiated between the ASM and the University. The ASM shall retain the right to use the work or any part(s) thereof in academic dissemination, or for teaching.
  - (b) If the work commissioned is intended for use in a degree, diploma or certificate credit course, at the time the commission is made, the ASM, who is the creator, and the University, may negotiate specific conditions which provide the University with a royalty-free license to use the material within the University for a fixed period of three (3) to five (5) years. Any sales of the work outside the University shall be subject to a royalty distribution agreement negotiated between the ASM and the University. Such license and agreement shall not prevent the ASM from using all or part of the work in academic dissemination. Upon request, the Association shall be provided with a copy of the final terms of the license and royalty distribution agreement negotiated with the ASM.
- 28.09 When a royalty-free license granted pursuant to Clause 28.08(b) expires, the license may be renewed, subject to negotiation between the creator and the University, for periods each of which is not to exceed three (3) years.
- 28.10 When, during the royalty-free period, either the University or the ASM wishes that the work be revised or replaced, by mutual consent of the University and the ASM, the University may commission the ASM to revise or replace the work. The revision or replacement work shall be subject to Clause 28.08(b).
- 28.11 When a royalty-free license granted pursuant to Clause 28.08(b) expires, and the University wishes the work to be revised or replaced, its creator shall be offered a commission to revise or replace the work. The revision or replacement work shall be subject to Clause 28.08(b). If the creator does not agree to revise or replace the work, the University may commission another ASM(s) in the creator’s Academic Unit, qualified to do the work, to revise or replace the work. Where no ASM qualified to do the work is identified in the creator’s Academic Unit, the University shall issue a call for expression of interest, via electronic mail, to ASMs in all

other Academic Units. Where no ASM qualified to do the work is identified, the University may commission another individual who is not an ASM to revise or replace the work. In the case of a revised work, copyright shall be held by the original creator and the ASM(s) responsible for the revision, except where the original creator chooses to relinquish their copyright to the revised work. Any sales of the revised work outside the University shall be subject to a royalty distribution agreement among the ASM(s), any person(s) responsible for the revision, and the University, with the ASM creators' division of royalties being proportionate to their contribution to the revised work. Such an agreement shall not prevent the ASM(s) from using all or part of the original work in an academic publication, and shall not prevent the ASM(s) from using all or part of the revised work in an academic publication subject to agreement by others involved in the revision.

### **MORAL RIGHTS**

28.12 ASMs shall retain moral rights to their Intellectual Property. An ASM may waive their moral rights in writing in favour of the University, or any other party.

### **PATENTS**

28.13 When an ASM is not party to a research or development contract which has explicit provisions for patents and revenue sharing from such patents, and a potentially patentable invention, discovery, or creation made by the ASM in the course of scholarly activity the ASM may notify their Administrative Head in writing of all potentially patentable inventions, discoveries or creations made by the ASM. Within thirty (30) days of the date that the Administrative Head was so notified, the University shall indicate to the ASM in writing whether the University is interested in commercializing the invention, discovery or creation in partnership with the ASM on terms negotiated between the ASM and the University. Upon request, the Association shall be provided with a copy of all final commercialization terms negotiated with the ASM.

### **OUTSIDE PROFESSIONAL ACTIVITIES**

28.14 ASMs may utilize their Intellectual Property in their Outside Professional Activities. ASMs wishing to utilize Intellectual Property that they co-own with other creators shall obtain the Informed Consent of those other creators prior to utilizing the co-owned Intellectual Property in their Outside Professional Activities. The use of Intellectual Property shall not include the license or assignment of Intellectual Property or Intellectual Property Rights except as provided for under Clause 28.15 of this Article. Such use shall also be subject to the terms described in Article 21. When engaging in Outside Professional Activities, the ASM shall ensure that they do not represent themselves as acting on behalf of the University. The University will assume no liability for any action brought against an ASM as a result of Outside Professional Activities or use of Intellectual Property in Outside Professional Activities.

### **LICENSE OR ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS**

28.15 Subject to the Intellectual Property Rights and contributions of other ASMs, the University, and third parties, ASMs are free to license or assign their Intellectual Property Rights. If the University made a Significant Documented Contribution to the creation of the Intellectual Property, written consent of the Vice-President (Research) or delegate shall be required. The consent of the Vice-President (Research), or delegate, shall not be unreasonably withheld, and a decision rendered within thirty (30) days. If notification of a decision on consent is not received from the Vice-President (Research) within 30 days of the request being made, consent shall be deemed to have been given.

### **DISSEMINATION**

28.16 The University shall make no claim to the proceeds of dissemination for which it has provided no more than normal academic facilities, including research grants.

28.17 When the University has subsidized dissemination by making a Significant Documented Contribution, it may negotiate with the ASM who is the creator specific conditions governing participation in royalties.

28.18 The University shall stipulate, at the time it offers a dissemination subsidy, whether it wishes to negotiate a claim to royalties that may accrue from publications thus supported. If the University does not so stipulate, it shall be deemed to have waived any claim to royalties or other income.

28.19 The University's share of royalties shall be used to support research and scholarly activity.

- 28.20 On request, the University shall within twenty (20) days transmit to the Association a list of royalties earned under this Article. No more than one (1) such request shall be made per year.
- 28.21 Subject to the terms of this Article, any other applicable agreement, and any ethical or legal requirements, ASMs shall be free to disseminate and/or present their Intellectual Property in academic journals and other vehicles of scholarly dissemination and to assign or license copyright in any academic work to academic journals and other vehicles of scholarly dissemination. ASMs shall have an absolute right to publicly disclose information about risks to research participants, or the general public, or threats to the public interest that become known in the course of their scholarly activity.

**RIGHTS OF ESTATE**

- 28.22 In the event of the death of an ASM, their Intellectual Property Rights under this Article shall revert to the estate, or succession of the ASM.