

## Intellectual Property and Ownership Policy

Questions regarding this policy should be directed to the Policy Administrator.

Effective Date:	August 27, 2018	Cross Reference:	<b>Internal</b> <ul style="list-style-type: none"> <li>• Academic Freedom Policy</li> <li>• College Involvement in Commercialization Policy</li> <li>• Copyright – Fair Dealing Policy</li> <li>• Ethical Conduct for Research Involving Humans Policy</li> <li>• Integrity in Research Activity Policy</li> <li>• Research Activities Policy</li> <li>• Research or Teaching Involving Animals Policy</li> </ul> <b>External</b> <ul style="list-style-type: none"> <li>• Copyright Act (<a href="http://laws-lois.justice.gc.ca/eng/acts/C-42/">http://laws-lois.justice.gc.ca/eng/acts/C-42/</a>)</li> <li>• Industrial Design Act (<a href="http://laws-lois.justice.gc.ca/eng/acts/I-9/">http://laws-lois.justice.gc.ca/eng/acts/I-9/</a>)</li> <li>• Integrated Circuit Topography Act (<a href="http://laws-lois.justice.gc.ca/eng/acts/I-14.6/">http://laws-lois.justice.gc.ca/eng/acts/I-14.6/</a>)</li> <li>• Patent Act (<a href="http://laws-lois.justice.gc.ca/eng/acts/P-4/index.html">http://laws-lois.justice.gc.ca/eng/acts/P-4/index.html</a>)</li> <li>• Post-Secondary Learning Act (<a href="http://www.qp.alberta.ca/++documents/Acts/p19p5.pdf">http://www.qp.alberta.ca/++documents/Acts/p19p5.pdf</a>)</li> <li>• Trade-marks Act (<a href="http://laws-lois.justice.gc.ca/eng/acts/T-13/">http://laws-lois.justice.gc.ca/eng/acts/T-13/</a>)</li> </ul>
Policy Owner:	Vice President Academic	Appendices:	
Policy Administrator:	Director, Quality Assurance and Research Services		
Approver:	Executive Committee		
Review Schedule:	Every 3 years		

## **1. Policy Statement**

- 1.1. Keyano College (hereinafter also referred to as “the College”) seeks to encourage creativity, scholarly research, applied research, innovation, and development, while promoting individual initiatives and commercialization of academic research, creating investment, and protecting academic freedom. This policy recognizes that ownership of Intellectual Property can take different forms (creator, the College, joint, and third party) and that ownership resides with the employer unless there is prior agreement. This policy clarifies prior agreement.

## **2. Background**

- 2.1. This document, “Intellectual Property and Ownership Policy” sets out the policy and regulations governing Intellectual Property (IP) at the College. Policy development included a review of existing intellectual policies and procedures from Canadian colleges and university with a focus on the Comprehensive Community Institutes (CCIs) in Alberta.
- 2.2. The College is dedicated to excellence in education and embraces its applied research and innovation mandate. The College seeks to provide a vibrant environment that supports the inventive, scholarly, and creative activity of its Employees and is committed to ensuring interests of Employees and the College are safeguarded.
- 2.3. The College is committed to finalizing an institutional vision and strategy for research, applied research and scholarly activity.
- 2.4. The College supports the researcher’s right to use his/her research for non-commercial purposes in future research and teaching activities.

## **3. Policy Objective**

- 3.1. This policy supports College faculty and staff, as well as contractors, consultants, clients, and volunteers in their pursuit, creation, and sharing of knowledge. By providing a clear process for establishing ownership of Intellectual Property, the College aims to encourage an atmosphere of innovation and creativity and ensure employees and the College are properly recognized for their efforts. All Intellectual Property provisions are in accordance with applicable law.
- 3.2. The purpose of this policy is to:
  - a) Define Intellectual Property;
  - b) Clarify ownership when no written agreement exists; and
  - c) Encourage College faculty and staff, as well as contractors, consultants, clients, and volunteers to enter into written agreements with the College prior to the creation of Intellectual Property in circumstances where they wish to have an ownership interest. The existence of a prior written agreement can prevent misunderstandings, disputes, and litigation.

## **4. Scope**

- 4.1. This policy applies to all College faculty and staff, as well as contractors, consultants, clients, and volunteers who make or develop Intellectual Property resulting from or connected with

their duties or employment with the College. Intellectual Property issues involving students are addressed in a manner consistent with this policy.

- 4.2. This policy does not apply to Intellectual Property created by an individual prior to being employed by the College.
- 4.3. The College recognizes that an Employee is the sole owner of a Copyright and Intellectual Property of a Personal Work created outside the scope of his/her employment with the College, on his/her own initiative and time, and without College support.
- 4.4. A number of activities, including third party projects, may generate Intellectual Property. These may include, but are not limited to, teaching materials; artistic products; research materials, including data; commercialization materials; and inventions, trademarks, and or design products.
- 4.5. External funding sources may have certain funding agreements or contracts that may impose conditions or requirements that supersede elements of this policy.
- 4.6. Publication in scholarly journals may require the creator to assign the publisher rights to the work. Assigned rights may vary from limited to total, depending on the scholarly press.

## 5. Definitions

*Note:* Patent, trademark, secret, design, and copyright are all terms related to specific Acts and have specific requirements and meanings within the terms of the Act.

- 5.1. **Applied research** refers to activities that move concepts from the theoretical, conceptual stage to the commercialization stage, usually by engaging in proof of concept, prototype development, testing, and validation activities.
- 5.2. **College** refers to Keyano College.
- 5.3. **College Resources** refers to any technology, facility, space, funds, equipment or resource owned by the College.
- 5.4. **Commercialization** refers to the process of making a product or service available for sale.
- 5.5. **Contractor** refers to any individual or company who provides services to the College under a service contract (i.e., a non-employee-employer relationship).
- 5.6. **Copyright** refers to the rights granted to prevent copying for specified periods pursuant to the Copyright Act (Canada), as amended or re-enacted from time to time, or any successor legislation.
- 5.7. **Creator(s)** refers to the individual(s) making a substantial intellectual contribution to the development of Intellectual Property (e.g. authors, artists, designers, inventors, and other similar designations). To qualify as a creator, the creator's contribution must be critical to its main conclusions and consistent with the appropriate Act.
- 5.8. **Design** refers to a feature or features of shape, configuration, pattern, or ornamentation applied to enhance the visual appeal of a useful article, protectable in Canada through an "Industrial Design" and in the United States through a "Design Patent."
- 5.9. **Employee** refers to any person who is employed by the College or who provides services to the College under an employment contract.

- 5.10. **Entrepreneurial Opportunity** refers to an unfulfilled need that has been identified that presents the college with an opportunity for financial gain if a product or service can be developed to fulfill the need. Entrepreneurial opportunity emerges at the nexus of individual aspirations with economic and social conditions perceived as favourable to create a new product or service, in either an existing market or a new one. (source: <http://lexicon.ft.com/Term?term=entrepreneurial-opportunity>)
- 5.11. **Idea** refers to any form of knowledge created with one's intellect.
- 5.12. **Intellectual Property** refers to any form of knowledge or expression created with one's intellect. It includes inventions, scientific or scholarly discoveries, computer software, trademarks, literary, artistic, musical, or visual works, and even simple know-how that can be registered or otherwise protected under the law. Intellectual Property is generally broken down into recognized categories: copyright, designs, patents, secrets, and trademarks.
- 5.13. **Intellectual Property Officer** refers to the person or persons appointed by the College to be responsible for administration of College policies relating to Intellectual Property and ownership, commercialization and development of entrepreneurial opportunities. In the absence of the Intellectual Property Officer, the Vice President Academic shall be the Intellectual Property Officer for the purposes of this policy.
- 5.14. **Invention** refers to an idea that is considered to have potential to be protected by patent.
- 5.15. **Inventor** refers to a creator who has contributed an idea that is not "obvious" and is the subject matter of a claim of a patent application.
- 5.16. **Know-How** is the product of experience. While "know-how" has commercial value and is part of Intellectual Property, it is not something that "can be registered or otherwise protected under the law." When a student (or an Employee) leaves the institution, they are prohibited from using "secrets" but the whole purpose of his/her education was to develop a "know-how" they can use elsewhere.
- 5.17. **Net Revenue** refers to all revenues in whole or in part from commercialization of Intellectual Property, products and/or services including, but not limited to, proceeds from royalties, profit sharing, lump-sum payments and monies from the sale of equity shares less costs incurred during commercialization.
- 5.17.1. The existence of a prior written agreement relative to 'costs incurred during commercialization' is encouraged.
- 5.18. **Patent** refers to a set of exclusive rights that protect new inventions, such as new or improved materials, products, or processes. When an idea presents a solution to a technical problem, it may be protected by applying for a patent. In order to be patentable, an invention must be novel, useful, and not obvious to a person skilled in the field of the invention.
- 5.18.1. There are strict time deadlines applicable for applying for a patent. It is, therefore, important that ideas capable of being patented be maintained as secrets until a patent has been applied for, if possible.
- 5.19. **Personal Work** refers to any work or intellectual property that is created outside the scope of employment or relationship with the College that is unrelated to the business carried on by the College and that does not result from the use of any of the College's facilities, funds, or resources either on or off campus.

- 5.20. **Research** refers to any activity which involves a systematic investigation to establish facts, principles, or generalizable knowledge. Any undertaking intended to extend knowledge through a disciplined inquiry or systematic investigation shall be considered research.
- 5.21. **Secret** refers to an idea that has been kept confidential. Depending upon the nature of the ideas, disclosure of idea in the absence of a written secrecy agreement may result in the loss of ability to protect the Intellectual Property in some countries. Disclosure may also start a 12-month deadline for protecting the idea in other countries that allow disclosure to occur before a patent has been filed (e.g. Canada, United States, and Australia).
- 5.22. **Student** refers to any person registered in a College credit course. A College employee registered as a student remains an employee for purposes of this policy.
- 5.23. **Trademark** refers to 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. Note: The most common trademarks are brand names, logos and slogans.
- 5.24. **Volunteer** refers to any person performing work for the College in an unpaid capacity
- 5.25. **Work** refers to any action that leads to a tangible result.
- 5.25.1. This extends the current Keyano College Faculty Association (KCFA) Collective Agreement definition of work beyond authorship to include all forms of Intellectual Property. External Cross Reference: KCFA Collective Agreement Article 18.
- 5.25.2. Employee work(s) are defined as work produced by an Employee:
- a) as required or commissioned by the College.
  - b) as initiated at the discretion of the employee.
- 5.25.3. See 5.19 for the definition of Personal Work.

## 6. Guiding Principles

- 6.1. Keyano College values and encourages innovation and supports College faculty and staff, as well as contractors, consultants, clients, and volunteers in the development of creative works.
- 6.2. Disclosure
- 6.2.1. When creative works are developed in ways that use College resources, the developer has an ethical obligation to disclose this to the College.
- 6.3. Types of Ownership
- 6.3.1. The College recognizes that Intellectual Property has four possibilities of ownership (creator, the College, joint, and third party). In the absence of a prior written agreement, Intellectual Property belongs to the College unless the creator, College, or joint or third-party owner, demonstrates that it should be otherwise.
- 6.3.2. Intellectual Property created within the framework of a prior written agreement becomes the property of the creator(s) or entities designated within the written agreement.
- 6.3.3. Ownership of instructional materials creates unique distinctions defined in Section 2.1.5 of the Intellectual Property Procedure.

#### 6.4. Commercialization and Entrepreneurial Opportunity

6.4.1. The College encourages and supports commercialization and entrepreneurial activity.

6.4.2. Any creator who decides to pursue commercialization of Intellectual Property shall follow the procedures set out in the College's Involvement in Commercialization Policy.

## 7. Roles & Responsibilities

STAKEHOLDER	RESPONSIBILITIES
Executive Committee	<ul style="list-style-type: none"> <li>Approve and formally support this policy.</li> </ul>
Vice President Academic	<ul style="list-style-type: none"> <li>Review and formally support this policy.</li> </ul>
Deans' Council	<ul style="list-style-type: none"> <li>Develop and maintain this policy.</li> <li>Take proactive steps to reinforce compliance with this policy by all stakeholders.</li> </ul>
Managers, Supervisors, or Representatives	<ul style="list-style-type: none"> <li>Explain the terms of this policy to faculty, staff, and students as well as contractors, consultants, clients, and volunteers and assist users to understand the requirements of this policy.</li> <li>Ensure that all stakeholders follow the requirements of this policy.</li> </ul>
Procurement and Managers	<ul style="list-style-type: none"> <li>Follow the guidelines provided in this policy when performing due diligence and assessment of the risks related to Intellectual Property for any new contracts with third parties.</li> <li>Ensure that responsibilities and obligations of each party to the contractual relationship are outlined in the contract executed between the College and the contractor/sub-contractor.</li> </ul>
Human Resources	<ul style="list-style-type: none"> <li>Ensure each new employee has read and signed off understood this policy upon the first 7 days of employment with the College.</li> <li>Support all employees in the understanding of the requirements of this policy.</li> </ul>
All users (faculty, staff, students, and third parties)	<ul style="list-style-type: none"> <li>Comply with the requirements of this policy as applicable to them at all times.</li> <li>Report all non-compliance instances with this policy (observed or suspected) to the Vice President Academic as soon as possible.</li> </ul>

## 8. Policy Management

Policy Title:	Intellectual Property and Ownership Policy
Approval Date:	July 15, 2018
Effective Date:	August 27, 2018
Historical Review Dates:	February, 2020
Next Review Date:	February, 2023
Related Legislation:	<ul style="list-style-type: none"> <li>Copyright Act</li> <li>Industrial Design Act</li> <li>Integrated Circuit Topography Act</li> <li>Patent Act</li> <li>Post-Secondary Learning Act</li> </ul>

	<ul style="list-style-type: none"> <li>• Trade-marks Act</li> </ul>
Supersedes Policies:	N/A
Monitoring/Frequency:	<ul style="list-style-type: none"> <li>• Monitoring of compliance activities will be reviewed at a minimum, once a year.</li> <li>• Education and training sessions will periodically take place throughout the year.</li> </ul>
Policy Owner:	Vice President Academic
Policy Administrator:	Director, Quality Assurance and Research Services
Policy Coordinator:	Executive Assistant, Academic