

HR-016
Intellectual Property Policy
Human Resources
CREATION DATE – March 2004
ELT APPROVAL DATE – March 2004
LATEST REVIEW DATE – Feb 1 2011
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ORGANIZATIONAL SCOPE:

All Michener faculty, contract instructors, staff, students, and the Michener Institute

PURPOSE:

The purpose of the following policy is to delineate the rights of faculty, contract instructors, staff, students, and The Michener Institute in the creation of intellectual property.

POLICY:

The activities covered by this policy include, but are not limited to, the following:

- Writing of books, manuals, publications, reports, articles and conference papers
- Writing of teaching materials, course outlines, exams, curriculum, including electronic "courseware"
- Making of multi-media and audio-visual productions
- Designing and creating questionnaires, forms and databases
- Developing computer software and websites
- Researching projects and conducting related activities

The rights covered by this policy include, but are not limited to, the following:

- The exclusive right to own and use the intellectual property
- The exclusive right to sell, transfer, grant, license and otherwise deal in the intellectual property
- The exclusive right to register, defend and enforce the intellectual property through legal and/or other proceedings

Types of Intellectual Property and General Ownership Rules

The ownership of intellectual property created in the course of or during employment will depend on the specific type of property and how that property was created. Since there can be uncertainty in the application of legal principles to specific fact situations, the purpose of this Policy is to provide clear guideline on ownership issues.

(i) Patents

A patent may be granted under statute for an invention that is new, useful and non-obvious. A patent precludes others from making, using or selling the patented invention for a period of time (e.g. twenty years from the date of application). An "inventor" is someone who contributed to the inventive concept, as opposed to verifying the concept or providing a physical or financial contribution. Disclosure of an invention in such a manner that it becomes available to the public, in Canada or elsewhere, may preclude patent protection.

In the case of a (potentially patentable) invention, the general rule is that where an employee's job responsibilities include developing and inventing new products (in other words, if the

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employee is "employed to invent"), then the rights to an invention made by that employee in the course of his or her employment will belong to the employer. In other cases, the rights to the invention generally belong to the inventor, in the absence of an agreement to the contrary. It is common for companies to have a written employment agreement whereby any invention developed by an employee, whether on or off the job, is assigned to the employer.

(ii) Copyright

Copyright exists under statute for an original literary, musical, dramatic or artistic work. Copyright covers books, articles, conference papers, course outlines, course materials, exams, curriculum, diagrams, flow charts, questionnaires, photographs, computer programs, electronic "courseware", computer databases, multi-media and audio-visual works, and so on. Copyright includes the right to produce, reproduce, translate and to perform a work in public, as well as to publish a work if it is unpublished. Copyright does not protect mere ideas or facts. Rather, copyright protects the form of expression by which the ideas or facts are conveyed

For copyright, the general rule is that the author of a work is the first owner of copyright. However, when the author of the work was an employee "under a contract of service or apprenticeship", and when the work was made in the course of employment then, absent an agreement to the contrary, the employer will be the first owner of copyright.

(iii) Moral Rights

Moral rights exist under statute for the author of an original copyright work. An author has the right to the integrity of the work and, where reasonable in the circumstances, to be associated with the work as its author, by name or under a pseudonym, or to remain anonymous. These rights cannot be assigned, but can be waived in whole or in part.

(iv) Trade Marks

Trade marks exist under statute and at common law, and protect a name, word, design, logo, etc., that distinguishes one person's product, service or business, from the product, service or business of another person or company. For example, a new name for a course, book, or audio-visual work, may be a trade mark.

For trade marks, the general rule is that rights arise when there is "use" of the trade mark, which has a defined meaning under the *Trade-marks Act*, and usually requires the sale or offering for sale of a product or service in the ordinary course of trade. Usually, the first person to "use" the trade mark or to acquire a reputation in the trade mark, is the owner of the trade mark in the geographic area where the use occurred or where the reputation arises. A trade mark can be registered, and a registration creates rights across Canada.

(v) Confidential Information

Confidential Information is information that is not generally known to the trade or industry, and that is communicated to others with the intention that it be kept confidential. For example, contracts between Michener and third parties typically involve the exchange of confidential information. Confidential information is typically owned by the person or company who discloses it in confidence.

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Research Conducted at Michener

Michener employees engage in various forms of research. When funds will be provided by an external granting agency for the purpose of scholarship, faculty or staff typically originate a proposal and formally apply (on behalf of or involving Michener) to the granting agency, or originate a proposal in response to a general solicitation. Granting agencies generally surrender any ownership interest to the named Principal Investigator on the project. If the Principal Investigator is an employee of Michener, ownership of the intellectual property resides with Michener.

Contract research is any research conducted for a company, government, organization, or individual, where a formal contract between Michener and the external party is made and where (generally) there are defined outcomes and payment is made after receipt of invoices from Michener. The contract normally assigns ownership of the intellectual property to the external party.

Internally generated research is any research for the pursuit of scholarly knowledge or professional development which has had funds, resources or contributions made from Michener or from any internal source. Normally such research projects are awarded 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. Ownership of this intellectual property will reside with Michener.

For research completed during paid leave (commonly termed sabbatical research), ownership of the intellectual property will reside with Michener.

Should faculty, contract instructors or staff undertake research on their own time, without funding from Michener and without using Michener facilities or equipment, Michener would have no claim to ownership of the research or related intellectual property.

Claims to Ownership of Intellectual Property Pursuant to this Policy

For the purpose of this section, faculty, contract instructors, staff and students hired by Michener to conduct or participate in certain research or other projects, shall be referred to collectively as “employees”.

(i) When Michener may claim Ownership of Intellectual Property

When a person is employed by Michener, either on a full-time or part-time basis, and any intellectual property is generated in the course of activities related to their employment, Michener shall be the owner of the intellectual property, unless (i) Michener waives ownership in whole or in part by written instrument signed by the Vice-President of Michener, or (ii) Michener has entered into an agreement with a third party assigning ownership to that third party, in whole or in part.

For the purposes of this section, the phrase “activities related to their employment” includes, without limitation, teaching, publishing and research activities, whether such research is internal to Michener, or pursuant to a contract with a third party, and any other activities normally undertaken by the employee, regardless of whether these activities are performed during normal working hours or “after hours”, or physically at Michener or at some other location, and regardless of whether these activities are established by a written or oral

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agreement or by conduct. Employees of Michener shall promptly execute any assignment or other document necessary to facilitate Michener's ownership, licensing or enforcement of the intellectual property pursuant to this policy.

For all intellectual property owned by Michener, employees waive all their moral rights in favour of Michener and its successors, assigns and licensees.

(ii) When Employees may Claim Ownership of Intellectual Property

Employees may claim ownership of intellectual property when the intellectual property is created in the course of activities that are wholly unrelated to their employment and are undertaken without using Michener's facilities or equipment or funding.

Employees may also claim ownership to intellectual property that they develop pursuant to (i) a written agreement with Michener or (ii) a written agreement with a third party that has been approved by Michener in writing, and that gives the employee all or part ownership of the intellectual property. If an employee believes that he or she has a claim to partial ownership, the employee shall promptly file a written submission that outlines a proposed joint ownership of the intellectual property. Michener may agree to the proposal, reject the proposal, or offer a counter-proposal, within 30 days from receipt of the employee's submission.

(iii) When Employees may use Intellectual Property Owned by Michener

Employees are permitted to use and disclose intellectual property owned by Michener for (i) their teaching duties at Michener, and for (ii) any research or other uses authorized by Michener in writing.

Employees shall not use or disclose any confidential information except as specifically instructed by the owner of the confidential information, whether Michener or a third party.

The fact that Michener has full or part ownership of the intellectual property, does not preclude any employee from making a development proposal to Michener.

Employees shall not use or disclose any intellectual property owned by Michener for their financial or other material gain unless they have been authorized to do so in writing by Michener, after having submitted a written application for such authorization. Michener shall be under no obligation to approve such applications. Those employees who receive authorization in writing to use intellectual property owned by Michener (in whole or in part) shall provide Michener with annual written reports of all activities undertaken in relation to the intellectual property during the previous 12 months, which shall include (i) the names and addresses of all persons granted a licence to use the intellectual property, (ii) a detailed list of all expenses relating to the development, protection and/or licensing of the intellectual property, and (iii) a detailed list of all income or other benefits received by the employee relating to use or disclosure of the intellectual property. Employees shall be required to pay to Michener a percentage of the moneys received from all activities related to the exploitation of that intellectual property, which percentage shall be the subject of negotiation but shall not be less than ten percent.

(iv) When Michener may use Intellectual Property owned by Employees

Michener may use the intellectual property owned by its employees pursuant to any written agreement with the employees, or pursuant to any contract between Michener and a third party that deals with the creation and use of the intellectual property at issue.

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(v) Appeals

An employee who disagrees with a decision made by Michener pursuant to this policy, or who believes that his or her intellectual property rights are being infringed by Michener or by a third party who is connected to Michener on a research project, may make a written appeal to the Vice President, Academic Affairs. All written appeals must contain the following:

- a) reasons for making the appeal;
- b) the names of all parties involved;
- c) what action on the part of Michener is sought;
- d) a statement of the facts on which the employee relies; and
- e) a statement setting out any material changes from any original notice.

All appeals shall be heard by an Appeals Committee to be comprised of no fewer than three members, selected by the Vice President, Academic Affairs. This committee will be comprised of independent third parties. Employees are encouraged but not required to make a verbal presentation to the Appeals Committee. The Appeals Committee shall render a decision within thirty days from the date of the written submission or, if an oral presentation is made, within thirty days from the date of the oral presentation, whichever is later. The decision of the Intellectual Property Appeals Committee is final and binding on all parties.

DEFINITIONS:

The term “intellectual property” includes, but is not limited to, inventions, patents, trademarks, trade names, domain names, copyrights and related rights (including translation rights), moral rights, confidential information, industrial designs, and any other right that is or may in the future become recognized as intellectual property. These rights are a form of property that can, in most cases, be bought, sold, licensed, and generally dealt with like other forms of property.

I have read and understand Michener’s Intellectual Property policy.

Name (please print): _____

Signature: _____

Department: _____

Date: _____

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REVISION HISTORY – TO BE COMPLETED AT EVERY REVISION

DATE	REVIEWER	CHANGE(S) MADE	POLICY LOCATION(S) (i.e. internet, intranet, academic handbook)
Feb 1 2011	Robin Darling	Transferred to new template	