


## INTELLECTUAL PROPERTY PROCEDURE

<b>SECTION</b> GENERAL PROCEDURES	<b>DATE DRAFTED</b> February 25, 2011
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<b>Original signed by President &amp; CEO</b> 	

### INTENT

Alberta College of Art and Design (“College”) promotes dissemination and the open and free exchange of ideas, practices and scholarly works. The College is an advanced educational and research institution where intellectual property shall be freely shared subject to the principles and conditions outlined in this Procedure. Academic freedom and critical inquiry imply the responsibility to communicate the findings and results of intellectual investigation. As such the communication and dissemination of this knowledge applies to Intellectual Property and its use.

By identifying the terms and conditions which qualify the College’s interest in Intellectual Property, this Procedure seeks to assist in the effective dissemination of knowledge while attempting to maintain an atmosphere conducive to the growth and development of ideas and research. It is also intended to clarify and provide a fair reward to the College for the use of its facilities and resources that may be used in the creation and/or commercialization of Intellectual Property.

### DEFINITIONS

**Intellectual Property** means any ideas, materials or other communicable result arising from any academic, scientific, humanistic, literary or artistic endeavor, including any patents, copyrights, trade secrets, industrial designs, integrated circuit topographies, trademarks or other intellectual property rights in or to any of the foregoing. It includes, but is not limited to, designs, trademarks, books, monographs, papers, paintings, drawings, sculpture, performances, computer software, and lecture and conference presentations.

**Commercialize or Commercialization** means: the assignment, transfer, sale, lease, licensing or other distribution of Intellectual Property for financial or other compensation; the provision of services or goods using or incorporating Intellectual Property in whole or in part, for financial or other compensation; or any other exercise of rights in ,or to, Intellectual Property for financial or other compensation. Commercialization is not intended to apply to sales or use of original works of art that are created by a Creator using the College’s facilities and resources which may be sold but not intended for replication or multiple reproduction for public use or consumption, or for works placed in the public domain or for assignments or licenses which do not involve a fee or royalty.

**Creator** means an individual who is the originator of Intellectual property or who has made a substantial intellectual contribution to the development of Intellectual Property. To qualify as a Creator, an individual must have contributed sufficiently to the work to take public responsibility for its content and the individual's contribution must be critical to its main conclusions or result. Where contributions to an intellectual property are made by more than one individual then the development of an Intellectual Property can be deemed to have more than one Creator.

**Sponsor** means an individual or organization which provides grant or contract funds to the College to assist with the costs of research or other activities carried out by College employees, including but not limited to a government department or agency, private foundation, charitable organization, business, partnership, corporation or private individual.

**Revenue-sharing** means the sharing of net revenues between the Creator and the College which result from the Commercialization of Intellectual Property.

**Net revenue** means the revenues resulting from the commercialization of Intellectual Property less any fees, expenditures, or other costs, including costs of patent protection and searches, incurred to receive or otherwise generate these revenues.

## SCOPE

This Procedure applies to Intellectual Property created by College employees in the course of their College-related scholarly and creative duties. Scholarly activities include teaching but not administrative duties. This Procedure also applies to any contractors, consultants, students, or agents retained and compensated by the College for services that result in the creation of Intellectual Property. The Procedure does not apply to Intellectual Property created in the course of non-College-related activities such as outside employment or work undertaken by employees in their external professional business or studio practices as independent artists, or to Intellectual Property created by others but used by the College or its employees in the course of their scholarly and creative activities.

## PRINCIPLES

1. The ownership of Intellectual Property and all rights pertaining to the ownership are vested in its Creator in proportion to his or her contributions to the work unless qualified by law or written agreements to the contrary. Such laws are defined by copyright, patent, industrial design and trademark laws.
2. Creators who are employees of the College own their works. In freely assigning the ownership of Intellectual Property to Creators, this Procedure supports and encourages the extraordinary creative and inventive endeavors of its academic community. At the same time, if Creators have used College facilities and support in creating Intellectual Property, the College has a right to share in the net revenues earned from commercializing the property.

3. Subject to the Creator's compliance with this Intellectual Property Procedure and Section 68 of the Alberta Post-Secondary Learning Act, the Creator of Intellectual Property shall be the owner of Intellectual Property with the following exceptions:
  - a. As between a Creator and the College, the College shall be the owner of Intellectual Property produced by a Creator as a result of any written agreement between the College and a Sponsor, under which the Sponsor is to own such Intellectual Property, where the Creator has agreed in writing to this arrangement.
  - b. The College shall own Intellectual Property which results from the performance of a written contract, agreement or commission in which the College and the Creator have agreed that the College will own the Intellectual Property.
4. As a publicly funded institution, the College has the right to report on the publications, exhibitions, shows, patents, licenses and other forms of research, scholarly and creative activity of its employees where such activities are conducted as part of their College responsibilities.
5. Where the College is the owner of Intellectual Property, it may assign or transfer any interest in the Intellectual Property to the Creator.
6. The College has the right to use, practice, perform, display, reproduce, modify, improve, create derivative works, distribute and sublicense any Intellectual Property created or acquired by faculty or staff of the College that results from or is connected with the employee's duties in the normal course of employment to the College or for any work produced jointly by an employee and the College.
7. Without the consent of the Creator the College's right to use and re-use any work produced jointly by the Creator and the College, or as part of the normal employment duties of the Creator, or using the specialized equipment and technical services of the College, will be limited to the purposes for which the work was produced or recorded. The Creator will have the right to use and re-use the work within the College for the purpose for which the work was produced or recorded.
8. The College shall have no right to use or redistribute the work of a Creator, in whole or in part, outside the College without the consent of the Creator in a distribution agreement. Such work may be available to the public under conditions, on payment of fees or royalties or other compensation as the College may determine to the College and/or an officer or employee involved with its creation or acquisition.
9. The College may enter into an agreement with an employee or officer of the College to whom the College has provided or proposes to provide facilities, equipment or financial aid providing for the respective rights, obligations and liabilities of the College and the person with respect to any invention, work, or information or material, regardless of form, including any patent, copyright, technological or industrial design process or trademark acquired or produced by the person while engaged in a project funded in whole or in part by the College. The College will

not, without the agreement of the Creator, enter into arrangements or agreements that restrict its employees from communicating the results of scholarly activities.

10. A Creator may Commercialize Intellectual Property he/she owns that results from activities where there have been no Sponsors contributing in whole or in part to the creation of such Intellectual Property, without any requirement to obtain College approval. The College will not enter into third party arrangements which will preclude the dissemination of the results of research without the permission of the Creator.
11. Normally the Creator and the College will share in the net revenues resulting from commercialization of Intellectual Property when:
  - a. the cost of the activities giving rise to the Property were specifically funded by grants received by the College or by contracts between external sponsors and the College;
  - b. the costs of the activities giving rise to the Property were specifically funded from the College's special purpose funds, internal reserves, or specific budget allocations;
  - c. the Property was created using the College's specialized capital equipment and technical facilities and services where specialized equipment does not include the use of offices and office equipment such as personal computers;
  - d. the college actively participates in the commercialization of the Intellectual Property including the development, financing, licensing and sale of the Property.
12. . A Creator that wishes to Commercialize Intellectual Property resulting from activities where there has been a contribution by a Sponsor in whole or in part to the creation of such Intellectual Property, shall make arrangements with the College and enter into a revenue sharing agreement and share net revenues with the College.
13. Revenue sharing will generally not apply when Intellectual Property was created as a result of unsponsored activities and without using the College's specialized facilities and equipment, when created in the course of outside professional activities or non-College activities, or when the College has agreed to forgo revenue sharing through a prior agreement.
14. The College will not be responsible for any liability resulting from the commercial marketing or selling of any Intellectual Property in which it was not directly involved in the creation or sale.
15. The College shall have the right to approve or disapprove any use of the College's name, facilities or resources in any commercial arrangement or Commercialization of Intellectual Property. A Creator is not permitted to imply that the College approves, promotes or endorses works produced as part of his or her professional practice/research without the prior written consent of the College.

16. The Creator agrees to execute any such documents, render such assistance, and take such other actions as the College may reasonably request to register, perfect, confirm and protect the ownership or license rights of the College or a Sponsor in or to the Intellectual Property in accordance with this Procedure.

## PROCEDURES

### General

1. College faculty or staff shall disclose fully and in a timely manner all Intellectual Property developed in the course of their employment for commercialization or internal use to their immediate supervisor.
2. Faculty and staff who enter into a collaboration to create potentially new Intellectual Property are encouraged to develop a written contract in advance regarding rights and ownership.
3. The respective Vice-President, Director or School Chair shall be responsible for communicating this Intellectual Property Procedure to the College employees within their area.

### Revenue-Sharing

1. Where arrangements have been made for revenue-sharing or in situations where this Intellectual Property Procedure requires revenue-sharing, the Creator and the College shall negotiate an Intellectual Property Agreement that establishes the respective rights, revenue shares, and interests of the Creator and the College. Revenue shares to the College shall not exceed 75% of the gross revenues derived from the commercialization of the property.
2. The Creator of Intellectual Property shall disclose to his or her immediate supervisor any proposed commercialization of Intellectual Property that is covered by a revenue-sharing agreement or for which a revenue-sharing agreement is required by this Procedure.

### Disputes

1. In the case of disputes between or among Creators, the College encourages the individuals to settle the dispute amongst themselves.
2. In the case of disputes related to the subject matter of this Procedure that cannot be settled by the individuals involved, advice or assistance may be sought from their immediate supervisor. If the dispute is not resolved through these informal means, the Vice-President to which the employee is accountable to shall appoint a mediator in consultation with the President.

### REFERENCE

- Academic + Artistic Freedom Policy
- ACADFA Collective Agreement
- Academic & Artistic Freedom Procedure
- Alberta Post-Secondary Learning Act ( Sec 68 – Ownership of Intellectual Property)