

CR512: Intellectual Property

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| Policy Title: | Intellectual Property |
| Policy Number: | CR512 |
| Owner: | Innovation and Business Engagement |
| Approved by: | CET |
| Effective Date: | May 15, 2023 |
| Reference: | Associated processes and procedures are under development. |
| Links to Other Policy: | Commercialization Policy, Privacy Policy |

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BACKGROUND

DEFINITIONS and INTERPRETATION

The definitions below are provided for the purpose of interpreting this policy. Some definitions are found in Canadian laws; others are paraphrased from those in legislation/regulation (statute) for greater understanding and ease of application. In case of a conflict between a definition here and the same in Canadian law, the definition as stated in the law should be considered authoritative. The relevant statutes include, but should not be limited to, the *Copyright Act, RSC 1985, c C-42* and the *Patent Act, RSC 1985, c P-4*. [also includes the *Personal Information Protection and Electronic Documents Act, SC 2000, c 5* and the *Freedom of Information and Protection of Privacy Act, RSO 1990, c F.31.*]

“Assigned Tasks” means duties/activities of employees or contract workers undertaken for St. Lawrence College [the “College”]. **Assigned Tasks** generate deliverables to support the College’s operations or administration, and/or management of the College’s affairs and other endeavors, and include, but are not limited to:

- letters; memoranda; administrative reports

- Course Materials
- laboratory manuals
- inventions
- Plant Varieties
- business processes
- Integrated Circuit Topographies
- Industrial Designs
- minutes of meetings
- computer programs

Assigned Tasks may include from time to time, activities that constitute “Scholarly Work” as defined in this Policy and, as such, are subject to all rights and limits associated with Scholarly Work; see “Scholarly Work”.

Assigned Tasks include St. Lawrence College Brands and Trademarks.

“**Consent**” means an agreement, approval, or similar confirmation by a person by which they provide explicit permission. Consent must be valid, i.e., it must be informed, voluntary and absent fraud or misrepresentation. “Informed” means that all information material to making a decision is provided by the other party is provided to and understood by the person.

“**Copyright**” means such rights as are recognized in the Canadian *Copyright Act, R.S.C. 1985, c. 10*; see the Act for details about particular types rights. In general, “copyright” includes the right to produce, reproduce, perform, or publish any form of material, or any part of it. Examples of material protected by copyright are dramatic, literary, musical and artistic works.

“**Creator**” means a person(s) who makes material(s) that has associated IP rights under Canadian law, or law in another jurisdiction(s).

“**Fair Dealing**” means a person is allowed to use other people’s copyright material for the purpose of research, study, education, parody, satire, criticism, review or news, provided that what is done with the work is fair. Fair dealing is an exemption in Canada’s Copyright Act.

“Intellectual Property” or **“IP”** means any form of knowledge or expression created by one's intellect. In Canada, rights/entitlements related to IP can be legally protected. Some examples of IP include technical information, inventions, models, drawings, photographs, specifications, prototypes, computer software, curriculum and teaching materials and other creations that can be protected under patent, copyright, trademark, integrated circuit topography, plant breeders' rights and industrial design laws.

“License” means a process by which a person who owns IP (the licensor) grants another person (the licensee) permission, exclusive or non-exclusive, to use the IP for certain purposes and/or under certain conditions. A license to use IP does not transfer ownership of IP from the licensor to the licensee. A license may be formal (i.e., a written document using a standardized template creating a legally binding agreement/relationship), or informal (i.e., an ad hoc memo/message that documents understanding between two parties about use of IP.)

“Moral Rights” include:

- (i) the right of a Creator to be associated with a work, material or other deliverable as its author by name.
- (ii) the right to remain anonymous, if it is the choice of the Creator, with respect to same
- (iii) the right to prevent the distortion, mutilation or modification of the work, material or other deliverable to the prejudice of the honour or reputation of the Creator of same,
- (iv) the right to prevent the use of the work, material or other deliverable in association with a product, service, cause or institution to the prejudice of the honour or reputation of the Creator of same.

“Patent” means a right to somehow use an idea/process that results in a tangible and saleable product(s). The right is typically granted only for the physical incarnation of the product. A government grant that confers upon the creator of an invention the sole right to make, use and sell that invention for a set period of time is also a patent.

A patent may be obtained for an improvement to an existing patented invention. In this case, if the original patent may remain in force, an agreement with the original inventor(s) may be required before using an improved patent.

“Scholarly Work” means a work that is created in the course of teaching, learning and/or scholarship and research activities. “Scholarly Work” includes, but is not necessarily limited to, the following: books, published papers, research reports, inventions, Instructional Material, Plant Varieties, Industrial Designs, materials protected by Copyright, Integrated Circuit Topographies, academic work submitted by Students (including assignments and theses), Computer Programs, works of art, and/or experimental data. “Scholarly Works” shall not include St. Lawrence brands and related materials. “Scholarly Work” constitutes IP and, as such, is eligible for protection under Canadian and/or foreign IP law.

“Scholarship and Research Activity” (SRA) means an inquiry/investigation or activity conducted by a St. Lawrence College employee and/or student that makes a productive, intellectual and/or creative contribution that advances knowledge and adds to developments in their field, or a related field. Examples include, but are not limited to, the following:

- i) Application of conceptual knowledge to current practice in their fields, such as reports to industry or consulting work;
- ii) Making of creative contributions to their field through exhibitions or related forms;
- iii) Participation and/or presentations at provincial, national and international conferences;
- iv) Participation in competitions or exhibitions in their fields;
- v) Development of case studies in their fields; Publishing and/or reviewing professional publications in their fields;
- vi) Participation in regulatory and accrediting association workshops, degree audits, or related work in their fields;
- vii) Engagement with the scholarship of pedagogy in their fields; Engagement in basic and/or applied research, labour market research, and/or related industry needs assessments;
- viii) Writing peer-adjudicated publications and/or peer-adjudicated research grants.

“Student” means any individual who is admitted, enrolled or registered for study at St. Lawrence College and includes participants involved in non-credit training and continuing education. Individuals who are active in a program, but not enrolled in

classes for a particular term (e.g. on vacation or co-op term) are considered to have a continuing student relationship and are included in the definition of “Student”.

PURPOSE

St. Lawrence College seeks to encourage creativity, innovation, and invention among all members of the College community.

The goals of this Policy are:

i) To foster creative activity while ensuring fair recognition of IP rights and to ensure that IP produced within College activities be used to benefit Creators, the College as a whole and the broader community. The procedures [to be developed] that facilitate these goals provide processes to accomplish the following:

- Encourage creativity among the faculty, students and staff.
- Increase the likelihood that ideas, innovations, inventions and creative works produced at the College are used to benefit the broader community.
- Protect the rights of Creators to own the products of their intellectual endeavors
- Comply with the provisions of contracts with external sponsors.
- Encourage collaborative projects with external partners and provide guidelines for sharing intellectual property-with external partners.

ii) To clearly state the College’s intention to comply with all applicable laws, regulations, and contractual obligations, ensure fair dealing, respect Moral Rights and recognize the contributions of all stakeholders involved in the creation and/or development of IP.

iii) To affirm that, subject only to exceptions that have been clearly and expressly defined, the Creators of IP shall own the IP rights to their creations. Such rights and related Moral Rights may only be modified or waived through the express Consent of the Creator(s) of the IP.

iv) To express the intention of the College to preserve its right to use IP, under clear and explicit conditions, without royalty where IP is identified/created/developed for teaching, learning, SRA, creative activities and administrative activities conducted by the College.

SCOPE

This policy applies to all College personnel, whether compensated or not, including staff in the Academic and Support Staff bargaining units, sessional and part time faculty, administrative staff, administrators, managers, contractors, consultants, volunteers, educational partners, students employed by the College, students conducting research as a requirement for their academic program, and all other persons who engage in projects using the College's employees, students, facilities, and/or resources.

This policy extends to third parties who participate in collaborative research projects and/or joint initiatives, such as industry or sector partners; however, if any part of this policy conflicts with provisions of a signed agreement between the College and a creator of Intellectual Property, or between the College and a third party, the provisions of the signed agreement will prevail.

POLICY STATEMENTS

1. IP created in the course of Scholarly Work belongs to the Creator(s) of the IP. A Creator of IP may license use of the IP to another person/party. No contract or written agreement shall contain a clause waiving moral rights of a Creator of any Scholarly Work.
2. When an activity that is Scholarly Work is also an Assigned Task, the Creator of the IP shall grant to the College a License to the IP under its auspices and:
 - a) The License shall be non-exclusive, non-transferable, irrevocable and considered fully paid-up/royalty-free;
 - b) The License shall include the right to copy and use Scholarly Works by the College, and the right to make derivative works from, or modifications and improvements to, the Work. Such use granted by the License shall be for the purposes of teaching, learning, (including distance, continuing education courses, and training programs), Scholarship and Research Activities, creative activities and administrative tasks performed on behalf of the College;

- c) The License will permit the College to sublicense to other employees of the College to use the Scholarly Work(s) for the purposes of teaching, learning (including distance, continuing education courses, and training programs), Scholarship and Research Activities, creative activities and administration carried on behalf of the College, and to make derivative works from or modifications and improvements to same for such purposes.
 - d) The License shall include limits on the use of the IP, including, but not limited to, the following:
 - i. The License shall not confer any commercial right;
 - ii. The License shall not authorize distribution or sub-licensing activity outside the College;
 - iii. The License shall not authorize the use of IP for promotional purposes without the explicit and documented consent of the Creator(s) of the IP.
3. IP rights in works, materials and other deliverables that are created as or from Assigned Tasks that are not Scholarly Work shall belong to the College.
4. When Scholarly Work, research and/or creative activities have been funded and/or undertaken pursuant to a contract or collaborative research agreement, the ownership of IP rights may be determined in whole or in part by the terms of the contract or collaborative research agreement or the rules created by the funder and/or external party. Any such conditions and/or terms will be communicated to those participating in the research activity by the principal investigator or project leader. Prior to participating in the project, all participants, including Employees and/or Students, must agree in writing to any terms and conditions related to IP in the contract or agreement.
5. The College shall strive to ensure timely notification and attribution to the Creator(s) of IP that is Scholarly Work. All Members of the College are expected to respect all principles in this policy when using Scholarly Works of others under license to the College. Members of the College are not permitted to use Scholarly Works of others for paid-for consultative or contract work without the express written consent of the Creator(s) of IP that is Scholarly Work, unless the works have been specifically and

explicitly prepared with this purpose and with the full knowledge and consent of the Creator. Scholarly Works shall not be made available to anyone outside of the College without the written consent of the Creator(s) of IP that is Scholarly Work.

6. Contributions: Everyone who contributes to the creation of IP on behalf of the College shall be given fair recognition for their contribution. Recognition includes, but is not limited to, Recognition as a Creator, or Recognition through a citation or acknowledgment. The College shall also be recognized for its contribution/role in the creation of such IP: In the event the IP was created on College property and/or using College resources, the College shall be recognized by the Creators of the IP as the location where their work was done; The Creator(s) of the IP shall recognize any indirect support provided by the College, such as the use of its facilities/campuses. All individuals who contribute to such IP shall be recognized, regardless of their status at the College.
7. Third Party Agreements: Where there is an agreement between the College and a collaborating external organization, industry partner or any other third-party that addresses IP arising from the collaboration, the creation, development, acquisition, ownership, use, maintenance, and management of said IP shall be dealt with in accordance with the terms of such agreement. In the event of a collaborative agreement from which IP may be created, it must be specified in advance and in writing how the process by which the ownership rights to the IP created will be determined. Further, the cost of creating, maintaining, and monitoring the IP must be specified. Such determination should be based not on differences of power, but on the extent of the contribution. Such rights may be waived/modified through Informed Consent.
8. The College shall ensure that all activities undertaken in accordance with this Policy comply with all applicable provincial and federal laws and regulations and, in particular, the *Copyright Act*.
9. The College will create mechanisms to balance the goals of: i) ensuring unrestricted dissemination of knowledge and information produced by members of the College community and encouraging and supporting the Creators of IP that is Scholarly Work

to disseminate their findings (i.e., via publication, conferences, resumes/CV, etc.); and ii) the goal of ensuring that related rights (e.g., patents) are protected. To this end, the College will create training opportunity for Creators of IP to ensure they are aware that publication may introduce deadlines for proprietary protection of IP (e.g., in filing patent applications.) The College will obtain the consent of the Creator(s) of IP before entering into third-party agreements that would preclude or restrict the ability of the Creator(s) to communicate the results of research. Where research involves human participants, requirements of the College Research Ethics Board will prevail over this Policy.

MONITORING

The policy will be reviewed after the first year to reflect the development of associated processes and procedures. The monitoring of the policy and associated processes and procedures will be led by the Innovation and Business Engagement Department.

POLICY REVISION DATE

June 2024

SPECIFIC LINKS

Commercialization Policy

Fair Dealing and Copyright:

<https://stlawrencecollege.sharepoint.com/:b:/r/sites/slcmestaff/Policies/Fair%20Dealing%20for%20Copyright-Protected%20Work.pdf?csf=1&web=1&e=LC3U6R>

APPENDIX A AND ATTACHMENTS

This policy was developed from sources at Sheridan College, Mohawk College, and Niagara College. Resources from the Heads of Applied Research group were explored in the creation of this policy.