

**TORONTO METROPOLITAN UNIVERSITY
POLICY OF SENATE**

Policy 171: Scholarly, Research and Creative (SRC) Activity Intellectual Property

Policy Number: 171

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Responsible Office: Vice-President, Research and Innovation

1. Preamble

The advancement and mobilization of knowledge, including the creation of new and original Intellectual Property, is fundamental to the University's scholarly, research and creative (SRC) endeavours.

The creation, promotion, and dissemination of artistic, creative, technical, and scientific knowledge to enable public benefit is core to the University's mission.

That mission can also be achieved through the Commercialization or other sharing of University-created Intellectual Property. Members of the Toronto Metropolitan University community who create or invent any Intellectual Property by conceptualizing the intellectual activity in the course of SRC Activity are free to make decisions with respect to the dissemination, disposition, or use of the results of those SRC Activities.

It is important to clearly define who holds intellectual property rights at the University and who has the authority to make decisions regarding the disposition of intellectual property arising from SRC Activities. It is equally important to ensure the equitable distribution of any material benefits that result from the Commercialization or sharing of Intellectual Property arising from SRC Activity.

In order to fulfil its obligations under agreements with sponsors, to government agencies that support research, and to relevant government ministries, the University must ensure transparency and compliance in the management of intellectual property arising from SRC Activities. Funding and partnership agreements often include requirements for reporting, disclosure, or access to research results and associated intellectual property. Accordingly, the University may be required to disclose Intellectual Property created in the course of SRC Activity by any member of the community. Establishing this expectation within the Policy provides clarity to researchers, helps safeguard the University's contractual commitments, and reinforces a culture of accountability and responsible stewardship of research outputs.

2. Purpose

The purpose of this Policy is to:

2.1 support the mission of the University to advance knowledge and research for societal benefit, including through the dissemination and sharing of Intellectual Property;

2.2 clarify rights and ownership of Intellectual Property created in the course of SRC Activity;

2.3 ensure that all creators of Intellectual Property are provided with information about their rights and obligations.

3. Application, Scope and Relationship to Other Policies

3.1 This Policy applies to all Intellectual Property created in the course of any SRC Activity by all members of the University's community. This Policy does not replace any Intellectual Property language in any applicable collective or employment agreement, and in the event of a conflict such collective or employment agreement shall prevail.

3.2 This Policy does not apply to Intellectual Property developed by an individual as part of SRC Activities that are demonstrably separate from and unrelated to the individual's role at the University and which do not make use of facilities, resources, or funds administered by the University, or any Intellectual Property created in the course of teaching activities.

3.3 This Policy is to be read in conjunction with applicable University policies and statements, including but not limited to Senate Policy 118: Scholarly, Research and Creative Activity (SRC) Integrity Policy and Senate Policy 56: Publication of SRC Results. In particular, the determination of Intellectual Property ownership under this Policy does not relieve a researcher of the obligation to properly acknowledge and cite contributors in publications arising from SRC Activity.

3.4 Notwithstanding any provision of this Policy, all agreements between the University and third parties that relate to Intellectual Property remain in full force and effect. In the event of any conflict between the terms of this Policy and the existing agreement, the agreement shall prevail.

3.5. The use of artificial intelligence or other advanced computational tools in the course of SRC Activity does not, in itself, alter the application of this Policy. Such tools are instruments of the research or creative process. Determinations of Creative or Inventive Contribution, ownership, and disclosure continue to be based on human intellectual contribution under Canadian law. The Vice-President, Research and Innovation, may issue interpretive guidance or supplementary procedures to address the use of such tools in SRC Activity.

4. Definitions

Within this Policy the following words have the following meanings:

4.1 “Creative or Inventive Contribution” means conceptualizing or substantially contributing to the creation of Intellectual Property in a manner that confers ownership under Canadian law (such as inventorship for an invention or authorship for a copyrightable work). The determination of a Creative or Inventive Contribution depends on the nature and extent of an individual’s contribution to the conception or development of the Intellectual Property. For clarity, simply executing instructions or performing intellectual activity directed by another does not, on its own, constitute a Creative or Inventive Contribution.

4.2 “Commercialization” means the creation of commercial or marketable products, processes, and/or services derived in whole or in part from Intellectual Property with the goal of financial return, including through the assignment or licensing of the Intellectual Property.

4.3 “Commercialization Costs” shall mean costs incurred related to the Protection and Commercialization of the Intellectual Property including costs associated with patenting, copyright, trade-mark/-name, or other form of Intellectual Property Right protection as well as general legal costs and expenses associated with protecting the Intellectual Property. Commercialization Costs shall also include costs related to activities undertaken to commercialize the Technology including, but not limited to, market studies and business plans.

4.4 “Dispute Resolution Committee” means a committee appointed by the Vice-President, Research and Innovation under section 7.

4.5 “Extraordinary Support” means financial or other support of the University, including the use of personnel, equipment, supplies and facilities, which is specific to the individual and is more than the individual would ordinarily receive or be able to access in the standard course through their role at the University and in their normal SRC Activities. This includes, but is not limited to, Commercialization Costs.

4.6 “Intellectual Property” means a creation of the mind, including, but not limited to, technical information, know-how, copyrights, patents and trade secrets, ideas, concepts, processes, techniques, data, development tools, models, drawings, specifications, works, prototypes, inventions and software.

4.7 “Intellectual Property (IP) Ownership” defines the individual(s) or entity that holds the legal rights to use, control, and/or profit from intangible creations of the mind, including but not limited to inventions, copyrights, and patents. IP Ownership allows the owner to prevent others from using, selling, or distributing the Intellectual Property without permission.

4.8 “Invention” means any novel and useful idea, discovery, process, method, composition of matter, machine, manufacture, or improvement thereof, whether or not patentable, that is conceived, developed, or reduced to practice in the course of SRC Activity. Including, without limitation, software, biological material and other tangible research material, integrated circuits, plant cultivars, trade-marks, and industrial designs.

4.9 “Net Revenue” means any revenue, income or equivalent financial return, including any proceeds resulting from equity or other financial instruments, that result from the Commercialization or other dissemination of Intellectual Property. Net Revenue does not include any contributions to SRC Activities made to the University by third parties to fund the continued development or improvement of Intellectual Property.

4.10 “TFA Member” means a member of the Toronto Metropolitan Faculty Association as determined by the terms of the collective agreement entered into between the Toronto Metropolitan Faculty Association and the Board of Governors of Toronto Metropolitan University. The term TFA Member does not include individuals who are Associate Members of the Toronto Metropolitan Faculty Association, as that term is defined in the collective agreement.

4.11 “SRC Activity” means funded and non-funded creative, scholarly, and/or knowledge-generating activities, whether fundamental or applied, whose primary objective is discovery, problem-solving, or to achieve some desired result that can be specified to a significant extent but that cannot be produced with existing knowledge. SRC Activity is undertaken in the course of an individual’s role at the University, and is made, discovered or developed using the University facilities, support personnel, support services, equipment, materials or funds, or otherwise under the auspices of the University.

5. Creation and SRC Intellectual Property Ownership

5.1 Ownership of Intellectual Property that is created in the course of SRC Activity by a TFA Member is determined in accordance with the terms of the Toronto Metropolitan Faculty Collective Agreement.

5.2 Unless otherwise set out in this policy, individuals who are not TFA Members will own Intellectual Property to which they make a Creative or Inventive Contribution.

5.3 The Intellectual Property created in the course of SRC Activity by an individual who is not a TFA Member shall be owned by the University where:

5.3.1 the Intellectual Property was created by an employee in the scope of their employment contract with the University; or

5.3.2 the rights to the Intellectual Property have been granted by the University, in whole or in part, to a third party under a written agreement; or

5.3.3 the Intellectual Property was created pursuant to a formal agreement with the University.

5.4 Unless otherwise set out, Intellectual Property that is created in the course of SRC Activity jointly by two or more individuals (regardless of whether they are TFA Members) is jointly owned by those individuals.

5.5 The University shall be deemed to have a non-exclusive, royalty-free, irrevocable and non-transferable license to use solely for the University's internal use any Intellectual Property created in the course of SRC Activity. Such right shall not include the right to commercially exploit the Intellectual Property, or to license anyone to do so.

5.6 Disclosure of Invention: An individual who creates an Invention in the course of SRC Activity, regardless of IP Ownership, shall make full and complete disclosure of the Invention to the University as soon as the Invention can be clearly described in writing or has been reduced to practice, without unreasonable delay.

6. Commercialization

6.1 Owners of Intellectual Property, as set out in Section 5, may choose to engage in Commercialization of such Intellectual Property, and may request the University's assistance in commercializing the Intellectual Property. The University is under no obligation to provide Commercialization assistance.

6.2 The University has the right to share in any Net Revenue resulting from the Commercialization or dissemination of Inventions created in the course of SRC Activities as follows:

6.2.1 The University shall receive 10% of any Net Revenue received by the owner(s), regardless of any Commercialization assistance;

6.2.2 In the event that the University has entered into an agreement with the creators to provide Commercialization support and has contributed financial support, including but not limited to Commercialization Costs, the owners shall remit 50% of any Net Revenue until the University has recovered its agreed support, and thereafter as specified in the Commercialization Support Agreement.

6.3 All agreements with respect to the Commercialization of Intellectual Property created in the course of SRC Activity shall include indemnification of the University. The owner(s) shall provide to the University in confidence, on an annual basis, a copy of any Commercialization agreements entered into by the owner(s), together with a report of all protection activity and business transactions undertaken and revenues received or expenses incurred with regard to the protection of the Intellectual Property. IP creators who assign their rights to the University must not engage in commercialization efforts that compete with the University.

6.4 The University's share of Net Revenue shall be administered under the authority of the Vice-President, Research and Innovation and shall be used to support SRC Activity, including protection and Commercialization of Intellectual Property.

7. Dispute Resolution

7.1 In the absence of and/or subject to any process set out in an applicable policy or collective agreement grievance procedure of the University, any disputes arising under this Policy will be considered by a Dispute Resolution Committee appointed by the Vice-President, Research and Innovation. The committee will investigate the matter under dispute, prepare a written report of their review, and provide it to the Vice-President, Research and Innovation (VPRI), who shall render a decision. University community members shall cooperate with the Dispute Resolution process. In the case that a substantive risk is identified by the VPRI through non-compliance with the decision rendered, the VPRI may take the necessary action to mitigate any risk to the University. Failure to act in accordance with this policy may result in an allegation of SRC Integrity breach under Senate Policy 118.

8. Responsibility, Accountability, and Education

8.1 The Vice-President, Research and Innovation, is responsible for the administration of this Policy and is authorized to approve guidelines, regulations and procedures pursuant to this Policy. The Vice-President, Research and Innovation (or designate) is also authorized to execute such assignments, agreements, consents, and other documents as may be necessary or desirable to implement this Policy, and the disposition of rights in Intellectual Property thereunder, on behalf of the University.

8.2 To promote an understanding of Intellectual Property issues across the University, the Office of the Vice-President, Research and Innovation shall use appropriate vehicles to ensure that the University community members are informed and educated about this Policy, and shall work with other units of the University, including TMU Libraries and the Yeates School of Graduate and Postdoctoral Studies as appropriate, to educate and promote awareness across the University community on Intellectual Property.

9. Rescinded Policies and Related Documents

This Policy supersedes Policy 63: Policy on Ownership of Student Work in Research.

Procedures: SRC Intellectual Property (Policy 171)

Related Documents: Policy 171: Scholarly, Research and Creative (SRC) Intellectual Property Policy

Implementation Date: To be confirmed

Responsible Office: Vice-President, Research and Innovation

The University encourages all University community members to clarify, plan, and formalize provisions related to ownership, protection, disclosure, utilization, and disposition of Intellectual Property at the very outset of any SRC Activity undertaking that may result in Intellectual Property.

All capitalized terms not otherwise defined in these Procedures have the meanings set out in Policy 171.

1. Disclosure of Invention

- 1.1 To initiate the process of Invention disclosure in accordance with Section 5.6 of the Policy, the individual(s) who made a Creative or Inventive Contribution to the Invention must complete and sign a confidential invention disclosure form (the “Disclosure Form”).
- 1.2 Completed and signed Disclosure Forms are to be filed with the Office of the Vice-President, Research and Innovation (OVPRI) via the process information provided by the OVPRI.
- 1.3 Disclosure Forms are to be filed as soon as the Invention can be clearly described in writing or has been reduced to practice.
- 1.4 The OVPRI will undertake a preliminary review of the Disclosure Form to ensure that the Disclosure Form is complete, including accurate inventorship, and will contact the submitters in the event that the Disclosure Form is incomplete or requires clarification.
- 1.5 The OVPRI will accept and record completed Disclosure Forms and will communicate the acceptance of the Disclosure Form, including the registration number, to the disclosing individual(s).

2. Commercialization Assistance Request Process

- 2.1 Owner(s) of Inventions created in the course of SRC Activity may request the University’s assistance to Commercialize the Invention by submitting a written request to the OVPRI.

2.2 All requests must reference the specific Invention that has been disclosed to the University in accordance with Section 5.6 of the Policy.

2.3 Upon receipt of a request for assistance the OVPRI will initiate an assessment to determine the commercial viability of the Invention and the merit of committing University resources toward its protection and development. As part of this due diligence process, the OVPRI may require Inventor(s) to provide further information or details. Provided that all requested information has been submitted, the OVPRI will typically complete its review and notify the Inventor(s) of its decision regarding acceptance for Commercialization within ninety (90) days.

2.4 The decision to provide Commercialization support is at the OVPRI's sole discretion. Except as set out in a "Commercialization Support Agreement," the University is under no obligation to provide Commercialization support to submitter(s).

2.5 If support for Commercialization cannot be extended by the University, the OVPRI will, without undue delay, inform the requester and record the decision.

2.6 If support for Commercialization is extended, the OVPRI will provide confirmation to the requester(s). The OVPRI will enter into a written agreement with the owner(s) of the Invention which sets out the obligations of the parties, including the support provided, and arrangements regarding revenue sharing (the "Commercialization Support Agreement"). The University is not obligated to provide any Commercialization support until the parties have executed the Support Agreement.

2.7 All support provided by the University to Invention owners under a Commercialization Support Agreement is considered Extraordinary Support.

2.8 The OVPRI may negotiate a revenue share in excess of the amounts set out in Section 6.2 of the Policy as part of a Commercialization Support Agreement.

3. Dispute Resolution

3.1 The University recognizes that conflicts may arise in attempting to reach an agreement with respect to the determination of Intellectual Property ownership. Such conflicts may or may not involve allegations of wrong-doing; members of the University community may simply have incompatible perceptions of the meaning or application of the Policy and the relevant Creative or Inventive Contributions made by individuals to the Intellectual Property in question. In general, conflicts are best dealt with at an informal level. It is advisable for persons in conflict to seek mediation or other forms of informal dispute resolution.

3.2 If a conflict cannot be resolved informally, the matter may be brought to the Vice-President, Research and Innovation for dispute resolution. Individuals raising a dispute under the Policy must submit a written request for dispute resolution to the Vice-President, Research and Innovation via email to ovpri@torontomu.ca.

A request for dispute resolution must be submitted in writing to the VPRI and should include: the parties involved; a brief description of the dispute; and identification of the Intellectual Property at issue.

The VPRI will conduct a preliminary review to confirm that the matter falls within the scope of Policy 171.

3.3 In the absence of and/or subject to any process set out in an applicable policy or collective agreement grievance procedure of the University, any disputes arising under Policy 171 will be considered by a Dispute Resolution Committee.

3.3.1 The Vice-President, Research and Innovation will, within ten (10) business days of the written request, appoint the Dispute Resolution Committee.

3.3.2 The Dispute Resolution Committee shall consist of at least three impartial individuals with the necessary expertise, the majority of whom are drawn from the University community, including faculty, staff and/or students, and which may also include an external member.

3.4 The Dispute Resolution Committee will be tasked with undertaking an investigation. The committee will determine its own investigative process, following guidelines and timelines set out by the OVPRI, ensuring the involved parties are provided with an opportunity to be heard. University community members shall cooperate with the Dispute Resolution process. It is understood that University community members will comply with the directions that are required of them as part of fulfilling the requirements of this policy.

3.5 The Dispute Resolution Committee shall prepare a written report of its investigation to the Vice-President, Research and Innovation, and such other parties as it deems appropriate. The report shall include a summary of the issues, the factual findings, and the conclusions.

3.6 The Vice-President, Research and Innovation shall receive and review the report, after which they shall render a binding decision.

3.7 The Vice-President, Research and Innovation will provide the involved parties with a copy of the final report and the VPRI's decision within ten (10) business days of receipt.

4. Related Documents

Frequently Asked Questions to be provided in future.