

BCIT Intellectual Property Policy¹

Category: Research	Policy Number: 6601	Effective Date: 2006 05 09	Related Policies:
Approved By: Board	Executive Responsible: VP Research and International Maintained By: VP Research and International	Amended:	Review Due: 2007 05 09

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1. Philosophy

BCIT is mandated to provide educational programming and applied research to meet the economic development needs of the province of BC. In doing so, the Institute relies on the expertise and dedication of its faculty members and other staff, the participation of its students, and the support of the province’s business community. BCIT’s intellectual property policy reflects the Institute’s core values of academic integrity, collegiality and entrepreneurship, while striking a balance between the worlds of postsecondary education and industry.

Common law gives employers the right to own intellectual property created by employees. The same power is enshrined in legislation that governs postsecondary educational institutions. BCIT, in common with other postsecondary institutions, recognizes that this power should be tempered by providing incentives that will encourage creative people to bring their new ideas forward.

This policy therefore grants creators the right to own the intellectual property they have created in certain cases, including educational materials they have created for teaching their students, scholarly works they have written such as textbooks or papers in journals, and research results from grants awarded to the individual researcher. In other cases, such as work BCIT has specifically commissioned, research sponsored by industry, and other research supported by significant levels of Institute funding, BCIT will retain the right to own the intellectual property and/or to transfer ownership to the research sponsor.

¹ This policy is implemented through procedures set out in a separate document titled “BCIT Intellectual Property Procedures”.

Where ownership resides with the creators, they may deal with the intellectual property in any way they wish. Where ownership resides with the Institute, BCIT makes a strong commitment that it will develop the commercial potential of the ideas to the best of its ability and its means, and then share the majority of the resulting benefits with the creators. Furthermore, the Institute will begin to share these benefits as soon as they materialize, before all the Institute's costs are recovered. Provision is also made to enable creators who so desire, to conduct the commercial development of their ideas themselves.

2. Purpose of the Policy

- 2.1 To contribute towards furthering British Columbia Institute of Technology's ("BCIT" or the "Institute") educational and research objectives, in accordance with the Institute's polytechnic mandate;
- 2.2 To foster a vibrant educational and research culture at BCIT, that encourages employees and students to create intellectual property ("IP"), and encourages high quality people to become BCIT employees and/or to enrol as BCIT students;
- 2.3 To define the ownership, use and control of IP and IP rights created by members of the BCIT community as a result of using BCIT's resources, and to define who owns IP created during sponsored research activities, thereby encouraging potential sponsors (e.g. government, business organizations and individual donors) to provide resources to, or engage in collaborations with, BCIT that will advance research and education at the Institute and employment opportunities for BCIT graduates;
- 2.4 To set out the responsibilities of researchers at BCIT regarding disclosure of innovative ideas, discoveries and creations;
- 2.5 To encourage commercialization of IP arising from applied research conducted at BCIT, and to establish practices for sharing of Income arising from IP that is commercialized.

3. Scope of the Policy

- 3.1 This Policy applies to all Institute employees, students and third parties (e.g. visitors and contractors) who may create IP using Institute Resources.
- 3.2 This Policy applies to IP of all types of inventions, works and creations arising as a result of educational, research or other activity by the Institute, and using Institute Resources including, but not limited to, those protected by Patent, Copyright, Trademark, Design and Trade Secret law.
- 3.3 In keeping with established practices, BCIT applies different considerations to IP that is contained in certain instructional course materials created by instructors, compared to IP from research activities.

4. Ownership of Intellectual Property

Ownership of IP is and shall be vested with the Institute, or with the Creator(s), depending on the type of IP and the circumstances under which the IP was created.

4.1 *Creator(s) shall own IP that is:*

- 4.1.1 Research results, inventions or copyrightable material created by BCIT employees outside their duties at the Institute.
- 4.1.2 IP that the Institute has specifically agreed to assign to the Creator(s).
- 4.1.3 Copyrightable material created by an instructor in support of his/her own classroom teaching activities unless subject to the terms of §4.2.1 below.
- 4.1.4 Scholarly works, e.g. copyrightable works such as a paper in a peer-reviewed journal, an article in a trade journal, or a text book intended for students.
- 4.1.5 IP resulting from research funded by grants awarded to the Creator as an individual researcher².
- 4.1.6 IP created by a BCIT employee in any of the following circumstances: (i) while on professional development leave, (ii) resulting from an Instructional Enhancement Grant unless a written agreement has been made in advance with the Creator(s) giving BCIT the ownership rights to such works.
- 4.1.7 Research results, inventions or copyrightable material created by an employee or student without significant use of Institute Funds, facilities or information owned or administered by BCIT.
- 4.1.8 Research results and theses produced by BCIT students in the course of their studies, unless such work is based on BCIT's proprietary information.
- 4.1.9 All other circumstances not specifically covered under §4.2 below.

4.2 *BCIT shall own IP that is:*

- 4.2.1 The result of any work specifically commissioned by the Institute of a BCIT employee, pursuant to a written contract of employment, or when release time from their normal duties has been designated for such work.
- 4.2.2 The result of sponsored work done under the terms of a contract or other agreement between BCIT and a sponsor/client. In cases where the contract specifies that a sponsor/client shall have the option or right to own or license the resulting IP, BCIT will initially hold the IP and then facilitate its transfer.
- 4.2.3 Except for circumstances described in §4.1, the result of work that involves significant use of Institute Funds, facilities or information owned or administered by BCIT.

² See "BCIT Intellectual Property Procedures" (§2.4) for an explanation of what is meant by "a grant to an individual researcher".

5. Ownership of Course Materials

- 5.1 The Institute acknowledges that course materials created by an instructor in support of his/her own classroom teaching, where such materials have not been specifically commissioned by the Institute and/or not developed as an assigned portion of their workload, are owned by the Creator(s).
- 5.2 To deliver its educational programs, BCIT uses course materials owned by its instructional staff, as well as course materials that are owned by the Institute. The latter are commissioned (pursuant to §4.2.1), purchased, licensed or received as a donation.
- 5.3 In keeping with the spirit of collegiality among faculty at educational institutions, BCIT instructors are invited to assign their rights to IP for course materials which they own to the Institute, with the understanding that the materials will be used by the instructors in their program or department for mutual benefit.

6. Disclosure of Inventions

- 6.1 Except for course materials created by instructors, all other potentially valuable IP conceived or first reduced to practice by BCIT employees in the course of their Institute duties, whether or not the IP in question is Creator-owned or Institute-owned, shall be promptly disclosed to the Institute in accordance with the informal procedure set forth in BCIT's Intellectual Property Procedures document. Initial disclosure may be done informally. At a later time, if the IP is BCIT-owned, and BCIT expresses its interest in commercializing the IP, a formal written disclosure will be required.
- 6.2 Information about IP disclosures shall be kept confidential (i.e. the Creator(s) and others having knowledge of the IP shall not make known information about the disclosure to parties that are not bound by appropriate confidentiality agreements with the Institute) until the Institute advises that such information can be released.
- 6.3 If, after evaluation, the Institute decides not to commercialize the disclosed IP, it shall promptly offer to assign its ownership interest in the IP to the Creator(s), thereby enabling the Creator(s) to release the information into the public domain or pursue commercialization on their own. Such assignment shall include a provision that BCIT shall have the right to receive up to a 20% share of the Income from commercialization realized by the Creator(s).

7. Commercialization of Intellectual Property resulting from Research

- 7.1 BCIT-owned IP may be protected, developed and/or commercialized in the manner that the Institute deems appropriate, and at the Institute's expense. Where BCIT decides not to develop and/or commercialize the IP, it may waive its ownership rights in favour of the Creator(s); or, if the IP has been assigned to the Institute by the Creator(s), it will be returned to the Creator(s).
- 7.2 BCIT will operate a Technology Commercialization Office ("TCO") to focus on commercialization of Institute-owned inventions and other research results.
- 7.3 The TCO commercialization services are available for Creator-owned IP. To obtain the TCO's services, Creators must assign ownership of the IP to the Institute. If accepted by the TCO, IP that has been voluntarily assigned by the Creator(s) will be treated in the same manner as BCIT-owned IP, including sharing of proceeds according to §8 below.

- 7.4 BCIT will give favourable consideration to Creator(s) who wish to undertake commercialization of BCIT-owned IP themselves, provided the Creator(s) make a convincing case that they have an appropriate business plan and the resources to execute said plan. Requests of this nature will not be unreasonably denied. In cases where the Creator(s) conduct the commercialization themselves the Institute shall be entitled to receive a share in the Income realized by the Creator(s).

8. Sharing Proceeds of Commercialization

- 8.1 BCIT will share with the Creator(s) the Income from licenses or sales of Institute-owned IP. Unless agreed otherwise by the parties, the sharing ratio shall be 55% to the Creator(s) and 45% to the Institute.
- 8.2 BCIT will offer Creator(s) the opportunity to receive a portion of their share of Income beginning as soon as proceeds from commercialization begin to be received by the Institute, i.e. while the Institute's commercialization expenditures are still being recovered, and on a mutually agreed basis. Once the Institute's expenditures have been fully recovered, the Income distributed to the Creator(s) will be adjusted to the sharing ratio in §8.1.
- 8.3 BCIT will use its share of Income realized from commercialization of IP to further advance the creation and/or development of IP at the Institute at the discretion of the Institute.
- 8.4 In certain special cases, where the proceeds from IP are received in a form that cannot easily be divided, such as gifts in kind to the Institute, equipment, real estate, buildings or other non-cash consideration, rewards to the Creator(s) will not be based on a percentage share of the proceeds. Instead, the Institute will make discretionary awards on a case-by-case basis.

9. Definitions

The following definitions apply to this Policy:

Assignment means a transfer of rights in Intellectual Property.

Commercialization means necessary activities undertaken in order to exploit IP. Commercialization includes assignment, licensing, manufacturing or production of IP as well as the protection of IP, including, but not limited to, obtaining patent protection and copyright registration, with the goal of financial return.

Copyright means an exclusive right conferred by the government on the creator of a work to exclude others from reproducing it, adapting it, distributing it to the public, performing it in public, or displaying it in public.

Course Materials means materials used by an instructor, such as lecture notes, class notes, examinations, educational software, books, articles, graphic materials (e.g. maps, photographs, drawings) or other teaching aids for the purpose of explaining concepts to students, or evaluating their performance.

Creator(s) means a sole individual, or group of individuals working collaboratively and/or cooperatively, who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of Intellectual Property. Creator includes the concept of "inventor" as used in the Canadian Patent Act, or "author" as used in the Canadian Copyright Act.

Direct Expenses means the reasonable costs attributable to commercialization of IP, less any applicable grants or other reimbursements received from other parties. Costs of Commercialization include, but are not limited to, direct salary and benefit costs for personnel engaged in commercialization activities, plus the direct costs of consumable materials and other reasonable out-of-pocket expenditures associated with evaluating IP, obtaining and maintaining IP protection, preventing unauthorized use or infringement, legal fees, prototype development funds, negotiating and implementing licenses or other agreements with third parties.

Equity includes, but is not limited to, non-cash proceeds from the commercialization of IP (e.g. stock, securities, stock options, warrants, buildings, real or personal property).

Income means Revenue less Direct Expenses.

Institute Funds means funds awarded to or collected by BCIT, including but not limited to, operational funds from government, student fees, donations, grants and contracts.

Institute Resources include, but are not limited to, BCIT's physical structures, research laboratories, capital equipment, technical facilities, services and personnel. Services include administration of funds received by BCIT in the form of grants, contracts or other support provided by the Institute or external sponsors. Personnel includes work done by BCIT employees and directed work done by BCIT students.

Intellectual Property or IP means any form of knowledge or expression created by human intellect that can be owned by a person. It includes, but is not limited to, inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative works which have value. It includes that which is protectable by statute or legislation, such as Patents, Copyrights, Trademarks, and Trade Secrets. It also includes the physical embodiments of intellectual effort, for example, models, machines, devices, designs, apparatus, instrumentation, circuits, computer programs and visualizations, biological materials, chemicals, other compositions of matter, plants, and records of research.

License includes a permission to use an intellectual property right within a defined time, context, market line, or territory.

Patent means a grant by the government to an inventor of the right to exclude others from making, using, or selling his or her invention.

Policy means this BCIT Intellectual Property Policy.

Proceeds means all Revenue and/or Equity received by the Institute from transfer, Commercialization, or other exploitation of Intellectual Property.

Revenue or Gross Revenue means cash derived from the Commercialization of IP (by the Creator if commercialized by the Creator, or by the Institute if commercialized by BCIT) including, without limitation, proceeds from royalties, profit-sharing, lump sum payments, and sale of equity shares. Revenue does not include funding for sponsored research projects.

Trademark means a word, slogan, design, picture, or other symbol used to identify and distinguish goods and any identifying symbol, including a word, design, or shape of a product or container, that qualifies for legal status as a trademark, service mark, collective mark, certification mark, trade name, or trade dress.

Trade Secret means information that is confidential and the subject of reasonable efforts to preserve confidentiality and has value because it is not generally known in the trade. Such confidential information is protected against those who gain access to it through improper methods or by a breach of confidence.