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<b>Administrative Responsibility:</b>	AVP, Scholarship, Research and Creative Activity	<b>Procedure:</b>	<a href="#">31.13.001</a>

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## 1. PREAMBLE

This Policy and its corresponding Procedures provide a framework for the management of Intellectual Property created by members of the Vancouver Island University community while acting in a scholarly, professional or Student capacity.

The University recognizes its role in generating benefits for society through facilitating the creation and dissemination of research findings and creative activities, and where appropriate, encouraging the application of its research and creativity in tangible ways. Accordingly, this Policy is designed to promote a supportive climate for the development of Intellectual Property and the provision of services based on mutually beneficial partnerships that respect the interests of researchers and IP owners, the University, and the wider community.

## 2. PURPOSE

The purposes of this Policy are to:

- 2.1 Provide a supportive climate and incentives for intellectual and creative development, innovation, and entrepreneurship by members of the Vancouver Island University community, including Students;
- 2.2 Create an Intellectual Property environment consistent with the educational mandate of the University. This mandate encourages the wide dissemination of ideas and enables IP owners to capitalize on their research. The University acknowledges that it has the privilege and obligation, within a framework of respect for Intellectual Property principles, to share, spread and disseminate the products of scholarly activity to benefit IP owners, the University, and the public;
- 2.3 Provide a framework for effective development and use of discoveries for the benefit of our society, and which accords with the interests of the University and the public;
- 2.4 Increase opportunities for funding and other resources that may be used to promote and aid research and creative activities at the University;

- 2.5 Support the University in meeting its obligations to funding sponsors, and assist VIU Members in fulfilling the terms of grants or contracts, with respect to Intellectual Property;
- 2.6 Provide safeguards for the protection and disposition of Intellectual Property and uphold the principles of scholarly integrity and academic freedom in the mobilization of Intellectual Property;
- 2.7 Establish a set of procedures to address ownership, disclosure, publication, mobilization, and disposition and sharing of revenues associated with Intellectual Property, and when such sharing is in dispute, provide an effective dispute resolution mechanism.

### 3. DEFINITIONS

- 3.1 “Courseware” has the limited meaning of all instructional materials used to facilitate student learning, in either hardcopy or electronic formats, created by VIU Faculty as part of their assigned duties with the University, including, without limitation syllabi, lecture notes and materials (e.g., PowerPoint slides), and assessment materials. For greater certainty, “Courseware” does not include:
  - (a) instructional materials created with the Direct Support of the University; and
  - (b) textbooks and instructional software created outside of a VIU Faculty member’s assigned duties and without Direct Support of the University.
- 3.2 “Direct Support” means the provision of VIU Resources to a VIU Member for the purpose of creating IP, and includes:
  - (a) where a VIU Member is hired to create IP, or where the University and a VIU Member otherwise agree to create IP;
  - (b) the provision of release time to a VIU Member for the purpose of creating IP; and
  - (c) payment to a VIU Member, in addition to the regular rate of pay, made for the creation of IP.
- 3.3 “Intellectual Property” or “IP” is a collective term for property arising as creations of the human intellect and protected by legal rights in the following Federal statutes:
  - (a) the *Patent Act*, which creates exclusive rights to utilize and Mobilize useful inventions (meaning any new or useful art, process, machine, manufacture or composition of matter, or any useful improvement thereof);
  - (b) the *Copyright Act*, which creates rights to control copying, dissemination and dissemination of a large variety of works, including literary (i.e. written), musical, dramatic, and artistic works (paintings, sculptures, etc.), and performances, broadcasts, and sound recordings; as well as moral rights in these works;
  - (c) the *Trademarks Act*, which concerns exclusive rights to distinguishing marks used to identify the source or origin of a specific products or services;

- (d) the *Industrial Design Act*, which concerns certain original configurations, shapes, patterns or ornamentation which are applied to a useful article of manufacture and which appeal to and are judged solely by the eye;
- (e) the *Integrated Circuit Topography Act*, which concerns the protection of the designs of the interconnections of integrated circuits, and the integrated circuit products that incorporate those designs; and
- (f) the *Plant Breeders Rights Act*, which concerns new plant varieties.

For the purposes of this Policy, the term IP will exclude the following, which are sometimes included in the term IP: confidential information (including “trade secrets”), personality rights, privacy, and domain names.

- 3.4 “IP owner” means the person who, at law, owns IP, including (without limitation), the author of a copyrighted work where the author (not their employer) is the first owner of copyright, and the inventor of a patent. The term “IP owner” includes multiple owners of IP (e.g. co-authors and co-inventors).
- 3.5 “Mobilize” or “Mobilization” means activities undertaken to assign or license IP for the purpose of wider dissemination, further research and development, and/or commercial deployment leading to reputational benefits or revenue for the University or the University Member (or both), as further detailed in the Procedures.
- 3.6 “Net Revenue” means the royalty, licensing and other income or equivalent financial return received from the Mobilization of IP, less agreed upon costs to develop, protect, market and otherwise develop and distribute the IP or products incorporating the IP. The exact calculation of Net Revenue for the Mobilization of any specific IP will be finalized and included in revenue sharing provisions of the relevant agreement(s) entered into as part of the Mobilization process.
- 3.7 “Policy” means this Vancouver Island University Policy 31.13, and the Procedures.
- 3.8 “Procedures” means Procedure 31.13.001
- 3.9 “Publication” means making IP available to the public, whether by way of speech, print, paper, electronic or other means.
- 3.10 “Student” means person who is presently enrolled at the University in a credit course or who is designated by resolution of the University’s Senate as a student. For greater certainty, this includes graduate and undergraduate students, as well as other non-degree students.
- 3.11 “University” means Vancouver Island University.
- 3.12 “VIU Administrative and Support Employees” means all employees of the University who are not VIU Faculty.
- 3.13 “VIU Faculty” means, collectively, the members of the Vancouver Island University Faculty Association and the members of the B.C. Government and Service Employees’ Union – Faculty Local 702.

- 3.14 “VIU Member(s)” means VIU Faculty, VIU Administrative and Support Employees, and Students.
- 3.15 “VIU Resources” means resources dedicated by the University such as funding, material supplies and equipment, dedicated space, teaching reassignment, or support staff, in addition to those provided merely to fulfill assigned duties.

#### **4. SCOPE**

- 4.1 This Policy applies to all IP created by VIU Members.
- 4.2 Notwithstanding 4.1 above, this Policy does not apply to:
- (a) IP created by VIU Faculty and VIU Administrative and Support Employees outside of their assigned duties with VIU;
  - (b) IP created by Students outside of their VIU coursework and research;
  - (c) IP created by VIU Faculty without Direct Support; and
  - (d) IP created by VIU Faculty during activities wholly while on an unpaid leave of absence away from the University and without Direct Support.

#### **5. INDIGENOUS KNOWLEDGES AND TRADITIONAL CULTURAL EXPRESSIONS**

- 5.1 The University recognizes Article 31.1 from the UN Declaration of Rights of Indigenous Peoples, which states that "Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions."
- 5.2 Engagement with Indigenous Peoples may result in the creation of Intellectual Property; the resulting rights to use, publish and disseminate the IP may not be in accordance with the understandings, express or implied, with the specific Indigenous persons or groups involved, or the laws and customs of those Indigenous persons or groups. Therefore, the ownership of IP which results from engagement with Indigenous Peoples, or is developed with the contribution of Indigenous Peoples, or which is based on or otherwise developed from Indigenous knowledge, history or culture, shall be subject to such consultations and acknowledgements determined appropriate by the Vancouver Island University Elders Council.
- 5.3 VIU Members should follow the OCAP® standards, as set and maintained by the First Nations Information Governance Centre (“FNIGC”), when collecting, protecting, using, or sharing data related to Indigenous Peoples. These OCAP® standards are intended to ensure that respect is given to the ownership, control, access, and possession of indigenous knowledge and traditional cultural expression, and are set out in more detail on the FNIGC website ([www.fnigc.ca](http://www.fnigc.ca)).

#### **6. GENERAL IP OWNERSHIP PRINCIPLES**

- 6.1 Ownership of each type of IP is determined by the statute which concerns the IP right. Each statute and the associated common law establish the rules regarding the ownership and usage rights of IP created in the course of employment.
- 6.2 The University adopts a creator-owned approach to IP created by VIU Faculty and Students, in keeping with its obligations pursuant to the BCGEU and the VIUFA Collective Agreement, subject to the exceptions set out in the BC *University Act*, relevant federal IP laws, and the common law. In particular,
- (a) the provisions of collective agreements with the bargaining agents for VIU Faculty (VIUFA and BCGEU) reflect an approach which may be described as a “creator-owned”, whereby
    - (i) With respect to patents: works created as part of assigned duties are owned by the VIU Faculty.
    - (ii) With respect to copyright:
      - (A) works created as part of assigned duties are owned by VIU Faculty, and licensed to the University for institutional purposes; and
      - (B) works for which Direct Support has been provided to VIU Faculty to create the copyrighted work, are owned by the University, and licensed to the VIU Faculty.
    - (iii) Ownership of other forms of IP (trademarks, plant breeders rights, industrial designs, integrated circuit topographies) shall be determined in accordance with the provisions of the relevant IP statute.
  - (b) Students own the Intellectual Property they create in the completion of course work and assessments. Where a Student is also employed by the University, the ownership of IP created in the course of a Student’s employment will be determined in the context of the employment agreement. See the Procedures for additional information.
  - (c) The ownership of IP created by VIU Members who are not VIU Faculty shall be determined in accordance with the provisions of the relevant IP statute and the terms of any applicable agreement between the University and the VIU Members (for example, an employment agreement). See the Procedures for specific ownership examples.
- 6.3 If there is a conflict between the ownership principles described in this Policy, and the terms of the applicable collective agreement or terms and conditions of employment, the latter shall govern.
- 6.4 The owner of Intellectual Property may voluntarily transfer any interest in the IP to any other person, including the University. If the interest in IP is assigned to a new owner, the new owner of the IP may then deal with the IP freely. If the interest in IP is licensed to another person, that person (the licensee) may use the IP in accordance with the terms of the license agreement. Note, some Mobilization scenarios involve the IP owner(s) first transferring IP to an entity that will secure all required protections for the IP in exchange for a part interest in the IP in return.

## 7. RECOGNITION OF CONTRIBUTION

- 7.1 All persons who contribute to a scholarly activity and research must receive appropriate recognition for their contributions. In particular:
- (a) Scholarly recognition must be consistent with the norms appropriate to their discipline and/or sector. Specifically, the Integrity and Conduct in Research and Scholarly Activity Policy addresses recognitions in the context of research and scholarly activities.
  - (b) Recognition as to IP creation, including acknowledging co-authors and co-inventors is not only required by the Integrity and Conduct in Research and Scholarly Activity Policy, but is also a requirement for many forms of formal IP protection, for Mobilization, and ensuring that a copyright protected work may be submitted for publication in compliance with the publisher's and funding requirements.
  - (c) Where IP ownership and rights (including Mobilization) have been specifically addressed in an agreement, recognition must also comply with such agreements.

## **8. THIRD-PARTY RIGHTS**

- 8.1 VIU Members are required to respect third-party intellectual property rights. This obligation precludes the unauthorized use, reproduction, modification, translation or adaptation of software, photocopied textbooks and the like. See also VIU's Policy 31.02 Copyright.

## **9. DISSEMINATION OF RESEARCH**

- 9.1 IP owners retain their right to determine the timing and nature of the Publication of research and other academic results, except:
- (a) when Publication restrictions are put into place pursuant to other University policies and procedures; or
  - (b) where the IP owner(s) have entered into an agreement that restricts or requires a delay in Publication (e.g. an embargo).
- 9.2 Where the University owns IP created by one or more VIU Faculty or a Student (for example, a VIU-commissioned work), the University will obtain the consent of the VIU Member(s) before entering into third-party or other agreements that would preclude, restrict or delay the communication of the results of research by the VIU Members.

## **10. MOBILIZATION AND REVENUE SHARING**

- 10.1 IP owners generally have exclusive rights to determine what is to be done with their IP. In support of a "creator owned" IP policy, VIU Faculty who create and own Intellectual Property have the exclusive authority to decide whether to pursue Mobilization of their IP (subject to the provisions of this Policy and related Procedures).
- 10.2 Where a VIU Member decides to Mobilize the VIU Member's IP, the following rules apply:
- (a) Where the University has not provided Direct Support, the VIU Member will be fully responsible for Mobilization activities and retain all revenues (i.e. the University will not

assume a share of revenue, ownership, copyright or other obligation for the rights to the IP).

- (b) Where the IP is related to Courseware, the VIU Faculty will be fully responsible for Mobilization activities and may retain all revenues, but the Mobilization activity must be disclosed to the University in accordance with Section 11 of this Policy so that the VIU Faculty and the Associate Vice President, Scholarship, Research and Creative Activity may collaborate with respect to the University's interest in the Courseware.
- (c) Where the University and the VIU Member have agreed in advance for the provision of Direct Support for research activities that may lead to the development of IP, the University has the right to a share of up to 30% of Net Revenue earned by the VIU Member from Mobilization of the IP. The exact revenue share percentage will be negotiated as between the University and the VIU Member, as contemplated in the Procedures.

10.3 The University's share of Net Revenue from Mobilization of IP shall be administered under the authority of the Vice-President Administration & Finance and/or Academic and will be used to support further research and technology transfer activities at the University, support Students, and, also, contribute towards the University's general operations.

10.4 The procedures for the Mobilization of IP generated by VIU Faculty with Direct Support from the University, including the distribution of the University's share of Net Revenues realized from Mobilization, are further outlined in the Procedures.

## **11. DISCLOSURE**

11.1 Disclosure of IP created by VIU Members is generally in the interests of the University and the VIU community. Disclosure of the creation of IP to the University is necessary to enable the University to fulfil its various roles and responsibilities, including (where applicable) its:

- (a) responsibility to be accountable to government and the public;
- (b) interest in being informed of the activities of its employees and Students in this area;
- (c) obligations regarding contract research, IP, and liability and related issues; and
- (d) right to a share of the revenue earned from Mobilization of the IP developed with Direct Support.

11.2 In order to support the University in fulfilment of these objectives, disclosure of all IP developed with Direct Support is required of VIU Members as follows:

- (a) For scholarly publications and much of the other typical creative activity by VIU Faculty, disclosure of IP of a non-commercial nature is to be done through established institutional processes (e.g. Vancouver Island University Annual Scholarly Activity Report) and/or employee evaluation processes.
- (b) Any IP owner who intends or elects to Mobilize IP that has been developed with Direct Support must disclose their intention to the University prior to the commencement of

any Mobilization activities, including initiation of discussions or negotiations with any third parties, as further detailed in the Procedures.

- (c) VIU Faculty must disclose at the earliest opportunity any requests from third parties for commercial development of Courseware.

11.3 IP owners should contact the AVP, Scholarship, Research and Creative Activity, to arrange for appropriate safeguards prior to disclosing IP, confidential information or proprietary and business information to any parties, including other VIU Members and external parties. Disclosure to specialized University staff and external professional advisors in aid of Mobilization is warranted, but sharing such information with individuals who do not need to know may jeopardize available IP protections and impede Mobilization.

## **12. IMPLEMENTATION**

12.1 The Provost & Vice-President Academic has executive responsibility for implementing this Policy and will be the final decision authority on behalf of the University for any Mobilization related agreements entered into.

12.2 IP created prior to the approval of this Policy shall be reviewed by the AVP, Scholarship, Research and Creative Activity, in consultation with the IP owners, to determine the applicability of any prior and relevant University agreements, policies and procedures.

## **13. INTERPRETATION AND DISPUTE RESOLUTION**

13.1 If any VIU Member has questions about the interpretation or application of this Policy, or if a dispute arises among VIU Members regarding their relative contributions to the creation of IP and such dispute cannot be settled by the individuals involved, VIU Members may seek information regarding this Policy from the office of the AVP Scholarship, Research and Creative Activity. Further questions or concerns regarding the interpretation or application of this Policy may be raised to the Office of the President, whose interpretation is final.

13.2 Disputes concerning IP in the context of an agreement relating to the creation of IP or the provision of Direct Support, including (but not limited to) a collective agreement, terms and conditions of employment, a sponsored research agreement, a contract research agreement, collaborative research agreement, etc., must follow the dispute resolution provisions of the relevant agreement(s).

13.3 If no dispute resolution procedures are mandated by the relevant agreements, the parties are encouraged to explore and mutually agree upon appropriate dispute resolution processes, such as facilitated negotiations, mediation or arbitration. For greater certainty, nothing in this Policy restricts a party from taking such legal actions as they deem appropriate to protect their legal rights.