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Administrative Responsibility:	AVP, Scholarship, Research and Creative Activity	Policy: 31.13

1. TERMINOLOGY

Terms defined in the Policy have the same meaning in these Procedures.

2. SPECIFIC IP OWNERSHIP EXAMPLES

- a. **Academic works created by VIU Faculty.** As noted in the Policy, the University adopts a creator-owned approach in keeping with its obligations pursuant to the BCGEU and the VIUFA Collective Agreements. However, there are instances in which the University owns copyright in materials created by VIU Faculty – see Article 27 of the BCGEU Collective Agreement and Section 14.8 of the VIUFA Collective Agreement. By way of summary only:
 - i. **Materials commissioned by VIU:** where the University hires or enters into an agreement with VIU Faculty to create and produce work that is protectable under copyright. Such commissioned materials may include course design and materials for distance education, continuing education and other types of teaching, Courseware and research. Such commissions may be offered to VIU Faculty outside of their regular assigned duties, whether by a written contract, agreement or informal arrangement. For greater certainty, this section does not concern the development of lecture notes or Courseware by VIU Faculty in the course of their normal faculty or department teaching duties.
 - ii. **Materials created under release of usual duties:** where a member of VIU Faculty is given a release from their usual duties to create and produce work that is protectable under copyright.
 - iii. **Materials created for additional compensation:** where a member of VIU Faculty is paid, in addition to their regular rate of pay, for their time in an appointment to produce copyrightable work product.
- b. **Administrative duties of VIU Faculty:** The VIU Faculty owns the copyright resulting from contributions or creations performed as a result of the fulfillment of an administrative

role for the University, including but not limited to the development of databases and collection of information, development of processes, creation of electronic tools and systems (e.g. websites and information technology systems), information brochures and promotional materials, commissioned or requested studies, reports or descriptive handbooks.

However:

- i. the University is automatically granted a license to use those contributions or creations, on the terms described in the relevant collective agreement; and
 - ii. the University will own the copyright if the VIU Faculty creates the work or other subject matter in the circumstances described in Article 27 of the BCGEU Collective Agreement and Section 14.8 of the VIUFA Collective Agreement. By way of summary only:
 1. **Materials commissioned by VIU:** where the University hires or enters into an agreement with VIU Faculty to create and produce work that is protectable under copyright.
 2. **Materials created under release of usual duties:** where a member of VIU Faculty is given a release from their usual duties to create and produce work that is protectable under copyright.
 3. **Materials created for additional compensation:** where a member of VIU Faculty is paid, in addition to their regular rate of pay, for their time in an appointment to produce copyrightable work product.
- c. **Assigned duties of VIU Administrative and Support Employees:** Copyright in the works created in the course of the usual and/or specified duties of VIU Administrative and Support Employees are owned by the University, subject to the existence of an agreement to the contrary (such as, for example, their collective agreement or employment agreement).
- d. **Sponsored or contract research:** In sponsored or contract research activities, IP ownership may be determined in whole or in part by the terms of the research contract (which may incorporate by reference the IP policies of the research sponsor or granting agency). See Section 3 of these Procedures for further details regarding entering into sponsored research contracts and contract research agreements.
- e. **Copyright Licenses:** Even where copyright is owned by another person, the University or VIU Member (as applicable) may be able to make some use of it, depending on the terms of a license. For instance, under applicable collective agreements:
- i. Where copyright is owned by a member of the VIU Faculty, the University automatically has a license to use that work in certain ways. For example, in the VIUFA Collective Agreement, the University is permitted to use the work subject to major limitations: any amendments or updates are subject to the employee's approval (which cannot be unreasonably withheld); and the University's license

automatically terminates when the employee is no longer employed at the University. In the BCGEU Collective Agreement, the University is permitted to use the work in perpetuity but only for institutional purposes and any amendments or updates are subject to the employee's approval (which cannot be unreasonably withheld).

- ii. Where copyright is owned by the University, a member of the VIU Faculty automatically has a license to use that work in certain ways. For instance, both the VIUFA Collective Agreement and the BCGEU Collective Agreement, the member has a right to use the work in perpetuity, and can amend or update the materials subject to the University's approval (which cannot be unreasonably withheld).
- f. **Student Creators:** The University specifically acknowledges that IP created solely by a Student or together with other Students in the course of completing the requirements for an academic degree, certificate or other academic program is owned by that Student or that group of Students. For further clarity:
- i. This ownership principle applies equally to the IP in work that created as a part of the requirements of the degree, certificate or program.
 - ii. The ownership of the IP may, however, be different if the IP is created in the context of an employment or other agreement between the Student and the University, or an agreement between the Student and an external party that sponsors or supports the Student's academic activities (e.g. businesses that provide real-client Student projects as part of an academic program).
 - iii. VIU Faculty must not involve any Students in research or creative activities that conflict with, or jeopardize, the Students' progress toward meeting their degree requirements.
- g. **Collaborative Research:** The University encourages researchers to share information and to work in collaboration with others, where this is likely to advance the state of knowledge. For greater certainty:
- i. Where a member of VIU Faculty seeks to engage in collaborative research activities with one or more research collaborators who are not VIU Members, whether on the VIU campus or elsewhere, and the collaboration is expected to generate IP, the VIU Faculty member must ensure that the ownership, licensing and, if relevant, Mobilization, of the resulting IP is addressed in a written agreement as between the research collaborators and, where required by the University. The agreement(s) must comply with this Policy and the policy(ies) applicable to the research collaborator(s), applicable law and the provisions of any funding or granting agreements pursuant to which the research is undertaken. Legally binding agreements, including those that concern the ownership of IP, may not be amended except with the full, informed consent of each party to the agreement.

- ii. Where IP is created from contributions undertaken by a team whose membership changes over time and the contributors have not, through informed consent, entered into a written agreement, the default arrangement for revenue sharing will be in keeping with IP ownership as determined by the relevant IP statute.
- iii. In addition to the policies and requirements of research funding agencies, such as the Tri-Agency Open Access Policy on Publications, which may apply to the research activity. VIU Members are encouraged to consider open licensing models when negotiating provisions regarding the publication of the results of collaborative research projects.

3. Entering into Sponsored Research and Contract Research Agreements

- (a) Where VIU Resources or funds administered by the University are involved in a proposed sponsored research or contract research agreement, the University must be a party to the agreement.
- (b) Research agreements with external parties will be negotiated by the AVP, Scholarship, Research and Creative Activity in consultation with the academic personnel proposing to undertake such research activities.
- (c) Arrangements where external sponsors retain ownership of IP generated by the research must be approved by the AVP, Scholarship, Research and Creative Activity and the appropriate Dean. Approval will normally only be granted if the AVP and Dean are satisfied that the arrangement will create some other academic benefit for the VIU Members involved in the research or scholarly activity.
- (d) Participants in sponsored or contract research activities must be made aware of sponsor regulations or contract terms by the principal investigator, or by any other designated leader of the research project. VIU Members entering into a relationship that will limit their enjoyment of normal academic benefits of their research must enter into it with informed consent.
- (e) The waiver of moral rights, if appropriate and agreed upon by the copyright owner(s), must be recorded in a written agreement signed by the party(ies) waiving their moral rights.

4. Entering into Collaborative Research Agreements

- (a) If a VIU Faculty member seeks to enter into a collaborative research agreement that proposes to waive, limit or assign IP, that agreement must be reviewed and approved by the AVP, Scholarship, Research and Creative Activity or their delegate. Where established agreements that waive, limit or assign IP rights are modified, the modified agreement must also be reviewed and approved by the AVP, Scholarship, Research and Creative Activity or their delegate.

5. Mobilization Procedure

(a) Preamble

The University's research mission differs fundamentally from the mission of a research-intensive institution. Due to a mandated emphasis on teaching and learning, in most of the University's faculties, the potential for generating revenues from research products and scholarly works is not an evaluation criterion, and therefore the institutional focus is not specifically on Mobilization. For this reason, the University does not offer technology transfer services to VIU Members, but encourages Creator-led Mobilization activities.

(b) Mobilization Principles

When an IP owner or the IP co-owners elect to Mobilize their IP, they assume responsibility for legally protecting and marketing it, finding a licensee, buyer or partner, negotiating an agreement with such a third party(ies), and administering that agreement. The University is not responsible for any legal, development, marketing or other costs the IP owner(s) may incur, including patent prosecutions.

Any type of agreement whereby the IP owner(s) earn revenue from Mobilizing IP generated through the use of VIU Resources must contain full and complete releases and indemnification in favour of the University with respect to the Mobilized IP.

Unless otherwise approved by the AVP Scholarship, Research and Creative Activity, any Mobilized Intellectual Property will remain subject to the license and other rights of the University granted under the provisions of agreements relevant to the creation of the IP, including collective agreements and other contracts specifically for the creation of the IP.

IP owners must obtain the approval of the Scholarship, Research and Creative Activity Office or senior University personnel (Vice-President level or higher or designate), before using the University's name, logo, facilities or resources in connection with any Mobilization activities. In addition, the University reserves the right to disassociate itself from an Intellectual Property or Mobilization activity.

(c) Disclosure Procedure

Any IP owner who intends or elects to Mobilize IP that has been developed using VIU Resources must disclose such intention to the University prior to commencement of any Mobilization activities, including initiation of discussions or negotiations with any third parties. Such disclosure must be in writing to the VIU Scholarship, Research and Creative Activity Office or equivalent, and the Dean/Director of the Faculty/School (for VIU faculty members) or senior supervisors (for VIU Administrative and Support Employee. These administrative groups will then forward the information to any other appropriate University offices.

When Students or other supervised persons are involved, the supervising person is obligated to inform the Students or other supervised persons of the intent to Mobilize and inform them that

the Scholarship, Research and Creative Activity Office or equivalent will provide information regarding the relevant policies and procedures. The supervising person is responsible for ensuring that the arrangements are fair and equitable and in compliance with all applicable VIU Policies and Procedures, as well as applicable law.

The University will make all reasonable efforts to maintain the confidentiality of proprietary and business information of IP owners who disclose Mobilization plans to University personnel. Similarly, IP owners are expected not to disclose proprietary or business information of the University.

(d) Revenue Sharing among Creators

If there is more than one IP owner, then following disclosure, the IP owners must reach a written agreement to determine ownership sharing based on their respective intellectual contributions to the work. Such an agreement should be concluded as early as possible and before any negotiations related to Mobilization are commenced with external parties and/or the private sector.

In the absence of a written agreement, sharing of commercial proceeds will be proportional to share of IP ownership, unless the entitlement to share has been waived in writing and through informed consent.

(e) University's Share in Revenue

IP owner(s) choosing to Mobilize IP created with the direct support of VIU Resources will enter into a revenue sharing agreement with the University, under which the University will receive up to 30% of the Net Revenue which the IP owner(s) may receive, payable on an annual basis.

The allocation and/or split of Net Revenue will be negotiated between the IP owner(s) and the Associate Vice-President, Scholarship, Research and Creative Activity and will take into account the extent of direct support provided by the University in the development of the IP. In exceptional circumstances, where the IP owner(s) make a clear case that any obligation to pay Net Revenue to the University would considerably reduce the viability of the Mobilization activity, the Board of Governors of the University may consider modifications to this percentage.

For the purposes of determining the allocation and/or split of Net Revenue, either the University or the IP owners(s) may require the other to provide an accounting of all revenues and funds received and expenses incurred with regard to IP covered by IP Policy 31.13 and this Procedure.

Mobilization proceeds actually received by the University shall be distributed as follows:

- (a) 40% to the Faculty(ies) or Department in which the IP owner(s) are appointed, employed or enrolled (as the case may be), to support research, creative activity and future IP development;
- (b) 60% to be further subdivided as follows:

- (i) 30% to the Office of the Vice-President Academic;
- (ii) 30% to the Vancouver Island University Foundation.

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