

Yeates School of Graduate Studies

INTELLECTUAL PROPERTY GUIDELINES

INTRODUCTION

Toronto Metropolitan University (TMU) recognizes and is committed to preserving the principles of academic and intellectual freedom and ensuring that all creators of intellectual property – graduate students, faculty, staff and other contributors – have their rights protected, have their contributions acknowledged appropriately, and receive appropriate economic return for their contributions in creating intellectual property when it results in commercialization.

The TMU Intellectual Property Policy is posted at the Office of Vice-President, Research & Innovation (OVPRI), torontomu.ca/research. It applies to all faculty, staff and student employees, graduate students and postdoctoral fellows, as well as to non-employees who participate in or intend to participate in teaching and/or research, scholarship or creative activities at the University. The policy is currently under review and any modifications will be posted as soon as they are approved.

These guidelines are intended to help you understand your rights to intellectual property that may result from your educational and research activities at TMU.

These guidelines do not constitute legal advice. Intellectual property issues can become very complicated. For help with a particular problem, you may need advice from a lawyer.

1. How are intellectual property, copyright and related terms defined in Canadian law and at TMU?

Intellectual Property (IP) means the tangible or communicable results of literary, artistic and scientific endeavour. It includes, among others, works in the form of books; monographs; papers; journal and magazine articles; theses and technical reports; paintings; drawings and sculpture; artistic performances; film, video and audio recordings; computer software; Internet website pages; inventions; industrial design; trade marks; plant breeders' rights; know-how; and biological materials. Most intellectual property can be protected under copyright, trademark or, in the case of inventions, through patents, such as industrial design or utility patents.

Intellectual property may be held individually, collectively as one group or entity, or jointly shared between persons or other entities. Protected intellectual property may, like any other asset, be bought or sold, leased, and/or shared. Licensing is the mechanism by which owners of the property lease and share the rights to use that property. Generally, creators are the owners of their own intellectual properties. In other cases, those who commission or purchase original works of art, or employers who contract or employ staff who invent works, will own the right of the IP through purchase, employment agreements or other arrangements.

Licensing intellectual property is the act of the owner who gives or licenses his/her intellectual property to permit someone to use the property, subject to the owner receiving valuable consideration in return (e.g., a royalty). Licensing or assigning IP is the act of giving the right to use the IP, in whole or in part, to another person or entity. Licensed IP rights may include the transfer of money, but not necessarily. Use of IP for commercial purposes usually requires a licensing agreement of a copyright, trademark or patent, but permission may also be granted in writing from the owner, usually for non-profit purposes, and with/or without conditions governing its use.

Copyright is a property right to publish, produce, reproduce, translate, broadcast, adapt or perform a work, as defined by the Copyright Act (R.S.C. 1985, c. C-42, as amended.) Copyright gives rights to creators and/or owners while providing access to IP by users. Canadian copyright law, which is intended to strike a balance between two interest groups—the creators/owners of IP and the Users, applies to all original literary, scholarly, dramatic, musical, and artistic works and recordings and software. For creators/owners, the law is intended to ensure that they have control over the use of their IP. For users, the law sets out the conditions and terms under which an original work may be legally copied, in whole or in part, or used for instruction, research, translation, broadcast, performance, adaptation or display. In particular, copyright gives the creator/owner of the IP the right to control

certain uses of his/her work in economic terms in the areas of reproduction and public performance. Economic rights allow creators/owners to draw income from these uses of their works.

Extraordinary use can be defined as something that might allow the university to own (in part) the research data generated by a graduate student through his or her own individual effort. It could include: the use of personnel hired specifically in order to assist the student with the data collection; computer capacity that exceeds the normal limitations of the university system (e.g. the system shuts down all other activity for two hours to permit data mining); specific funding from the university to support the data collection.

Invention means "any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter" (s. 2, Patent Act., R.S.C. 1985, c. P-4) and includes related computer software, know-how and new life forms.

Moral copyright can only be claimed by the creator of the work. Consequently these rights cannot be assigned, transferred or sold since it is intended to preserve the integrity of the work as a whole, as well as give recognition to the creator's original intent for the work. As well as including those rights to integrity of the work, artists and authors also have the right of association (or attribution), the right to have one's name associated with the work, or, if the author chooses, the right to use a pseudonym. Even if the creator sells or transfers all other rights to his work, moral copyright allows the creator to challenge (and enforce through court order), any proposed change to the work by the current owner, in order for the creator to preserve the original work, as well as to protect the creator's reputation attributed to that work. The only way an author or artist can forfeit moral rights to an artwork is through a specific waiver in a written agreement.

Patents are government grants that give inventors or their assignees exclusive rights to their inventions. Patent protection applies in the country that issues the patent. In Canada, this protection extends for up to 20 years from the date of filing. Patents are granted for products or processes that are new, workable and ingenious (novel, useful and inventive).

Scholarly, Research and Creative Activity (SRC) is a term used at TMU for a variety of fundamental or applied knowledge-generating activities. It includes peer-reviewed and non-peer-reviewed, funded and non-funded research and scholarship, and creative professional practice. SRC includes but is not limited to SRC that has as its objective Adiscovery@ and whose merit lies in the importance and excellence of the program, as judged by peers. SRC includes as well activities whose object is to solve a problem or achieve some desired result that can be specified to a significant extent but that cannot be produced with existing knowledge.

Tangible Research Property (TRP) means tangible items produced in the course of research projects supported by TMU or by external sponsors. TRP includes such items as data generated from surveys or investigations, biological materials, engineering drawings, computer software, integrated circuit chips, computer databases, prototype devices, circuit diagrams, and equipment. Research involves the collection of data. Often that results in the publication of a research paper interpreting and analyzing that data. This can involve any combination of scholarly, scientific, research and creative activity producing TRP.

2. Do graduate students need intellectual property agreements?

When you are first assigned to a faculty supervisor, you and your supervisor should discuss ownership of intellectual property that may be created in the course of your research as a graduate student. A formal agreement about ownership of intellectual property should be developed and signed by the student, the supervisor and other members of the research team.

A copy of all such agreements and amendments should be submitted to the director of your program. These documents will be placed in your program file, with copies sent to the Yeates School of Graduate Studies (YSGS) and to the OVPRI.

You should seek the support of the and/or the OVPRI before entering into any agreement about ownership of intellectual property. An agreement governing IP may affect your legal rights. You should treat these rights seriously and seek whatever advice you require, including independent legal advice.

3. How do research contracts affect intellectual property rights?

As a graduate student, you may be involved in research activities that are contractual in nature. Such contracts, when authorized by TMU, normally contain provisions relating to intellectual property. In some cases, all intellectual property created under such contract relationships may be owned entirely by the sponsor and may contain clauses that delay or prevent the publication and/or use of the IP.

Where research is conducted under a contract which places restrictions on the use of or access to IP, this will be disclosed to you. Restrictions on use of or access to IP usually arise as a result of contractual relationships between the University and an external sponsor. All participants should be aware of any restrictions prior to conducting research.

In research contracts, restrictions on the use of student-developed intellectual property should not interfere with a student satisfying degree requirements. For example, where a student's research is funded by means of an external contract, the student's thesis/report cannot be stipulated as a deliverable of the contract. Publication of the thesis cannot be delayed without the express written permission of the Graduate Student. The student's completion of thesis, dissertation or granting of degree cannot be delayed by restrictions on the timing or confidentiality of the study/research project.

With the increasing amount of researchers working in collaboration between the University and the industrial and governmental sponsors or consortia, graduate students may be required to sign agreements of confidentiality and/or assign research IP to the sponsor(s). You should seek the support of YSGS and/or the OVPRI before entering into any agreement about ownership of intellectual property. An agreement governing IP may affect your legal rights. You should treat these rights seriously and seek whatever advice you require, including independent legal advice.

4. How do I document my contributions to intellectual property?

In the interests of good scholarly practice and in order to substantiate claims to intellectual property, you should keep complete, dated records of your research. These records may be in the form of bound notebooks, logbooks, laboratory records or other documentation, as appropriate to the discipline. You should retain copies of significant drafts and notes, and of all material submitted for evaluation, presentation, publication and any informal contribution to collaborative research projects. Raw data and other research results should remain accessible at all times to all other members of any collaborative research activity.

5. What happens if my supervisor and/or other students and I have a dispute about intellectual property?

If you have a dispute with other graduate students or with your supervisor over respective intellectual property rights, you should attempt to resolve the questions in an informal manner, with the assistance of the Graduate Program Director, Dean of Graduate Studies, Director of Research Services and the Associate Vice-President, Academic or their designates. If the disagreement can't be resolved at this level, the matter will be referred to the Intellectual Property Committee of Academic Council. The preferred mechanism for dispute resolution is mediation. These offices can arrange this service at any time.

AUTHORSHIP AND PUBLICATION

6. How are the results of graduate student research made public?

TMU encourages students, faculty members and staff to publish the results of their Scholarly Research and Creative (SRC) activities in any appropriate venue or format. The results of graduate student research are also made public by requirements of YSGS that all successfully defended graduate theses be submitted to the National Library of Canada, the University and the candidate's Program, where they will be freely available to other scholars.

If you wish to delay circulation of your thesis in order to protect intellectual property for a period of no more than twelve months from the date of final examination, you must make an application in writing to the Dean of Graduate Studies.

7. How is co-authorship of a publication determined?

Any person who has made a contribution to a work that is reported in a presentation, publication and/or artistic performance, either in the conception, design, or execution of the experimental work, interpretation of data or drafting an article/presentation, should be given appropriate acknowledgement or attribution. Authorship of a paper should be attributed only to those persons who have made substantive contributions to the paper, and who have given permission for their names to be included. If you use the IP of others in your research, you must also acknowledge their contribution to your research. Prior to the research project, arrangements need to be made to obtain the necessary permissions and rights to use this IP through a purchase or licensing agreement.

Your thesis supervisor may be a co-author of the work that you publish as a graduate student. You may also be a co-author of works published by your supervisor. Where the order of authorship is important, the individual who makes the most significant contribution to the paper should appear as the first author. If possible, you and your supervisor should decide at the outset of collaborative work how the contributions of each person will be acknowledged.

OWNERSHIP OF INTELLECTUAL PROPERTY

8. What kinds of student work may be copyrighted?

As a graduate student, you hold the copyright to works that you have produced independently, without collaborators. You would not hold sole copyright if you (a) collaborated with others, including your research supervisor or (b) the work was part of your assigned duties as part of a research grant or contract. If you used another's work (e.g. a computer program source code) as a foundation for your work, you must obtain permission from the owner(s) of that property to use and/or negotiate their share in your intellectual property.

Except as noted above, you would generally be the sole copyright holder of the following as long as the above conditions do not apply:

- i) material and ideas submitted in course work or presented in seminars and thesis that you had developed as part of your academic program;
- ii) lectures that you have developed and delivered;
- iii) printed works (books, articles and similar materials) that you have written;
- iv) artistic works (paintings, sculptures, musical compositions and the like) that you have created;
- v) computer programs and website pages that you have developed;
- vi) recorded works (films, video tapes, audio recordings, etc.) that you have created;
- vii) data you have generated.

9. Who owns research data?

When you acquire data through your own individual effort, and without the extraordinary use of TMU facilities, they are your property (see definition of extraordinary use). Barring extraordinary use, generally you would own the IP or the copyright to that data. However, exceptions may occur when you collect data using research instruments, including interview schedules and questionnaires developed wholly or in part by your research supervisor or by some other person or agency. In such instances the right to ownership and/or use of the data may be shared among the parties involved. Ownership of data is affected by the policies of the research institution or university, and by the terms of the research contract that has supported the work (see #13 below).

Copyright exists as soon as a copyrightable work is created. Ownership of copyright should be indicated on the title page by placing the copyright symbol in front of your name, followed by the year, such as "© 2001". Copyright generally lasts for the life of the author plus 50 years.

10. Who owns computer software?

Like other works, computer programs written under contract or employment are the property of the employer, as specified in the Copyright Act, unless the contract terms or policies of employment state otherwise. Computer programs written as part of course work, a project or a thesis where no extraordinary university resources (as defined in #9 above) have been used, are usually the property of the student.

When the student draws upon or uses pre-existing proprietary software or 'source code' as a basis for creating new software, the terms and conditions of the licensing or purchasing agreement must be followed. That proprietary source of software is presumed to be owned or licensed by the University. This affects the student's ownership copyright of new developed software in three ways:

1. If you, as a graduate student, develop software under faculty supervision, it is assumed that there is joint ownership of the intellectual property rights. In such cases, it is recommended that the individuals involved (usually you and your supervisor) co-author a working paper which documents the software separately, rather than include it as an appendix to your thesis or report. However, any agreement of co-authorship should have been confirmed prior to development through an Intellectual Property Agreement based on the TMU IP template.
2. If you develop software on your own, for an independent project, copyright remains with you. If you used extraordinary university computing facilities/resources in that development, you are required to grant the university a royalty-free license to use the software within the university. This includes the right of the university to distribute copies of the software for the university's administrative, educational and research activities. This license does not include the right to use the software for commercial purposes or to transfer (sale, give or otherwise deliver) it to others outside the university.
3. The owner of the pre-existing proprietary software may also have interest in your developed software. Proprietary owners would be interested in any expanded use or potential commercialization of their product. Prior to the research project, arrangements need to be made to obtain the necessary permissions and rights to use and develop further applications to existing software platforms used in your project. This can be done through an Intellectual Property Agreement based on the TMU IP template.

11. Who owns equipment developed in a research project?

If extraordinary TMU resources have been applied to the construction or design of equipment or other tangible research property that property belongs to the University. Equipment that you have constructed or designed as part of a course or thesis work is your property if you provided the work and used no extraordinary university materials, resources nor space. Ownership of newly constructed equipment should also be specified in the research contract that supports the work prior to its development.

ECONOMIC INTERESTS AND COMMERCIALIZATION

12. How are the economic interests divided if an invention is commercialized?

Providers of intellectual and material contributions to inventions may have economic interests in any profits resulting from commercialization. Economic interests arise (a) in the case of authors/creators, by virtue of their creative contribution, time and expertise, and through the use of another's pre-existing proprietary IP; (b) in the case of the University, from its provision of employment for creating innovations, and its commitment of extraordinary laboratory space, material support and facilities, laboratory space, material support, and facilities; and (c) in the case of sponsors, from their financial and other support, such as support-in-kind, materials or resources, for development of the intellectual property.

13. When does TMU retain ownership of intellectual property?

Any works, such as computer programs written under contract or employment are the property of the employer, as specified in the Copyright Act, unless the contract terms or policies of employment state

otherwise. Research contracts, which create intellectual property at universities, are usually sponsored through government research funding agencies and/or private industries in partnership and are signed by the university and sponsors. The University usually retains certain intellectual property rights for educational, training, and research purposes. The University may also share in the proceeds, such as royalties and licensing fees, from the inventions and innovations created through that contract.

The University also retains ownership of works created as institutional works. Institutional works include works that are supported by a specific allocation of University funds or that are created under the direction of the University for a specific University purpose. Institutional works also include works whose authorship cannot be attributed to only one author or to a discrete number of authors but, rather, result from simultaneous or sequential contributions over time by multiple faculty and students. For example, software tools developed and improved over time by many faculty and students, where authorship is not appropriately attributable to a single or defined group of authors would constitute institutional works in progress.

The University also has ownership rights if the creator of a copyrightable work or patentable invention makes extraordinary use of the university's resources or benefits from the direct contributions from the university's non-faculty employees to create the work. In such cases, the creator must disclose the work to the OVPRI and assign certain IP rights to the University. For further information, please refer to the TFA Collective Agreement.

14. Can a graduate student receive royalties?

As a graduate student, you are entitled to receive royalties or licensing fees from copyrighted, patented, or other registered work if you are an owner of the IP rights. Royalties from works that are produced as part of a joint collaboration will be shared between the owners of the copyrighted works in proportion to their contributions; for the university, according to its contributed resources (see #12 above). As a matter of policy, the University's share of such royalties or licensing fees will be used to support the protection and commercialization of intellectual property.

Researchers who have contributed to the intellectual property developed under a university research contract may also be eligible for a share of the university's proceeds. This share can be determined by TMU's Intellectual Property Committee, formed under the "Faculty and Staff Ownership of Research Results," a policy currently under review. This can be obtained at torontomu.ca/research.

15. How is income from inventions shared?

The OVPRI provides direction in the evaluation, marketing, negotiations and licensing of University-owned inventions or copyrightable materials with commercial potential. The University and the creator(s) share the net income from the invention received by the University. Royalty income and licensing fees that remain with the University will be used to support further scholarly activity and to further protect intellectual property at TMU, according to its policies.

RELATED POLICIES AND GUIDELINES

You should be aware of and familiar with the contents of the following policy statements and guidelines:

TFA Collective Agreement:

<https://www.torontomu.ca/faculty-affairs/documents-forms/collective-agreements/rfa-collective-agreement>

Ownership of Student Work in Research:

<https://www.torontomu.ca/content/dam/senate/policies/pol63.pdf>

YSGS Policies and Procedures for master's and PhD programs:

<https://www.torontomu.ca/graduate/student-guide/academic-matters/policies-guidelines>

YSGS Responsibilities of the Faculty Advisor, Members of the Supervisory Committee, Members of the Examining Committee, and the Graduate Student:

<https://www.torontomu.ca/graduate/student-guide/academic-matters/supervision-advising>