

SIR SANDFORD FLEMING COLLEGE POLICY MANUAL

POLICY NO. 9-904 (formerly 2-215)	APPROVED BY: BOARD OF GOVERNORS
PAGE NO. 1 OF 5	SUPERCEDES: Policy 4-405 "Copyright" Approved June 14, 1995
DATE APPROVED: January 30, 2008	
SUBJECT: INTELLECTUAL PROPERTY & COPYRIGHT	

INTRODUCTION

Sir Sandford Fleming College (hereafter referred to as Fleming College) values the creative and innovative process that sustains academic excellence. The College recognizes and encourages those individuals involved in creative endeavours on behalf of the College. To that end, the College has adopted this policy on Intellectual Property to provide the guiding principles and goals related to Copyright ownership of original Copyright material and Intellectual Property including inventions, patents and trademarks.

1. POLICY STATEMENT

Employees and students of Fleming College shall comply with the provisions of the *Copyright Act (Canada) R.S. 1985, c. C-42* as amended from time to time.

The College asserts its rights under the *Copyright Act* including its right to claim ownership as employer under subsection 13(3) for Work made by employees in the source of their employment.

Nothing in this document on the matter of copyrights supersedes the terms and conditions of Article 13 of the current Academic Collective Agreement.

The College also asserts its right to claim ownership as employer for Intellectual Property created by employees in the course of their employment.

2. DEFINITIONS

"Copyright" means the rights as set out in the *Copyright Act*. In relation to a Work, this means the sole right to produce or reproduce the Work or any substantial part thereof in any material form whatever, to perform the Work or any substantial part thereof in public or, if the Work is unpublished, to publish the Work any substantial part thereof in any format.

"Copyright material" means all original literary, dramatic, musical, artistic and cinematographic works and sound recordings, etc., including books, periodical articles, printed materials, music, photographs, films, broadcast materials, compact disks, audio and video tapes, computer software, and digital material.

"College Support" shall include the specialized knowledge and skills or support and technical staff, hardware and software resources, Copyright clearances, illustrations, editorial and instructional design services, financial support, production and reproduction services, internal structure in which the materials can be created and sold, a distribution system in the form of the bookstore, a market of students to purchase the materials and the College's name and reputation.

“Employee Work(s)” shall mean Work produced by employees that may be related to employment, study or curriculum at the College that the College has not provided the employee with any type of College support.

“Intellectual Property” shall mean any form of expression or knowledge created with one’s intellect, including inventions, computer software, patents, trademarks, literary, artistic, musical works and know-how.

“Personal Work(s)” shall mean Work produced by staff or student that are not directly related to employment, study or curriculum at the College or that the College has not provided the creator with any type of College Support.

“Work(s)” shall include but not be limited to teaching support materials, instructional by-products, curriculum support material, teaching/learning resources produced on assignment, administrative materials, College publications, applied research products, and professional, technical and artistic work produced on assignment.

3. GOALS AND GUIDING PRINCIPLES

This policy is intended to meet the following goals:

- Recognize the College’s rights within Canadian Copyright laws while respecting the rights of individuals;
- Encourage educational innovation and promote and provide the resources for the development of Work and Intellectual Property;
- Promote new ventures for the best interest of the College and its students, and encourage the marketing of educational Work and Intellectual Property originally designed and created for the College’s use;
- Define an equitable balance between the interests and rights of the authors in their Work and Intellectual Property and the interests and rights of the College;
- Determine an equitable balance and sense of fair practice amongst College employees;
- Acknowledge student rights to Work and Intellectual Property they create as part of their training and education at the College.

4. SCOPE

This Policy applies to all College employees, students and to any third party that has entered into an agreement with the College.

5. POLICY TERMS

5.1 Determination of Ownership

(1) Within the context of this policy, the College asserts its sole ownership of all Work and Intellectual Property that is:

- a) created in the course of the individual’s employment with the College; or
- b) specifically commissioned by the College under a written agreement in which the individual assigns Copyright to the College; or
- c) created in whole or in part with the assistance of College Support.

- (2) In cases where there is a combination of Personal Work and Work, shared ownership shall be determined in advance through negotiations and to the mutual satisfaction of the employee and the College.
- (3) The College has the sole right to determine the disposition of all Copyright and Intellectual Property in any format and in any manner.

5.2 Personal Work

The College recognizes an employee's ownership of the Copyright of Personal Work created outside the scope of his or her employment by the College, on his or her own initiative and time and without College Support. Development of Personal Work that is to be used within the College must adhere to appropriate professional and College conflict of interest procedures.

5.3 Development of Specialized Work/Use of Personal Work

- (1) The College is responsible for maintaining the quality and integrity of curriculum and material used within the classroom and has the right to approve all materials to be used within the College for teaching purposes.
- (2) The College recognizes that appropriate externally produced teaching and learning material may not always be available and that employees may create their own material for use as part of the curriculum or teaching resource material. It is also acknowledged that administrative employees may create material for professional organizations or affiliated entities that may be relevant and useful to the College. College approval of curriculum is imperative in order to limit any perceived conflict of interest when students are required to purchase learning materials developed by the course instructor. If an employee wishes to use such personal Work during their course of employment at the College the following shall apply:
 - a) The employee must self-declare such use to the College and will discuss the proposed use of the Personal Work in advance with the his/her supervisor before the work is included in curriculum or any other College function or process;
 - b) The College may commission the employee to prepare the necessary material under a written agreement on terms acceptable to both parties, including assignment of Copyright.
 - c) Reproduction and distribution of Personal Works that are to be used by the College shall be arranged in conjunction with applicable College policies and procedures.
 - d) The employee grants the College a non-exclusive, royalty-free license to use the Personal Work.

5.4 Moral Rights

- (1) The College acknowledges that the author of a Work has the right to the integrity of a Work and where reasonable in the circumstances, the right to be associated with the Work as its author by name or under a pseudonym and the right to remain anonymous. These rights are created by the *Copyright Act* and are known as moral rights.
- (2) Where the College requires revisions to a Work created by an author who is still a College employee, the College will request that the employee make the revisions

(as part of his or her employment). If the author is unable or fails to perform these revisions, the College may assign this task to others.

- (3) The College may ask the author to waive his or her moral rights in a Work on terms to be negotiated by the College and the author.

5.5 Student Works

- (1) The College recognizes that students generally own the Copyright and moral rights to materials they produce in their courses of study.
- (2) The College may claim joint or sole Copyright ownership to material developed by students if compensation is provided to the students from the College, or the creation of the Work required College Support.

5.6 Material Created by Separate Agreement

When a Work or Intellectual Property is to be created on behalf of the College by individuals that are not employees or students, the College shall use a written agreement that stipulates ownership of the finished product. In most cases, the College shall require the individual to assign ownership to the College and the College may also require the individual to waive his or her moral rights.

5.7 Disclosure

- (1) Disclosure of Intellectual Property rights by a College employee is intended to ensure clarity of activity and to encourage cooperation between an employee and the College in the development of Work and Intellectual Property.
- (2) Works and inventions and related Intellectual Property rights that fall within the scope of this Policy shall be disclosed by employees to the College prior to any publication or presentation that would have the effect of putting the Work or invention in the public domain.
- (3) No employee will enter into any agreement or contracts with any third party in respect of the Work or invention and related Intellectual Property, including but not limited to the commercialization of the Intellectual Property. The College reserves the sole rights to any such agreements or contracts.
- (4) Disclosure shall be made to the President or designate.

5.8 Recognition of Employee Contributions

- (1) The College believes that the interests of society are served by creating an intellectual environment that encourages educational excellence, innovation and creative effort. New ideas, discoveries and inventions need to be communicated to the public and deployed for the benefit of society. Employees provide the creative energy for inventive endeavours.

The College recognizes that employees may expend significant time and effort to create Work or Intellectual Property in which the College has ownership of Copyright. The College also recognizes that many Works and Intellectual Property are created by more than one individual or department within the College. The College will

endeavour to acknowledge or provide appropriate credit to employees involved in the development of such projects.

- (2) The College is committed to recognizing the generation of Work and inventions and related Intellectual Property rights by employees. The commercialization, costs, licensing and revenue related to Work and Intellectual Property will be addressed in a separate policy. This separate policy will describe fair and consistent distributions of income from the sale, lease, use or other transfer of Intellectual Property, recognizing the contributions of employees. In the interim, such arrangements are on a case by case basis to be determined in advance through negotiations and to the mutual satisfaction of the employee and the College.

5.9 Use of Classroom Recordings and Still Images

- (1) The College owns the Copyright to audio and video recordings of classroom proceedings and recognizes the personal rights of the participants. Any recording or teleconferencing are for the educational benefit of students enrolled in that particular class and no one is permitted to use these recordings for reasons other than stated herein and without the prior written consent of all participants.
- (2) The same parameters as outline above apply to any still images of classroom proceedings including photographic or digital images.