

Practice Education Guidelines for BC Intellectual Property

July 2021

Intent / Purpose

- Outline the rights and obligations of Post-Secondary Institution (PSI) Students in relation to ownership of Student Works created during the course of the practice education experience.
- Outline the rights and obligations of the Health Care Organization (HCO) to Students when Student Works are created during the course of the practice education experience.

Definitions

Refer to: [Standard Terms and Abbreviations](#)

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| <i>Creator/Author</i> | "...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." ¹ |
| <i>Intellectual Property</i> | "...refers to creations of the mind: inventions; literary and artistic works; and symbols, names and images used in commerce. Intellectual property is divided into two categories: Industrial Property and Copyright" ² Industrial Property: "...includes patents for inventions, trademarks, industrial designs and geographical indications" ³ Copyright: "...a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings." ⁴ |
| <i>Moral Rights</i> | "...include the right of an author to be associated with the work [attribution] and to prevent the distortion or modification of the work. Moral rights cannot be assigned and remain with the author, but an author can agree to not enforce them." ⁵ "...protect the honor and reputation of an author and only authors or their heirs can exercise them, regardless of whether the author assigned copyright or it was made in the course of employment and the employer therefore owns copyright. In Canada, however, an author may choose to waive their moral rights." ^{6,7} |

¹ Fraser Health Authority. (2014). *Policy: Intellectual Property (IP)*. Surrey, B.C. Page 11. Retrieved April 30, 2019 from www.fraserhealth.ca/-/media/Project/FraserHealth/FraserHealth/Health-Professionals/Research-and-Evaluation-Services/20170601_research_intellectual_property.pdf

² World Intellectual Property Organization. (2003). *What is Intellectual Property?* (No. 450). WIPO. Page 2. Retrieved April 30, 2019 from www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

³ Ibid.

⁴ World Intellectual Property Organization. (n.d.). *Frequently Asked Questions: Copyright – Basics*. Retrieved April 30, 2019 from www.wipo.int/copyright/en/faq_copyright.html

⁵ Intellectual Property Institute of Canada. (2019). *Statutory Rights – Author's Rights*. Retrieved April 30, 2019 from www.ipic.ca/english/what-is-ip/copyright/statutory-rights.html

⁶ Centre for Canadian Copyright Law. (2018). *Who Owns Copyright in Canada?* Copyrightlaws.com. Retrieved April 30, 2019 from www.copyrightlaws.com/who-owns-copyright-in-canada/

⁷ Ibid. (2019). *Moral Rights in Canadian Copyright Law*. Retrieved April 30, 2019 from www.copyrightlaws.com/moral-rights-in-canadian-copyright-law/

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| <i>Ownership</i> | <p>"The author of a work is usually the first owner of copyright and can assert, assign or license the owner's rights. The author has additional rights called 'moral rights' ..."⁸</p> <p>"A copyright owner has the sole right to produce or reproduce a work or any substantial part, to perform the work or any substantial part in public, to publish the work or any substantial part, to transmit or record a work, to communicate a work to the public by telecommunication or to authorize any of the above. Additional rights in the Copyright Act protect performer's performances, sound recordings and broadcast communications."⁹</p> <p>"Under Canadian copyright law, the creator (or author) of a work is the owner of copyright in it. However, where a work is created as part of the author's work duties, the employer may have copyright ownership."¹⁰</p> <p>"In Canada, copyright ownership of a work created by an employee in the course of their employment belongs to the employer, unless there's a verbal or written agreement otherwise."¹¹</p> |
| <i>Student Works</i> | <p>Any materials created/authored wholly or in part by a Student specifically for the HCO during the course of a practice education experience – includes but not limited to written materials (brochures, posters, handouts, reports), digital works (presentations, web sites, computer programs and applications, programming language, video recordings), artwork (paintings, drawings, photographs, maps, musical scores or lyrics), or other works.^{12, 13}</p> |

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Intellectual Property is specifically defined within each HCO.

This guideline **does not apply to:**

- scholarly works such as essays, reports, assignments or materials Students produce to meet the requirements of their PSI program, or
- scientific or scholarly discoveries, research data, and research tools as the result of research activities conducted in the HCO

(The HCO should have a policy that addresses the development of intellectual property that might arise out of research.)

⁸ Intellectual Property Institute of Canada. (2019). *Statutory Rights – Author's Rights*. Retrieved April 30, 2019 from www.ipic.ca/english/what-is-ip/copyright/statutory-rights.html

⁹ Ibid. *Statutory Rights – Owner's Rights*. Retrieved April 30, 2019 from www.ipic.ca/english/what-is-ip/copyright/statutory-rights.html

¹⁰ Centre for Canadian Copyright Law. (2018). *Who Owns Copyright in Canada?* Copyrightlaws.com. Retrieved April 30, 2019 from www.copyrightlaws.com/who-owns-copyright-in-canada/

¹¹ Ibid.

¹² World Intellectual Property Organization. (2003). *What is Intellectual Property?* (No. 450). WIPO. Page 2. Retrieved April 30, 2019 from www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf

¹³ Ibid. (2016). *Understanding Copyright and Related Rights* (No. 909E). Geneva, Switzerland. Retrieved May 2, 2019 from www.wipo.int/edocs/pubdocs/en/wipo_pub_909_2016.pdf.

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The HCO retains the rights to the intellectual property created by Students (Student Works) when at least one of the following 'HCO as first owner' conditions applies (*based on the principle of Works Made In The Course Of Employment*¹⁴):

- The Student Works were specifically created for the HCO as part of the practice education experience.
- The Student created the Student Works in a facility owned and operated by the HCO (unless created as scholarly works).
- The Student used HCO resources (personnel, confidential information, equipment, supplies, and/or corporate branding [logo]) to create the Student Works.
- HCO funded, wholly or in part, the creation of the Student Works.
- The Student Works was created as a result, wholly or in part, within a HCO employee/employer relationship with the HCO.
- The Student Works was created under contract with the HCO outside of the practiced education experience.

The Student retains the ownership of the Student Works when:

- The conditions of 'HCO as first owner' do not apply; or
- When there is a verbal or written agreement in place stipulating that the Student retains ownership.

Students (in consultation with a representative from their PSI) can agree to transfer or assign ownership to the HCO of any Student Works created outside of the conditions of 'HCO as first owner' when:

- The intellectual property in the Student Works could provide future benefits to the HCO's systems, activities, and/or Client health care.
- The primary purpose of the practice education experience is to carry out an activity or task where the use of the outcomes or results have been specifically agreed to for the benefit of the HCO and/or its Clients.

For Student Works that do not meet the conditions of 'HCO as first owner', the HCO can initiate an agreement to transfer or assign all or part of ownership from the Student to the HCO before the Student starts creating the Student Works, or as soon as possible, after the Student Works merits are recognized. Assignments of intellectual property ownership must be in writing to be valid.¹⁵

¹⁴ Centre for Canadian Copyright Law. (2018). *Who Owns Copyright in Canada?* Copyrightlaws.com. Retrieved April 30, 2019 from www.copyrightlaws.com/who-owns-copyright-in-canada/

¹⁵ Kerr, P.B. (2007). *Copyright Law in Canada*. Retrieved April 30, 2019 from users.rytel.com/~pbkerr/copyright.html

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Regardless of ownership, the Student retains the 'moral rights' to the Student Works as the creator/author unless the Student chooses to waive their moral rights wholly or in part and does so in writing.

If the HCO wishes to display or use all or part of any Student Works, within the HCO or at an external event, the HCO will credit the authorship of Student involved.

If there is no mechanism to negotiate ownership Student Works, then the Student Works cannot be used, reproduced, published, or printed without the Student's permission.

No Student Works can be created or produced with the HCO corporate branding (i.e. logo) for use outside of the HCO without prior permission of the HCO.

Legal advice may be sought out as necessary by either party.

Roles, Responsibilities and Expectations

Post-Secondary Institutions

- Ensure Students and Educators are aware of and comply with applicable HCO intellectual property policies.
- Identify who within the PSI can support the Student before they enter into an agreement to assign ownership of Student Works to the HCO created outside the 'HCO as first owner' conditions.

Students

- Comply with the HCO intellectual property policies and procedures.
- Seek advice from the PSI (and/or legal advice if necessary) when approached by the HCO to transfer or assign ownership wholly or in part to Student Works.
- Refrain from using, reproducing, publishing, printing, selling, or distributing any Student Works where ownership is held by the HCO.

Health Care Organizations

- Make any applicable intellectual property policies available to the PSI and its Students and Educators (see [Educational Institution Affiliation Agreement Template: Obligations of Health Authority 5. \(a\) \(iii\)](#))¹⁶.

¹⁶ Health Care Protection Program. (2008). *Risk Note: Managing Risk in Educational Affiliation Agreements - Educational Institution Affiliation Agreement Template*. Retrieved October 27, 2020 from <https://www.hcpp.org/?q=node/17>

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- Identify and communicate HCO contacts responsible for intellectual property and related permissions, transfers, and negotiations to the PSIs and Students.
- Provide the necessary documents for Students to sign when the HCO requests to transfer ownership.
- Make sure appropriate ownership and intellectual property rights are confirmed before using, displaying, reproducing, republishing, or reprinting the Student Works.
- Take immediate action to stop using Student Works as soon as infringement of copyright is discovered when the Student retains ownership.
- Retain records of any transferred or assigned intellectual property rights and ownership, wholly or in part, of Student Works for the time period outlined in the Copyright Act of Canada.¹⁷

References and Resources

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¹⁷ Government of Canada. (2018). *A guide to copyright: A lifetime of protection*. Retrieved May 2, 2019 from www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html

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Guideline Review History

| Version | Date | People Responsible | Brief Description (reason for change) |
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| 1 | February 2007 | Authors/Editors: Carol A. Wilson (BCAHC), Barb Collingwood (BCAHC) Reviewers: Practice Education Committee of the BC Academic Health Council (Grace Mickelson, Chair) | |
| 2 | February 2013 | Editors: Cheryl Zawaduk (TRU) Debbie McDougall (BCAHC) Heather Straight (VCH) | Content revised and edited to reflect different HCO processes for Student ID Scope defined to address PSI Students/Educators only vs/ broader range of 'learners' New template and terminology References updated |
| 3 | March 2021 | Editor: Carol A. Wilson (PHSA) Reviewers: Judy Lee (KPU) BJ Gdanski (PHSA) Ministry of Health (Allied Health Policy Secretariat and Nursing Policy Secretariat) Ministry of Advanced Education, Skills and Training (Health Education Reference Committee) Health Authority Practice Education Committee | Title changed to reflect the wider range of intellectual property and broaden range of Student Works within the digital age Content revised and updated to clarify language Connected obligations to those stated within the Education Institution Affiliation Agreement Template Definitions updated References updated |