

CAUT Model Clause on Intellectual Property

1

Intellectual Property

1.1

The parties recognize that the common good of society depends upon the unfettered search for knowledge in all fields of study and upon its free exposition.

1.2

In order that the member has control over the direction, integrity and use of his or her scholarly work, as a general principle ownership of all types of intellectual property shall rest with the member who creates it. Such ownership is recognized as an integral part of academic freedom.

1.3

No member shall be obliged to engage in the commercial exploitation of his or her scholarly work nor to provide commercial justification for it.

1.4

The Employer shall not enter into any agreement with a third party (including an agreement to administer funds) which alters or abridges, or has the effect of altering or abridging, the intellectual property rights of a member under this agreement.

1.5

In the event that the Canadian *Copyright Act* or *Patent Act* or other similar intellectual property legislation is amended to the extent that this Article requires revision, the parties shall re-open the negotiation of the Article.

2

Right to Publish

2.1

The University is an open environment for the pursuit of scholarly work. Academic freedom and critical inquiry depend on the communication of the findings and results of intellectual investigation. The Employer shall not interfere with a member's freedom to publish the results of scholarly inquiry and research, except for limitations imposed by duly constituted university research ethics boards.¹

The Employer shall refuse to enter into or administer any research agreement or grant that allows the funders or other third party to infringe on members' freedom to publish the results of research, except in extraordinary circumstances where, to statutorily protect intellectual property, a maximum publication delay of two months from the conclusion of a research project may be accepted.

3

Right to Disclose Risks

3.1

Members shall have an absolute right to publically disclose information about risks to research participants or the general public or threats to the public interest that become known in the course of their research.

4

Definition

4.1

Intellectual property means any result of intellectual or artistic activity created by a Member, that can be owned by a person. Intellectual property includes, but is not limited to: inventions, publications, computer software, works of visual art and music, industrial and artistic designs, plant cultivars, integrated circuit topography as well as all other creations that can be protected under patent, copyright, trademark or similar laws.

5

Copyright

5.1

Copyright applies to all original literary, dramatic, artistic and musical works as well as sound recordings, performer's performances and communication signals.

5.2

Works include but are not limited to: books, texts, articles, monographs, glossaries, bibliographies, cartographic materials, modular posters, study guides, laboratory manuals, correspondence course packages, interactive textbooks, course work delivered on the Internet, multimedia instructional packages, syllabi, tests and work papers, lectures, musical and/or dramatic compositions, choreographic works, performers' performances, unpublished scripts, films, filmstrips, charts, transparencies, other visual aids, video and audio tapes and cassettes, computer programs, live video and audio broadcasts, programmed instructional materials, drawings, paintings, sculptures, photographs, and other works of art.

5.3

All copyright belongs to the member or members who create the work even if it is produced during the course of employment and with the use of the employer's facilities and resources, except in those cases where there is a written contract to the contrary which assigns the copyright to the employer.

5.4

The academic staff association shall be a party to all negotiations leading to written agreements or contracts under article 5.3. Written agreements or contracts not countersigned by the academic staff association shall be interpreted as a violation of the collective agreement.

5.5

No contract or written agreement between the employer and a member shall contain a clause waiving moral rights.²

5.6

In the event that an original work is the creation of more than one member, the provisions of this article apply on a pro rata basis to all the creators of the work.

5.7

In the event that the employer or assignee relinquishes its rights in any work, all intellectual property rights shall revert back to the first owner. In the event that the first owner is deceased, the rights shall revert to the estate of the first owner.

6

Patents

6.1

The discovery of patentable inventions is not a basic purpose of university research, nor is it a condition for support of such research. The employer agrees that the member shall have no obligation to seek patent protection for the results of scientific work or to modify research to enhance patentability. The employer further agrees that the member has the unqualified right to publish his or her inventions.

6.2

Members are the owners of the intellectual property rights in any invention, improvement, design or development that they create in the course of their employment even if it was produced with the employer's facilities and resources, except in those cases where there is a written contract to the contrary which assigns the property to the employer.

6.3

The academic staff association shall be a party to all negotiations leading to written agreements or contracts under article 6.2. Written agreements or contracts not countersigned by the academic staff association shall be interpreted as a violation of the collective agreement.

6.4

In the event that an invention, improvement, design or development is the creation of more than one member, the provisions of this article apply on a pro rata basis to all the creators of the work.

6.5

In the event that the employer or assignee relinquishes his or her rights in any work, all intellectual property rights shall revert back to the first owner. In the event that the first owner is deceased, the rights shall revert to the estate of the first owner.

6.6

The employer has no claim to the revenue arising from any invention, improvement, design or development made by employees without the use of the employer's time, resources, or facilities.

6.7

Should the employer have a valid claim on the revenue arising from any invention, improvement, design or development because of the use of the employer's time, resources or facilities by the member, the member and the employer shall share in the net revenues arising from a discovery on a fair and reasonable basis. "Net revenues" means the revenues after deduction of all costs incurred by the member and/or the employer for patent searches, for obtaining patent protection, for maintaining such protection in Canada and other countries and for commercializing the discovery.

Approved by the CAUT Council, May 2004.

Endnotes

1. Ensure that your collective agreement's provisions providing for research ethics boards conforms to the CAUT Model Clause: Application of Tri-Council Policy Statement on Ethical Conduct for Research Involving Humans.

2. Moral rights include the rights of a creator to be identified with a work, to maintain the integrity of a work and their honour and reputation with respect to the work.

- See more at: <http://www.caut.ca/members-only/collective-bargaining/model-clauses/lists/caut-model-clauses/model-clause-on-intellectual-property#sthash.ZRKzBvB1.dpuf>