

Intellectual Property Guidelines

For

Graduate Students and Supervisors

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FOREWORD

Each and every intellectual property issue is unique, and must be carefully considered with regard to its specific circumstances. When students or supervisors are trying to determine their intellectual property rights, they must, at a minimum, consider the following:

1. Athabasca University policies and procedures (the “**AU Policies and Procedures**”);
2. Regulations and professional codes of conduct governing the practice of their academic discipline;
3. Intellectual property law; and
4. Third party agreements.

It is the responsibility of every student and supervisor to be aware of his or her applicable rights and restrictions under each of the above listed resources, and to ensure that his or her research is conducted in accordance with the requirements stipulated therein.

The Faculty of Graduate Studies strongly recommends that consideration and discussion between the student and their supervisor occurs before work begins on the thesis/dissertation or other research projects. Clear expectations respecting ownership of intellectual property rights should be clearly established.

Athabasca University (the “**AU**”) has policies that deal at length with specific aspects of intellectual property and the conduct of research. These policies can be obtained through the AU’s web site <http://ous.athabascau.ca/policy/> or from your graduate department.

Introduction

The intent of this booklet is to identify and provide clarification on common issues associated with intellectual property that can arise between students and their supervisors during the students' graduate education at AU. The information provided herein is directed towards: 1) graduate students, 2) faculty members who may be the graduate students' supervisors for academic work, and 3) faculty members who may be the graduate students' employers on a research project. These guidelines are provided to help students and supervisors determine their ownership rights to intellectual property created while attending AU. The term "thesis" is used herein to refer to both a master's thesis and a doctoral dissertation (see Appendix A for definitions of terms used in this document).

1. What is intellectual property?

Intellectual property refers to intangible creations of the mind, such as: inventions, literary and artistic works and symbols, names and images. Intellectual property is the product of intellectual or creative activity that, to some extent, can be protected under the law.

2. What are intellectual property rights?

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their work or investment in a creation. An intellectual property owner has two fundamental rights: the right to use the property without interference from others, and the right to exclude others from using the property. An owner of intellectual property can also control and receive payment for its use. Intellectual property can be bought, licensed, sold, leased or shared.

Intellectual property rights include rights relating to:

- Literary, artistic and scientific works;
- Performances of performing artists, phonograms and broadcasts;
- Inventions in all fields of human endeavor;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks and commercial names and designations;
- Protection against unfair competition;

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

3. What are the intellectual property rights of the student?

The law grants intellectual property rights to all creators/inventors, irrespective of their status at a university or research institution.

In general, students will be the owners of, and have intellectual property rights and rights to protection under the intellectual property laws, to all intellectual property they create, provided that they satisfy the requirements of applicable laws.

Also, notwithstanding the AU policy: *Publication of Research Policy*

<http://ous.athabascau.ca/policy/research/publicationofresearch.htm> and *Electronic Thesis & Dissertation Policy* - http://ous.athabascau.ca/policy/academic/ETD_policy.pdf

which requires students to license their research and thesis with the Library and Archives Canada and the AU Library, students continue to own the copyright of the thesis.

4. How can Intellectual Property of students be protected?

There are various forms of legal protection of intellectual property. The two most relevant in the AU environment are copyright and patents.

Copyright

A copyright is the exclusive right to copy, publish, distribute, perform or exhibit in public, modify, translate, etc. a work, and the right to authorize others to do so. Subject to specific exceptions, copyright generally prevents the public from copying, publishing, translating, or broadcasting a work without the copyright owner's express permission.

The *Copyright Act* - <http://laws-lois.justice.gc.ca/eng/acts/C-42/page-6.html#h-6>, RSC 1985, C C-42 automatically confers copyright protection on every expression of an original literary, dramatic, musical and artistic work, provided that certain conditions are met. An "original" work does not need to be new, unusual or innovative, it simply means that the work is the result of creativity, some intellectual effort in skill and judgment, and has not been copied from a pre-existing source. Typical works that copyright protects include: books, articles, sheet music, illustrations, photographs, motion pictures, works of sculpture and computer programs as well as personal communications such as e-mail messages.

Registering your work is not necessary in Canada, as copyright automatically arises upon creation. However, it is always recommended that students and supervisors apply for copyright registration for their added protection.

Except as otherwise expressly provided by the *Copyright Act* - <http://laws-lois.justice.gc.ca/eng/acts/C-42/page-6.html#h-6>, a copyright is valid for the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

Patents

A patent is a temporary, limited legal right granted to an inventor by the government to prevent others from manufacturing, selling, licensing or using the inventor's invention. Patenting your invention does not give you the right to *do* anything with the invention; rather it is the right to stop others from using, manufacturing, selling or otherwise exploiting the patented invention. "Invention" means a solution to a specific problem in the field of technology and includes: machines, products, or processes.

To obtain a patent, the invention must be: novel, useful and not obvious.

- "Novel": means that the invention is an original way to solve a problem that is not already known. Your invention will be compared to everything that has already been created, disclosed or proposed anywhere in the world, which is called *prior art*. The novelty requirement stipulates that the invention cannot have been publicly disclosed, so as to have become available to the public anywhere in the world. However, please note, in Canada, the inventor does have a one-year grace period during which he or she can disclose the invention before filing a Canadian patent application.
- "Useful" means that someone can take your invention and use it to construct something or do something with it.
- "Not obvious" means that there must be some spark of inventive ingenuity. The invention must be a development or improvement that would not have been obvious beforehand to workers of average skill in the technology involved.

Unlike copyright, patent rights do not arise automatically. The inventor must apply for a patent. A patent will give the owner a monopoly or exclusive right to make, use or sell the invention for the life of the patent, which is typically 20 years from the date of filing the application. After a patent expires, anyone is able to use the invention without requiring the owner's permission.

5. What is fair dealing?

One exception to copyright is the concept of fair dealing. Fair dealing allows others to use copyrighted work (published or unpublished) without the author's permission for the purposes of research or private study.

AU Policy and Procedure *Fair Dealing Policy and Fair Dealing Procedure* - http://ous.athabascau.ca/policy/academic/fair_dealing_policy.pdf stipulates rights and restrictions surrounding fair dealing at the AU.

6. Who owns the student's thesis or work conducted as a course requirement?

Generally, the student will be the owner of his or her thesis or work conducted as a course requirement, provided that he or she satisfies the requirements of the applicable laws.

Furthermore, notwithstanding the AU policy *Publication of Research Policy* - <http://ous.athabascau.ca/policy/research/publicationofresearch.htm> and *Electronic Thesis & Dissertation Policy*, - http://ous.athabascau.ca/policy/academic/ETD_policy.pdf which requires students to share their research and thesis with the Library and Archives Canada and the AU Library, the student shall continue to own the copyright of the thesis.

7. Who owns the data in the thesis or student's work?

Generally, research data is jointly owned by the researcher and AU, which means that both have the right to use the data. The research project's funding source may also be relevant. A sponsor may have rights to the data under a Research Funding Agreement, or may require that the data be made broadly available to the research community through public data archiving or other methods.

Whether or not you have rights in the data, the equipment on which your data and results are recorded (i.e. hard-drives, notebooks etc.), may be the property of AU. Also, the collection and ownership of personally identifiable data collected from human subjects may be governed by AU Policy *Open Access to Research Outputs Policy* - <http://ous.athabascau.ca/policy/research/openaccess.htm> and privacy legislation, which may place restrictions on your use of the data, including its removal from AU premises.

Students should inquire into AU policy governing the rights to research data. This is also an issue that can be broached with one's supervisor: students should make an agreement with their supervisor that makes clear what data they can take with them or access once they leave AU.

8. Does the thesis supervisor have any rights to the student's thesis/project work, discovery or invention?

Determination of whether a thesis supervisor has rights to a student's thesis/project work, discovery or invention depends upon the specific circumstances. The student and supervisor must consider, at a minimum, AU's Policies and Procedures, intellectual property law, any third party agreements, and regulations and professional codes of conduct governing the practice of the academic discipline. Determination of ownership will likely depend largely upon the role the supervisor plays in the student's thesis/project work, discovery or invention. It is recognized that a supervisor's role varies greatly depending on the specific field of study, for example:

- **Humanities and social sciences:** it is normally expected that students will receive guidance from their supervisors, but generate their own ideas, do their own research and seek out their own financial support. The supervisor acts as a mentor, “resource person”, and/or consultant, but less often as a full collaborator.

Under these circumstances, the student will likely have the primary rights to the intellectual property produced by his or her research.

- **Physical and life sciences:** it is normally expected that students will join an established research group and work collaboratively with the supervisor, other students, postdoctoral fellows, technicians and/or other employees. In this model, the supervisor has provided the general ideas that guide the research of the group, as well as the resources required to support or conduct the research activities.

Under these circumstances, the supervisor will likely have rights to the intellectual property produced by the research.

Prior to commencing the thesis/project work, it is important for students and their supervisors to discuss with each other their expectations respecting the roles each party will play in the thesis/project work, and the ownership of intellectual property. Students and supervisors should also discuss any expectations sponsors or funders may have. If you have further questions, you can contact one of the AU resources (the Faculty of Graduate Studies or the Research Centre) to discuss the rights of the student, the supervisor and the sponsor or funder. Attached hereto at Appendix B is a form of Letter of Understanding, which may be used to clarify student and supervisor roles and prevent misunderstanding at a later date.

9. Does the course instructor have any rights to a student’s course work?

Determination of whether a course instructor has any rights to a student’s course work depends upon the specific circumstances. When a student is trying to determine his or her course instructor’s intellectual property rights, he or she must consider, at a minimum, AU’s Policies and Procedures, intellectual property law, any third party agreements, and regulations and professional codes of conduct governing the practice of the academic discipline.

10. Is the thesis a publication when deposited in the DTheses repository?

Yes, a thesis is a publication when it is deposited in the DTheses repository. AU Policy *Temporary Publication Restriction of Theses and Dissertations* - http://fgs.athabascau.ca/guidelines/temp_pub_restriction.php defines “publication” as making information publicly available in a reproducible form in the Library and Archives Canada and the AU Library. However, publication of the thesis for academic and commercial purposes remain the sole right of the author. Pursuant to the AU Policy *Electronic Theses & Dissertation Policy* - http://ous.athabascau.ca/policy/academic/ETD_policy.pdf electronic submission of the thesis

with the Library and Archives Canada and the AU Library does not preclude further publication of the thesis or any part of it in a journal or book.

In the event the student desires to publish his or her thesis in a journal or book, it is the student's responsibility to become acquainted with the policies of a prospective publisher and to determine whether that publisher stipulates a restriction on public access as a condition of publication. If the publisher does stipulate a restriction period, the student must request approval from the Dean of the Faculty of Graduate Studies. A request to restrict publication of a thesis or dissertation may be approved for a maximum of twelve months. Please see AU Policy *Temporary Publication Restriction of Theses and Dissertations* - http://fgs.athabascau.ca/guidelines/temp_pub_restriction.php for valid reasons to restrict publication of a thesis or dissertation.

11. If a student publishes an article arising from thesis or course work, do they retain copyright ownership?

When a scholarly journal accepts a submitted article (whether by a student or a faculty member or a team) for publication, the journal publisher will provide the author(s) with a written agreement to sign. This agreement details the terms and conditions on which the journal and author(s) agree to proceed with the publication. This agreement must always be read with extreme care by the author(s) before signing, in order to ensure the authors' interests are protected.

12. If the student's research is supported by external funding, such as a scholarship or fellowship, what is the effect on the intellectual property that the student creates?

The relationship between funding and intellectual property rights depends upon 1) the funding body; and 2) the terms and conditions of the funder.

Pursuant to AU's *Research Funding Administration Policy* - <http://ous.athabascau.ca/policy/research/researchadministration.pdf> financial contributions received from an external sponsor shall be administered and expended in accordance with legislated requirements and the terms and conditions set out in the Research Funding Agreement. The Research Funding Agreement is a written agreement entered into to provide or receive funding to facilitate research. Each Research Funding Agreement will have its own unique terms, conditions and restrictions; students and supervisors are responsible for carefully reviewing the Research Funding Agreement in advance to ensure compliance.

13. Is ownership different if the student creates a work as a research assistant or an employee rather than as a graduate student?

Yes, under applicable legislation, intellectual property created by an employee in the course of his or her employment is deemed to belong to the employer unless there is an agreement

providing otherwise. An agreement between the AU and the employee may be entered into giving partial or full ownership to the employee.

14. As a graduate student conducting thesis/project research in a teaching hospital or other organization, which institution's intellectual policies should prevail?

Determination of which institution's intellectual policies shall prevail depends upon the specific circumstances. Factors to consider include, but are not limited to:

- Is the student conducting the thesis/project research as a student of AU, or an employee of the teaching hospital or other organization;
- Who is funding the thesis/project research; and
- Is there an agreement in place between AU and the teaching hospital or other organization?

In some cases, both institutions may own the intellectual property jointly. This issue needs to be discussed prior to the development of the project or research.

15. How can authorship be determined in a collaborative research context?

It is recommended that the determination of authorship be one of the initial issues discussed between individuals when they are considering publishing their work. As early as possible, collaborators should decide on which tasks are necessary for the project's completion, how the work will be divided, which tasks or combination of tasks merit authorship credit, and on what level credit should be given (i.e. first author, second author). As the project progresses, the roles and contributions of each collaborator may change, resulting in a renegotiation of authorship.

16. When is someone considered a joint author?

Work of joint authorship means a work produced by the collaboration of two or more authors, in which the contribution of one author is not distinct from the contribution of the other authors with respect to the composite work. Only contributors to the form or expression of the work qualify, those that simply supply ideas normally do not.

Generally, joint authorship should be recognized where the author has participated in a significant way in at least two of the following aspects of the research:

- Conception of idea and design of the study;
- Actual execution of experiment or hands-on lab work;
- Analysis and interpretation of data; and/or
- Actual writing of the manuscript or parts thereof.

17. How is the order of authorship determined?

The various authors are responsible for determining the order of authorship. Generally, the name of the principal contributor should appear first, with subsequent names in order of decreasing contribution.

18. When is someone considered a joint inventor?

The student may be a 'joint inventor' if they made an original and substantive contribution to an invention. Generally, an inventor is someone who contributed intellectually to the conception of the invention, as claimed in a patent application. The inventor must form a definite and permanent idea of the complete and operable invention to establish conception. If more than one person contributed to the conception of the invention and/or reduction to practice, then they exist as joint inventors.

19. If the student has an invention, what should they do?

The supervisor may be able to help the student through the process. There are a number of important points for the student to consider:

- (a) All individuals involved need to clarify the role each had in the creation of the invention and then its ownership.
- (b) Consultation with a registered patent agent may be needed prior to disclosing the invention to third parties. A public disclosure made outside of a confidentiality agreement, prior to filing a patent, can destroy the possibility of obtaining valid patent rights.
- (c) Before filing a patent application, the student needs to consider having "prior art" searches conducted to assess the patentability of the invention (i.e. its novelty and non-obviousness).

If it is deemed to be patentable, the student should instruct the registered patent agent to prepare and file a patent application at the earliest opportunity if the search results and other applicable factors appear favourable.

20. What should be done if a dispute arises with respect to intellectual property and/or co-authorship rights between the student and supervisor?

If a dispute or concern arises with respect to intellectual property and/or co-authorship rights, you and your supervisor should first try to resolve any differences amicably. The underlying causes of disputes can be complex but resolution can usually be obtained through discussion or negotiation. If discussion or negotiation cannot resolve the issue, the student has several avenues to pursue depending upon the nature of the issue – speak with their graduate program director, the Dean of their Faculty, and the Faculty of Graduate Studies. Also, involvement of the Athabasca University Graduate Students' Association or the AU Ombuds office may also be helpful to the student.

21. What is Creative Commons?

AU Policy *Electronic Thesis & Dissertation* -

http://ous.athabascau.ca/policy/academic/ETD_policy.pdf stipulates that electronic submission of all theses' will be conducted under licensing program Creative Commons Attribution 2.5. Creative Commons licenses enable copyright owners to share their creation with others through free legal tools. Creative Commons has created a number of easy-to-use copyright licenses that provide a simple, standardized way to give the public various kinds of permission to share and use their creative work with specific conditions. Creative Commons licenses are not an alternative to copyright; Creative Common licenses work alongside copyright and enable the creator to modify their copyright terms to best suit their needs.

Appendix A

Definitions

Authorship: Work that has been performed by the individual or which they have substantially contributed.

Intellectual Property: Intellectual property refers to intangible creations of the mind, such as: inventions, literary and artistic works and symbols, names and images.

Copyright: the exclusive right or monopoly of the creator, or subsequent copyright holder to reproduce a work, and to prevent others from making copies of the protected work for a specified time.

Creative Commons: a nonprofit organization that enables the sharing and use of creativity and knowledge through free legal tools.

DTheses repository: a repository that graduate students submit their thesis or dissertation electronically to, which is dedicated to collecting, storing, preserving, and making accessible digital versions of the theses and dissertations produced by AU graduate students.

Invention: means a solution to a specific problem in the field of technology and includes: machines, products, or processes.

Patent: is a temporary, limited legal right granted to an inventor by a government to prevent others from manufacturing, selling, licensing or using the inventor's invention.

Research Funding Agreement: means a written agreement entered into to provide or receive funding to facilitate research.

Supervisor: refers to a student's thesis or project supervisor or co-supervisor, or someone for whom the student has been hired to conduct research, as in an employee-employer relationship. This person may or may not be an AU faculty member.

Appendix B

Sample Letter of Understanding between the Graduate Student and the Supervisor regarding Intellectual Property*

Dear _____ :

The purpose of this letter of understanding is to confirm our conversation regarding my expectations of our roles in possible publication and ownership of any of the intellectual property that is developed as a result of our work together. It should prevent any misunderstandings that might otherwise arise. Read this carefully, then sign one of the copies and return it to me.

Based on our discussion, here are the details of your position, our relationship, and the possible intellectual property outcomes.

[details of TAs, RAs, employee/employer; supervisor/student, etc.]

It is important that you publish the relevant results of your research from your thesis or dissertation. This will be done under our joint authorship, [using discipline norms for the order of names].

Publication is important for many reasons. If there are any manuscripts that are under review by a publisher when you graduate, you will have one calendar year to deliver to me a draft manuscript. If, at the end of that time, you have not produced a manuscript, I will produce the paper, but as a senior author.

You will be a co-author of presentations at scientific meetings that feature your work in a prominent way. I hope there will be opportunities for you to present the research, but on many occasions I am invited to summarize the work of our lab at a conference or in a book chapter. Given the number of people involved in the work, I do not usually include as co-authors in such presentations all the people who have contributed, but I always acknowledge the specific contributions of the individuals concerned.

We all share responsibility for the ethical conduct of research. You should familiarize yourself with AU policies dealing with research, patents and licensing, conflicts of interest and scholarly integrity. While it is important to have these understandings, I very much look forward to working with you. I hope that our relationship is always one of mutual respect. My objective is to encourage your intellectual development to the very limit of your capabilities.

Yours sincerely,

I have read the contents of this letter and understand them.

Student's Signature:

*Modified from the UBC document. Source url: <https://www.grad.ubc.ca/intellectual-property-guide/sample-letter-graduate-student>

Appendix C

Athabasca University Policies and Procedures

Athabasca University Fair Dealing Policy

http://ous.athabascau.ca/policy/academic/fair_dealing_policy.pdf

Research Integrity Policy and Procedures

<http://ous.athabascau.ca/policy/research/researchintegrity.pdf>

Conflict of Interest in Research Policy and Procedures

<http://ous.athabascau.ca/policy/research/conflictinterest-proc.pdf>

Electronic Thesis and Dissertation Policy

http://ous.athabascau.ca/policy/academic/ETD_policy.pdf

Ethical Conduct for Research involving Humans Policy and Procedures

Policy <http://ous.athabascau.ca/policy/research/ethicpolicy.htm>

Procedures <http://ous.athabascau.ca/policy/research/ethicprocedures.htm>

Fair Dealing Policy and Procedures

http://ous.athabascau.ca/policy/academic/fair_dealing_policy.pdf

Hiring of a Research Assistant Policy and Procedures

<http://ous.athabascau.ca/policy/research/hiringresearchassist.pdf>

<http://ous.athabascau.ca/policy/research/hiringresearchassist.pdf>

Open Access to Research Outputs Policy

<http://ous.athabascau.ca/policy/research/openaccess.htm>

Publication of Research Policy

<http://ous.athabascau.ca/policy/research/publicationofresearch.htm>

Research Policies and Procedures

<http://ous.athabascau.ca/policy/research/research.html>

Research Funding Administration Policy

<http://ous.athabascau.ca/policy/research/researchadministration.pdf>

Research Funding Administration Procedures

<http://ous.athabascau.ca/policy/research/researchfundingadminprocedures.pdf>

Research Integrity Policy

<http://ous.athabascau.ca/policy/research/researchintegrity.htm>

Temporary Publication Restriction of Theses and Dissertations

http://fgs.athabascau.ca/guidelines/temp_pub_restriction.php

Appendix D

Resources

Canadian Association for Graduate Schools: www.cags.ca

Canadian Intellectual Property Office: <http://www.cipo.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home>

Copyright Act: <http://laws-lois.justice.gc.ca/eng/acts/C-42/page-6.html#h-6>

[Creating a Letter of Understanding for Advisors/Supervisors and Graduate Students](#) (2012)
(PDF - 75KB)

Faculty of Graduate Studies: <http://fgs.athabascau.ca/>

Tri-Council Policy: Ethical Conduct for Research Involving Humans:
<http://www.pre.ethics.gc.ca/eng/policy-politique/initiatives/tcps2-eptc2/Default/>

Intellectual Property Institute of Canada: <http://www.ipic.ca/>

Christopher S. Wilson, *Intellectual Property for Solicitors – 2010 update paper 1.1: Overview of Intellectual Property*, Continuing Legal Education of British Columbia, November 2010.

David Vaver, *Intellectual Property Law*, 2d ed (Toronto: Irwin Law Inc., 2011)

Henri Charmasson, John Buchaca, Neil Milton, Diana Byron, *Canadian Intellectual Property Law for Dummies*, special ed (Mississauga: John Wiley & Sons Canada, Ltd., 2009)

World Intellectual Property Organization. *What is Intellectual Property?* Online WIPO <
http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_pub_450.pdf>

World Intellectual Property Organization, *Intellectual Property Handbook*, online WIPO <
http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf>

Appendix E

Acknowledgements

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University of Saskatchewan, Faculty of Graduate Studies & Research. (2012). *Policies and Procedures Manual*.

University of Toronto, Faculty of Graduate Studies. (2007). *Intellectual property Guidelines for Graduate Students and Supervisors at the University of Toronto*.

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<https://www.grad.ubc.ca/intellectual-property-guide/introduction>