

INTELLECTUAL PROPERTY POLICY

This policy is the responsibility of the Dean's Council and was reviewed by Faculty Senate in May of 2012 and then approved by Cabinet in June of 2012.

POLICY OVERVIEW

Briercrest College and Seminary (BCS) affirms and recognizes the principle of encouraging wide freedom of research and dissemination of information generated for the benefit of society. This policy facilitates research and dissemination processes and ensures that the benefits of intellectual property can accrue to the Creator(s), the College and Society-at-large, without whose participation the intellectual property could not have been created.

PRINCIPLES

As an academic institution, Briercrest College and Seminary is committed to the open exchange of ideas and the publication, dissemination and communication of the results of scholarly activity.

SCOPE

This policy applies to all College members, including employees and other individuals, students, post-doctoral fellows and research grant employees, affiliated with BCS who use facilities, resources or funds administered by BCS in the course of College-related scholarly and creative activities.

This Policy does not apply to IP created in the course of non-BCS activities that do not make use of facilities, resources or funds administered by BCS, for example outside employment or other activity in an area unrelated to BCS activities, or activity conducted wholly while on an unpaid leave of absence away from BCS.

This Policy does not apply to IP created by individuals not affiliated with BCS but whose IP is used by College members.

POLICY STATEMENT

1. Preamble

1.1 Rationale for Intellectual Property

BCS encourages and supports the creation of intellectual property (IP) by Members of the Academic Community. Faculty members benefit as the creative application of their expertise enables them to grow as disciplinary experts and teachers and to originate innovations that contribute to society in critical and

practical ways. Students benefit as innovation is modeled to them, and they are given opportunities to participate in purposeful application of knowledge. BCS benefits in many ways, including as IP development demonstrates and enhances its academic excellence, status, and leadership, generates funds to sustain the development process, and attracts enterprising faculty members.

1.2 Rationale for Intellectual Property Policy

IP policy facilitates IP development by structuring the development process to protect and support the interests of the developer and BCS. It clarifies and provides ethical, legal and administrative safeguards for the interests and options of both parties from research to market, in keeping with the mission of BCS. Articulated IP policy undergirds and sustains the investment of faculty members and BCS in research and its vendible results, among others.

1.3 Definitions

1.3.1 Commercialization: Transfer of knowledge resulting from research to a new or existing company for commercial purposes.

1.3.2 Conflict of interest: A breach of an obligation to BCS that has the effect or intention of advancing the Member of the community's own interests or the interests of others in a way detrimental to the interests or potentially harmful to the integrity or fundamental mission of BCS.

1.3.3 Creator(s): Member(s) of the academic community who originate intellectual property.

1.3.4 Intellectual property: 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:

(a) inventions, publications, computer software, works of art, industrial and artistic designs, as well as all other creations that can be protected under patent, copyright, trademark or similar laws; and

(b) data bases, audio visual and computer material or equivalent circuitry, biotechnology and genetic engineering products (including plant cultivars and germ plasm), computer software, inventions, discoveries and all other products of research or discovery which are protected by a statutory regime through a registration system (such as patent or trademark registration), which may be licensable or otherwise protected by law; and

(c) computer software and lecture notes, laboratory manuals, articles, books, artifacts, works of visual art and music (including any software which expresses the said notes, manuals, articles, books, artifacts, or works). The terms "works or visual art and music" include productions (including sound, video, film, and hypertext multimedia).

1.3.5 Interest: Ownership or part ownership of a copyright, invention or process.

1.3.6 Members of the academic community: All full-time, part-time, and emeritus academic and academic support employees, students registered in course work or a degree program while working for academic credit, fellows admitted to work in BCS for independent study, and project employees (employees paid by BCS from special purpose accounts).

1.3.7 Net revenues: The gross amounts received by BCS and the Creator(s) from royalty and license fees derived from the commercialization of IP less the costs specifically related to the IP generation, protection and licensing, whether the costs were incurred by BCS or the Creator(s).

1.3.8 Spin-off company: A commercial entity that derives a significant portion of its commercial activities from the application or use of a technology and/or know-how developed by or during a BCS research program.

The new enterprise is created either: (a) to license a BCS invention; (b) to fund research at BCS in order to further develop a technology/invention that will be licensed by the company; or (c) to provide a service using BCS-derived expertise.

2. Principles

As an academic institution, Briercrest College and Seminary is committed to the open exchange of ideas and the publication, dissemination and communication of the results of scholarly activity and believes that this is best served by the following principles:

2.1 BCS members who create IP own the products of their intellectual endeavors and are free to publish those products without commercial intent, to pursue commercialization with the assistance of BCS, or to pursue commercialization of the IP in their own right, subject to the provision of revenue sharing set forth in Part 7 of this policy statement.

2.2 Because of BCS unique role in the creation and dissemination of knowledge, products of intellectual endeavour should be used for the greatest possible public benefit. IP produced solely in anticipation of profit is incompatible with College scholarly and research activity.

2.3 BCS retains a royalty-free perpetual right to use for scholarly, academic and other non-commercial purposes all IP created through use of College resources.

2.4 Any IP created through use of College resources and then commercially exploited is subject to exercise BCS's right to share in the revenue earned from such commercialization of the IP.

2.5 BCS has the right to require the Creator(s) of IP to disclose the intention to commercialize that IP.

3. Ownership and Rights of All Intellectual Property

3.1 All intellectual property is owned by the Members who create it, except in those cases where there is a written contract to the contrary between the Creator(s), BCS, and /or a third party which assigns the ownership rights of the intellectual property to BCS or the third party.

3.2 BCS shall not enter into any agreement with a third party which alters or abridges, or has the effect of altering or abridging, the intellectual property rights of a Member without the Member's written consent.

4. Patents

4.1 Members enter into research contracts only on the basis of using best efforts to do so in accordance with College policy. At this stage, BCS is present and providing resources for the process. Where a Member is a party to a research contract and an invention is made by the Member in the course of research supported by that contract which has explicit provisions for patents and revenue sharing from such patents, the provisions of that contract take precedence over this policy.

4.2 BCS acknowledges that it has no claim or interest in any Member's invention which does not arise from College-supported activities. The parties agree that BCS has an interest in any Member's invention which does arise from BCS supported activities.

4.3 It is to the benefit of both BCS and Members that potentially patentable discoveries or creations be disclosed to BCS prior to public disclosure. BCS disclosure is required at as early a stage in the development as possible. Because disclosure prior to public disclosure may limit the Creator's ability to obtain patents, BCS will provide experts to disclose to and receive advice.

4.4 When potentially patentable discoveries or creations are disclosed to BCS by a Member(s) and BCS agrees to pursue a patent application, this protection shall be pursued in the name of the Member(s) who is the inventor(s), discoverer(s), or Creator(s). If BCS decides to file a patent application, it shall do so within six months of disclosure. The cost involved in this process shall be paid by BCS. Where the inventor(s), discoverer(s), or Creator(s) and BCS agree to pursue the feasibility of patenting an invention, the Member(s) agrees to provide full co-operation and assistance in the preparation of the patent application, including disclosure of information containing potentially patentable discoveries which have not yet been protected. Such disclosures shall only be made within agreements of confidentiality. BCS shall notify the Member(s) of its decision to file or not to file within 3 months of the disclosure.

4.5 If BCS decides the potentially patentable discovery arose from BCS supported activities, and decides not to pursue patent protection, the Member(s) shall be so advised in writing within 3 months of disclosure to BCS and may pursue patent protection at his/her own expense.

4.6 If BCS decides that the potentially patentable discovery was unrelated to College-supported activities, the Member may deal with the patent as he/she deems appropriate. This latter situation shall not preclude a joint development agreement between the Member and BCS.

4.7 If, pursuant to 4.4, a Member does not disclose a potentially patentable discovery, and the Member makes an application for a patent, then the Member shall disclose the patent application to BCS within 3 months of the application, and shall affirm in writing at the time of disclosure to BCS whether or not the discovery has been made and developed as a result of BCS supported activities. If the Member(s) fails to disclose the existence of patent applications within 3 months, it shall be understood that BCS maintains its rights under this Article until such disclosure is made. BCS shall decide if the patent application arose from BCS supported activities, and shall notify the member of its decision within one month of disclosure.

4.8 Members shall share in any royalties derived from the commercialization of patents which they have assigned to BCS.

4.9 If BCS pursues patent protection, then the royalties to be shared shall be those remaining after the recovery of BCS's costs incurred in all the activities specifically involved in the patenting process, including the cost of development, but not including overhead. If the patentable discovery arose from College supported activities, and the Member decides to pursue patent protection without BCS's aid, then the royalties to be shared shall be those remaining after the recovery of the Member's costs incurred in all the activities specifically involved in the patenting process, including the cost of development, but not including overhead. The sharing of the remaining royalties after the disbursements for costs shall be based on the revenue sharing principles identified in Section 7.

4.10 In the event that BCS elects not to proceed with an application for patent for an invention arising from BCS supported activities, and the Member subsequently obtains such a patent, the Member shall grant to BCS a non-exclusive, royalty-free, irrevocable, indivisible and non-transferable license to the use of the invention for BCS's purposes.

4.11 BCS's share of royalties shall be used to support research and scholarly activity following the principles contained in Section 8.

4.12 BCS shall not enter into any agreement with a third party which alters the patent rights of Members stated in this Article without their written consent.

5. Copyrights

5.1 The copyright on all literary works, dramatic works, musical works, artistic works, computer programs, or other forms of intellectual property produced or created by Members is vested in the Members who created the works. The benefits that may accrue to Members may be limited by the terms of external contracts and licensing agreements.

5.2 Notwithstanding clause 5.1, where BCS specifically commissions the preparation of a particular work, at the time the commission is made the Member(s) who is the Creator(s) and BCS may negotiate specific conditions which may vest the copyright in BCS, and the Member(s) as a minimum shall provide BCS with a non-exclusive, royalty-free, irrevocable, indivisible and non-transferable license to use the material for College purposes.

5.2.1 BCS may negotiate as a term of the commission the copyright ownership and/or revenue sharing conditions resulting from that work.

5.2.2 If no such term is imposed or negotiated by BCS as a condition of the work's preparation, then BCS shall have no right to the copyright or share in royalties but shall still have a royalty free right to use the work for academic purposes.

5.3 BCS shall make no claim to the proceeds of publication for which it has provided no more than normal academic facilities, including research grants.

5.4 When BCS has subsidized publication by a grant for that purpose, it may negotiate specific conditions with the Member(s) who is the Creator(s) to participate in royalties.

5.5 Whenever a publication subsidy is made, BCS shall stipulate at the time it offers the subsidy if it wishes to negotiate a claim to royalties that may accrue from publication thus supported; and if it does not, it shall be deemed to have waived any claim to royalties or other income.

5.6 Any funds which accrue to BCS for royalties from copyrights in which it participates shall be used to support research and publication following the principles contained in section 7.

6. Revenue Sharing

6.1 Whenever IP activities involve the use BCS resources beyond the regular resources used for academic activities, a portion of the resulting revenues shall be returned to BCS to be used to support further research and scholarly activity (see 8.2 below). Revenue sharing may apply regardless of whether the IP is owned by the Creator(s) or by BCS. College

6.2 The Creator(s) and BCS will share in the net revenues from IP when the activities producing the IP:

6.2.1 were specifically funded by grants received by BCS or contracts between external sponsors and BCS;

6.2.2 funded by BCS's endowments, special purpose funds, or specific budget allocations;

6.2.3 used the specialized research facilities and services of BCS not commonly available to all the Members of the community; or

6.2.4 when BCS actively participates in the commercialization of the IP, including the development, financing, manufacture, license, and sale of the property, unless BCS made prior agreement to modify or forgo revenue sharing as specified in this IP policy.

6.3 BCS is not entitled to a share of the revenues from artistic, dramatic, musical, or literary works, such as books, articles, plays, music, films, videos, and software, unless the BCS's entitlement was specified by contract before their creation.

6.4 The sharing of revenue will be based on the following formula:

6.4.1 If the Creator(s) retains ownership of the IP and does not request the assistance of the College in commercializing the IP or the Creator(s) requests assistance of BCS in commercializing the IP and BCS declines to assist, or BCS abandons the commercialization of the IP, BCS will receive 5% of the additional annual net revenue received by each of the Creator(s), after \$25,000 in annual net revenue has been received by that Creator(s), based on the provision of general College resources and facilities, and the maintenance of the IP. Assignment of the IP is not required.

6.4.2 If the Creator(s) requests assistance of BCS in commercializing the IP and BCS agrees to assist, then after the direct costs of commercialization, BCS will normally retain 30% of the revenue.

6.5 Normally, an accounting of IP net revenues is made at least annually.

7. Use of BCS Revenues

7.1 The net proceeds BCS derives from IP will be used by BCS to support the direct and indirect costs of research and scholarly activity. The Vice President Academic will administer the funds in consultation with the Dean of Research and Curriculum.

7.2 Normally, BCS's share of revenue from IP activities will be administered as follows:

7.2.1 100% to a fund for the enhancement of BCS's programs and resources;

7.2.2 In the case of very large revenue from IP (in excess of \$500,000), up to 50% of the net revenue may be directed to BCS programs, resources, and initiatives as determined by the Office of the Vice President Academic. The remaining 50% will be distributed as specified above.

8. Use of BCS Resources

8.1 The Vice President Academic in accordance with BCS policy has a right to approve or disapprove of any use of its name and insignia, resources, or services in any commercial arrangement. Use of College resources and services for non-College commercial or consulting activities requires the permission of the Dean or Supervisor. Depending on the scale and frequency of use, the Dean or Supervisor may require a

letter of agreement regarding terms of use and reimbursement. Any use of BCS resources by a spin-off company will be governed by specific agreements with BCS, which will include the payment schedule for the use of the resources. The use of equipment originally purchased from grants from external funding agencies will be regulated both by the policies of the agencies and of BCS.

8.2 The Dean or Supervisor will report formal and informal use of BCS resources agreements to the Office of the Vice President Academic and Dean of Research and Curriculum. Use of BCS resources and services for private IP activities must not impede BCS functions in any way.

9. Implementation of Policy

9.1 The IP policy will be administered by the Vice President Academic, the Dean of Research and Curriculum, and an **Intellectual Property Committee**. The Dean of Research and Curriculum and the IP Committee are responsible to conduct periodic reviews of the IP policy and processes and recommend changes as needed to the Vice President Academic for consideration by Faculty Senate and, as required, by the Board of Governors. See Attachment A: Intellectual Property Committee.

9.2 IP that was created prior to the approval of this policy will be subject to the agreements negotiated at the time of the creation of the IP, and if no such agreements have been negotiated, then the provisions of this policy statement shall be effective in governing the legal status of all IP in question.

10. Resolution of Disputes

10.1 If a dispute arises among Creators regarding their relative contributions to the creation of IP and this cannot be settled by the individuals involved, the advice and assistance of the Faculty/School Dean or administrative equivalent should be sought.

10.2 Disputes between the Creator(s) and BCS regarding the provisions of this policy which cannot be resolved through informal consultation will be decided with reference to the formal procedures outlined in the appropriate agreement between the relevant employee group and BCS, or the appropriate set of College policies or regulations governing BCS constituent group of which the Creator(s) is a Member. In situations not covered by existing agreements or policies, BCS and the parties involved will agree upon a dispute resolution mechanism, initiated and monitored by the IP Committee.

10.3 Where the relationship between the Creator(s) and BCS may be governed by more than one agreement or set of policies or regulations owing to multiple activities of the Creator(s) within BCS, then that agreement or set of policies or regulations which relate to the primary status of the Creator(s) will apply for purposes of actions under this section.

The BCS Intellectual Property Policy draws upon that of Trinity Western University and is used with permission.

APPENDIX A

Related Forms/Policies	Intellectual Property Policy_Appendix A Committee Intellectual Property Policy_Appendix B Disclosure Form
Where is this policy published	
Contact Information	Provost