



FOR RECOMMENDATION

PUBLIC

OPEN SESSION

TO: Academic Board

SPONSOR: Vivek Goel, Vice-President, Research & Innovation
CONTACT INFO: 416-978-4649; VP.Research@utoronto.ca

PRESENTER: As above
CONTACT INFO:

DATE: December 15, 2017 for January 25, 2018

AGENDA ITEM: 4

ITEM IDENTIFICATION:

Vice-President, Research & Innovation: Revisions to the *Copyright Policy*

JURISDICTIONAL INFORMATION:

Policy on research is considered by the Committee on Academic Policy and Programs and forwarded with its recommendation for approval to the Academic Board. Research policies deal with such matters as intellectual property, publication of research results, inventions and innovations. (*AP&P Terms of Reference, Guidelines Regarding Levels of Approval*)

GOVERNANCE PATH:

1. Committee on Academic Policy & Programs [for recommendation](January 11, 2018)
2. **Academic Board [for recommendation] (January 25, 2018)**
3. Executive Committee [for endorsement and forwarding] (February 6, 2018)
4. Governing Council [for approval] (February 14, 2018)

PREVIOUS ACTION TAKEN:

The *Copyright Policy* was approved by Governing Council on May 30, 2007.

HIGHLIGHTS:

This is a proposal to amend the *Copyright Policy* so that it reflects current University of Toronto titles, definitions, and business processes.

In addition, the current *Policy* sets out the author's share of revenues along with the internal distribution of any revenues which may be received by the University. The distribution of Copyright revenues is proposed to be harmonized to those of *Inventions Policy* to provide greater

consistency in the handling of such funds. Under the new distribution model the author's share of revenue remains at 75% when the author commercializes, and increases from 25% to 40% when the University commercializes. As with the *Inventions Policy*, distribution information for the proposed *Copyright Policy* is clearly noted in an Appendix to the *Policy*.

The proposed revised *Policy* has been developed in the course of a review of current practices. The revision process began in 2016 and drafts were brought forward for discussion in 2017 to the Research Advisory Board and subsequently and the University of Toronto Faculty Association (UTFA). All bodies' comments and suggestions have been addressed in the current version.

FINANCIAL IMPLICATIONS:

N/A

RECOMMENDATION:

Be it Recommended,

THAT the proposed *Copyright Policy*, which replaces the *Copyright Policy* approved by the Governing Council on May 30, 2007, be approved.

DOCUMENTATION PROVIDED:

Revised *Copyright Policy*

Previous Version of *Copyright Policy*, May 30, 2007

Revised Clean Version of Proposed *Policy*

COPYRIGHT POLICY

Preamble

This Copyright Policy has the following basic objectives:

- To determine the ownership of copyright works created by members of the University community.
- To foster the creation and development of copyright works in support of the University's academic mission.
- To provide for the equitable sharing of the revenues arising from copyright works between authors and the University.

1. Definitions

The following capitalized terms, whether used in the singular or plural, have the following meanings in this Policy:

- 1.1 **“Administrative Staff”** has the meaning prescribed by the *University of Toronto Act*¹.
- 1.2 **“Author”** means any member of the University's Teaching Staff, librarians or Administrative Staff, any postdoctoral fellow or student of the University, and any visitor to the University, who has written or created a Work.
- 1.3 **“Commercialize”** and **“Commercialization”** mean to make a Work available outside of the University on a for-profit basis, but does not include publication or distribution of conventional texts by a recognized university or other academic press.
- 1.4 **“Connaught Fund”** means the fund administered by the University's Connaught Committee, or any similar fund established by the University to support research.
- 1.5 **“Computer Software”** means any set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer to bring about a specific result.
- 1.6 **“Copyright”** has the meaning prescribed by the Copyright Act.
- 1.7 **“Copyright Act”** means the *Canadian Copyright Act* (R.S.C. 1985, c. C-42), as amended, or any successor legislation thereto.
- 1.8 **“Instructional Software”** means Computer Software designed for instructional purposes that provides for interaction with the user, or makes use of multimedia products, or both, and includes technology-enabled learning products in electronic format.
- 1.9 **“Management Fee”** means a fee for services provided by the University in connection with the Commercialization of a Work by the University.

¹ As of [Policy revision date], the **Administrative Staff** are the employees of the University, University College, the constituent colleges and the federated universities who are not members of the Teaching Staff.

- 1.10 **“Moral Rights”** means all of the Author’s rights to claim authorship and to protect the integrity of a Work under the Copyright Act and applicable law.
- 1.11 **“Net Revenue”** means the royalty, licensing and other income or equivalent financial return, including the proceeds of disposition of share capital or other financial instruments, received from the Commercialization of a Work created with Substantial Use of University Resources, less legal and other fees incurred directly in the process of establishing and maintaining the legal protection of those rights.
- 1.12 **“Substantial Use of University Resources”** means the extraordinary provision of resources by the University, which includes, without limitation: release time from regularly assigned duties where the primary purpose of this is the creation of a Work; direct discretionary investment by the University of funds or staff, or the purchase of special equipment for the creation of a Work; extraordinary use of multimedia production personnel and facilities; and, extraordinary use of computing resources. It would not normally include basic salary or the provision of overhead costs associated with the University’s administration of external funds.
- 1.13 **“Teaching Staff”** has the meaning prescribed by the *University of Toronto Act*².
- 1.14 **“University”** means the Governing Council of the University of Toronto, as represented by its duly appointed officers and officials and their designates.
- 1.15 **“University of Toronto Act”** means the *University of Toronto Act*, S.O. 1971, as amended by S.O. 1978, c. 88.
- 1.16 **“Work”** means any architectural, artistic, choreographic, cinematographic, dramatic, literary, musical, scientific, technical or other work in which copyright may subsist under the Copyright Act and applicable law, but excludes any Computer Software that is not Instructional Software.

2. Rights in the Work

- 2.1 The University will own Copyright in all Works which are:
- (a) created by an Author in the course of the Author’s employment by the University; or,
 - (b) specifically commissioned by the University under a written agreement in which the Author assigns Copyright in the Work to the University.

For the purposes of this Policy, Works, including Instructional Software, created by members of the University’s Teaching Staff, librarians or postdoctoral fellows in the course of their research, scholarship or teaching shall not be deemed to be made or undertaken in the course of their employment by the University.

² As of [Policy revision date], the **Teaching Staff** are the employees of the University, University College, the constituent colleges and the arts and science faculties of the federated universities who hold any of the following academic ranks: professor; associate professor; assistant professor; professor, teaching stream; associate professor, teaching stream; assistant professor, teaching stream; lecturer and senior lecturer; tutor and senior tutor; assistant professor (conditional); assistant professor, teaching stream (conditional); sessional lecturer I, sessional lecturer II, sessional lecturer III, athletics instructor and senior athletics instructor; but does not include any part-time lecturer who is registered as a student.

- 2.2 In all other cases, the Author will own Copyright in the Work, except to extent that any rights in the Work have been granted to a third party under a prior written agreement signed by the University and acknowledged in writing by the Author.
- 2.3 Where the University owns Copyright in a Work created other than in the course of employment, the Author will:
- (a) retain all Moral Rights in the Work;
 - (b) have the right to revise the Work at reasonable intervals; and,
 - (c) have a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license to use, revise and modify the Work for non-commercial purposes.
- 2.4 Where the University does not own Copyright in Work created with Substantial Use of University Resources, the University will:
- (a) have the right to receive a share of Net Revenue, in accordance with Section 3 of this Policy; and,
 - (b) have a perpetual, irrevocable, royalty-free non-exclusive, non-transferable license to use, revise and modify the Work for research and teaching purposes within the University, provided that:
 - i. the license will not confer any commercial rights to the University; and,
 - ii. the University will not publish any revised version of the Work without the Author's prior written consent.
- 2.5 To encourage awareness of rights and obligations under this Policy and reduce the possibility of misunderstanding, circumstances involving Substantial Use of University Resources should be identified in advance of the creation of a Work whenever possible. Since practices and procedures on such matters may vary in different divisions of the University, divisions are encouraged to develop their own guidelines in furtherance of this Policy, subject to the approval of the Vice-President and Provost and the Vice-President, Research and Innovation. The object of such guidelines will be to create an atmosphere that encourages the creation of Works, without interfering with freedom of inquiry or causing unnecessary administrative burdens.
- 2.6 Computer Software that is not Instructional Software will be deemed to be an "Invention" under the *Inventions Policy*, and the rights and obligations with respect to such Computer Software and the disposition of revenues therefrom shall be in accordance with the *Inventions Policy*.
- 2.7 Notwithstanding any statement elsewhere in this Policy:
- (a) if an Author also holds an appointment with an affiliated teaching hospital or other external institution, the determination of rights in a Work and the allocation of Net Revenues arising out of its Commercialization shall be subject to the terms and conditions of agreements between the University and the hospital or other institution

in force at the time of the disclosure of the Work, or, in the absence of such an agreement, to negotiation between the institutions involved;

- (b) all agreements existing at the time of the adoption of this Policy between the University and Authors, or the University and governments, corporations and other third parties relating to Works and/or Authors shall remain in full force; and,
- (c) the rights and obligations set out in this Policy may be modified by written agreement between an Author and the University.

3. Commercialization

- 3.1 If an Author wishes to Commercialize a Work created with Substantial Use of University Resources, the Author will disclose the Work to the University by completing a disclosure form and submitting it to the Vice-President, Research and Innovation or his/her designate(s) without unreasonable delay. Works which comprise an instructional course shall not be considered Commercialized simply because the tuition income from the course exceeds the cost of mounting the course.
- 3.2 The Author may consult with the University's appropriate officials with respect to the various options available to the Author regarding Commercialization and of sources of information about those options. If the Author wishes to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author will enter into a revenue sharing agreement with the University.
- 3.3 If the Author does not wish to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author may offer to assign Copyright in the Work to the University. If the University accepts the assignment, the Author will enter into an assignment and revenue sharing agreement with the University.
- 3.4 Net Revenue shall be shared and distributed in accordance with Appendix A, on an annual basis. In cases where the respective contributions of the Author and the University vary substantially from the norm, the respective shares of Net Revenue may be varied accordingly by agreement to reflect the relative contributions of the Author and of the University.

4. Arbitration

- 4.1 If a dispute arises between an Author and the University with respect to the application of this Policy, the Author and the University shall attempt to resolve the dispute through mediation, failing which the dispute shall be referred for decision to a panel composed of one member nominated by the Author, one member nominated by the University and one member selected by the first two or, in the absence of an agreement between them, by the Dean of the Faculty of Law of the University.
- 4.2 Until a decision is given by the panel, no action shall be brought by the Author against the University, or by the University against the Author, in any court of law on any matter arising out of this Policy.

5. Application and Administration of Policy

- 5.1 This Policy applies to all Works created after the date fixed for implementation of this Policy by the University, and to trademarks relating to those Works. This Policy does not apply to Works created in the course of demonstrably private research unrelated to the Author's University functions or in the course of private consulting activities to outside bodies, or to trademarks relating to those Works.
- 5.2 This Policy replaces the *Policy on Copyright and Other Proprietary Rights* (May 19, 1977) and the *Policy on Computer Software* (April 14, 1998).
- 5.3 The creation and designation of a rank as an academic rank by the University under the University of Toronto Act shall amend the definition of Teaching Staff in this Policy accordingly.
- 5.4 The Vice-President, Research and Innovation is responsible for the administration of this Policy and is authorized to approve guidelines, regulations and procedures pursuant to this Policy. The Vice-President, Research and Innovation (or designate) is also authorized to execute such assignments, agreements, consents, and other documents as may be necessary or desirable to implement this Policy, and the disposition of rights in Works thereunder, on behalf of the University.

June 3, 2002

Reviewed 2005-2006

Amended May 30, 2007

Amended [DRAFT – _____, 2018]

Appendix A

The tables below show the distribution of Net Revenue to all participants:

Commercialization by the University:

Cumulative Net Revenue	\$0 - \$500,000	\$500,001 - \$5,000,000	Over \$5,000,000
Author	60%	60%	60%*
Management Fee	20%	20%	20%*
Author's Academic Division	10%	3%	0%*
Author's Academic Department	10%	3%	0%*
Connaught Fund	0%	14%	20%*

Commercialization by the Author:

Cumulative Net Revenue	\$0 to \$500,000	\$500,001 - \$5,000,000	Over \$5,000,000
Author	75%	75%	75%*
Management Fee	0%	0%	0%*
Author's Academic Division	12.5%	3.75%	0%*
Author's Department	12.5%	3.75%	0%*
Connaught Fund	0%	17.5%	25%*

* unless otherwise determined by the Vice-President, Research and Innovation in consultation with relevant stakeholders and communicated to the Business Board of Governing Council.

COPYRIGHT POLICY

Preamble

This Copyright Policy has the following basic objectives:

- To determine the ownership of copyright works created by members of the University community.
- To foster the creation and development of copyright works in support of the University's academic mission.
- To provide for the equitable sharing of the revenues arising from copyright works between authors and the University.

1. Definitions

The following capitalized terms, whether used in the singular or plural, have the following meanings in this Policy:

- 1.1 **“Administrative Staff”** ~~means the employees of the University, University College, the constituent colleges and the federated universities who are not members of the Teaching Staff [University of Toronto Act, S.O. 1971, c. 56, s. 1(1)(aa), as amended by S.O. 1978, c. 88]~~ has the meaning prescribed by the University of Toronto Act¹.
- 1.2 **“Author”** means any member of the University's Teaching Staff, librarians or Administrative Staff, any postdoctoral fellow or student of the University, and any visitor to the University, who has written or created a Work.
- 1.3 **“Commercialize”** and **“Commercialization”** mean to make a Work available outside of the University on a for-profit basis, but does not include publication or distribution of conventional texts by a recognized university or other academic press.
- 1.4 **“Connaught Fund”** means the fund administered by the University's Connaught Committee, or any similar fund established by the University to support research.
- 1.5 **“Computer Software”** means any set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer to bring about a specific result.
- 1.6 **“Copyright”** has the meaning prescribed by the Copyright Act.
- 1.7 **“Copyright Act”** means the Canadian *Copyright Act* (R.S.C. 1985, c. C-42), as amended, or any successor legislation thereto.
- 1.8 **“Instructional Software”** means Computer Software designed for instructional purposes that provides for interaction with the user, or makes use of multimedia products, or both, and includes technology-enabled learning products in electronic format.

¹ As of [Policy revision date], the **Administrative Staff** are the employees of the University, University College, the constituent colleges and the federated universities who are not members of the Teaching Staff.

1.9 “Management Fee” means a fee for services provided by the University in connection with the Commercialization of a Work by the University.

1.910 **“Moral Rights”** means all of the Author’s rights to claim authorship and to protect the integrity of a Work under the Copyright Act and applicable law.

1.4011 **“Net Revenue”** means the royalty, licensing and other income or equivalent financial return, including the proceeds of disposition of share capital or other financial instruments, received from the Commercialization of a Work created with Substantial Use of University Resources, less legal and other fees incurred directly in the process of establishing and maintaining the legal protection of those rights.

1.412 **“Substantial Use of University Resources”** means the extraordinary provision of resources by the University, which includes, without limitation: release time from regularly assigned duties where the primary purpose of this is the creation of a Work; direct discretionary investment by the University of funds or staff, or the purchase of special equipment for the creation of a Work; extraordinary use of multimedia production personnel and facilities; and, extraordinary use of computing resources. It would not normally include basic salary or the provision of overhead costs associated with the University’s administration of external funds.

1.4213 ~~“Teaching Staff” means the employees of the University, University College, the constituent colleges and the arts and science faculties of the federated universities who hold the academic rank of professor, associate professor, assistant professor, full time lecturer or part time lecturer, unless such part time lecturer is registered as a student, or who hold any other rank created by the University and designated by it as an academic rank [University of Toronto Act, S.O. 1971, c. 56, s. 1(1)(m), as amended by S.O. 1978, c. 88]~~ has the meaning prescribed by the University of Toronto Act².

1.4314 **“University”** means the Governing Council of the University of Toronto, as represented by its duly appointed officers and officials and their designates.

1.4415 ~~“University Revenue” means the portion of Net Revenue received by the University under this Policy.~~ “University of Toronto Act” means the University of Toronto Act, S.O. 1971, as amended by S.O. 1978, c. 88.

1.4516 **“Work”** means any architectural, artistic, choreographic, cinematographic, dramatic, literary, musical, scientific, technical or other work in which copyright may subsist under the Copyright Act and applicable law, but excludes any Computer Software that is not Instructional Software.

2. Rights in the Work

2.1 The University will own Copyright in all Works which are:

- (a) created by an Author in the course of the Author’s employment by the University; or,

² As of [Policy revision date], the **Teaching Staff** are the employees of the University, University College, the constituent colleges and the arts and science faculties of the federated universities who hold any of the following academic ranks: professor; associate professor; assistant professor; professor, teaching stream; associate professor, teaching stream; assistant professor, teaching stream; lecturer and senior lecturer; tutor and senior tutor; assistant professor (conditional); assistant professor, teaching stream (conditional); sessional lecturer I, sessional lecturer II, sessional lecturer III, athletics instructor and senior athletics instructor; but does not include any part-time lecturer who is registered as a student.

- (b) specifically commissioned by the University under a written agreement in which the Author assigns Copyright in the Work to the University.

For the purposes of this Policy, ~~research and instruction, or the creation of instructional~~ Works, including Instructional Software, ~~undertaken~~created by members of the University's Teaching Staff, ~~or librarians~~ or postdoctoral fellows in the course of their research, scholarship or teaching shall not be deemed to be made or undertaken in the course of their employment by the University.

- 2.2 In all other cases, the Author will own Copyright in the Work, except to extent that any rights in the Work have been granted to a third party under a prior written agreement signed by the University and acknowledged in writing by the Author.
- 2.3 Where the University owns Copyright in a Work created other than in the course of employment, the Author will:
 - (a) retain all Moral Rights in the Work;
 - (b) have the right to revise the Work at reasonable intervals; and,
 - (c) have a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license to use, revise and modify the Work for non-commercial purposes.
- 2.4 Where the University does not own Copyright in Work created with Substantial Use of University Resources, the University will:
 - (a) have the right to receive a share of Net Revenue, in accordance with Section 3 of this Policy; and,
 - (b) have a perpetual, irrevocable, royalty-free non-exclusive, non-transferable license to use, revise and modify the Work for research and teaching purposes within the University, provided that:
 - i. the license will not confer any commercial rights to the University; and,
 - ii. the University will not publish any revised version of the Work without the Author's prior written consent.
- 2.5 To encourage awareness of rights and obligations under this Policy and reduce the possibility of misunderstanding, circumstances involving Substantial Use of University Resources should be identified in advance of the creation of a Work whenever possible. Since practices and procedures on such matters may vary in different divisions of the University, divisions are encouraged to develop their own guidelines in furtherance of this Policy, subject to the approval of the Vice-President and Provost and the Vice-President, Research and ~~Associate Provost~~Innovation. The object of such guidelines will be to create an atmosphere that encourages the creation of Works, without interfering with freedom of inquiry or causing unnecessary administrative burdens.
- 2.6 Computer Software that is not Instructional Software will be deemed to be an "Invention" under the *Inventions Policy* (May 30, 1990, as amended), and the rights and obligations with respect to such Computer Software and the disposition of revenues therefrom shall be in accordance with the *Inventions Policy*.
- 2.7 Notwithstanding any statement elsewhere in this Policy:
 - (a) if an Author also holds an appointment with an affiliated teaching hospital or other external institution, the determination of rights in a Work and the allocation of Net Revenues arising

out of its Commercialization shall be subject to the terms and conditions of agreements between the University and the hospital or other institution in force at the time of the disclosure of the Work, or, in the absence of such an agreement, to negotiation between the institutions involved;

- (b) all agreements existing at the time of the adoption of this Policy between the University and Authors, or the University and governments, corporations and other third parties relating to Works and/or Authors shall remain in full force; and,
- (c) the rights and obligations set out in this Policy may be modified by written agreement between an Author and the University.

3. Disclosure and Revenue Sharing Commercialization

3.1 If an Author wishes to Commercialize a Work created with Substantial Use of University Resources, the Author will disclose the Work to the University by completing a disclosure form and submitting it to the Vice-President, Research and ~~Associate Provost~~ Innovation or his/her designate(s) without unreasonable delay. Works which comprise an instructional course shall not be considered Commercialized simply because the tuition income from the course exceeds the cost of mounting the course.

3.2 The Author may consult with the University's appropriate officials with respect to the various options available to the Author regarding Commercialization and of sources of information about those options. If the Author wishes to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author will enter into a revenue sharing agreement with the University, ~~under which the University will receive 25% of the Net Revenue which the Author may receive, payable on an annual basis.~~

3.3 If the Author does not wish to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author may offer to assign Copyright in the Work to the University. If the University accepts the assignment, the Author will enter into an assignment and revenue sharing agreement with the University ~~under which the Author will receive 25% of the Net Revenue which the University may receive, payable on an annual basis.~~

3.4 Net Revenue shall be shared and distributed in accordance with Appendix A, on an annual basis. In cases where the respective contributions of the Author and the University vary substantially from the norm, the respective shares of Net Revenue may be varied accordingly by agreement to reflect the relative contributions of the Author and of the University.

~~3.5 University Revenue shall be divided as follows, unless otherwise agreed by the Vice President, Research and Associate Provost:~~

~~(a) For cumulative University Revenue up to \$100,000:~~

~~Author's Department 50%
Author's Faculty 20%
University Distribution 30%~~

~~(b) For cumulative University Revenue above \$100,000:~~

~~Author's Department 15%
Author's Faculty 15%
Connaught Fund 70%~~

4. Arbitration

- 4.1 If a dispute arises between an Author and the University with respect to the application of this Policy, the Author and the University shall attempt to resolve the dispute through mediation, failing which the dispute shall be referred for decision to a panel composed of one member nominated by the Author, one member nominated by the University and one member selected by the first two or, in the absence of an agreement between them, by the Dean of the Faculty of Law of the University.
- 4.2 Until a decision is given by the panel, no action shall be brought by the Author against the University, or by the University against the Author, in any court of law on any matter arising out of this Policy.

5. Application and Administration of Policy

- 5.1 This Policy applies to all Works created after the date fixed for implementation of this Policy by the University, and to trademarks relating to those Works. This Policy does not apply to Works created in the course of demonstrably private research unrelated to the Author's University functions or in the course of private consulting activities to outside bodies, or to trademarks relating to those Works.
- 5.2 This Policy replaces the *Policy on Copyright and Other Proprietary Rights* (May 19, 1977) and the *Policy on Computer Software* (April 14, 1998).
- 5.3 The creation and designation of a rank as an academic rank by the University under the University of Toronto Act shall amend the definition of Teaching Staff in this Policy accordingly.
- 5.4 The Vice-President, Research and Innovation is responsible for the administration of this Policy and is authorized to approve guidelines, regulations and procedures pursuant to this Policy. The Vice-President, Research and Innovation (or designate) is also authorized to execute such assignments, agreements, consents, and other documents as may be necessary or desirable to implement this Policy, and the disposition of rights in Works thereunder, on behalf of the University.

June 3, 2002

Reviewed 2005-2006

Amended May 30, 2007

Amended [DRAFT – Oct xx, 2017]

Appendix A

The tables below show the distribution of Net Revenue to all participants:

Commercialization by the University:

<u>Cumulative Net Revenue</u>	<u>\$0 - \$500,000</u>	<u>\$500,001 - \$5,000,000</u>	<u>Over \$5,000,000</u>
<u>Author</u>	<u>60%</u>	<u>60%</u>	<u>60%*</u>
<u>Management Fee</u>	<u>20%</u>	<u>20%</u>	<u>20%*</u>
<u>Author's Academic Division</u>	<u>10%</u>	<u>3%</u>	<u>0%*</u>
<u>Author's Academic Department</u>	<u>10%</u>	<u>3%</u>	<u>0%*</u>
<u>Connaught Fund</u>	<u>0%</u>	<u>14%</u>	<u>20%*</u>

Commercialization by the Author:

<u>Cumulative Net Revenue</u>	<u>\$0 to \$500,000</u>	<u>\$500,001 - \$5,000,000</u>	<u>Over \$5,000,000</u>
<u>Author</u>	<u>75%</u>	<u>75%</u>	<u>75%*</u>
<u>Management Fee</u>	<u>0%</u>	<u>0%</u>	<u>0%*</u>
<u>Author's Academic Division</u>	<u>12.5%</u>	<u>3.75%</u>	<u>0%*</u>
<u>Author's Department</u>	<u>12.5%</u>	<u>3.75%</u>	<u>0%*</u>
<u>Connaught Fund</u>	<u>0%</u>	<u>17.5%</u>	<u>25%*</u>

* unless otherwise determined by the Vice-President, Research and Innovation in consultation with relevant stakeholders and communicated to the Business Board of Go



UNIVERSITY OF TORONTO

University of Toronto
Governing Council

Copyright Policy

May 30, 2007

To request an official copy of this policy, contact:

The Office of the Governing Council
Room 106, Simcoe Hall
27 King's College Circle
University of Toronto
Toronto, Ontario
M5S 1A1

Phone: 416-978-6576

Fax: 416-978-8182

E-mail: governing.council@utoronto.ca

Website: <http://www.governingcouncil.utoronto.ca/>

COPYRIGHT POLICY

Preamble

This Copyright Policy has the following basic objectives:

- To determine the ownership of copyright works created by members of the University community.
- To foster the creation and development of copyright works in support of the University's academic mission.
- To provide for the equitable sharing of the revenues arising from copyright works between authors and the University.

1. Definitions

The following capitalized terms, whether used in the singular or plural, have the following meanings in this Policy:

- 1.1 **“Administrative Staff”** means the employees of the University, University College, the constituent colleges and the federated universities who are not members of the Teaching Staff [*University of Toronto Act*, S.O. 1971, c. 56, s. 1(1)(aa), as amended by S.O. 1978, c. 88].
- 1.2 **“Author”** means any member of the University's Teaching Staff or Administrative Staff, any student of the University and any visitor to the University, who has written or created a Work.
- 1.3 **“Commercialize”** and **“Commercialization”** mean to make a Work available outside of the University on a for-profit basis, but does not include publication or distribution of conventional texts by a recognized university or other academic press.
- 1.4 **“Connaught Fund”** means the fund administered by the University's Connaught Committee, or any similar fund established by the University to support research.
- 1.5 **“Computer Software”** means any set of instructions or statements, expressed, fixed, embodied or stored in any manner, that is to be used directly or indirectly in a computer to bring about a specific result.
- 1.6 **“Copyright”** has the meaning prescribed by the *Copyright Act*.
- 1.7 **“Copyright Act”** means the Canadian *Copyright Act* (R.S.C. 1985, c. C-42), as amended, or any successor legislation thereto.
- 1.8 **“Instructional Software”** means Computer Software designed for instructional purposes that provides for interaction with the user, or makes use of multimedia products, or both, and includes technology-enabled learning products in electronic format.
- 1.9 **“Moral Rights”** means all of the Author's rights to claim authorship and to protect the integrity of a Work under the *Copyright Act* and applicable law.
- 1.10 **“Net Revenue”** means the royalty, licensing and other income or equivalent financial return received from the Commercialization of a Work created with Substantial Use of University Resources, less legal and other fees incurred directly in the process of establishing and maintaining the legal protection of those rights.
- 1.11 **“Substantial Use of University Resources”** means the extraordinary provision of resources by the University, which includes, without limitation: release time from regularly assigned duties where the primary purpose of this is the creation of a Work; direct discretionary investment by the University of funds or staff, or the purchase of special equipment for the creation of a Work; extraordinary use of multimedia production personnel and facilities; and, extraordinary use of computing resources. It would not normally include basic salary or the provision of overhead costs associated with the University's administration of external funds.

- 1.12 **“Teaching Staff”** means the employees of the University, University College, the constituent colleges and the arts and science faculties of the federated universities who hold the academic rank of professor, associate professor, assistant professor, full-time lecturer or part-time lecturer, unless such part-time lecturer is registered as a student, or who hold any other rank created by the University and designated by it as an academic rank [*University of Toronto Act*, S.O. 1971, c. 56, s. 1(1)(m), as amended by S.O. 1978, c. 88].
- 1.13 **“University”** means the Governing Council of the University of Toronto, as represented by its duly appointed officers and officials and their designates.
- 1.14 **“University Revenue”** means the portion of Net Revenue received by the University under this Policy.
- 1.15 **“Work”** means any architectural, artistic, choreographic, cinematographic, dramatic, literary, musical, scientific, technical or other work in which copyright may subsist under the *Copyright Act* and applicable law, but excludes any Computer Software that is not Instructional Software.

2. Rights in the Work

- 2.1 The University will own Copyright in all Works which are:
 - (a) created by an Author in the course of the Author’s employment by the University; or,
 - (b) specifically commissioned by the University under a written agreement in which the Author assigns Copyright in the Work to the University.

For the purposes of this Policy, research and instruction, or the creation of instructional Works, including Instructional Software, undertaken by members of the University’s Teaching Staff or librarians shall not be deemed to be made or undertaken in the course of their employment by the University.
- 2.2 In all other cases, the Author will own Copyright in the Work, except to extent that any rights in the Work have been granted to a third party under a prior written agreement signed by the University and acknowledged in writing by the Author.
- 2.3 Where the University owns Copyright in a Work created other than in the course of employment, the Author will:
 - (a) retain all Moral Rights in the Work;
 - (b) have the right to revise the Work at reasonable intervals; and,
 - (c) have a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable license to use, revise and modify the Work for non-commercial purposes.
- 2.4 Where the University does not own Copyright in Work created with Substantial Use of University Resources, the University will:
 - (a) have the right to receive a share of Net Revenue, in accordance with Section 3 of this Policy; and,
 - (b) have a perpetual, irrevocable, royalty-free non-exclusive, non-transferable license to use, revise and modify the Work for research and teaching purposes within the University, provided that:
 - i. the license will not confer any commercial rights to the University; and,
 - ii. the University will not publish any revised version of the Work without the Author’s prior written consent.
- 2.5 To encourage awareness of rights and obligations under this Policy and reduce the possibility of misunderstanding, circumstances involving Substantial Use of University Resources should be identified in advance of the creation of a Work whenever possible. Since practices and procedures on such matters may vary in different divisions of the University, divisions are encouraged to develop their own guidelines in furtherance of this Policy, subject to the approval of the Vice-

President and Provost and the Vice-President, Research and Associate Provost. The object of such guidelines will be to create an atmosphere that encourages the creation of Works, without interfering with freedom of inquiry or causing unnecessary administrative burdens.

- 2.6 Computer Software that is not Instructional Software will be deemed to be an “Invention” under the *Inventions Policy* (May 30, 1990, as amended), and the rights and obligations with respect to such Computer Software and the disposition of revenues therefrom shall be in accordance with the *Inventions Policy*.
- 2.7 Notwithstanding any statement elsewhere in this Policy:
 - (a) if an Author also holds an appointment with an affiliated teaching hospital or other external institution, the determination of rights in a Work and the allocation of Net Revenues arising out of its Commercialization shall be subject to the terms and conditions of agreements between the University and the hospital or other institution in force at the time of the disclosure of the Work, or, in the absence of such an agreement, to negotiation between the institutions involved;
 - (b) all agreements existing at the time of the adoption of this Policy between the University and Authors, or the University and governments, corporations and other third parties relating to Works and/or Authors shall remain in full force; and,
 - (c) the rights and obligations set out in this Policy may be modified by written agreement between an Author and the University.

3. Disclosure and Revenue Sharing

- 3.1 If an Author wishes to Commercialize a Work created with Substantial Use of University Resources, the Author will disclose the Work to the University by completing a disclosure form and submitting it to the Vice-President, Research and Associate Provost or his/her designate(s) without unreasonable delay. Works which comprise an instructional course shall not be considered Commercialized simply because the tuition income from the course exceeds the cost of mounting the course.
- 3.2 The Author may consult with the University’s appropriate officials with respect to the various options available to the Author regarding Commercialization and of sources of information about those options. If the Author wishes to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author will enter into a revenue sharing agreement with the University, under which the University will receive 25% of the Net Revenue which the Author may receive, payable on an annual basis.
- 3.3 If the Author does not wish to retain the responsibility to Commercialize a Work created with Substantial Use of University Resources, the Author may offer to assign Copyright in the Work to the University. If the University accepts the assignment, the Author will enter into an assignment and revenue sharing agreement with the University under which the Author will receive 25% of the Net Revenue which the University may receive, payable on an annual basis.
- 3.4 In cases where the respective contributions of the Author and the University vary substantially from the norm, the respective shares of Net Revenue may be varied accordingly by agreement to reflect the relative contributions of the Author and of the University.
- 3.5 University Revenue shall be divided as follows, unless otherwise agreed by the Vice-President, Research and Associate Provost:
 - (a) For cumulative University Revenue up to \$100,000:
 - Author’s Department 50%
 - Author’s Faculty 20%
 - University Distribution 30%
 - (b) For cumulative University Revenue above \$100,000:

Author's Department 15%
Author's Faculty 15%
Connaught Fund 70%

4. Arbitration

- 4.1 If a dispute arises between an Author and the University with respect to the application of this Policy, the Author and the University shall attempt to resolve the dispute through mediation, failing which the dispute shall be referred for decision to a panel composed of one member nominated by the Author, one member nominated by the University and one member selected by the first two or, in the absence of an agreement between them, by the Dean of the Faculty of Law of the University.
- 4.2 Until a decision is given by the panel, no action shall be brought by the Author against the University, or by the University against the Author, in any court of law on any matter arising out of this Policy.

5. Application of Policy

- 5.1 This Policy applies to all Works created after the date fixed for implementation of this Policy by the University, and to trademarks relating to those Works. This Policy does not apply to Works created in the course of demonstrably private research unrelated to the Author's University functions or in the course of private consulting activities to outside bodies, or to trademarks relating to those Works.
- 5.2 This Policy replaces the *Policy on Copyright and Other Proprietary Rights* (May 19, 1977) and the *Policy on Computer Software* (April 14, 1998).

June 3, 2002
Reviewed 2005-2006
Amended May 30, 2007