

ARTICLE 21 - INTELLECTUAL PROPERTY AND COPYRIGHT

IV.7 Intellectual Property and Copyright

IV.7(a) Subcontracting by Employer

The employer agrees not to enter into any agreement to subcontract the services of any member without securing to the member whose services are subcontracted all the rights, privileges and benefits accorded to members in this Article IV.7, nor shall the employer enter into any agreement to create or participate in a consortium of universities or government departments or private companies, for the purposes of research or development or commercial exploitation or the creation of intellectual property without securing to the members who may be seconded to or employed by such consortia, departments, or private companies all the rights, privileges and benefits accorded by this Article IV.7. If the employer makes an agreement contrary to this provision and fails to secure the said rights, privileges and benefits to said members, the agreement shall not apply to members unless there is a special agreement in writing between the employer and the Association, upon the recommendation of the Intellectual Property and Copyright Committee (Article IV.7.6), to waive this provision in that case. Any member(s) who uses the employer's facilities while providing subcontracted services will provide reciprocal protection to the employer.

IV.7(b) Members with existing protection to intellectual property and copyrights arrangements with the employer may opt for provisions in this Agreement if they so choose.

IV.7.1 Protection of Intellectual Property not Subject to Copyright

- IV.7.1(a)
- i) The employer waives, disclaims and abandons, any interest in or claim to, any invention, improvement, design or development made by a member without any use of the employer's funds, services, facilities, support and/or technical personnel. Demonstration of use of the employer's services or facilities by members lies with the employer. Members are required to give the employer immediate notice of any application made by them to legally protect intellectual property prior to filing such an application.
 - ii) Ownership of inventions, improvements, designs or developments shall vest in the member(s) who developed it. The employer will share equally any revenue generated as a result of commercialization of any invention, improvement in design or development made by a member

with the use, in whole or in part, of the employer's funds, services, facilities, support and/or technical personnel. The use of normal academic facilities as defined in Article IV.1.3 shall not be considered use of the employer's services or facilities. Demonstration of use of the employer's services or facilities by members lies with the employer.

- iii) There will be a joint committee established to negotiate issues related to the disclosure of intellectual property, the responsibilities of the employer and/or members regarding demonstration of the use of the employer's services or facilities and the proportionality of shared revenues based on a schedule of resources used and accrued interest, within the life of the agreement.
- iv) Disputes as to what constitutes normal academic facilities shall be referred to the Intellectual Property and Copyright Committee for adjudication. No member shall make any application to protect intellectual property in respect of any such invention, improvement, design or development except in accordance with this Article.
- v) For the purpose of this Article, the payment of salaries to members shall not be construed as use of the employer's funds.

IV.7.1(b) Subject to Article IV.7(a), Article IV.7.1(a) shall not apply to any invention, improvement, design or development resulting from work financed by a grant or contract where the granting or contracting body, as a condition of the grant or contract, requires that any patent rights be assigned to it.

IV.7.1(c) The parties agree that members have no obligation to seek intellectual property protection for the results of their work, nor to modify research to enhance commercialization potential. The parties further agree that, except as herein provided, members have the unqualified right to publish their inventions, although such publication may be a bar to future application for protection of intellectual property.

IV.7.1(d) There shall be no obligation on the employer to enter into any agreement with the member in the development of intellectual property. Members who seek to exploit an innovative idea have the option to use or not to use the services of the employer for the development and exploitation of the idea. The employer shall have the first option to carry out development of the intellectual property towards commercialization. In either case, the member shall sign an agreement with the employer which governs the rights of the parties in accordance with this Article and sets out in detail the understanding between them as to the intellectual property and any subsequent costs and/or revenue.

In the case of protection of intellectual property, the member shall, if the terms are satisfactory to the member, sign an agreement to take all steps or actions necessary for the purpose of formally involving any approved intellectual property development agency (IPA) with whom the employer may have a contract.

- IV.7.1(e) If the intellectual property development agency (or agencies) with whom the employer has entered into agreement does (or do) not accept the invention for development, protection and/or commercialization, the employer may at its own discretion release the member from any obligation to the employer, thus permitting the member to proceed or not with development on an independent basis.
- IV.7.1(f) The costs and expenses involved in obtaining, protecting, maintaining, licensing and commercializing any intellectual property referred to in IV.7.1(a) (ii) exploited through the services of an IPA will be borne by the employer. Expenses incurred in respect of such intellectual property not exploited through the services of a IPA will be borne by the member.
- IV.7.1(g) All royalties received in respect of any intellectual property referred to in paragraph IV.7.1(a) (ii) will be deposited in a separate account opened at the University in respect of that intellectual property (the "IP Account"). Where the University incurs expenses with respect to the efforts of an IPA, it may be immediately reimbursed from the appropriate IP Account. Where members incur expenses in respect of intellectual property not exploited by the IPA, they may also be immediately reimbursed from the appropriate IP Account. On April 30 of each year, reimbursement of any outstanding expenses incurred in the preceding year will be made from each IP Account. The amount remaining in each IP Account will be distributed in proportions agreed to by the member and the employer. The employer shall allocate its share to the academic and/or research budget. It may use its share at its discretion to provide such items as, but not exclusively restricted to, equipment and library resources to foster and maintain the academic and research environment generally in the University, and half of such resources shall be designated to acquisition of such resources in the department or program with which the inventor is affiliated. If the amount in any IP Account as of April 30 is not sufficient to reimburse the outstanding expenses of the employer or member as the case may be, those expenses shall be reimbursed to the extent possible and the amount of the deficiency shall be deemed to be expenses incurred in the following year. These funds and accounts shall be maintained in such a way as to be open for inspection to the Association's President or designate.

- IV.7.1(h) The member shall grant to the employer non-exclusive, royalty-free, irrevocable, indivisible and non-transferable right to use solely for the employer's internal use any intellectual property, improvement, design or development referred to in IV.7.1(a) above. Such right shall not include the right to transfer or exploit any product or process.
- IV.7.1(i) The name and trademark of Trent University shall not be used in connection with any intellectual property without agreement of the member and the employer and shall be used upon request of the University in connection with any intellectual property referred to in IV.7.1(a) above.
- IV.7.1(j) Members must verify protection of the employer against liability in the use/application of their independently created works.
- IV.7.1(k) Contributions in the development of intellectual property shall at the request of the member be included in listings of publications and scholarly papers, in any curriculum vitae, in grant applications, and in reports prepared by the employer.

IV.7.2 Copyrights

IV.7.2(a) Copyright

- i) The parties agree that members hold the copyright in all their original literary, dramatic, musical and artistic works, with the exception of secondary print materials forming an integral part of an audio-visual production, which shall be subject to the provisions of Article IV.7.4. The employer also agrees and undertakes to transfer to the author and hereby transfers to the author any copyright which the employer may have in any original literary, dramatic, musical or artistic work created by a member, except as herein provided.
- ii) Sub-paragraph (i) above does not apply to members who are employed by the employer or an agent of the employer to edit a journal or magazine except with respect to articles, reviews or literary pieces written by them.

IV.7.2(b) Copyright in Lectures

The employer agrees that all rights in the copyright to lectures, laboratory manuals, and all other teaching materials including, but not limited to,

multimedia instructional materials prepared by and delivered by a member using facilities as defined in Article IV.1.3 shall vest in the member.

~~V.7.2(c)~~ Theses

~~From the time when a graduate thesis proposal has been finally approved by the Graduate Studies Committee, it shall be retained by the Graduate Studies Office for twelve (12) months unless, by mutual agreement between the supervisor of the thesis and the supervisee, it is decided that it may then be released and deposited in the Library. Otherwise, at the end of the twelve (12) months the completed thesis will be deposited in the Library.~~

IV.7.3 Copyright and Improvements in Computer Programs

The regulations contained herein shall apply only to computer programs developed as part of a member's duties in the course of University employment.

IV.7.3(a) Ownership

- i) The members shall hold the copyright in any computer programs developed during the course of the member's University employment. If the member ceases to be employed by the University, the employer shall have the use, for internal purposes, of such programs in perpetuity.
- ii) The member shall grant to the employer a non-exclusive, royalty-free, irrevocable, indivisible and non-transferable right to use solely for the employer's internal use any computer program referred to in IV.7.3(a) (i) above. Such right shall not include the right to transfer or exploit any product or process. The employer shall take reasonable precautions to ensure that these computer programs are protected from unauthorized access, mutilation, copying, or amendment.
- iii) Subject to Article IV.7(a), Article IV.7.3(a) (i) does not apply to any copyright resulting from work financed by a grant or contract where the granting or contracting body, as a condition of the grant or contract, requires that any copyrights be assigned to it.

IV.7.3(b) Academic Credit

Contributions in the development of computer programs shall at the request of the member be included in listings of publications and scholarly papers, in any curriculum vitae, in grant applications, and in reports prepared by the employer.

IV.7.3(c)

Commercialization

- i) The parties agree that members have no obligation to seek copyright protection for the results of their work, nor to modify research to enhance commercial potential. The parties further agree that, except as herein provided, members have the unqualified right to publish their computer programs, although such publication may be a bar to future commercialization of such programs.
- ii) Members choosing to make their computer programs commercially available shall inform the employer in writing of their decision.
- iii) The net profits accruing from the exploitation of the computer program shall be shared equally between the employer and the member.
- iv) The fee or royalty to be charged shall be established by agreement between the member, with the assistance of the Association if requested, and the employer. If the parties fail to reach agreement on such fee or royalty, it shall be set by the Committee on Intellectual Property and Copyright (Article IV.7.6).
- v) The employer shall not unreasonably restrain the exploitation of the computer program. If, within two (2) months of the receipt of a written request by a member, the employer has not commenced negotiations with the member for the exploitation of the computer program, the employer shall be deemed to have waived any and all rights in the exploitation of the copyright of the said computer program and shall forego all fees, royalties, and other income. In this event, the employer's obligation under paragraph IV.7.3 (c) (vi) shall cease.
- vi) The cost and expenses involved in registering, protecting, maintaining, licensing and commercializing any copyright ("Copyright expenses") shall be borne by the employer in the event that University facilities were used in the creation process. The University shall be responsible for obtaining registration of any copyright and shall have carriage of any application for registration for such copyright. All royalties received in respect of any copyright will be deposited in a separate account opened at the University in respect of that copyright (the "Copyright Account"). Where the employer incurs copyright expenses, it may be immediately reimbursed from the appropriate Copyright

Account. On April 30 each year, the employer shall be reimbursed from the appropriate Copyright Account for any outstanding copyright expenses incurred in that year.

- vii) Fifty per cent (50%) of the amount remaining in the Copyright Account will be distributed to the employer and the remaining fifty per cent (50%) will be distributed to the member. If the amount in any Copyright Account as of April 30 is not sufficient to reimburse the outstanding copyright expenses of the employer, those copyright expenses shall be reimbursed to the extent possible and the amount of the deficiency shall be deemed to be copyright expenses incurred in the following year.

IV.7.3(d) Multiple Copyright Holders

- i) Where more than one (1) member is an author of a computer program, any reference in this Article IV.7.3 to the 'member' shall be deemed to mean all members who are authors of the computer program, and the agreement or permission of the 'member' shall be deemed to mean the unanimous agreement or permission of all such members.
- ii) Members who are co-authors of computer programs shall agree among themselves as to the interest of each in the ownership of the member's share of the copyright, and also as to division of the member's share of royalties, fees, or other income.

New Copyright in Distance Education Courses

- i) **Subject to IV.7.4. c, and to such provisions as may be subsequently agreed by the Parties regarding Distance Education, a Member teaching a course or part of a course dependent on information and communication technologies which involve the broadcast, transmission, re-transmission, publication, recording, or storage of the contents of the course shall exercise copyright in all course materials created by the Member regardless of the medium used to broadcast, transmit, re-transmit, publish, record or store the course, except where there is an agreement between the Member and the Employer or a third party assigning or licensing specified uses and interests. A copy of any such agreement shall be provided to the Association.**
- ii) **Any agreements pursuant to Distance Education shall specify:**
 - a) **limits and conditions of use of copyright material;**

- b) **whether, and under what circumstances, the Member assigns the right to rework, revise, or amend the copyright material and whether there is a waiver of moral rights, in whole or in part;**
 - c) **what rights of use the Member retains;**
 - d) **the term of the licensing agreement; and**
 - e) **the conditions for renewal or termination.**
- iii) **The development of materials by a Member that are commissioned by the Employer shall be governed by a special agreement between the Employer and the Member. This special agreement shall be in writing, shall be consistent with the provisions of this Article, and shall specify copyright ownership and the terms of any licensing arrangements under the agreement.**

IV.7.4 Multimedia Instructional Material

- IV.7.4(a)
- i) The regulations of IV.7.4 apply only to multimedia instructional materials (including secondary-printed materials that are integral to the multimedia instructional materials and shall be only those that are necessary for the proper use of the multimedia material, but shall not include the text or script of the multimedia formats) which are prepared or developed by members in the course of their employment and which are produced with the assistance of direct employer funding or with the use of the employer's production facilities free of charge or at rates lower than those of local commercial establishments. "Multimedia instructional materials" shall include, but are not limited to, films, filmstrips, film loops, tape/slide programs, series of overhead transparencies, videotape or television programs, audiotapes, audio or video cassettes, and which are intended for broadcast on radio, television, by teleconference, or to be transmitted or received via the Internet or the World Wide Web.
 - ii) A member who uses production facilities outside the University or who pays full commercial rates for the use of employer's facilities, is under no requirement to enter into any arrangement with the employer and the employer shall have no right, title or interest in any copyright in any multimedia materials produced under this subparagraph IV.7.4(a) (ii).
 - iii) A member who proposes to use direct employer funding or the employer's facilities as described above, shall enter into a written agreement with the employer which is in accordance with this Article.

- iv) For the purpose of this Article, the payment of salaries to members shall not be construed as use of direct employer funding.
- v) Use of facilities as defined in Article IV.1.3 shall not be considered use of the employer's production facilities. Demonstration of use of the employer's production facilities by members lies with the employer.

IV.7.4(b) Production of Materials

i) Content

Members shall retain all moral rights in the content of multimedia instructional materials, which includes, but is not limited to, the exclusive right to revise, rework or amend any work which, in the opinion of the member, requires updating. The employer shall be notified and provided with an original version of the revised or reworked materials.

ii) Copyright Clearance

The member and the employer shall bear joint responsibility for securing copyright clearance on copyrighted materials which are used in any recorded production. The employer shall have carriage of the application for copyright and shall apply for clearances where necessary.

iii) Academic Credit

- (1) The contribution of the member to any multimedia instructional materials shall be acknowledged in the original copies.
- (2) Contribution to the content of multimedia instructional materials shall, at the request of the member, be included in the member's curriculum vitae and listings of publications and scholarly papers, and in grant applications and reports prepared by the employer.

IV.7.4(c) Ownership

- i) The member shall hold fifty per cent (50%) and the employer shall hold fifty per cent (50%) of any right, title to and interest in any copyright in any work defined in IV.7.4(a) (i), subject to the terms laid down in this Article. The joint copyright shall be identified on all copies of multimedia instructional materials. Secondary-printed materials that are integral to the multimedia material shall be considered part of the

multimedia material for the purposes of this Article; such printed materials shall be only those that are necessary for the proper use of the multimedia material, but shall not include the text or script of the recording. All other printed materials which are related to the production shall be covered by Article IV.7.2. Any dispute over the classification of such printed material shall be settled in the manner provided for in Article IV.7.7.

ii) Subject to Article IV.7(a), Article IV.7.4(c) (i) shall not apply to any copyright resulting from work financed by a grant or contract where the granting or contracting body, as a condition of the grant or contract, requires that any copyrights be assigned to it.

iii) Assignment

The member(s) shall not assign this copyright or any other rights and responsibilities which issue from this Article without the express written consent of the employer.

iv) Retention of Master Copy

The employer shall retain the master copy of a multimedia recorded production as defined in IV.7.4(a) (i), and shall take reasonable precautions to ensure that any such master copy is not damaged, erased, copied, amended or edited without the authorization of the member(s).

IV.7.4(d) Internal Use

i) The internal use of materials defined in IV.7.4(a) (i) shall be for an initial period of use to be agreed upon by the member and the employer. Where no agreement is reached, the initial period shall be fixed by the Intellectual Property and Copyright Committee. The initial period of use may be renewed or extended only by agreement between the member and the employer.

ii) Nothing in this Article shall be construed as permission to the employer or to any agent of the employer to broadcast the recorded works to the general public other than as explicitly provided for by agreement of the employer and the member.

iii) The use of material licensed for internal use shall not be the basis for a decision by the employer to reduce the size of the department or program of the member who produced the recorded work, nor shall

such material be the basis for a decision to lay off or terminate a contract of a member of the bargaining unit.

iv) Compensation

A member who participates in the production of a multimedia recording covered by IV.7.4 shall not be entitled to receive additional compensation over and above regular salary except for any proceeds as set out in IV.7.4(e) (iv) below. The member shall likewise not receive residual compensation for any re-use within the University.

IV.7.4(e) External Distribution

Where a member has copyright in multimedia instructional material, distribution external to the University shall be only by agreement between the member and the employer and shall be subject to the following:

- i) A fee or royalty shall be charged to third parties wishing to use the work which shall be established by agreement between the member, with the assistance of the Association if requested, and the employer. If the parties fail to reach an agreement as to such fee or royalty, it shall be set by the Intellectual Property and Copyright Committee (Article IV.7.6).
- ii) The employer shall not unreasonably restrain the exploitation of copyrighted works under this section. If within one (1) year of the receipt of an employee's written request for the exploitation of the recorded work, the employer has not commenced negotiations or signed a contract with the member for the exploitation of the recorded work, the employer shall be deemed to have waived any and all rights in the exploitation of the copyright of the said recorded work and shall forego all fees, royalties and other income. In this event, the employer's obligation under paragraph IV.7.4 (e) (iv) shall cease.
- iii) The employer shall not lend or transfer a copy of the recorded work nor allow any agent to lend or to transfer such a copy to any third party outside the University without permission from the member(s).
- iv) The provisions of IV.7.3(c) (vi) shall apply to multimedia instructional materials.

IV.7.4(f) Availability of Resources

On application by the member, the employer, in its sole discretion, may make available to members, without charge, production facilities and funds necessary to produce recorded works for use in the University's educational program.

IV.7.4(g) Amendments, Editorial Changes and Withdrawal

- i) Members who believe their work is unsatisfactory for a proposed use because of obsolescence or other good reason may, subject to the availability of funds and production facilities, require the work to be amended, or may require its use to be withheld, except that the member shall not require such amendments or withholding within one (1) year of the production of the recorded work. Any dispute as to the bona fides of the requirement to amend or to withhold shall be settled in the manner provided for in Article IV.7.6.
- ii) The employer shall have no right to cause a new production, revision or amendment of any multimedia material to be made without written agreement with any member who holds joint copyright in the existing material.

IV.7.5 Passing of Rights

On the death of a member or former member, any rights which the member had derived under this Article IV.7 or any agreement made in pursuance of this Article IV.7 shall pass to the member's estate.

IV.7.6 Intellectual Property and Copyright Committee

The parties agree to establish an Intellectual Property and Copyright Committee, which shall be composed of two (2) members appointed by the employer and two members appointed by the Association. The Committee shall be co-Chaired jointly by one (1) representative of the Association and one (1) representative of the Board. The Committee shall meet at the call of any two (2) members to:

- i) conduct such business as is referred to it;
- ii) consider proposals for modifications or changes in the intellectual property and copyright Articles of this Collective Agreement;
- iii) mediate any disputes arising out of this Article as per IV.7.7 below;

- iv) receive from the employer any communication on the University's contract with an IP development agency.

IV.7.7 Complaints

For the purpose of this Collective Agreement, the complaint stage of a grievance pertaining to intellectual property and copyright shall be referred to the Intellectual Property and Copyright Committee. If the Committee is unable to resolve the dispute, the remaining formal grievance and arbitration procedures provided for in Chapter VI of this Collective Agreement shall apply.

IV.7.8 Interpretation

In this Article the singular shall include the plural and the plural the singular where appropriate.