

**MOU Intellectual Property Committee
Preliminary Report
23 December 2010**

Background

The 2010-2012 Collective Agreement between the Board of Governors of Mount Royal University and the Mount Royal Faculty Association created a joint committee under the Memorandum of Understanding Regarding Article 19 – Copyright. Under the terms of the MOU, both the Board and the MRFA appointed two members to the committee. The committee includes Carol Shepstone, University Librarian (co-chair); David Hyttenrauch, Immediate Past President of the MRFA (co-chair); Trevor Davis, Associate Vice-President Research; and Michael Truscello, Department of English. The committee has also benefited greatly from the participation and expertise of Cari Merkley, MRFA Academic Liaison Officer, acting as a resource to the committee. Ann Kus from the University Librarian’s office provided administrative support.

The MOU calls on the committee to develop a draft article by 15 January 2011; to conduct community consultations on the draft; and to convey a completed draft by 31 March 2011 to the negotiating teams. The committee’s work is advisory to the teams and is explicitly included as an item for negotiations under the Memorandum of Understanding Regarding the Limited Re-opening of the Collective Agreement for 2011-2012.

The committee conducted a series of meetings during the fall of 2010. We reviewed Collective Agreements from a large number of universities, considered other relevant resource documents, and had wide-ranging conversations about current copyright and intellectual property issues and concerns at Mount Royal and elsewhere. These conversations have been positive and constructive, and the committee was able to achieve clear and efficient consensus on the issues. From there we developed a draft list of principles which would give direction and structure to a draft article.

Early on, the committee recognized that “copyright” is too narrow a term for the range of issues under consideration, and it is also likely a term that would generate confusion in the context of other current conversations about Copyright legislation and Access Copyright licenses. It has considered Intellectual Property a broader and more appropriate label for its work.

Principles

1. Knowledge and Information
 - a. The University's essential mission is to create, disseminate and ensure public access to knowledge and information.
 - b. The core nature of the faculty profession is to carry out this mission.
 - c. Communities and society benefit where works are disseminated openly, and the university strongly supports and encourages the open exchange of knowledge and information, including distribution models such as open access and open source.
2. Intellectual Property Ownership
 - a. Academic freedom is an abiding right of academic members of the University, necessary to protect the autonomy and integrity of scholarship and teaching.
 - b. Creator ownership of intellectual property is an important protection of academic freedom.
 - c. Faculty own the intellectual property in their works, except in well-defined circumstances where the University properly owns the work (see Principle 5 below).
3. Intellectual Property Rights
 - a. The University and its members have mutual obligations to defend intellectual property rights. These obligations are:
 - i. To practice transparency
 - ii. To act in good faith
 - iii. To provide appropriate attribution for works, including those by students
 - iv. To abide by copyright laws, to respect third-party copyrights, and to defend each other's intellectual property rights
 - b. The owner of intellectual property in a work is entitled to continuing moral rights, and a waiver of moral rights may not be a condition or obligation attached to the creation or commission of a work.
 - c. The owner of intellectual property in a work is entitled to appropriate attribution.
 - d. The owner of intellectual property has the sole right and authority to determine whether and when a work should be amended.
 - e. The owner of intellectual property has the sole right and authority to determine whether to commercialize it or not, and should be under no obligation or pressure to commercialize.
4. Licensing Intellectual Property
 - a. Faculty should contribute a copy or version of a work to the University's Open Access repository.
 - b. Faculty should append a Creative Commons license governing use of their work by others, based, wherever possible, on a recommended common standard.
 - c. Licensed use restrictions should be both reasonable, and consistent with open dissemination.
 - d. It is reasonable that the University has license to use a work in well-defined circumstances: within the University's credit academic programs, in the work's original intended delivery mode, and without prejudice either to the employment of its creator or the viability of a course, program or academic unit. A license to use, subject to such reasonable restrictions, may be a condition of the University's commissioning of a work.

- e. When the University intends to exercise its license to use a work, it should provide notice of the nature of the intended use to the owner.
 - f. A license to use is a restriction or condition placed independently by its creator on the use of a work, rather than a contract between the creator and user. Users are obligated to abide by the conditions of the license to use. A license to use should not be construed as a contract with the user for the purposes of the bargaining agency of either the Board or the MRFA.
5. University Ownership
- a. Teaching works belonging properly to an academic unit, including the course title, calendar description, and the general course outline, are owned by the University. All other teaching works are owned by the creator.
 - b. Service works constituting the record of the activities of a committee or academic unit are owned by the University.
6. Custody and Control
- a. The University is responsible for custody and control of works it owns.
 - b. The University is responsible for custody and control of a master copy of a work it uses through license.
7. Successor and Other Rights
- a. When a creator leaves Mount Royal, license rights and obligations should continue as defined here.
 - b. All Intellectual Property rights devolve to their owners' heirs and successors.
8. Ownership among Multiple Creators
- a. Multiple creators share ownership in direct proportion to their intellectual contributions, whether those contributors are faculty, staff, administrators or students.
 - b. Where these principles describe a single creator, that should be read to reflect the shared ownership rights of multiple creators.
 - c. Every contributor should have license to use the group's work.
 - d. Contributors are encouraged to address respective ownership and license rights in advance of the work's creation. Where that is not possible, or where circumstances change during or after the creation of the work, or where a work already exists when a new Article comes into force, contributors should work to agree on terms of shared ownership and licensing rights. If they are unable to come to an agreement, any dispute should be referred to the Adjudication Committee (see Principle 10 below)
 - e. Where collaborative and iterative development of teaching works is the normal or agreed practice in the academic unit, all contributors may agree that the work is transferred to the copyright of the University on behalf of the academic unit, and that the academic unit has authority to amend the work as needed. Such normal practice must be communicated to individual creators prior to their beginning to create a work.
9. Intellectual Property Policy Application
- a. The committee considers that the existing Mount Royal IP policies and procedures align closely with the principles expressed in this document. Mount Royal IP policies and procedures existing and in force at the time of ratification should be recognized and referred to in the Collective Agreement.
 - b. Notice of intent to amend IP policy and procedure must be conveyed to the Board and Association, and either party may refer substantive matters to negotiations.
10. Dispute Resolution

- a. The Collective Agreement should establish an Intellectual Property Adjudication Committee made up of two designates from each party. The Board of Governors and the MRFA may review the need for such a body after the term of the next Collective Agreement.

Draft Working Definitions

Intellectual Property:

Intellectual Property (IP) refers to ideas, designs and other inventions that are or can be protected under various laws. In the course of fulfilling Mount Royal's mission, MRU Members will produce Intellectual Property that may be of benefit to society. Intellectual Property includes: patents, trademarks, copyrights, industrial designs, and circuit topography

Copyright:

Copyright, as a legal subject matter, is often grouped with other forms of protection for commercially-valuable intangibles, which collectively are called "intellectual property". The other valuable intangibles, in addition to copyright, include:

- patents which give an inventor an exclusive right to exploit technological advances, such as new products or processes;
- trademarks and trade names which give the holder the right to control the use of a name or other identifier of a product or service, i.e. brand names and the names of businesses; and,
- industrial design registrations which give the designer the exclusive right to exploit non-functional and non-technological aspects of the appearance of useful products, i.e. the shape of a chair or a cola bottle.

[from: Webpage URL: <http://www.cippic.ca/en/faqs-resources/copyright-law/>]

Academic Freedom:

Academic members of the community are entitled, regardless of prescribed doctrine, to freedom in carrying out research and in publishing the results thereof, freedom of teaching and of discussion, freedom to criticize the University and the faculty association, and freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual. Rather, academic freedom makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research and teaching on an honest search for knowledge. In exercising the freedom to comment and criticize, academic staff members have a corresponding obligation to use academic freedom in a responsible manner. This implies a recognition of the rights of other members of the academic community, and a tolerance of differing points of view.

[wording from Policy 580]

Open Access

Open-access (OA) literature is digital, online, free of charge, and free of most copyright and licensing restrictions. OA is [compatible](#) with [copyright](#), [peer review](#), [revenue](#) (even profit), print, preservation, [prestige](#), [quality](#), career-advancement, indexing, and other features and supportive services associated with conventional scholarly literature.

[from: Peter Suber's Open Access overview found at:
<http://www.earlham.edu/~peters/fos/overview.htm>]

Open Source

Open source typically refers to software which is developed and distributed within the following criteria: free distribution, access to source code, ability to modify the work, technology neutral, maintains the integrity of the authors source code and open licensing.

[from the Open Source Initiative definition: <http://www.opensource.org/docs/osd>]

MRU Open Access Repository

An institutional repository in development that would hold both scholarly and teaching materials for which the MRU faculty member holds copyright and/or permission to house in a repository. The content would be accessible to the public and would facilitate creative commons licensing.

Creative Commons licencing:

Creative Commons licencing is an alternative to the more restrictive standard copyright regime which limits all rights as a default. Launched in 2001 Creative Commons developed a set of user-friendly licences that enable creators to share their work under certain conditions. Creative Commons licences now apply to more than one million documents and licencing terms have been created to comply with laws in specific countries including Canada. Creative Commons licences fall into different licence categories according to the following conditions:

1. **Attribution:** You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give you credit.
2. **Noncommercial:** You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.
3. **No Derivative works:** You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.
4. **Share alike:** You allow others to distribute derivative works only under a license identical to the license that governs your work.

[adapted from : <http://creativecommons.ca/index.php?p=explained>]