



Memorandum

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TO: Senate
FROM: Dr. Rosie Goldstein, Vice-Principal (Research and Innovation)
SUBJECT: Proposed Revisions to the Policy on Intellectual Property
DATE: March 22, 2017
DOCUMENT #: D16-48
ACTION INFORMATION APPROVAL/DECISION

ISSUE McGill’s Policy on Intellectual Property has been reviewed and revised by a working group convened by the Vice-Principal (Research and Innovation) and the resulting policies and accompanying guidelines have undergone a wide consultation process with the McGill community. The revised policies are now being put forth to Senate for information with a view to being put forth for approval by Senate on April 22, 2017.

BACKGROUND & RATIONALE McGill’s current Policy on Intellectual Property (“IP Policy”) has been in effect, unaltered, since 2001. Over the past fifteen years, changes have occurred in the way intellectual property (“IP”) is protected, in McGill’s approach to commercialization of University IP, in our internal IP protection processes, in how our technology transfer office is organized, and in the expectations of researchers interested in translating the outcome of their research to the benefit of individuals and society.

A working group was struck by the Office of the Vice-Principal (Research and Innovation) to review the IP Policy and make any necessary changes. In their review of the IP Policy, the Working Group considered similar policies from peer universities regarding IP ownership and income-sharing. The resulting revisions to the IP Policy addressed the following principal themes:

- (a) Clarity: added clarity and precision to all definitions and decision making processes, removed extraneous/outdated clauses and simplified language.
- (b) Separating Policy Applicable to Copyright from Policy Application to Inventions & Software: the nature of these works require different treatment and this separation is in line with the approach taken by peer institutions
- (c) Separating Policies from Operational Guidelines: Guidelines for implementing the policies are now separate from the policies themselves which allows internal implementation processes to adapt to changing practices.

- (d) Sharing of Revenues & Expenses – clarified how equity is treated, how net income is defined and how the University’s share of income is distributed internally, simplified the distribution of Net Revenues where the Inventors, and not the University, are commercializing the Invention or Software and provided that administrative staff can share in revenue the same way academic staff can,
- (e) Dispute Resolution – created a more straightforward dispute resolution process.

The result of the Working Group revisions and subsequent consultation process is 3 distinct documents: (a) Policy on Inventions and Software, (b) Policy on Copyright and (c) Guidelines on the Application of the Policy on Inventions and Software which are attached hereto as Appendix A, B and C.

The Office of Research and Innovation will commit to reviewing the Policies every 5 years as part of an ongoing process to ensure the Policies continually reflects the interests of the University and its constituents.

**PRIOR
CONSULTATION**

The IP Policy Revisions Working Group was struck in August of 2015 (the “Working Group”). The Working Group is composed of members drawn from the Innovation Steering Committee, PGSS, selected research institutes, the Associate Provost’s Office, the Office of Innovation and Partnerships, and legal counsel. The group met several times throughout the fall and winter of 2015.

Members of the Working Group:

- Dr. Mark Weber, Associate Director, Invention Development and Entrepreneurship Assistance
- Ms. Suzanne Owen, McGill Legal Services
- Ms. Lea Cameron, Special Advisor
- Dr. Mark P. Andrews, Department of Chemistry
- Prof. Angela Campbell, Associate Provost, Policies, Procedures and Equity
- Dr. Michel L. Tremblay, Department of Biochemistry, Goodman Cancer Research Centre
- Dr. Danuta Radzich, Professor of Medicine and Human Genetics at McGill University and a researcher at the Research Institute of the McGill University Health Centre
- Dr. Nathan Horby, Postdoctoral Fellow

A sub-group of the Working Group then submitted the revised policies for consultation by the following groups:

Innovation Steering Committee, Deans, MAUT, AMURE, AMUSE, PGSS, MCSS, MCGSS, MACES, McGill Legal Information Clinic Student Advocacy and University Affairs, Office of Copyright, Digital Rights Group, Affiliated Hospitals and Institutes, Research Advisory Committee, Faculty of Science Advisory Committee, SSMU, MUNASA/MUNACA, Senior Administration, and external collaborators and stakeholders.

In addition the revised policies have been available from January 12 2017 to February 12 2017 for comment from the entire McGill Community via online consultation.

SUSTAINABILITY CONSIDERATIONS	The proposed policies establish a sustainable policy framework in support of intellectual property matters.
IMPACT OF DECISION AND NEXT STEPS	The Policy on Inventions and Software and the Policy on Copyright will be presented to Senate for approval on April 20, 2017.
MOTION OR RESOLUTION FOR APPROVAL	N/A
APPENDICES	Appendix A: Summary of Changes Appendix B: Policy on Inventions and Software Appendix C: Policy on Copyright Appendix D: Guidelines on the Application of the Policy on Inventions and Software Appendix E: Current Policy on Intellectual Property

This document summarizes the changes introduced as part of the process to revise and update McGill's IP policy documents

1) STRUCTURAL CHANGES

a) SPLITTING THE IP POLICY

The current IP Policy sets out a framework for the treatment of three categories of works created at the University: 1) Inventions; 2) Software; and 3) Works. Inventions and Software are treated similarly throughout the IP Policy, while Works, which are the subject of copyright protection, are treated entirely differently. For example, Inventions and Software are owned jointly by the University and Inventors, whereas Works are owned solely by the Author (the University simply has a right to use them for academic and research purposes). In addition, should an Inventor wish to commercialize an Invention or Software, they must first report it to the University and the University has a first right to undertake the commercialization - no such obligation exists for Works. As a result, the Working Group has split the IP Policy into two distinct policy documents: 1) Policy on Inventions and Software and 2) Policy on Copyright.

b) CREATION OF GUIDELINES

The current IP Policy contains several provisions setting out the processes by which the IDEA team undertakes the commercialization of an Invention or Software. These internal processes are better suited to a "guidelines" document, which could evolve with the processes, rather than a "policy" document. As a result, several provisions relating to the operations of IDEA were moved to a document entitled "Guidelines on the Application of the Policy on Inventions and Software". The result of this approach yielded a more streamlined and specific set of policies for Inventions, Policies, and Works.

2) NOTABLE CHANGES

The following section highlights the substantive changes for the three proposed documents: (a) Policy on Inventions and Software; (b) Policy on Copyright; and (c) Operational Guidelines.

a) POLICY ON INVENTIONS AND SOFTWARE

i. **Principles and Objectives (Section 1)**

The preamble was revised to emphasize that the University supports and values efforts to protect intellectual property and its commercialization. The preamble also now includes language indicating that there is no obligation for inventor(s) to pursue commercialization after reporting an invention (this is repeated in Section 6.2).

ii. **Definition of Inventor (Section 2.7)**

More precision was added to the definition of "Inventor" to ensure that the full range of possible Inventors is addressed through the Policy.

iii. **Definition of Net Income (Section 2.10)**

“Administration” costs were added to the list of costs to be deducted from gross income received from licensing to arrive at Net Income. This addition is meant to cover several things: (1) management fees which may be charged by valorization societies when they are involved in the licensing and (2) internal administration costs – for example financial services charges 3% (will go up to 4%) on every amount received by the University.

iv. Definition of Student Academic Inventions or Software (Section 2.12)

This definition was added to help clarify the rights and roles of McGill students as Inventors.

v. Ownership (Section 5.3)

The original clause precludes administrative and support staff members who develop an invention in the course of their employment at McGill from sharing in its ownership and receiving revenue. In consultation with University stakeholders, this position was changed to allow administrative and support staff members to share ownership of these inventions jointly with the University in the same manner as academic inventors.

vi. Commercialization (Section 6.1)

A sentence was added to clarify that Inventor(s) may opt to commercialize independently of the University.

vii. Dispute Resolution (Section 8)

The dispute resolution process was modified and now requires that disputes be brought within one year of the complainant having had knowledge of the matter underlying the dispute. This was done to encourage individuals to raise an issue once they hear of it and not just once there is money at stake.

In addition, Section 8 now provides that any decisions by the Vice-Principal (Research and International Relations) pursuant to the dispute resolution process are final. The current IP Policy provided an appeals process that was not included in the Policy on Inventions and Software. The appeals process was a cumbersome process involving the creation of a standing committee which was almost never used. Given that the Vice-Principal (Research and International Relations) is required to review all relevant material, invite comments from interested parties, and is free to consult with experts (and in such cases will share the opinion of the experts with interested parties and invite them to comment), it was felt that simply using this decision making process was adequate, thereby eliminating the need for a standing committee to be struck. It was the Working Group’s opinion that if the interested parties were not satisfied with the Vice-Principal’s decision on the matter, they would likely not be satisfied with an appeal committee’s decision.

viii. Review of Policy (Section 10)

MUNACA and MUNASA have been added to the list of University bodies to be consulted as part of the review process.

b) POLICY ON COPYRIGHT

i. Definition of “Works” (Section 2.5)

The definition of “works” was updated in consultation with the Schulich School of Music to capture the full range of works subject to copyright.

ii. Dispute Resolution and Appeals (Section 5)

The provision on dispute resolution and appeals in the IP Policy has been removed and replaced with language that provides that any dispute relating to the application of the Policy on Copyright will be resolved via grievance under the relevant policy. The subject matter of disputes arising out of the application of the Policy on Copyright are likely to be outside of the mandate of the Vice-Principal (Research and Innovation) and therefore it did not make sense to have him/her hear and decide on such matters.

i. Review of Policy (Section 7)

MUNACA and MUNASA have been added to the list of University bodies to be consulted as part of the review process.

c) OPERATIONAL GUIDELINES ON THE APPLICATION OF THE POLICY ON INVENTIONS AND SOFTWARE

ii. Sharing of Revenues and Expenses (Section 5.1).

In Section 5.1.1, language was added to clarify how income received in the form of equity by the University will be treated.

In Section 5.1.2 the splitting of Net Income where the Inventors, and not the University, are commercializing the Invention or Software was changed. Under the current IP Policy, for the first \$100,000 of Net Revenues, 80 % goes to the Inventors and 20 % goes to the University, and then for any Net Revenues above \$100,000, 70 % goes to the Inventors and 30 % goes to the University. It also provides that for any income received in the form of equity, 70 % goes to the Inventors and 30 % goes to the University. It was felt that this involved a lot of accounting and was overly complicated for a provision that in practice was very difficult to enforce and under which the University received very little income. As a result, the split was simplified such that for all Net Income received by the Inventors (whether in the form of cash or equity), the Inventors would be entitled to 80 % and the University would be entitled to 20 %.

iii. Allocation of University’s Share of Income (Section 5.2)

The current IP Policy, at Section 9.2, sets out a rather complicated formula for the internal allocation of the University’s share of Net Income, including different percentages depending on whether income is received in the form of equity or cash and, in the case of equity, depending on the value of the equity. Section 5.2 of the proposed operational Guidelines provides that the University’s share of Net Income would be split equally (33 1/3% each) among Central Administration, Faculty(ies) of the Inventor(s), and OVPRIR (within OVPRIR, 50 % to IDEA, 50% to OVPRIR). We also provided language that the above split

may be varied by the OVPRI in consultation with the Provost, given that in potential windfall scenarios there may be a desire to change the internal allocation of funds.

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POLICY ON INVENTIONS AND SOFTWARE**1. Principles and Objectives**

This policy sets forth the rules applying to the ownership of, and rights to, intellectual property in the form of Inventions and Software developed by McGill University academic staff, administrative and support staff, students, as well as any other physical person working or doing research at or under the auspices of the University. The rules applicable to the ownership and rights to intellectual property (other than Software) covered by copyright are dealt with in the Policy on Copyright.

The primary functions of the University are education, research, and the creation and dissemination of knowledge. The University affirms the principles of wide freedom of research and of free publication of the information generated. In some cases, obtaining intellectual property and transferring it to the private or public sector offers an optimal means of ensuring that University research positively affects the lives of Canadians and the world. Where this is the case, the University supports and encourages Inventors who so desire to pursue intellectual property protection and to seek appropriate transfer of the underlying knowledge to private firms, philanthropies or civil society.

Intellectual property is the product of a cooperative relationship among academic staff, administrative and support staff, students, and the University, and derives from the creative energies of the individual fostered by the academic community and the environment. This includes facilities, equipment and financial support, in the form of grant funding, provided and administered by the University. The Inventor(s) and the University (and, where applicable, the affiliated institutions) have a shared interest in intellectual property. As hospitals and research institutes affiliated with the University may have contributed to the resources and the environment that led to Inventions or Software, separate agreements between the University and its affiliated institutions will provide for proper recognition of the financial, and other, interests of all parties.

Since the University draws its operating and research funds in large measure from the governments of Quebec and of Canada, the commercial development of its intellectual property must, to the extent possible, result in benefits to Quebec and Canada. Benefits take many forms including building up the research and innovation capacity of Quebec and Canada, offering more training opportunities, contributing to a knowledge infrastructure and responding to social and economic concerns. The University further recognizes that the presence of a vibrant, local, knowledge-based economy is beneficial to its members and seeks to foster its development by establishing McGill as a hub of knowledge mobilization, technology transfer, and networking between researchers and industry.

The objectives of this policy are:

- to serve the public interest by increasing research capacity, knowledge transfer or by contributing to the development of useful products, services, and processes;
- to ensure the continued vibrancy of the University, its research and its service to the community through the dissemination and use of Inventions; and
- to contribute, to the extent possible, to the socio-economic well-being of Quebec and Canada.

2. Definitions

For the purpose of this policy, the following definitions apply:

- 2.1 “Field of Academic Research” means the particular areas of research in relation to which an Inventor has published works, has received funding, or has made Inventions or developed Software, in the course of his or her academic duties.
- 2.2 “Field of Academic Research and Teaching” means the fields in relation to which an Inventor has been teaching, and the particular areas of research in relation to which he or she has published works, has received funding, or has made Inventions or developed Software or Learnware, in the course of his or her academic duties.
- 2.3 “Equity Holder” means an Inventor who holds more than ten percent (10 %) equity at the creation of the spin-off company based wholly or in part on his or her Invention or Software.
- 2.4 “Guidelines” means the Guidelines on the Application of the Policy on Inventions and Software.
- 2.5 “IDEA” means the Invention Development and Entrepreneurship Assistance Team.
- 2.6 “Invention” means any new and useful art, process, machine, manufacture, design or composition of matter, or any new and useful improvement to any art, process, machine, manufacture, design or composition of matter, which is or may be protected by patent, plant breeder’s right, industrial design, utility model, or other similar intellectual property right.
- 2.7 “Inventor” means any student, employee, or appointee of the University, whether academic or administrative and support staff, or any physical person, such as a visiting professor, working or doing research at or under the auspices of the University, who satisfies the applicable statutory requirements of inventorship. In this policy, the term “Inventor” shall also be used in reference to the creators of Software covered by copyright.
- 2.8 “Lead Inventor” means that member of a group of Inventors designated by the group to act as its contact person with the University.
- 2.9 “Learnware” means Software designed for teaching purposes that provides for interaction with the user, or makes use of a multimedia product, or both. It includes technology-enabled learning products in electronic format.
- 2.10 “Net Income” means all consideration, including, without limiting the generality of the foregoing, royalties, cash, equity, and options, received by the Inventor(s) and the University from the sale, licensing, or other disposition of an Invention or Software, less the costs specifically related to the protection, licensing, distribution, financial charges imposed by the University for fund administration, or other charges related to the commercial development of the Invention or Software.

- 2.11 “Software” means any set of instructions that is expressed, fixed, embodied, or stored in any manner and that can be used directly or indirectly in a device in order to bring about a specific result.
- 2.12 “Student Academic Inventions or Software” means any Invention or Software that is created, conceived, developed, or first reduced to practice in the course of, or as part of, a student’s coursework or extracurricular activity, unless such coursework or activity: (a) is a graduate student’s thesis work; (b) involves activities for which the student is paid by the University; (c) involves research or coursework that is the subject of an agreement with a third party; (d) was created, conceived, developed or first reduced to practice with the creative input or invention contribution of a non-student Inventor; or (e) makes substantial use of University facilities.

3. Application of the Policy

- 3.1 This policy is binding on all students and employees of the University and all physical persons working or doing research at or under the auspices of the University. This policy also applies to academic staff and administrative and support staff on sabbatical leave or leave of absence unless the host institution or company has rules which preclude the application of this policy and, in the case of a company, the University agrees in writing to other arrangements.
- 3.2 The policy shall apply to any and all Inventions and Software disclosed after the date fixed for implementation of the policy.
- 3.3 This policy does not apply to Student Academic Inventions or Software. Student Academic Inventions or Software shall remain with its creators and ownership shall be determined in accordance with applicable law and shall not be impacted by this policy.

4. Guidelines on Application of the Policy on Inventions and Software

- 4.1 This policy shall be supplemented by the Guidelines. The Guidelines shall be used for the purpose of clarifying this policy and setting evolving processes and practices implemented in support of this policy. The Guidelines may be modified from time to time by the Vice-Principal (Research and Innovation) after appropriate consultation with the Senior Administration, Deans, IDEA and members of the University community and affiliated institutions having experience and expertise in matters of Inventions and Software and commercial development of such.
- 4.2 Except as provided in the Guidelines or agreed to between the Inventor(s) and the University, Inventions and Software are commercialized under the guidance and responsibility of the University.

5. Ownership

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- 5.1 *Ownership of Rights to Inventions:* Subject to Section 5.3, the Inventor(s), on the one hand and the University, on the other hand, will each hold an equal interest in the intellectual property underlying Inventions created by the Inventor(s):
- a) with University assistance; or
 - b) with the substantial use of University equipment, facilities, or resources; or
 - c) in the course of academic duties or work in the course of study, research, or teaching.
- 5.2 *Ownership of Rights to Software:* Subject to Section 5.4, the Inventor(s), on the one hand, and the University, on the other hand, will each hold an equal interest in the intellectual property underlying Software created by the Inventor(s)
- a) with University assistance; or
 - b) with the substantial use of University equipment, facilities, or resources; or
 - c) in the course of academic duties or work in the course of study, research, or teaching; and, in the case of Learnware, in the fields in which the Inventor has been teaching and doing research.
- 5.3 *Specific Exceptions Applicable to Inventions:* Notwithstanding section 5.1, the following categories of Inventions are not jointly owned by the University and the Inventor(s), and may be owned by the Inventor(s), the University, a third party, or jointly by two or more parties, as the case may be:
- a) where developed in the course of research sponsored by a third party pursuant to a written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the Invention to the third party, such Invention is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have become extinguished, at which point the Invention becomes jointly owned by the University and the Inventor(s);
 - b) where developed in the course of a consulting agreement between the Inventor(s) and a third party, made in accordance with University policies and procedures. The ownership rights are then determined by the specific terms of the agreement;
 - c) where made by an Inventor in a domain outside his or her Field of Academic Research, and where there has not been substantial use of University facilities, equipment or resources. The rights are then owned by the Inventor;
 - d) where made by an Inventor who is a member of the administrative and support staff of the University, as a result of activities not covered by his or her contract of employment, and where there has not been substantial use of University facilities, equipment or resources. The rights are then owned by the Inventor;
 - e) where the University assigned its rights to the Inventor(s) in accordance with section 4.3 of the Guidelines. The rights are then owned by the Inventor(s);
 - f) where the Inventor(s) assigned their rights to the University in accordance with section 6.3 of this policy. The rights are then owned by the University;
 - g) where the Invention is the product of work covered by a collective agreement. The ownership rights are then determined by the specific terms of the collective agreement; and

- h) where the Invention is the product of work covered by an agreement with the University. The ownership rights are then determined by the specific terms of the agreement.

5.4 *Specific Exceptions Applicable to Software:* Notwithstanding section 5.2, the following categories of Software are not jointly owned by the University and the Inventor(s), and may be owned by the Inventor(s), the University, a third party, or jointly by two or more parties, as the case may be:

- a) where developed in the course of research sponsored by a third party pursuant to a written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the Software to the third party, such Software is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have become extinguished, at which point the Software becomes jointly owned by the University and the Inventor(s);
- b) where developed in the course of a consulting agreement between the Inventor(s) and a third party, made in accordance with University policies and procedures. The ownership rights are then determined by the specific terms of the agreement;
- c) where limited to the electronic form of a work, or where it is ancillary to a work. The rights are then owned by the Inventor(s);
- d) works of art, including works of art expressed in multimedia format. The rights are then owned by the Inventor(s);
- e) in the case of Software which does not constitute Learnware, where developed by an Inventor in a domain outside his or her Field of Academic Research, and where there has not been substantial use of University facilities, equipment or resources. The rights are then owned by the Inventor;
- f) where constituting Learnware developed by an Inventor in a domain outside his or her Field of Academic Research and Teaching, and where there has not been substantial use of University facilities, equipment or resources. The rights are then owned by the Inventor;
- g) where developed by an Inventor who is a member of administrative and support staff of the University, as a result of activities not covered by his or her contract of employment, and where there has not been substantial use made of University facilities, equipment or resources. The rights are then owned by the Inventor;
- h) where the University has assigned its rights to the Inventor(s) in accordance with section 4.3 of the Guidelines. The rights are then owned by the Inventor(s);
- i) where the Inventor(s) assigned their rights to the University in accordance with section 6.3 of this policy. The rights are then owned by the University;
- j) where constituting Learnware developed as part of a web-based course specifically funded by the University, the rights are then owned or apportioned in accordance with a written agreement between the University and the Inventor(s);
- k) where the Software is the product of work covered by a collective agreement. The ownership rights are then determined by the specific terms of the collective agreement; and
- l) where the Invention is the product of work covered by an agreement with the University. The ownership rights are then determined by the specific terms of the agreement.

6. Commercialization

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- 6.1 *Disclosure:* Inventor(s) are required to disclose to IDEA those Inventions and Software described in sections 5.1, 5.2, 5.3, 5.4a), and 5.5a) that they wish to develop for commercial purposes. This disclosure is to be made to IDEA, acting as the delegate of the Vice-Principal (Research and Innovation), through a Report of Invention (“ROI”). The Inventor(s) may indicate in the ROI if they want to pursue commercialization of the Invention or Software independently of the University. [The Inventor(s) shall set out, in the ROI, reasons for believing that seeking intellectual property protection over the Invention or Software will best serve the University, the communities it serves and Quebec and Canada generally.]
- 6.2 *Decision of Inventors:* Inventor(s) are not obliged to seek commercial development of their work, and the University will respect the decision of the Inventor(s) not to commercialize their Invention or Software.
- 6.3 *Commercialization by Inventors:* In the event that all of the Inventor(s) agree to pursue commercialization of the Invention or Software independently of the University, the following shall apply:
- a) *Assignment.* All rights to the Invention or Software shall be assigned by the University to the Inventor(s) in order for the Inventor(s) to be able to proceed with commercialization.
 - b) *Sharing of Net Income.* The University shall retain the right to receive its share of the Net Income received from the commercialization of the Invention or Software by the Inventors, as is further set out in the Guidelines.
 - c) *Negotiation of Transaction.* The Inventor(s) shall be responsible for commercializing the Invention or Software and shall have full authority to negotiate the terms of any and all agreements with third parties. The Inventor(s) shall assume all risks and costs associated with entering into such agreements. The Inventor(s) shall keep the University informed on a regular basis of their efforts to commercialize the Invention or Software and of any agreements that may have been entered into in connection therewith, including providing the University with an annual report of their activities.
 - d) *Protection of Intellectual Property.* The Inventor(s) shall be responsible for securing and financing any intellectual property protection as appropriate. Except as otherwise provided in this policy or the Guidelines, the costs incurred in the protection of intellectual property shall be assumed wholly by the Inventor(s).
 - e) *Documentation.* The University shall execute any document reasonably required for the purpose of protecting the Invention or Software and furthering its commercial development.
- 6.4 *Commercialization by University:* In the event that, after reviewing the ROI, the University decides to commercialize the Invention or Software, the following shall apply:
- a) *Assignment.* All rights to the Invention or Software shall be assigned by the Inventor(s) to the University in order for the University to be able to proceed with commercialization.
 - b) *Sharing of Net Income.* The Inventor(s) shall retain the right to receive their share of the Net Income received by the University from the commercialization of the Invention or Software as is further set out in the Guidelines.

- c) **Negotiation of Transaction.** Inventor(s) shall be involved in the commercialization process by providing their input and agreement on the development plan of the Invention or Software as is further set out in Sections 3.5 and 3.6 of the Guidelines. Notwithstanding the foregoing, IDEA shall be responsible for commercializing the Invention or Software, and shall have full authority to negotiate the terms of any and all agreements relating to such commercialization. The University shall assume all risks associated with entering into such agreements.
- d) **Protection of Intellectual Property.** The University may seek patent protection or copyright registration of the intellectual property underlying the Invention or Software as appropriate. It does not seek protection for Inventions or Software that, in its judgment, do not have significant commercial potential or will not benefit commercially from such protection. The University will cease to pursue protection of intellectual property where successful commercial development seems unlikely. Except as otherwise provided in this policy or the Guidelines, the cost incurred in the protection of intellectual property is borne by the University.
- e) **Documentation.** The Inventor(s) shall execute any document reasonably required for the purpose of protecting the Invention or Software and furthering its commercial development.

6.5 *Divergent Opinions on Use of Invention or Software:* In cases where the University and the Inventor(s) have divergent ethical concerns in relation to the use of the Invention or Software by third parties, the matter will be resolved in accordance with Section 8 of this policy.

7. Sharing of Net Income

7.1 *Sharing of Income:* Net Income derived from the commercialization of Inventions or Software shall be shared between the Inventor(s) and the University in accordance with this policy and the Guidelines.

7.2 *Multiple Inventors:* In cases where there is more than one Inventor, the proportion of the Inventors' share of Net Income to be received by each Inventor, and any University contributors should the Inventors so decide, shall be set out in the ROI. The ROI shall be signed by all Inventors and any University contributors receiving a portion of the Inventors' Net Income. The Lead Inventor is responsible for the identification of all Inventors and University contributors, including students.

7.3 *Equity Holders:* An Inventor involved in the founding of a spin-off company may receive equity (shares or options) over and above his or her share of Net Income as an Inventor under this policy. In such cases and where the University is commercializing the Invention or Software, the Equity Holder may be required by the University to waive, in favour of the University, their rights to their share of the Net Income and the portion of the Net Income which would otherwise have been allocated to the Equity Holder, as an Inventor, would be split *pro rata* between the University and the other Inventor(s).

7.4 *Sharing with Other Academic Institutions:* Where an Invention or Software is developed jointly by an Inventor working at the University and a member of another academic institution working at the other institution, rights to such Invention or Software and Net Income shall be shared between the University and the other academic institution, taking into account the policies of both institutions. The sharing of Net Income will normally take into account the relative contributions of the individuals and their institutions. If the other academic institution is a University affiliated institution, the sharing of ownership and Net Income shall be governed by agreements in place between the University and its teaching hospitals regarding the management of intellectual property.

8. Dispute Resolution

Parties to any dispute arising out of the application of this policy are encouraged first to attempt to try to resolve the matter informally with the assistance of IDEA. If no such resolution is reached, the matter may be referred to the Vice-Principal (Research and Innovation). The Vice-Principal shall only hear disputes that have been brought within one (1) year of the complainant having had knowledge of the matter underlying the dispute. All material relevant to the dispute shall be provided to the Vice-Principal by all parties to the dispute, within fifteen (15) working days of the day on which the matter is referred to him or her. The Vice-Principal shall invite comments by interested parties and shall be free to consult with experts, if required. All information provided to experts by the Vice-Principal shall be treated as confidential by such experts. The Vice-Principal shall share the opinion of the experts with all interested parties and shall invite them to comment within a fixed delay. The Vice-Principal shall promptly advise the parties in writing of his or her decision in the matter. Any decision by the Vice-Principal under this Section 8 shall be final.

9. Enforcement

The University and Inventor(s) shall, within a reasonable timeframe, execute all documents, forms, and agreements reasonably required to give full effect to this policy.

10. Review

This policy shall be reviewed at the end of its fifth full year of operation by a working group comprised of one representative of each of IDEA, MAUT, SSMU, PGSS, MACES, MCSS, AMURE, MUNACA, MUNASA, the Office of the Provost and the Office of the Vice-Principal (Research and Innovation). The working group may make recommendations for modification of this policy.

Policy on Intellectual Property

History:

Approved:

Senate	April 18, 2001	Minute 11
Board of Governors	May 30, 2001	Minute 11

Amendments:

Executive Committee	June 26, 2001	Minute 8
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POLICY ON COPYRIGHT

1. Principles and Objectives

This policy sets forth the rules applying to ownership of, and rights to, intellectual property covered by copyright, but excluding Software, developed by McGill University academic staff, administrative and support staff, students, as well as any other physical person working or doing research at or under the auspices of the University. The rules applicable to the ownership and rights to Software covered by copyright are set out in the Policy on Inventions and Software.

The primary functions of the University are education, research, and creation and dissemination of knowledge. The University affirms the principles of wide freedom of research and of free publication of the information generated from research. The University encourages, supports and values the innovation agenda pursued by its academic staff.

Works of authorship can be the product of individual effort or of a cooperative relationship among academic staff, administrative and support staff, students, and the University. Such Works derive from the creative energies of the individual(s) fostered by the academic community and environment, including facilities, equipment and financial aid, in the form of grant funding, provided and administered by the University.

This policy aims to encourage the development of original Works of authorship and to recognize the contribution of both Authors and the University to Works of authorship.

2. Definitions

For the purpose of this policy, the following definitions apply.

- 2.1 “Author” means a student or employee of the University, whether academic or administrative and support staff, or any physical person, such as a visiting professor, working or doing research at or under the auspices of the University, who has written or created a Work.
- 2.2 “IDEA” means the Invention Development and Entrepreneurship Assistance Team.
- 2.3 “Software” means any set of instructions that is expressed, fixed, embodied, or stored in any manner and that can be used directly or indirectly in a device in order to bring about a specific result.
- 2.4 “Student Academic Work(s)” means any Work that is created in the course of, or as part of, a student’s coursework or extracurricular activities, unless such coursework or activity: (a) involves research or coursework that is the subject of an agreement with a third party; or (b) is a Work of joint authorship with another non-student Author.

2.5 “Work(s)” means any original literary, scientific, technical, dramatic, musical, artistic, or architectural work or any other original production including performances, sound recordings and communication signals covered by copyright, with the exception of Software.

3. Application of the Policy

3.1 This policy is binding on all students and employees of the University and all physical persons working or doing research at or under the auspices of the University. This policy also applies to academic staff or administrative and support staff on sabbatical leave or leave of absence unless the host institution or company has rules which preclude the application of this policy and, in the case of a company, the University agrees in writing to other arrangements.

3.2 This policy shall apply to any and all Works disclosed after the date fixed for implementation of this policy.

3.3 This policy does not apply to Student Academic Works. Student Academic Works shall remain with its creators and ownership and rights thereto shall be determined in accordance with applicable law and shall not be impacted by this policy.

4. Policy on Copyright

4.1 *Copyright:* In relation to any Work, the Author owns copyright. The Author is entitled both to determine how the Work is to be disseminated and to keep any income derived from the Work. Should an Author wish to disseminate a Work with the assistance of the University, he or she may contact IDEA. If IDEA agrees to assist with the dissemination of the Work, the University may ask that a portion of any revenues derived from the Work be attributed to the University. In such cases, the revenues would be split between the University and the Author in accordance with section 5.1.1 of the Guidelines on the Application of the Policy on Inventions and Software.

4.2 *Exceptions:* Notwithstanding section 4.1, copyright in a Work might not belong to the Author if:

- a) the Work was created as a result of research sponsored by a third party pursuant to a written agreement with the University, wherein copyright is determined by specific terms of the agreement. Unless the terms of the agreement give ownership of copyright to the third party, copyright is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have become extinguished, at which point the Author becomes the sole owner of copyright;
- b) the Work was created pursuant to a formal agreement with the University, wherein copyright is determined by specific terms of the agreement;
- c) the Work contains Software as the primary constituent. In such cases the Work will be treated as Software under the Policy on Inventions and Software; and
- d) the Work is covered by a collective agreement, wherein copyright is determined by the specific terms of the collective agreement.

4.3 *License to University:* The University is automatically granted a non-exclusive, royalty-free, irrevocable, indivisible, and non-transferable license to use, for its own academic purposes, all works created by an Author:

- a) with University assistance; or
- b) with the use of University equipment, facilities, or resources; or
- c) in the course of academic duties or work in the course of study, research, or teaching.

This license shall confer to the University neither commercial rights, nor the right to reproduce published Works. The University shall not disseminate Works in a way that would allow persons who are not members of the University community to have electronic access to them. For the purpose of this section, the University's "own academic purposes" refers to research carried on at the University by staff, including academic and administrative staff, and students of the University and teaching by academic staff of the University to students registered at the University.

5. **Dispute Resolution**

Should an Author disagree with the application of this policy, he or she may bring forward a grievance under the appropriate University policy.

6. **Enforcement**

The University and Authors shall, within a reasonable time-frame, execute all documents, forms, and agreements reasonably required to give full effect to this policy.

7. **Review of Policy**

This policy shall be reviewed at the end of the fifth full year of its operation by a working group comprised of one representative of each of MAUT, SSMU, PGSS, MACES, MCSS, AMURE, the Office of the Provost and the Office of the Vice-Principal (Research and International Relations). The working group may make recommendations for modification of the policy.

History:

Approved:

Senate	April 18, 2001	Minute 11
Board of Governors	May 30, 2001	Minute 11

Amendments:

Executive Committee	June 26, 2001	Minute 8
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DRAFT FOR CONSULTATION

GUIDELINES ON THE APPLICATION OF THE POLICY ON INVENTIONS AND SOFTWARE**1. Purpose**

The Guidelines on the Application of the Policy on Inventions and Software (the “Guidelines”) supplement the Policy on Inventions and Software (the “Policy”). They shall be used for the purpose of clarifying the Policy and setting evolving processes and practices implemented in support of the Policy. These Guidelines may be modified from time to time by the Vice-Principal (Research and Innovation) after appropriate consultation with the Senior Administration, Deans, IDEA, and members of the University community and affiliated institutions having experience and expertise in matters of Inventions and Software.

2. Definitions

For the purpose of these guidelines, the following definitions apply:

- 2.1 “Electronic research material”, or “ERM”, means the electronic representation, in whole or in part, of an Invention or Software, and includes, but is not limited to, digitized blueprints, programming source codes, and executable programs.
- 2.2 “IDEA” means the Invention Development and Entrepreneurship Assistance Team.
- 2.3 “Invention” means any new and useful art, process, machine, manufacture, design, or composition of matter, or any new and useful improvement to any art, process, machine, manufacture, design, or composition of matter, which is or may be protected by patent, plant breeder’s right, industrial design, utility model or other similar intellectual property right.
- 2.4 “Inventor” means any student, employee or appointee of the University, whether academic or administrative and support staff, or any physical person, such as a visiting professor, working or doing research at or under the auspices of the University, who satisfies the applicable statutory requirements of inventorship. In this policy, the term “Inventor” shall also be used in reference to the creators of Software covered by copyright.
- 2.5 “Net Income” means all consideration, including, without limiting the generality of the foregoing, royalties, cash, equity, and options, received by the Inventor(s) and the University from the sale, licensing, or other disposition of an Invention or Software, less the costs specifically related to the protection, licensing, distribution, financial charges imposed by the University for fund administration, or commercial development of the Invention or Software.
- 2.6 “Net Royalties” means all royalties, including, without limiting the generality of the foregoing, any one-time payment, milestone payment, or pass-through royalty received by the Inventor(s) and the University from the sale, licensing, or other disposition of an Invention or Software, less the costs specifically related to the protection, licensing, distribution, financial charges imposed by the University for fund administration, or commercial development of the Invention or Software.

- 2.7 “Software” means any set of instructions that is expressed, fixed, embodied, or stored in any manner and that can be used directly or indirectly in a device in order to bring about a specific result.
- 2.9 “Tangible research material”, or “TRM”, means the tangible embodiment of an Invention or Software, and includes, but is not limited to, biological materials, such as antibodies, cell lines, and animal models or physical devices.

3. Commercialization of Inventions and Software

- 3.1 *Receipt of the ROI:* Once a report of invention (ROI) is submitted to IDEA, IDEA shall, within a reasonable time frame, acknowledge receipt of the ROI and assign the ROI to a member of IDEA. In the event the ROI originates from an affiliated institution, such affiliated institution will be informed of the receipt of the ROI.
- 3.2 *Preliminary Review of ROI:* Within 60 days of acknowledging receipt of the ROI, IDEA shall have met (whether by phone or in person) with the Inventor(s) and completed a preliminary assessment of the Invention or Software. The objective of the meeting is to clarify aspects of the Invention or Software, the information included in the ROI, such as the correct identification of inventors and contributors, and whether the Inventor(s) have considered a commercialization path in order to complete a preliminary assessment of the ROI. Upon completion of this preliminary assessment, IDEA shall communicate to the Inventor(s), and copy the affiliated institution where applicable, one of the following:
- (a) IDEA will proceed with a full due diligence review as set out in Section 3.3 (the ROI will remain under review until such due diligence is completed); or
 - (b) the ROI is incomplete or more data/experiments are required and the decision on whether or not to proceed with a due diligence review will be deferred until the necessary details are completed or obtained; or
 - (c) The Inventor(s) have all agreed that they wish to commercialize the Invention/Software independently of the University or IDEA has decided to decline the ROI and will not commercialise the Invention/Software. In such cases, the University will transfer its rights in the Invention or Software back to the Inventor(s) as is further set out in Sections 4.3(a) and 4.4.
- 3.3 *Due Diligence Review.* Any ROI that is under review per Section 3.2 (a) shall undergo a due diligence review by IDEA. The due diligence review includes, among other things, an assessment of the patentability, third party rights, marketability, and commercial potential of the ROI. This due diligence review shall be completed by IDEA within 90 days of completing the preliminary assessment set out in Section 3.2. Upon completion of the due diligence review, IDEA shall communicate to the Inventor(s), and copy the affiliated institution where applicable, one of the following:
- (a) it has decided to accept the ROI and will proceed with commercialization of the Invention or Software, in which case the Inventor(s) and IDEA will prepare a development plan; or

(b) it has decided to decline the ROI and won't proceed with commercialization of the Invention or Software. In such cases, the University will transfer its rights in the Invention or Software back to the Inventor(s) as is further set out in Sections 4.3(a) and 4.4.

- 3.4 *Commercial Evaluation Meeting and Patent Protection.* In the event that the Invention or Software requires patent protection, IDEA will generally obtain approval of the Commercial Evaluation Committee at a Commercial Evaluation Meeting before proceeding with such patent protection. The Commercial Evaluation Meeting is a regular meeting of the members of IDEA and may include from time to time representatives of a valorisation society, affiliated hospitals, or other outside experts. The Inventor(s) and IDEA will together prepare the presentation of the Invention or Software to the Committee. The outcome of the Commercial Evaluation Meeting is a decision for the patent protection phase and an outline of development milestones to be achieved prior to the next decision point.
- 3.5 *Development Plan:* The development plan shall outline all of the events and milestones that need to occur in order to bring the Invention or Software to the next step in the commercialization process. While the development plan may change or be replaced from time to time as the commercialization process advances, it shall always be subject to the approval of IDEA and the Inventor(s). The plan will address matters such as the need for additional research data, intellectual property protection, funding requirements (including potential sources of financing), and industry contact to gauge interest for the Invention/Software and will include a timeline. The plan shall clearly outline the responsibilities of both IDEA and the Inventor(s) in the commercialization process and may include input from the Commercial Evaluation Committee. Should IDEA and the Inventor(s) fail, at any time in the commercialization process, to agree on a mutually acceptable development plan, the matter shall, at the Inventor's choice, be resolved through the dispute resolution process, pursuant to Section 8 of the Policy, or be resolved through the assignment of the Invention or Software to the Inventor(s) pursuant to Section 4.3. IDEA shall be under no obligation to continue with the commercialization process (including the continued financial support of filed patents or patent applications) if there is no agreement on the development plan or if the milestones or tasks within the development plan are not completed.
- 3.6 *Cooperation between the Inventor(s) and IDEA:* Participation of both the Inventor(s) and IDEA in the commercialization process is essential to the development and implementation of a successful development plan. The Inventor(s) and IDEA shall cooperate in assembling, updating, and implementing the development plan, which will serve the interests of both the University and the Inventor(s). Notwithstanding the foregoing, IDEA shall have full authority to negotiate the terms of any and all agreements entered into by the University in connection with the development plan.
- 3.7 *Assignment:* In the event that, pursuant to Section 3.3(a), the University decides to proceed with commercialization of the Invention or Software, all rights to the Invention or Software shall be assigned by the Inventor(s) to the University. If the Inventor(s) do not complete the assignments and other required legal documents, the University will be unable to proceed with the commercialization. Upon assignment, the University shall then become the sole owner of all rights

to the Invention or Software, however the Inventor(s) shall retain the right to receive their share of the Net Income as set out in Section 5.1.1.

3.8 *Tangible Research Material*: Tangible Research Material (TRM) may be distributed for academic purposes under agreements forbidding transfer to third parties. Where TRM is distributed for academic purposes, IDEA charges recipients only the costs related to generation, shipping, and handling. Where commercial development is envisaged, or where TRM is received from, or transferred to, a commercial entity, contracts concerning distribution or receipt of TRM are made through IDEA.

3.9 *Electronic Research Material*: Electronic Research Material (ERM) may be distributed for academic purposes under agreements forbidding transfer to third parties. Where ERM is distributed for academic purposes, IDEA charges recipients only the costs related to production, shipping, and handling. Where commercial development is envisaged, or where ERM is received from, or transferred to, a commercial entity, contracts concerning distribution or receipt of ERM, including, but not limited to, physical transfer on a storage medium and electronic transfer via fax, telephone, or internet, are made through IDEA.

4. University Decision Not to Commercialize and Transfer of Rights to Inventor(s)

4.1 *University Decision Not to Initiate Commercial Development*: As set out in Sections 3.2(c) and 3.3(b), after an Invention or Software is disclosed to the University, IDEA may decline to initiate commercial development. Should the Inventor(s) disagree with that decision, they may, within 30 days of the decision, in writing, refer the matter to the Vice-Principal (Research and Innovation), who will accept or reject the IDEA recommendation and promptly communicate his or her decision to the Inventor(s). A decision by the Vice-Principal (Research and Innovation) on such a matter shall be final.

4.2 *University Decision to Stop Commercial Development*: Once commercial development of an Invention or Software has been initiated, IDEA may at some point in time decide to cease efforts toward commercial development. Should the Inventor(s) disagree with that decision, they may, within 30 days of the decision, in writing, refer the matter to the Vice-Principal (Research and Innovation), who will accept or reject the IDEA recommendation and promptly communicate his or her decision to the Inventor(s). A decision by the Vice-Principal (Research and Innovation) on such a matter shall be final.

4.3 *Transfer of Rights by the University*: Subject to Section 4.4, the University shall assign its share of the rights to the Invention or Software to the Inventor(s) in the following cases. In such cases, the Inventor(s) shall then become the sole owner of the rights to the Invention or the Software:

- a) The University declines to pursue commercialization, or decides to cease its efforts to commercialize the Invention or Software, under Sections 4.1 or 4.2;
- b) The Inventor(s) agree to commercialize the Invention or Software independently of the University;

- c) The Inventor(s) wish to develop the Invention or Software for the purpose of licensing or distributing it without profit, or for the purpose of putting it in the public domain so that it is easily accessible; or
- d) IDEA and the Inventor(s) have failed to agree on a mutually acceptable development plan, and the Inventor(s) has chosen not to take advantage of the dispute resolution mechanism contained at Section 8 of the Policy.

4.4 *Conditions to a Transfer of Rights.* A transfer of rights from the University to the Inventor(s) shall be conditional upon, among other things, agreement by the Inventor(s) to the following, as applicable:

- a) to reimburse, prior to the distribution of any revenues received from commercialization of the Invention or Software, all costs to the University specifically related to the protection, licensing, distribution, or commercial development of the Invention or Software;
- b) to share Net Income with the University as set out in Section 5.1.2;
- c) to report to the University, on a yearly basis, on the activities and efforts to develop and commercialize the Invention or Software;
- d) to grant back to the University a non-exclusive, perpetual, irrevocable, royalty-free license to use the Invention or Software for academic and research purposes, including research collaborations;
- e) to release the University from any and all claims relating to the commercialization by the University of the Invention or Software;
- f) to agree to include indemnification for the University in any commercialization agreement regarding the Invention or Software;
- g) to agree to use best efforts to ensure the Invention or Software benefits Quebec and Canada;
- h) to obtain written approval of the Vice-Principal (Research and Innovation) prior to entering into any commercialization agreement that places him or her in a situation of potential conflict of interest, in particular in the case of an agreement with an enterprise in which the Inventor has a substantial interest;
- i) to fulfill any obligations of the University that may exist to third parties in relation to the Invention or Software.

4.5 *Documentation:* Whenever rights are assigned to the Inventor(s) under Section 4.3, the University shall execute any document reasonably required by the Inventor(s) for the purpose of protecting the Invention or Software and furthering its commercial development.

5. Sharing of Income and Expenses

5.1 *Sharing of Net Income:* Net Income derived from the commercialization of the Invention or Software shall be shared between the Inventor(s) and the University on the following basis:

5.1.1 *Commercialization by the University:* In the case where the University is responsible for the commercial development of the Invention or Software, the first \$10,000 of Net Royalties shall accrue solely to the Inventor(s). Of the balance of Net Income, 60 % shall go to the Inventor(s) and 40 % shall go to the University. In the case where part of the Net Income received by the University is in the form of equity in a company, the University shall, taking

into account any legal restrictions and the wishes of the Inventor(s) and the company: (a) arrange for the Inventor(s) to receive his or her share of the equity directly from the company; or (b) have all equity (i.e. including the Inventor(s)' share) issued in the name of the University, in which case the University shall be the sole decision maker as regards to disposition of the equity; the Inventor(s) sole right being the receipt of the appropriate share of such equity or its cash equivalent at such time and in such form as the University shall deem appropriate.

- 5.1.2 *Commercialization by the Inventor(s)*: In the case where the University assigns the rights to the Inventor(s) under Section 4.3, and the Inventor(s) is responsible for the commercial development of the Invention or Software, after the University has been reimbursed for any out-of-pocket expenses it has incurred, if any, in the commercialization process, Net Income shall be apportioned as follows: 80 % shall go to the Inventor(s) and 20 % shall go to the University.
- 5.2 *Allocation of University's Share of Income*: Unless otherwise determined by OVPRI (the Office of the Vice-Principal (Research and Innovation)), in consultation with the Provost, the University's share of Net Income shall be apportioned as follows: 33 1/3 % to central administration, 33 1/3 % to the faculties of the Inventors, and 33 1/3 % to OVPRI (50 % IDEA, 50 % OVPRI). In respect of revenue received upon the liquidation of equity in a company, the share for central administration shall be earmarked for special projects that are not covered by the general budget of the University.
- 5.3 Where an affiliated institution or hospital is associated with the Invention or Software, a separate agreement will direct what percentage of the University share will go to the affiliated institution or hospital and the remaining amount will be shared per Section 5.2. Any equity to be shared with the affiliated institution will be done as indicated in Section 5.1.1.

6. Dispute Resolution

Any dispute with respect to the application of these Guidelines shall be referred to the Vice-Principal (Research and Innovation) in accordance with the Policy.



currently under review

POLICY ON INTELLECTUAL PROPERTY

Amended:		
Executive Committee	June 26, 2001	Minute 8
Effective Date:	June 26, 2001	

Full legislative history appears at the end of this document.

Section 1 - Principles and Objectives

This policy sets forth the rules applying to ownership, distribution, and commercial rights to intellectual property developed by McGill University academic staff, administrative and support staff, and students, as well as procedures that govern the use and distribution of intellectual property.

The primary functions of the University are education, research, and dissemination and creation of knowledge. The University's mission statement calls for "providing service to society in those ways for which we are well suited by virtue of our academic strengths". The University affirms the principles of wide freedom of research and of free publication of the information generated. To carry on research solely or even primarily in anticipation of profits would be incompatible with the University's objectives and primary functions. However, it must be recognized that software or inventions resulting from research often serve the public interest best when they reach the private sector under appropriate agreements and are protected by patents, if applicable. Even though some inventions and software may not be proper matter for intellectual property protection and are better disseminated through publication in learned journals, the University and the inventor, in some cases, wish to promote their commercial development. The University and the inventor should be allowed to benefit financially from transactions resulting from commercial development.

Intellectual property is the product of a cooperative relationship among academic staff, administrative and support staff, students, and the University and derives from the creative energies of the individual fostered by the academic community and the environment, including infrastructure provided by the University. The inventor and the University (and affiliated institutions) have a shared interest in the intellectual property. As hospitals and research institutes affiliated with the University may have contributed to the resources and the environment that led to inventions or software, agreements between the University and its affiliated institutions will provide for proper recognition of the financial and other interests of all parties.

Since the University draws its operating and research funds in large measure from the governments of Quebec and of Canada, the commercial development of its intellectual property must, to the extent possible, result in benefits to Quebec and Canada. The University further recognizes that the presence of a vibrant, local, knowledge-based economy is beneficial to its members and wishes to contribute to its development.

The objectives of this policy are:

to serve the public interest by contributing to the development of useful and morally acceptable products, services, and processes;

to contribute, to the extent possible, to the socio-economic well-being of Quebec and Canada;

to ensure equitable returns to the University in support of its academic mission, to affiliated institutions, and to the inventors.

Section 2 - Definitions

For the purpose of this policy, the following definitions apply.

"Author" means an employee of the University, whether academic or administrative and support staff, or another physical person associated with the University, who has written or created a work.

"Contract of employment" means a contract by which a person undertakes to do work for remuneration, according to the instructions and under the direction or control of the University.

"Days" means calendar days, unless used in conjunction with a qualifying word indicating a different meaning.

“Electronic research material” or “ERM” means the electronic representation, in whole or in part, of an invention or software, and includes but is not limited to, digitized blueprints, programming source codes, and executable programs.

“Field of academic research” means the particular areas of research in relation to which an inventor has published works, or has received funding, or has made inventions or has developed software, in the course of his or her academic duties at any time during the six years preceding the date of disclosure of an invention or software.

“Field of academic research and teaching” means the fields in relation to which an inventor has been teaching, and the particular areas of research in relation to which he or she has published works, or has received funding or has made inventions, or has developed software or learnware, in the course of his or her academic duties at any time during the six years preceding the date of creation of learnware.

“Founder” means an inventor who accepts a significant role in the initial development phase of a spin-off company based wholly or in part on his or her invention or software.

“Incidental use” means a use that plays a minor role in, and is not essential to, the development of an invention or software.

“Invention” means any new and useful process, formula, machine, manufacture or composition of matter, within the purview of the Patent Act.

“Inventor” means any employee of the University, whether academic or administrative and support staff, who is defined as such under patent legislation. In this policy, the term “inventor” shall also be used in reference to development of software. The word “inventor” shall also mean a physical person, such as a visiting professor or a post-doc, temporarily working or doing research at the University.

“Know-how” means a skill or ingenuity that is available or known only to a limited number of persons, that is related to a licensed invention or software, and that is made known or available under license to the licensee of that invention or software.

“Lead inventor” means that member of a group of co-inventors designated by the group to act as its contact person with the University.

“Learnware” means software designed for teaching purposes that provides for interaction with the user, or makes use of a multimedia product, or both. It includes technology-enabled learning products in electronic format.

“Moral rights” means non-commercial rights related to the right of an inventor to claim authorship and to protect the integrity of his or her work.

“Multimedia product” means a product where software allows for interaction between the user and various media technologies such as the reproduction of sound and image.

“Net income” means all consideration, including, without limiting the generality of the foregoing, royalties, cash, equity, and options, but excluding any and all consideration granted to a founder in accordance with section 9.4, received by the inventor(s) and the University from the sale, licensing, or other disposition of an invention or software, less the costs specifically related to the protection, licensing, distribution, or commercial development of the invention or software. Considerations include equity and options taken in lieu of royalties.

“Net total income” means the sum of net income and of any and all consideration granted to founder in accordance with section 9.4.

“Net royalties” means all royalties, including, without limiting the generality of the foregoing, any one-time payment, milestone payment, or pass-through royalty, received by the inventor(s) and the University from the sale, licensing, or other disposition of an invention or software, less the costs specifically related to the protection, licensing, distribution, or commercial development of the invention or software.

“OTT” means the Office of Technology Transfer of McGill University.

“Software” means any set of instructions that is expressed, fixed, embodied, or stored in any manner and that can be used directly or indirectly in a computer in order to bring about a specific result.

“Tangible research material” or “TRM” means the tangible embodiment of an invention or software, and includes but is not limited to biological materials or physical devices.

“Work(s)” means literary, scientific, technical, dramatic, musical, artistic, architectural work material, and any original production within the purview of the Copyright Act, with the exception of software.

Section 3 - Application of the Policy

This policy does not apply to students of the University except where:

- a) they have contributed to a work with one or more authors;
- b) they have contributed to an invention with one or more inventors, or they have created an invention that they wish to develop with the help of the University.

Students who qualify under the above exceptions shall be treated as authors or inventors, as the case may be.

Section 4 - Policy on Copyright

- 4.1 *Copyright:* In relation to any work, the author owns copyright. The author is entitled both to determine how the work is to be disseminated and to keep any income derived from the work.
- 4.2 *Exceptions:* Notwithstanding section 4.1, copyright in a work might not belong to the author if:
 - a) the work was created as a result of research sponsored by a third party pursuant to a written agreement with the University, wherein copyright is determined by specific terms of the agreement. Unless the terms of the agreement give ownership of copyright to the third party, copyright is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point, the author becomes the sole owner of copyright;
 - b) the work was created pursuant to a formal agreement with the University, wherein copyright is determined by specific terms of the agreement;
 - c) the work contains software as the primary constituent.
- 4.3 *License to University:* The University is automatically granted a non-exclusive, royalty-free, irrevocable, indivisible, and non-transferable license to use, for its own academic purposes, all works created by an author:
 - a) with University assistance; or
 - b) with the use of University equipment, facilities, or resources; or
 - c) in the course of academic duties or work in the course of study, research, or teaching.

This license shall confer to the University neither commercial rights, nor the right to reproduce published works. The University shall not disseminate works in a way that would allow persons who are not members of the University community to have electronic access to them. For the purpose of this section, the University’s “own academic purposes” refers to research carried on at the University, by professors, students, and staff of the University, and teaching by professors of the University to students registered at the University.

Section 5 - Policy on Software and Inventions

- 5.1 *Ownership of Rights to Inventions:* Subject to sections 5.3 and 5.4, the inventor and the University jointly own the rights to inventions created by an inventor
 - a) with University assistance; or
 - b) with the use of University equipment, facilities, or resources; or
 - c) in the course of academic duties or work in the course of study, research, or teaching.
- 5.2 *Ownership of Rights to Software:* Subject to sections 5.3 and 5.5, the inventor and the University jointly own the rights to software created by an inventor
 - a) with University assistance; or
 - b) with the use of University equipment, facilities, or resources; or

c) in the course of academic duties or work in the course of study, research, or teaching; and in the case of learnware, in the fields in which the inventor has been teaching and doing research at any time during the six years preceding the date of creation of such learnware.

- 5.3 *Exception to Joint Ownership – Administrative and Support Staff:* Notwithstanding sections 5.1 and 5.2, where the invention or software was created by an inventor who is a member of the administrative and support staff of the University, as a result of activities covered by his or her contract of employment, the rights to such invention or software are owned by the University.
- 5.4 *Specific Exceptions Applicable to Inventions:* Notwithstanding section 5.1 and subject to section 5.3, the following categories of inventions are not jointly owned by the University and the inventor, and may be owned by the inventor, the University, a third party, or jointly by two or more parties, as the case may be:
- a) where developed in the course of research sponsored by a third party pursuant to a written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the invention to the third party, such invention is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point the invention becomes jointly owned by the University and the inventor;
 - b) where developed in the course of a consulting agreement between the inventor and a third party;
 - c) where made by an inventor in a domain outside his or her field of academic research, and where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;
 - d) where made by an inventor who is a member of administrative and support staff of the University, as a result of activities not covered by his or her contract of employment, and where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;
 - e) where the University assigned its rights to the inventor in accordance with section 8.4 of this policy. The rights are then owned by the inventor;
 - f) where the inventor assigned his or her rights to the University in accordance with section 7 of this policy. The rights are then owned by the University.
- 5.5 *Specific Exceptions Applicable to Software:* Notwithstanding section 5.2 and subject to section 5.3, the following categories of software are not jointly owned by the University and the inventor, and may be owned by the inventor, the University, a third party, or jointly by two or more parties, as the case may be:
- a) where developed in the course of research sponsored by a third party pursuant to a written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the software to the third party, such software is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point the software becomes jointly owned by the University and the inventor;
 - b) where developed in the course of a consulting agreement between the inventor and a third party;
 - c) where limited to the electronic form of a work, or where it is ancillary to a work. The rights are then owned by the inventor;
 - d) works of art, including works of art expressed in multimedia format. The rights are then owned by the inventor;
 - e) in the case of software which does not constitute learnware, where developed by an inventor in a domain outside his or her field of academic research, and where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;
 - f) where constituting learnware developed by an inventor in a domain outside his or her field of academic research and teaching, where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;
 - g) where developed by an inventor who is a member of administrative and support staff of the University, as a result of activities not covered by his or her contract of employment, and where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;

- h) where the University has assigned its rights to the inventor in accordance with section 8.4 of this policy. The rights are then owned by the inventor;
 - i) where the inventor assigned his or her rights to the University in accordance with section 7 of this policy. The rights are then owned by the University;
 - j) where constituting learnware developed as part of a web-based course specifically funded by the University, the rights are then owned or apportioned in accordance with a written agreement between the University and the inventor.
- 5.6 *Disclosure:* Inventors are required to disclose to OTT those inventions and software described in sections 5.1, 5.2, 5.3, 5.4.a, and 5.5.a that they wish to develop for commercial purposes before they are publicly disclosed. This disclosure is to be made to OTT, acting as the delegate of the Vice-Principal (Research), through a "Report of Invention" (ROI).
- 5.7 *Moral Rights:* Inventors of software may wish to defend their moral rights to their work. The University shall then provide appropriate advice and guidance to these inventors.

Section 6 - Commercialization

- 6.1 *Use of the Word Inventor:* For the purpose of this section, except where otherwise specified in the text, the word inventor shall, in cases where there is more than one inventor, mean the lead inventor, or the founder.
- 6.2 *Decision of Inventors:* Inventors are not obliged to seek commercial development of their work, and the University will respect the decision of the inventor not to commercialize his or her invention or software. Unless the software is owned by a third party pursuant to section 5.5a or 5.5b, or by the University pursuant to section 5.5j, inventors of software are free to license or distribute it without profit, or to put it in the public domain so that it is easily accessible, as long as their plan to disseminate such software is in accordance with guidelines developed and from time to time updated by the Senate Committee on Technology Transfer for that purpose.
- 6.3 *Preliminary Review:* OTT shall acknowledge receipt of the ROI. Within 30 days of receipt of the ROI, OTT shall meet with the inventor to discuss the various options open to him or her regarding commercialization of the invention or software, and sources of information about those options. At the inventor's request, meetings with experienced University inventors may also be arranged.
- 6.4 *Cooperation between the Inventor and OTT:* Participation of both the inventor and OTT in the decisions regarding the commercialization of an invention or software is essential to the development and implementation of a successful commercialization plan. The inventor and OTT shall cooperate in the development of a commercialization plan which will serve the interests of both the University and the inventor. Inventors shall not protect or commercialize invention or software independently of the University.
- 6.5 *Commercialization Plan:* Within 90 days of receipt of the ROI, or a longer delay if accepted by all parties, OTT and the inventor will prepare a mutually acceptable commercialization plan outlining the options to be considered for the development of the invention or the software. The plan will be prepared in the spirit of this policy and will address matters such as the need for further evaluation, additional research, intellectual property protection, seed funding, potential sources of financing, as well as delays. The plan shall outline the responsibilities of OTT and the inventor in the commercialization process. The commercialization plan may result in the assignment to the inventor of the rights of the University in the invention or software, under section 8.4. Should OTT and the inventor fail to agree on a mutually acceptable commercialization plan, the matter shall, at the inventor's choice, be resolved through the dispute resolution and appeals processes, pursuant to sections 10 and 11, or be resolved through the assignment of the invention or software to the inventor pursuant to section 8.4e.
- 6.6 *Use of Invention or Software:* In cases where the University and the inventor have divergent ethical concerns in relation to the use of the invention or software by third parties, the matter will be resolved in accordance with the mechanisms and procedures outlined in sections 10 and 11 of this policy.
- 6.7 *Negotiation of Transaction:* Except for cases where the rights have been assigned to the inventor under section 8 of this policy, and except in respect of a founder, OTT shall be responsible for the implementation of the commercialization plan, including, without limiting the generality of the foregoing, the negotiation of any and all agreements with third parties.
- 6.8 *Documentation:* The inventor shall execute any document reasonably required for the purpose of protecting the invention or software and furthering its commercial development.

- 6.9 *Protection of Intellectual Property:* The University may seek patent protection or copyright registration of the intellectual property underlying the invention or software as appropriate. It does not seek protection for inventions or software that, in its judgment, do not have significant commercial potential. The University ceases to pursue protection of intellectual property where successful commercial development seems unlikely. Except as otherwise provided in this policy, the cost incurred in the protection of intellectual property is borne by the University.
- 6.10 *Alternate Arrangements:* Whenever appropriate, and provided they do not represent undue risk or generate unreasonable expenses for the University, OTT will consider proposals from the inventor(s) aimed at lawfully minimizing the impact of income tax legislation for the inventor(s).
- 6.11 *Expenses:* In circumstances where the rights to the invention or software are assigned to an inventor under section 8.4c or 8.4e, all costs incurred by OTT in the protection of the intellectual property shall be borne by such inventor, and reimbursed to OTT within a reasonable period of time.
- 6.12 *Learnware:* OTT shall consult the Vice-Principal (Information Systems and Technology) in cases involving learnware.
- 6.13 *Tangible Research Material:* Tangible research material (TRM) may be distributed for academic purposes under agreements forbidding transfer to third parties. Where TRM is distributed for academic purposes, OTT charges recipients only costs related to reproduction, shipping, and handling. Where commercial development is envisaged, or where TRM is received from, or transferred to, a commercial entity, contracts concerning distribution or receipt of TRM are made through OTT.
- 6.14 *Electronic Research Material:* Electronic research material (ERM) may be distributed for academic purposes under agreements forbidding transfer to third parties. Where ERM is distributed for academic purposes, OTT charges recipients only costs related to the reproduction, shipping, and handling. Where commercial development is envisaged, or where ERM is received from, or transferred to, a commercial entity, contracts concerning distribution or receipt of ERM, including but not limited to physical transfer on a storage medium, and electronic transfer via fax, telephone, or internet, is made through OTT.

Section 7 - Assignment of Rights

- 7.1 *Assignment:* Except in cases where the rights of the University are assigned to the inventor(s) under section 8.4, all rights to inventions or software that an inventor wishes to develop for commercial purposes shall be assigned by the inventor(s) to the University within 30 days of completion of the commercialization plan, at the latest. Except for moral rights where they exist, which shall remain with the inventor, the University shall then become the sole owner of all rights to the invention or software.

Section 8 - Decision Not to Commercialize and Transfer of Rights to Inventor

- 8.1 *Decision Not to Initiate Commercial Development:* After an invention or software is disclosed to the University, OTT shall decide whether it will pursue commercialization of such and shall inform the inventor of its decision within 90 days of receipt of the report of invention. Should the inventor disagree with that decision, he or she may, in writing, refer the matter to the Vice-Principal (Research), who will accept or reject the OTT recommendation and promptly communicate his or her decision to the inventor(s).
- 8.2 *Decision to Stop Commercial Development:* Once commercial development of an invention or software has been initiated, OTT may at some point in time decide to cease efforts toward commercial development. Should the inventor disagree with that decision, he or she may, in writing, refer the matter to the Vice-Principal (Research), who will accept or reject the OTT recommendation and promptly communicate his or her decision to the inventor(s).
- 8.3 *No Appeal:* Notwithstanding section 6.5, a decision made by the Vice-Principal (Research) not to initiate commercial development under section 8.1, or to stop on-going commercial development under section 8.2, shall be final and shall not be subject to appeal under section 10 of this policy.
- 8.4 *Transfer of Rights:* The University shall assign its share of the rights to inventions or software to the inventor(s) in the following cases. In such cases the inventor(s) shall then become the sole owner of the rights to the invention or the software.
- a) The University declines to pursue commercialization, or decides to cease its efforts to commercialize the invention or software, under sections 8.1 or 8.2 of this policy;
 - b) The University has been unsuccessful in commercializing the invention or software within a reasonable period of time;

- c) The University and the inventor(s) agree that the inventor(s) can successfully commercialize the invention or software independently of the University. In such a case, the inventor(s) shall use best efforts to ensure benefits to Quebec and to Canada. Written approval of the Vice-Principal (Research) shall be obtained by the inventor(s) before he or she enters into any commercialization agreement, including, without being limited to, a license agreement, a shareholders' agreement, and an option agreement, that place the inventor(s) in a situation of potential conflict of interest, in particular in the case of an agreement with an enterprise in which the inventor has a substantial interest;
 - d) The inventor(s) wish to develop software for the purpose of licensing or distributing it without profit, or for the purpose of putting it in the public domain so that it is easily accessible, and his or her plan to develop such software is in accordance with guidelines developed and from time to time updated by the Senate Committee on Technology Transfer for that purpose;
 - e) OTT and the inventor(s) have failed to agree on a mutually acceptable commercialization plan, and the inventor(s) has chosen not to take advantage of the dispute resolution mechanisms contained at sections 10 and 11. In such a case, the inventor shall use best efforts to ensure benefits to Quebec and to Canada. Written approval of the Vice-Principal (Research) shall be obtained by the inventor(s) before he or she enters into any commercialization agreement, including, without being limited to, a license agreement, a shareholders' agreement, and an option agreement, that places him or her in a situation of potential conflict of interest, in particular in the case of an agreement with an enterprise in which the inventor has a substantial interest.
- 8.5 *Documentation:* Whenever rights are assigned to the inventor under section 8.4, the University shall execute any document reasonably required for the purpose of protecting the invention or software and furthering its commercial development.
- 8.6 *Inventor with a Private-Sector Affiliation:* Where an invention or software is developed by an inventor who is receiving a salary from a private-sector enterprise for the purpose of working at the University, the University will consider licensing the private-sector enterprise to use such invention or software on terms that will take into account the University's relative contribution.

Section 9 - Revenues

- 9.1 *Sharing of Income:* Net income derived from the commercialization of inventions or software shall be shared between the inventor(s) and the University on the following basis:
- 9.1.1 *Commercialization by the University:* In the case where the University is responsible for the commercial development of the invention or software, the first \$10,000 of net royalties shall accrue to the inventor. Of the balance of net income, 60 per cent shall go to the inventor(s) and 40 per cent shall go to the University.
 - 9.1.2 *Commercialization by the Inventor(s):* In the case where the University assigns the rights to the inventor(s) under section 8.4, and the inventor(s) is responsible for the commercial development of the invention or software, net total income shall be apportioned as described below:
 - a) *Royalties:* Of the first \$100,000 of net royalties, 80 per cent shall go to the inventor(s) and 20 per cent shall go to the University. Of any net royalties above \$100,000, 70 per cent shall go to the inventor(s) and 30 per cent shall go to the University.
 - b) *Equity, Options, and Other Consideration:* Of the balance of net total income, 70 per cent shall go to the inventor(s) and 30 per cent shall go to the University.
 - 9.1.3 *Alternative Arrangements:* In cases covered by section 9.1.2, and where it is required by the conditions of the market specific to the transaction being contemplated, the University will consider reasonable proposals aimed at agreeing on an equitable sharing of net total income different from that provided in said section.
- 9.2 *Allocation of University's Share of Income:* In respect of royalties, the University's share of income shall be apportioned as follows: 25 per cent to central administration, 25 per cent to the faculties of the inventors, 25 per cent to OTT, and 25 per cent to graduate fellowships. In respect of equity in the share capital of a company, the University's share of income shall be divided among central administration, the faculty(ies) of the inventor(s), OTT, and research and fellowships on the basis of the following formula. In respect of equity, the share of central administration shall be earmarked for special projects that are not covered by the general budget of the University.

	Central Administration	Faculty(ies)	OTT	Research and Fellowships
\$1 to \$1M	33 1/3%	33 1/3%	16%	17 1/3%
\$1M to \$3M	47%	20%	14%	19%
Over \$3M	65%	10%	0%	25%

- 9.3 *Multiple Inventors:* In cases where there is more than one inventor, the lead inventor shall provide OTT with an agreement, signed by all inventors, covering the distribution of each inventor's share of the net income. The lead inventor is responsible for the identification of all inventors, including students.
- 9.4 *Founders:* A founder of a spin-off company may receive equity (shares or options) over and above his or her share of net revenues as an inventor under this policy.
- 9.5 *Sharing with Other Academic Institutions:* Where an invention or software is developed wholly or in part by an inventor during a temporary stay at another academic institution, or by an individual from another academic institution on a temporary stay at the University, or jointly by an inventor working at the University and a member of another academic institution working at the other institution, rights to such invention or software and net income shall be shared between the University and the other academic institution, taking into account the policies of both institutions. The sharing of net income will normally take into account the relative contributions of the individuals and their institutions. If the other academic institution is a research institute affiliated with a McGill teaching hospital, the sharing of ownership and net income shall be governed by agreements in place between the University and its teaching hospitals.
- 9.6 *Exception:* Inventions or software resulting from activities carried out by an inventor who is a member of administrative and support staff under a contract of employment are excluded from this section, unless there is a written agreement to the contrary between such inventor and the University.

Section 10 - Dispute Resolution

Any dispute with respect to the application of this policy shall be referred to the Vice-Principal (Research) under this section. All material relevant to the dispute shall be provided to the vice-principal by all parties to the dispute, within 10 working days of the day on which the matter is referred to him or her. The vice-principal shall invite comments by interested parties and shall be free to consult with experts, if required. All information provided to experts by the vice-principal shall be treated as confidential by such experts. The vice-principal shall share the opinion of the expert with all interested parties and shall invite them to comment within a fixed delay. The vice-principal shall promptly advise the parties in writing of his or her decision in the matter.

Section 11 - Appeals

- 11.1 *Intellectual Property Appeals Committee:* There shall be an Intellectual Property Appeals Committee that shall hear appeals from decisions of the Vice-Principal (Research) or his or her delegate. The Intellectual Property Appeals Committee shall consist of six members appointed for three-year terms commencing September 1st, staggered, and one student member, appointed for a term of one year.
- 11.2 *Appointment of Committee:*
- 11.2.1 Prior to the 1st day of April each year, the President of the McGill Association of University Teachers or the President's designate and the Principal or the Principal's designate shall submit to the Senate Nominating Committee a jointly approved slate of names of academics and members of administrative and support staff of the University and/or Board members. This slate shall include at least one and a half times as many names as there are vacancies on the Intellectual Property Appeals Committee to be filled that year.
- 11.2.2 Prior to the 1st day of April of each year, the Executive Chairperson of the Post-Graduate Students' Society of McGill University, and the Principal or the Principal's designate, shall submit to the Senate Nominating Committee a jointly approved list of two names of graduate students, and the name of one undergraduate student.
- 11.2.3 From the slate proposed under section 11.2.1, and except in respect of the vacancy created by the end of the term of the student member, the Senate Nominating Committee shall strike a panel of nominees equal to the number of

vacancies to be filled and shall also designate the chair and vice-chair of the Intellectual Property Appeals Committee. The Intellectual Property Appeals Committee shall include academics involved in teaching or research in a suitably broad range of those disciplines generally generating commercialization projects. The Senate Nominating Committee shall also recommend the appointment of one student member from the slate proposed under section 11.2.2.

- 11.2.4 The chair and vice-chair shall be persons qualified by education and experience to make decisions on matters that may be submitted to the Intellectual Property Appeals Committee.
- 11.2.5 The panel thus struck shall be submitted to Senate and to the Board of Governors for approval.
- 11.2.6 In the event of rejection of the panel in whole or in part by Senate or the Board of Governors, the procedure set out in sections 11.2.1 and 11.2.2 shall recommence.
- 11.3 *Hearing Subcommittee:*
- 11.3.1 The Hearing Subcommittee shall be composed entirely of members of the Intellectual Property Appeals Committee and shall include:
- i) the chair or vice-chair;
 - ii) one member selected by the Vice-Principal (Research); and
 - iii) one member selected by the party who has brought an appeal before the Intellectual Property Appeals Committee.
- 11.3.2 If the Vice-Principal (Research) and the party who brought the appeal submit the same name, the chair shall choose that person and one other member of the Intellectual Property Appeals Committee to form the Hearing Subcommittee.
- 11.3.3 In the event that a vacancy occurs in the Hearing Subcommittee, the party who nominated the member in respect of whom such vacancy occurred shall forthwith nominate a replacement. In the event that the vacancy occurs in respect of the chair or vice-chair, the one shall replace the other, if available; if not available, the replacement shall be chosen by lot from the remaining members of the Intellectual Property Appeals Committee.
- 11.3.4 The members of the Hearing Subcommittee shall not be informed of the identity of the party who nominated them.
- 11.4 *Conflict of Interest:* No member of the subcommittee shall sit in a particular instance if that person:
- a) is a member of the same department (or, in a faculty without departments, of the same faculty) as the party who is bringing an appeal; or
 - b) is in a position of conflict of interest.
- 11.5 *Notice of Appeal:* Subject to section 8.3, a party to a dispute may appeal the decision of the Vice-Principal (Research) or his or her delegate within five working days of receipt of such a decision, by filing a written notice of appeal with the Office of the Secretary-General. Within 10 working days of filing of the notice to appeal, the appellant shall file all relevant documentation and representations with the Office of the Secretary-General. The appellant shall notify the Vice-Principal (Research) and all other parties having an interest in the outcome of the dispute of his or her request to appoint a Hearing Subcommittee, and shall promptly provide them with a copy of the notice to appeal and all documentation and representations filed with the Office of the Secretary-General.
- 11.6 *Dispute on Commercialization Plan:* Where the dispute submitted to the Hearing Subcommittee concerns the commercialization plan, the parties shall file with the Hearing Subcommittee the plans they are proposing. The Hearing Subcommittee shall have jurisdiction to decide which of the commercialization plans should be implemented. The Hearing Subcommittee shall also have the power to propose an alternative commercialization plan, in which case it shall indicate which of the parties shall be responsible for its implementation.
- 11.7 *Secretary:* The Office of the Secretary-General shall provide a secretary for the Intellectual Property Appeals Committee.
- 11.8 *Hearing and Decision:* The Hearing Subcommittee shall conduct the appeal in a manner consistent with principles of natural justice and shall ensure that all parties having an interest in the outcome of the decision have an opportunity to make representations and shall render a decision within 15 working days of its constitution, unless the parties

consent in writing to a longer delay.

- 11.9 *Advisors:* A party to the appeal has the right to be assisted by a member of the University community who has agreed to act in an advisory capacity to that party. The advisor shall receive no remuneration for acting as an advisor.
- 11.10 *No Further Appeal:* The decision of the subcommittee shall be final and binding upon all parties.
- 11.11 *Reports:* The Intellectual Property Appeals Committee shall report annually to Senate on the administration of the procedures described here.

Section 12 - Enforcement

Acceptance of this policy is a condition of employment by the University, or engagement as a visitor in any University program. Students registered at McGill are also bound by this policy. This policy also applies to academic staff or administrative and support staff on sabbatical leave or leave of absence unless the host institution or company has rules which preclude the application of this policy and the University agrees in writing to other arrangements.

The University, inventors, and authors shall execute all documents, forms, and agreements reasonably required to give full effect to this policy.

The policy shall apply to any and all work, invention, and software disclosed after the date fixed for implementation of this policy.

Section 13 - Review

Every year, OTT shall report to the Senate Committee on Technology Transfer on the application of this policy. The Senate Committee on Technology Transfer shall review the report presented by OTT and make any recommendation it deems appropriate to Senate for possible forwarding to the Board of Governors.

The Senate Committee on Technology Transfer shall also review this policy at intervals of no more than two years commencing from the date of its implementation and report to Senate on the results of its review.

Legislative History:		
<i>Approved:</i>		
Senate	April 18, 2001	Minute 11
Board of Governors	May 30, 2001	Minute 11
<i>Amended:</i>		
Executive Committee	June 26, 2001	Minute 8