

## **ARTICLE 38: INTELLECTUAL PROPERTY**

### **38.01 Patents and Other Intellectual Property**

In interpreting 38.01, ordinary support shall include the member's regular salary and benefits; the personnel, equipment, supplies, and facilities funded by regular departmental operating budgets; ordinary use of the library and centralized computing facilities; and research equipment and supplies obtained through grants in aid of the member's work. Extraordinary support shall be any other funding or support provided by the Board.

The term "invention" in 38.01 shall include any device, machine, or process.

38.01.01 A member has no obligation to seek patent protection for the results of his/her research or to modify his/her research to enhance the protectability of such results. A member has the unqualified right to publish such results.

38.01.02 Unless otherwise provided in this Article, the Board makes no claim to any rights to any invention, improvement, design, or development made by a member and the rights to such invention, improvement, design, or development and any patents and other rights arising from them shall be the sole property of the member.

38.01.03 A member shall give notice to the Board in writing of any patent application or other application to protect intellectual property made by him/her within three months of the date of the application and shall assert at that time whether or not it refers to an invention, improvement, design or development made with the extraordinary support of the Board. If the Board fails to challenge in writing the assertion of the member within three months of the receipt of the notification of the application, the Board shall be deemed to have accepted as accurate the assertions set out in the member's notice. Failure by the member to give notice of an application within the prescribed three month period shall maintain the Board's rights under 38.01.03 until such notification.

38.01.04 Where an invention, improvement, design or development has been invented or developed with the ordinary or extraordinary support of the Board, the member concerned shall grant to the Board a non-exclusive, royalty-free, irrevocable, indivisible, and non-transferable right to use the invention, improvement, design or development solely within the University. Such right shall not include the right to exploit the invention, improvement, design or development in any way.

Where a protected invention, improvement, design, or development involved:

- (A) the ordinary support of the Board, the Board shall receive 25% of the net proceeds;
- (B) the extraordinary support of the Board, the Board shall receive 50% of the net proceeds.

As used herein, "net proceeds" shall mean the net profits derived from the sale, leasing, licensing, or commercial exploitation of the invention, improvement, design or development after deduction of all expenses incurred in the protection of the invention, improvement, design, or development including patent searches, patent applications, patent application prosecution, and maintenance of patent protection in Canada and in other countries.

38.01.05 A member may, at his/her sole discretion, make his/her own arrangements for an application for patent or other form of protection of intellectual property at his/her own expense, subject to 38.01.03 and 38.01.04.

38.01.06 A member may, at his/her sole discretion, prepare and process an application for patent or other form of protection of intellectual property through any agency with which the Board has an agreement, subject to 38.01.03 and 38.01.04. In such case, the member shall make such agreements and shall receive such proceeds as are specified in the agreement between the Board and the agency.

The Board shall not initiate modifications to or the abandonment of its agreement with any such agency in such a way as to affect a continuing contract with any member without the approval of the Joint Committee for Administering the Agreement.

Any agency with which the Board has an agreement shall, at its sole discretion, have the right to refuse to prepare or process any application for patent or to exploit any patent. In such case, the member concerned remains bound by 38.01.03 and 38.01.04.

38.01.07 The name of the University and the University letterhead shall not be used in connection with any invention, improvement, design or development in which the Board has no interest unless agreed to in advance in writing by the Board, although nothing shall prevent a member from stating the nature and place of his/her employment, rank, and title in connection with activities associated with the invention, improvement, design or development, provided that he/she shall not purport to represent the University or to speak for it, or to have its approval, unless such approval has been given in advance in writing by the Board.

38.01.08 Any revenue that the Board may receive under 38.01.04 shall be dedicated to research and dispersed at the Board's discretion except that in each case 25% of such income shall be assigned by the Department or the School with which the member concerned is affiliated. The Board's auditors shall certify in writing annually to the Association that these funds have been expended in accordance with this Article.

## 38.02 Copyrights

Intellectual property, as used in 38.02 shall include, but not necessarily be limited to, books, articles, and similar printed material written or prepared by a member; painting, sculpture, music, and similar works of art created by a member; lectures delivered by a member; audio and video recordings or digitally encoded representations; photographs, film, and other similar recordings for which the content was created by a member; and computer programs developed, improved, or written by a member. Where Article 38.02 conflicts with Article 38.01, Article 38.02 shall prevail.

38.02.01 The Board shall not hold or make any claim to the copyright in any intellectual property produced or created by a member, except as described in this Article.

The Board may, with the consent of the member, use for its original purpose any intellectual property that the member produced in the course of his/her teaching assignment pursuant to 16.02.01, 16.02.11, or 13.03 and for which the member holds the copyright. Such use shall be without any payment, royalties, or other compensation and such consent shall not be withheld unreasonably.

38.02.02 The Board shall hold copyright with respect to the original purpose of any written information produced by a member pursuant to 16.02.06, and of any assessment, grading, report, or correspondence produced in his/her normal administrative duties pursuant to 16.04.

38.02.03 A member is the sole holder of copyright in his/her own lectures and in all intellectual property produced in association with his/her teaching assignment pursuant to 16.02.01, 16.02.11, or 13.03.

38.02.04 A member who edits a journal or magazine published by Lakehead University shall not claim copyright therein save and except for those articles, reviews, or literary pieces written by him/her.

38.02.05 The Board shall enter into a contract with a member the terms of which give the Board fifty percent ownership in the copyright of material developed by a member for a distance education course. Copies of all such materials shall contain a statement or marking identifying the ownership of copyright and appropriate credit to the contributors.

Where the Board retains possession of such material, it shall exercise reasonable care and caution to ensure that no material is erased, copied, amended, or edited in any way without the written consent of the copyright holder. The Board or its employees or agents shall not loan, transfer or distribute a copy of such material to a third party outside Lakehead University without the written consent of the copyright holder.

38.02.05.01 The member who holds copyright in such material may, after five academic years following completion of its development, and at three-year intervals thereafter, notify the Board of the need to revise such material or have it withdrawn from use by the Board. The member shall give twelve months' written notice to the Board in each instance.

The Board may request revisions in such material in order to ensure that proper and current academic standards are met.

The member who holds copyright in such material shall be responsible for its revision. At the time the development of distance education materials is assigned, the member shall agree that for five academic years following completion of its development, he/she shall accept the Board's request for revisions or allow the appropriate department or school to make the revisions. The member shall remain bound by this agreement regardless of his/her employment status with respect to the Board.

In the event that the Board and member cannot agree on the nature or extent of the revisions, the Board may purchase the member's 50 percent ownership of the copyright of the package of material. In this case, the member shall be paid 50 percent of the original stipend for development paid to the member pursuant to 35.02.03. The Board shall engage the services of someone recommended by the academic unit to make any revisions. In all cases where someone other than the member makes revisions to the materials, if the member objects to the extent or the propriety of the revisions, he/she shall, at his/her discretion, have his/her name withdrawn as a contributor to the work and any visible indications that he/she is a contributor to the work shall be withdrawn.

38.02.05.02

At the time distance education material is developed, the member shall warrant to the Board in writing that he/she is the copyright holder of all material contained therein and that it is original with him/her or shall at that time provide the Board with a list in writing of any other copyright material contained therein and the names of the relevant copyright holders. The member shall indemnify the Board against any loss resulting from a failure by the member to list the registered owner of any such copyright material. No such copyright material may be included by the member without the written approval of the Board. The Board shall pay any cost related to securing all copyright permissions and for the use of such approved copyright material.

38.02.05.03

The member who holds copyright in the material developed for a distance education course for the University shall grant to the Board an exclusive licence to distribute copies of such distance

education material for use by other educational agencies. "Net proceeds" of any fees or royalties that the Board receives for the use by another party of these materials shall be distributed 50% to the Board and 50% to the member. "Net proceeds" shall mean the fees and royalties received less the cost of reproduction, distribution and production costs (which include charges to produce the materials including licensing costs of other copyright materials contained therein). The Board, in distributing such material to any other educational agency, shall ensure that the other agency shall not loan, transfer, or distribute a copy of such material to any other party without the written consent of the copyright holder.

Notwithstanding the above, where funding has been provided by contractual agreement with the Province of Ontario or other granting agency for distance education initiatives, the Board may grant to the Province or such granting agency an exclusive royalty-free licence to distribute copies of distance education material. This exemption applies only to that material for which such a licence is a condition of receipt of funding and only where the Board has submitted a statement to the Association from the granting agency that such a condition obtains.

38.02.06 Where more than one copyright holder has contributed to and has an interest in a copyright work and that work is severable, each copyright holder shall exercise his/her rights and responsibilities under 38.02 and 38.03 with respect to his/her contribution independently. Where more than one copyright holder has contributed to and has an interest in a copyright work and that work is not severable, the copyright holders shall exercise their rights and responsibilities under 38.02 and 38.03 collectively and unanimously. As used herein, a work is severable if a portion of that work could be removed or erased or replaced by a similar portion without substantially diminishing the value of the other portions of the work.

38.02.07 When a member or a former member dies, his/her estate shall assume all rights and responsibilities for copyright works under 38.02 and 38.03.

38.03 Transfer of rights and responsibilities

38.03.01 Where the Board or a member holds a right or interest in a patented or protected invention, improvement, design, or development, or in a copyright work and wishes to sell, assign, or dispose of that right or interest, each shall, as a condition of the right to sell, assign, or dispose, protect and maintain the rights of the other pursuant to Article 38.

38.03.02 The Board shall not enter into any agreement to subcontract work or responsibilities held by the Board or any of its employees, or to form a consortium of other universities, government departments or agencies or corporations, and/or private companies or corporations for the purposes of

research and development or commercial exploitation without securing to the members who may be seconded to or employed by the subcontractors or consortia all the rights, privileges, and benefits accorded them by Article 38. Any such agreement made contrary to this provision shall not apply to any member except with his/her consent in writing.