



<b>SUBJECT:</b>  Intellectual Property	<b>CATEGORY:</b>  Academic Programming	<b>NO.</b>  109
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**PREAMBLE**

SIAS provides skills training and engages in applied research in order to meet the needs of students, employers and our communities and to advance the social and economic prosperity of Saskatchewan. When engaging in applied research, SIAS employees and students will create intellectual property which, if managed properly, can bring benefits to the creator, community and SIAS. The purpose of this policy is to create a supportive framework to manage intellectual property that is respectful of our institutional culture while balancing the interests of SIAS and its creative community. The objective of the policy is to outline guiding principles for the management of intellectual property at SIAS in order to avoid potential misunderstandings, delays and litigations.

**POLICY**

SIAS encourages participation in applied research activities and may provide incentives that foster creative activity. SIAS will help, where appropriate, to ensure that any intellectual property arising from applied research will be exploited to the benefit of the creator and the institution through commercialization. SIAS will ensure proper management of intellectual property and will ensure that the distribution of the benefits from those rights is in the best interests of the creator and the institution. This policy outlines principles designed to protect ownership of intellectual property and to aid in its commercialization. It also outlines the processes and requirements related to disclosure.

The policy applies to all SIAS employees, students, and research collaborators<sup>1</sup> who make use of SIAS facilities, equipment<sup>2</sup>, funds administered by SIAS or other resources while engaging in applied research activities at SIAS. This policy applies to all intellectual property arising from SIAS applied research activities that are funded in whole or in part by an external sponsor.

<sup>1</sup> Research collaborators are considered as visiting researchers, employed by another institution or company, who conduct research at SIAS and access SIAS expertise and facilities.

<sup>2</sup> Also see SIAS policy 303 Use of SIAS Equipment and Resources.

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## **DEFINITIONS**

**Intellectual property** is an intangible product of human intellect that is created through intellectual and/or discovery efforts of a creator. Intellectual property is legally protected by law and includes, but is not limited to, inventions, computer software, literary and artistic works, industrial design, integrated circuit topography and distinctive symbols or marks. Intellectual property is treated like any other property and can be sold, licensed, or transferred. The forms of intellectual property have been defined by the Canadian Intellectual Property Office:

- An invention is a product, process, art of manufacture or composition of matter or any improvement thereof. An invention can be protected by a patent which, once issued, gives the owner the exclusive right to use it, make and sell it. Software (when associated with a product or a process) can also be protected by a patent.
- Software is any code, line of code, lines of code or algorithms that give computer hardware instructions to execute a task. Software can be either in the form of a source code or an object code. Both source code and object code are protected by copyright. If a source code is part of a machine it can be protected by a patent.
- Literary works are written text, essays, publication, novels, poems, musical works, and recordings and are protected by copyright laws.
- Artistic works are drawings, paintings, photographs, sculptures and architectural designs, and are protected by copyright laws.
- Distinctive symbols, logos, or images that distinguish one product of a company from the other are protected by trademark laws.
- Industrial designs are an original shape, form, or some combination applied to, a useful article of manufacture. Industrial design can be protected by registration and are covered by industrial design laws.
- Integrated circuit products are constructed from a complex series of layers of semiconductors, metals, dielectrics and other materials on a substrate. Unique three dimensional configuration of these layers known as integrated circuit topography is protected by the Integrated Circuit Topography Act. The protection is done by a registration of the 3D design.
- Trade secrets (useful technical information, formulas, market strategies, that are held confidentially) are protected by trade secret laws that are part of tort or contract laws.

## **PROCEDURES**

### **1. Applicability**

This policy applies to all forms of intellectual property except copyright which is covered in Article 26 of the Collective Agreement between SIAST and the SIAST Academic and Professional Services Bargaining Units.

This policy does not apply to intellectual property developed before or after the creator was in an employment relationship with SIAST. Furthermore, the policy does not apply to cases when the intellectual property was developed in the course of non-SIAST related activities that did not involve SIAST facilities, resources or funds.

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This policy does not apply to SIAST students unless the following situations exist:

- a. the involvement of faculty, staff or SIAST resources is substantially in excess of the norm for educational purposes (for example, when students participate in sponsored research projects that are not part of their course work),
- b. the intellectual property resulted from the student's employment at SIAST, and
- c. the applied research that the student is engaged in is commissioned by SIAST.

In each case the student will sign an agreement that addresses intellectual property. SIAST procedures surrounding student work and student agreements are available in the programs operating procedures (POP) manual. This policy does not apply when students engage in research projects that are part of their course.

Any research collaborators, employed by another institution or company, who conduct research at SIAST and access SIAST expertise and facilities, must meet with the director, Applied Research to ensure appropriate agreements are in place prior to beginning research at SIAST or using SIAST expertise.

## **2. Disclosure**

It is the obligation of any SIAST employee, to whom this policy applies, to disclose any form of intellectual property to SIAST. The disclosure of intellectual property will occur after the physical embodiment of the idea has been realized or when a discovery is confirmed.

Disclosure is required so that SIAST can fulfill its obligation to other employees, staff and students, and to the agencies (if any) that sponsored contract research. The disclosure is also necessary so that SIAST can exercise its right to commercialize the intellectual property which can bring benefits to both SIAST and the SIAST employee who makes the disclosure. In order to ensure eligibility for patent protection, the disclosure to SIAST of a patentable invention must be made as soon as reasonably possible after the invention has been created. If SIAST deems commercialization is warranted, SIAST will pay patent costs when exercising its rights to commercialization.

The disclosure will be made to the Office of Applied Research and Innovation using the Intellectual Property Disclosure Form available in the programs operating procedures (POP) manual. The failure to comply with this obligation in no way extinguishes SIAST's rights to a non-disclosed intellectual property. All disclosures submitted to the Office of Applied Research and Innovation will be kept confidential.

## **3. Ownership of Intellectual Property at SIAST**

Before an employee embarks upon an assignment, applied research project or undertaking to develop or produce works, which may ultimately contain intellectual property, the ownership shall be established by an agreement between SIAST and the employee in accordance with the following provisions. The president or his/her delegated representative shall represent SIAST in reaching such an agreement.

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### 3.1 Employee Ownership

Where an employee utilizes works to support the employee's function at SIAST, created prior to their employment with SIAST, the ownership of the intellectual property to those works will be retained by the employee.

SIAST may ask for, and a SIAST employee will consider granting, a non-exclusive, perpetual, royalty free license to the works the SIAST employee owns, for the educational (non-commercial) use at SIAST by other SIAST employees.

Where an employee develops or produces works on the employee's own time, outside SIAST without using SIAST resources, systems, facilities, funds, faculty or staff, and for no use at SIAST, the employee will have the exclusive ownership of such works. For purposes of this clause, library collections are not considered a SIAST resource.

### 3.2 Joint Ownership

Where the works containing intellectual property are developed or produced by an employee, on his/her initiative, by using SIAST resources, the ownership of the intellectual property will be shared, with the shares to be negotiated at the time of disclosure. In the case where there is no agreement on the joint ownership split, each party will own an equal share of the work.

If the use of jointly owned works, or where the intellectual property is jointly owned produces any income (other than direct student fees), the income shall be apportioned according to the shares held. The income shall be calculated in accordance with generally accepted accounting principles. Each party's costs will be taken into account in such calculations.

### 3.3 SIAST Ownership

Where SIAST and a SIAST employee enter into an agreement to develop or produce works to support a function of SIAST which may contain intellectual property and is, hence, using SIAST resources, SIAST will own the intellectual property to such works.

SIAST or a research sponsoring agency may own the rights to intellectual property developed in the course of sponsored applied research pursuant to a written contract that is to be developed and agreed to prior to the commencement of work. The SIAST employee who will be conducting sponsored applied research will be privy to the negotiations and will also need to be satisfied with the terms of the agreement. SIAST employees will benefit from any commercialization as outlined in section 4.3.

SIAST will own the intellectual property in works developed by SIAST employees when the projects are funded by federal (NSERC, SSHRC, CIHR, CIF) or provincial funding programs and administered by SIAST. A SIAST employee participating in such funded projects will benefit from any commercialization as outlined in the section 4.3.

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A SIAST employee who creates intellectual property in the sponsored project can request the transfer of the ownership of the SIAST owed intellectual property for the purposes of commercialization. SIAST will consider such a request and will affect such a transfer provided the SIAST employee agrees to pay SIAST 20% of his/her revenues received through the commercialization.

#### 4. Management and Commercialization of Intellectual Property at SIAST

In general commercialization consists of four stages:

- evaluation of intellectual property for commercial potential,
- legal protection of intellectual property (via patent, for example),
- marketing of invention in order to find a licensee, and
- licensing of intellectual property to a licensee (in most cases a company) that will make products based on the intellectual property.

The licensing of the intellectual property can result in a newly created company or a formation of a joint venture. The technology, although very uncommon, can be sold outright to a company. A license agreement gives the licensee the right to use, make and sell products based on the intellectual property and in return the licensee pays royalties to the owner of intellectual property.

##### 4.1. SIAST Employee Ownership

When a SIAST employee owns his/her intellectual property, the SIAST employee can

- elect to commercialize it by him/herself,
- request SIAST to commercialize his/her intellectual property, or
- do nothing.

Should the SIAST employee owning intellectual property choose to request SIAST assistance in commercializing his/her intellectual property, the SIAST Office of Applied Research and Innovation will determine within three months of receiving the request whether an investment of SIAST resources in commercialization is warranted. If SIAST declines to invest, the SIAST employee may pursue commercialization alone. If the decision is to proceed, the SIAST employee will be required to make an assignment to SIAST of all rights in and to the intellectual property. Following any such assignment, SIAST will commence commercialization activities and commence obtaining protection of the intellectual property within six months of receipt of the assignment or it will assign the rights back to the SIAST employee. If SIAST fails to make reasonable efforts to commercialize the intellectual property for any six-month period of time, SIAST will assign its rights back to the SIAST employee, if so requested by the employee. If the intellectual property is successfully commercialized, both parties will share the proceeds in a 50/50 ratio after all the costs of commercialization are deducted (for example, cost of patenting).

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## 4.2 Joint Ownership

In the case when the intellectual property is jointly owned by SIAST and a SIAST employee, the parties will enter into an agreement prior to the commencement of commercialization that will govern the commercialization of jointly owned intellectual property. This agreement will ensure each party's legal rights are respected and upheld. The proceeds from the commercialization will be divided per the negotiations noted in Section 3.2. The proceeds will first be used to reimburse the outstanding costs incurred by either party in commercialization of jointly owned intellectual property.

## 4.3 SIAST Ownership

When SIAST owns the intellectual property to works, it is SIAST's intention to commercialize that intellectual property via licensing, company formation or the creation of joint ventures. SIAST will evaluate the intellectual property in terms of technical performance and marketability and based on the evaluation, SIAST will decide whether or not the investment of SIAST resources in commercialization is warranted.

If SIAST deems commercialization is warranted and successfully commercializes its intellectual property, SIAST will share the revenues from the commercialization with the creator of the intellectual property. The revenues generated by SIAST through the commercialization of SIAST owned intellectual property will be equally divided, after the recovery of all the costs, between the SIAST employee that created the intellectual property and SIAST.

The SIAST portion of revenues generated from the commercialization will be used to foster and support research at SIAST. The SIAST portion (50%) will further be equally divided between the SIAST division where the invention was created and Office of Applied Research and Innovation. The division will utilize their portion of the revenues for new research and/or for providing benefits to programs which support research. The funds so received by the Office of Applied Research and Innovation will be used to cover patenting costs and the costs of activities associated to the commercialization of new technologies.

In the case that SIAST elects not to commercialize its intellectual property, SIAST will assign the SIAST owned intellectual property to the SIAST employee that created it, if so requested by the SIAST employee. Such an assignment shall include a provision that SIAST will have the right to receive a 20% share of the income from commercialization realized by the creator.

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