

Students and Intellectual Property

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CASA | ACAE

Canadian Alliance of Student Associations
Alliance canadienne des associations étudiantes

Introduction

The Canadian Alliance of Student Associations (CASA) advocates for post-secondary education (PSE) in Canada to be accessible, affordable, innovative, and of the highest quality. A key aspect of these principles is ensuring that the Canadian post-secondary system properly supports students who wish to develop intellectual property (IP) during their studies.

IP can be defined as the tangible products of research and creative intellect; the fixed expression of ideas including, but not limited to, inventions, compositions, software, music, art, designs, photographs and processes. Students often create IP in the course of their studies and research. Post-secondary institution policies on the ownership of such works are not consistent and are rarely formed with the student's best interests in mind. As Canada continues to invest in innovation, it will be important to have clear rules protecting and promoting the rights of post-secondary students in the creation of IP. There is no doubt that students are the IP creators of the future. It is equally important to recognize that, in many instances, they are the IP creators of today.

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CASA's Position

Students in PSE are important contributors to the innovation economy. IP income reported from Canadian universities in 2008 totaled \$53.2 million,¹ and students undoubtedly played a big part in this. Without students, places like the University of Waterloo would not be as dominant in the global innovation sector as they are now. A structured system supporting and encouraging students' contributions to research and development (R&D) would enhance Canada's commitment to empowering the sciences, facilitating research and achieving the government's pledge to build a world-class innovative economy for the future.

Unfortunately, post-secondary institutions' current IP policies often benefit the institutions at the expense of students, which discourages talented students from developing IP in the first place.

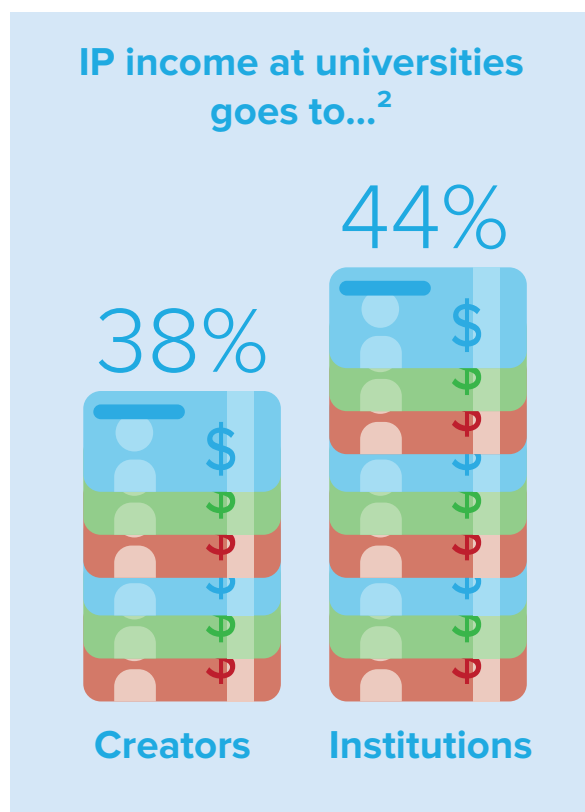
Unfortunately, post-secondary institutions' current IP policies often benefit the institutions at the expense of students, which discourages talented students from developing IP in the first place. From 2001-2003, a period which saw IP income at universities grow by \$3 million, 44% of that income went to institutions while only 38% went to the IP creators.² This data suggests a disincentive for students to seek IP protections and commercialization of their research.

Without clear, structured and consistent IP rules for all PSE institutions, students will continue to be at a disadvantage and/or overlooked.

Even more concerning is the fact that many students do not know their IP rights. Institutions contribute to this uncertainty because current institutional IP policies are unclear and inconsistent across the country. This leaves students at a disadvantage while negotiating and enforcing their rights as creators on projects they have worked on individually or

collaboratively. Per a 2010 review of IP policies at 30 universities in Canada, results displayed a wide array of rules around IP ownership.³ Another study found that only a few of 17 PSE IP policies examined specifically explained the situation and rights of graduate students regarding their research and IP.⁴

Disputes sometimes arise in who owns the IP that emerges from research. Many students engage in original research, while also participating in research as part of their studies, as research assistants, and in collaborative projects. As one study of IP and graduate students explains, "[t]his can create a complex and potentially conflictual situation because principal investigators may not realize that the IP generated in such relationships should



1 *Survey of Intellectual Property Commercialization in the Higher Education Sector* (Statistics Canada, 2008). Accessed online: <http://www.statcan.gc.ca/pub/88-222-x/2010000/aftertoc-aprestdm1-eng.htm>

2 *Survey of Intellectual Property Commercialization in the Higher Education Sector* (Statistics Canada, 2003). Accessed online: <http://www.statcan.gc.ca/daily-quotidien/051103/dq051103b-eng.htm>

3 *May Hen, Intellectual Property at Canadian Universities* (Simon Fraser University: Centre for Policy Research on Science and Technology, January 3, 2010). Accessed online: <http://www.sfu.ca/sfublogs-archive/departments/cprost/uploads/2012/10/IP-Policy-Introduction-January-2010FINALCombined.pdf>

4 Matthew Herder and Kelly Holloway, *Emerging Researchers and Intellectual Property: Law, Policy and Practice* (Canadian Association for Graduate Studies, April 24, 2015), 26. Accessed online: http://www.cags.ca/documents/publications/3rdparty/CAGS_Final%20IP%20Report_HerderHolloway_Apr%20242015_CLEAN.pdf

be shared with the students.”⁵ Furthermore, dispute resolution options surrounding IP ownership tend to favor faculty over students. In fact, some of the processes for resolving disputes do not actively involve students in the process.⁶ It must also be acknowledged that students are not on an equal footing when negotiating IP rights with supervisors, departments or university administrators.⁷ Without clear, structured and consistent IP rules for all PSE institutions, students will continue to be at a disadvantage and/or overlooked.

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A final pressing concern continues to be the lack of up-to-date information on IP and IP policies at PSE institutions. In 2012, the Statistics Canada’s Survey of Intellectual Property Commercialization in the Higher Education Sector was discontinued. This annual survey offered necessary insights into where, why, and how post-secondary institutions were engaging with IP and commercialization efforts. As a result of the survey’s discontinuation, students, policy makers and stakeholders now find themselves struggling to improve the situation without regularly updated and accurate information on this important topic.

5 Martha Crago, “Universities require transparent intellectual property guidelines,” *University Affairs* (March 9, 2016). Accessed online: <http://www.universityaffairs.ca/opinion/from-the-admin-chair/universities-require-transparent-intellectual-property-guidelines/>

6 Matthew Herder and Kelly Holloway, *Emerging Researchers and Intellectual Property: Law, Policy and Practice* (Canadian Association for Graduate Studies, April 24, 2015), 29. Accessed online: http://www.cags.ca/documents/publications/3rdparty/CAGS_Final%20IP%20Report_HerderHolloway_Apr%20242015_CLEAN.pdf

7 Matthew Herder and Kelly Holloway, *Emerging Researchers and Intellectual Property: Law, Policy and Practice* (Canadian Association for Graduate Studies, April 24, 2015), 7. Accessed online: http://www.cags.ca/documents/publications/3rdparty/CAGS_Final%20IP%20Report_HerderHolloway_Apr%20242015_CLEAN.pdf

CASA's Recommendations

Students should be incentivized and supported when seeking to commercialize their research findings. CASA believes that the federal government has a clear role to play by working with the PSE sector to help set policies and processes to ensure that students' IP is protected from commercial exploitation without their active permission. The federal government should insist, as part of agreements pertaining to federal funding in PSE, that PSE institutions respect IP ownership of their students.

CASA recommends:

- » The Federal Government work to ensure that students' IP is protected and that students are fully informed of their intellectual property rights and restrictions, by incentivizing universities through research under the following criteria:
 - » Students should have all rights to any IP they generate, except in circumstances where the institution has paid them to create the specific work in question
 - » PSE institutions must have a fair and effective mechanism in place to resolve disputes over authorship of IP
 - » Assistantships should not reduce the students' claim to ownership of their own IP
 - » Industry partnered assistantships should not reduce a student's claim to ownership of their own IP
 - » PSE institutions must have clear policies regarding the employment of students at partner or spin-off companies
- » The Federal Government bring back Statistics Canada's Survey of Intellectual Property Commercialization in the Higher Education Sector.

Our Members



About CASA

Established in 1995, the Canadian Alliance of Student Associations (CASA) is a non-partisan, not-for-profit national student organization composed of 22 student associations representing 255,000 post-secondary students from coast to coast. CASA advocates for a Canadian post-secondary education system that is accessible, affordable, innovative, and of the highest quality.



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