

# MODULE 3 - STUDENT CREATED INTELLECTUAL PROPERTY ARISING FROM PARTNERSHIP-BASED CURRICULAR ACTIVITIES (For Faculty)



UNIVERSITY OF  
TORONTO

Entrepreneurship



# STUDENT CREATED INTELLECTUAL PROPERTY ARISING FROM PARTNERSHIP-BASED CURRICULAR ACTIVITIES

## LEARNING OBJECTIVES

This training has been created for faculty and staff who are involved in instances where students create intellectual property (IP) in courses and related curricular activities.

After completing this module, you will be able to:

- ✓ Define Ownership and explain basic principles of why it is important to understand IP and Ownership in relation the third-parties
- ✓ Identify five scenarios where students and faculty work with third-party IP, and what agreements and procedures are needed for each scenario
- ✓ Explain the process and protocols for when a student, instructor, and/or department encounters a Non-Disclosure Agreement



# MODULE CONTENTS

1. ENGAGING WITH THIRD PARTIES AND FACULTY/INSTRUCTOR CONSIDERATIONS
2. OWNERSHIP OF INTELLECTUAL PROPERTY DURING PARTNERSHIP-BASED CURRICULAR ACTIVITIES
3. TYPES OF THIRD PARTY AGREEMENTS
4. LESSONS LEARNED
5. UNIVERSITY RESOURCES AND SUPPORTS

# PARTNERSHIP-BASED EXPERIENCES: ENGAGING THIRD PARTIES FOR CURRICULAR ACTIVITIES

Engaging third parties to support curricular activities has the potential to deepen the student learning experience, giving them opportunities to:

- **integrate their disciplinary outcomes** with competency development,
- **learn new skills,**
- understand **professional practices,**
- acquire **new knowledge,** and
- explore how their academic experiences can help them **contribute to the broader community and society.**

It is important to consider the implications for students when they engage with third parties and to understand your role in facilitating agreements with third parties.



# PARTNERSHIP-BASED EXPERIENCES: COMMON CURRICULAR ENGAGEMENTS WITH THIRD PARTIES

## ON CAMPUS

**Third Party Confidential Information** – students receive information in curricular setting from a third-party that cannot be further shared or distributed due to its confidential nature. In this case, students do not interact directly with the third-party.

**Organization-Partnered Project** – a project-based research, design, consultancy, creative or artistic work experience undertaken in partnership with a third-party. Sometimes referred to as a capstone course.

## OFF CAMPUS

**Academic Internships** – students engage in an unpaid work experience as part of a course, the experience integrates academic learning with its application in a workplace. Sometimes referred to as an unpaid placement.

**Professional Practicums** – An unpaid, practice-based experience where students observe or assist a licensed or registered professional through the hands-on application of disciplinary concepts in a professional setting.

**Professional Work Term** – students complete a full-time work experience, on or off-campus, for a minimum of one term as a component of an academic program (e.g., co-op work term). These experiences are typically paid.

# GUIDING CONSIDERATIONS: ENGAGING WITH THIRD PARTIES TO SUPPORT CURRICULAR ACTIVITIES



When planning a curricular collaboration with a third party, it is important the third party understands the purpose of their engagement – **to support teaching and learning**. This should be the basis of any discussion you have with them regarding agreements related to IP and confidential information.



If a third party is seeking exclusive rights to IP or wants to bind the University to lengthy confidentiality obligations, then the third party likely needs to better understand the purpose of the collaboration and, as the instructor, you may need to **consider if the partnership is appropriate and in the best interest of students**.



**Know the University policy.** If you are not 100% sure about the policy, always feel free to reach out to the Innovations & Partnerships Office (IPO) to check.



**Understand timelines and plan ahead.** It is important that you take time in this process to ensure you have the necessary agreements in place before students get started on any project with a third party.



# REVIEW: WHAT IS INTELLECTUAL PROPERTY (IP)?

- IP refers to the creations of the mind. IP is called “property” because rights are acquired with ownership but considered an intangible asset (e.g., product design, raw data and code, designing a new process) as opposed to a physical asset (e.g., building, equipment, cash).
- Under IP law, owners enjoy certain rights to a variety of intangible assets.
- For a detailed explanation of Intellectual Property, you should review [Module 1: Introduction to Intellectual Property and Intellectual Property Rights](#).

# REVIEW: OWNERSHIP AND THE UNIVERSITY'S INVENTIONS POLICY

## DOES THE INVENTIONS POLICY APPLY TO IP CREATED BY STUDENTS AS PART OF THEIR CURRICULAR ACTIVITIES?

Generally, no.

- The Inventions Policy defines “Inventor” as having created an invention using, in any way, facilities owned, operated or administered by the University and/or funds of, or funds administered by, the University.
- IP created by a student in the course of typical classwork tends to be created using U of T resources that are usually and customarily provided (e.g., classroom, dorm, library) and the use of these generally available resources have not been interpreted by U of T as triggering the Invention Policy’s application to IP.
- Therefore, students who develop IP as part of a classwork would not generally meet the definition of “Inventor” for the purposes of the Inventions Policy.
- Student IP created as part of a professional work term (e.g., co-op) would also not fall under the Inventions Policy because neither University facilities nor funds would be generally used to create the IP.

**However**, the Inventions Policy would likely apply if the University is providing students with funds to conduct a project (e.g., a graduate student conducts research in a faculty lab) or if the student enters into an employment contract with the University.





## WHEN STUDENTS CREATE IP DURING A PARTNERSHIP BASED CURRICULAR ACTIVITY, WHO OWNS IT?

When IP is created through curricular activities, there are three possible owners:

- Students
- The Employer / Organization (the third party)
- The University

*\* IP created as part of extra-curricular entrepreneurial activities (e.g., campus accelerator), sponsored research, thesis work, or the Mitacs Accelerate and Elevate Internships are out of scope for this module.*

# WHEN STUDENTS CREATE IP DURING A PARTNERSHIP BASED CURRICULAR ACTIVITY, WHO OWNS IT?

## STUDENTS

**When students create IP as part of academic course work at the University, the student will generally own the IP.**

This includes IP created as part of the course where a third party (e.g., an organization external to the University) has collaborated with the course instructor to provide a real-world problem for the students in the course to solve (e.g., organization partnered project). However, third parties may request a student grant limited non-exclusive rights to IP developed by the student to the third party.

## THIRD PARTY

**When students create IP during a professional work term (e.g., co-op term), the third party (their employer) will own any IP that is created.**

When students are on a professional work term (e.g., co-op term), they are employed by a third party and the students will be asked to sign an employment contract. Employment contracts typically cover details of IP ownership and confidentiality.

## UNIVERSITY

**Only in certain cases does the University have rights to IP developed by students and this is rarely connected to curricular activities.**

If students are being paid by the University, are accessing University resources and / or if they have an employment contract with the University, then the [Inventions](#) and [Copyright](#) policies of the University apply. This should be addressed in the employment contract or discussed with the student's supervisor.

**NOTE: Where there may be new and novel IP created through curricular partnership-based experiences, including academic internships, it is important for you to understand that you may not own the IP. Always ensure you have clarity prior to engaging in a partnership-based activity where new and novel IP may be created.**

# REVIEW: NON-DISCLOSURE AGREEMENTS (NDAS)

Third parties will sometimes request a non-disclosure agreement to protect their confidential information.

As a general definition, **non-disclosure agreements (NDAs)**, also known as confidentiality agreements, are legally enforceable agreements that can be used to protect the confidentiality of an invention. That includes preventing the receiving party from disclosing confidential information about the invention to others or use of the confidential information for a purpose other than one agreed upon in the NDA.

## Remember:

- **Be sure an NDA is necessary before agreeing to one:** NDAs can limit the free exchange of ideas and hinder student collaboration and discussion. The University NDA templates restrict disclosure of trade secrets for the same reason. Please review the University's [NDA template package](#) to help you determine whether accepting confidential information as part of a course is appropriate.
- **Students and instructors do not sign NDAs in curricular settings:** the academic unit head approves and signs the NDA, students in the course may sign a form acknowledging an NDA was signed on their behalf and that they will comply with the terms of the NDA.

# GUIDING CONSIDERATIONS: ENGAGING WITH THIRD PARTIES TO SUPPORT CURRICULAR ACTIVITIES

**Students own the Intellectual Property (IP) they develop during an academic course.**  
They own their papers, their projects and their thesis.

However, there are situations when students and faculty engage third parties (organizations, employers and peoples external to the University) during a curricular activity. These Partnership-Based Experiences necessitate considerations related to IP and confidential information.

When collaborating with third-parties for curricular activities, it is important to **understand the implications for students with respect to ownership of intellectual property and confidentiality requirements.**

In all cases, students are not required to enter into legally binding agreements with third parties in order to take an academic course.

# PROCESS: THIRD PARTY CONFIDENTIAL INFORMATION IN A COURSE

Students receive information in curricular setting from a third party that cannot be further shared or distributed due to its confidential nature. In this case, students do not interact directly with the third-party.

<b>Paid or Unpaid</b>	Unpaid
<b>Agreement</b>	None required unless the third party requires a non-disclosure agreement to be entered into prior to disclosing the information.
<b>Signatory</b>	If there is an agreement required by the third party, then the signatory would be the head of the academic unit and not the instructor.
<b>Non-Disclosure Agreements (NDA)</b>	<p>NDAs are not required.</p> <p>However, with more frequency, third parties are only willing to disclose proprietary information to the instructor and a classroom of students if there is a contract in place to ensure that the confidential information is not further disclosed. If you, as the course instructor, determine that working with this confidential information is beneficial to the enrolled students <b>and the third party has requested the use of a NDA</b>, the University's <a href="#">NDA Template Memorandum</a> and <a href="#">NDA package</a> provides detailed instructions.</p>
<b>Intellectual Property (IP) Considerations</b>	Students own their course work. Third parties should be provided with information on the University IP landscape including why students owning their IP is essential to their academic progression.

**Remember that any agreements with the third party would need to be signed by the head of your academic unit and that neither students nor course instructors sign these agreements.**

# CHECK FOR UNDERSTANDING

## THIRD PARTY CONFIDENTIAL INFORMATION

SCENARIO: A third party requests that students and the instructor sign an NDA written by the third party before sharing their data set to be used for a class project.

**Q: Should the instructor and students sign the agreement?**

**A: NO.** Instructors do not sign NDAs with third parties because faculty/instructors do not have signing authority to bind U of T. Students would also not sign agreement directly with third parties.

Conceptually, students should not be required to assume personal legal liability in order to earn an academic credit. If the organization strongly requests an NDA, instructors can use the [NDA template agreement](#) and have their unit-head sign. They may also request that students sign a confidentiality agreement with them (the instructor).

# PROCESS: ORGANIZATION-PARTNERED PROJECT

A project-based research, design, consultancy, creative or artistic work experience undertaken in partnership with a third party. Sometimes referred to as a Capstone Course or Project.

<b>Paid or Unpaid</b>	Unpaid
<b>Agreement</b>	Not required unless a third party requires an agreement to document the scope of the project, use of confidential information and sharing of outcomes with the third party.
<b>Signatory</b>	Not required unless the third party requires a contract. The terms of the contract will vary depending on the course/nature of the project.
<b>Non-Disclosure Agreements (NDA)</b>	<p>NDA's are not required.</p> <p>However, with more frequency, third parties are only willing to disclose proprietary information to the instructor and a classroom of students if there is a contract in place to ensure that the confidential information is not further disclosed. If you, as the course instructor, determine that working with this confidential information is beneficial to the enrolled students <b>and the third party has requested the use of a NDA</b>, the University's <a href="#">NDA Template Memorandum</a> and <a href="#">NDA package</a> provides detailed instructions.</p>
<b>Intellectual Property (IP) Considerations</b>	<p>Students own their course work. Third parties should be provided with information on the University IP landscape including why students owning their IP is essential to their academic progression.</p> <p>Some third parties may insist on the right to use on a non-exclusive basis (but not necessarily own) the IP developed by the students through organization-partnered projects. If the academic-unit head approves of this arrangement, please consult with your academic unit head to access legal support to ensure appropriate language can be included into a contract.</p>

Remember that any agreements with the third party would need to be signed by the head of your academic unit and that neither students nor course instructors sign these agreements.

# CHECK FOR UNDERSTANDING

## ORGANIZATION-PARTNERED PROJECT

**SCENARIO:** As an instructor, you assign your students an organization-partnered project with a software company. For the project, the software company shares some of its valuable original software code and asks the students to design a method to improve on the data processes.

In order to complete the assigned project, the students develop some intellectual property including outlining a novel design process in the report the students submit to you and the company.

**Q: Who owns the new designs? Does the University own the IP for the design the students made?**

**A:** Subject to an agreement with the software company and/or University policies, whoever developed the IP owns the IP. The University did not develop the IP, so it would not own the IP, unless University funds or resources were used to design or test the method. For example, if the students used servers or supercomputers at the University to test the method or new code, the University would have joint rights to the IP. Likewise, if the students and the software company jointly created IP, the IP would be jointly owned between the students and the software company.



# PROCESS: ACADEMIC INTERNSHIPS

Students engage in an unpaid work experience as part of a course, the experience integrates academic learning with its application in a workplace. Sometimes referred to as an unpaid placement.

<b>Paid or Unpaid</b>	Unpaid
<b>Agreement</b>	U of T's Student Placement Agreement (template available through the <a href="#">Student Placement Portal</a> )
<b>Signatory</b>	Divisional (i.e., the head of the academic unit, typically a Chair or Dean)
<b>Non-Disclosure Agreements (NDA)</b>	The Unpaid Student Placement Agreement includes language about confidential information. If a third party requests additional non-disclosure language included in the agreement, the academic unit head would need to be consulted for approval and referral to the University's legal counsel.
<b>Intellectual Property (IP) Considerations</b>	Students generally do not own their IP developed while on placement because they are being directed to create certain deliverables by the placement site and using site resources to do so. However, each placement site is different as is the scope of the student's work and the likelihood that the student will create new and novel IP. Where there may be new and novel IP created, it is important for the student to understand this and, if they do not want the site to own the IP, to consider a different placement opportunity.

**Remember that any agreements with the third party would need to be signed by the head of your academic unit and that neither students nor course instructors sign these agreements.**

# CHECK FOR UNDERSTANDING

## ACADEMIC INTERNSHIPS

**SCENARIO:** A student is participating in an academic internship at an architecture firm, a project the student is contributing to is being led by a professional architect. As part of the project team, the student develops an app that allows the architecture firm to share design images with their clients via mobile devices.

**Q: The student believes this app is marketable and wants to share it with other architecture firms who might be interested in paying the student to implement it for their business. Does the student own this invention and can they market it to other organizations?**

**A:** While participating in an academic internship, students generally would not own the IP they create because they are generally required to agree to the terms / policies of the placement site itself. Therefore, unless there is an agreement in place that states otherwise, the IP developed is owned by the architecture firm where the student was placed for their academic internship. This being the case, the student is not able to claim the invention as their own and would not be able to market it to other organizations.

# PROCESS: PROFESSIONAL PRACTICUMS

An unpaid, practice-based experience where students observe or assist a licensed or registered professional through the hands-on application of disciplinary concepts in a professional setting.

<b>Paid or Unpaid</b>	Unpaid
<b>Agreement</b>	U of T Student Placement Agreement (template available through the <a href="#">Student Placement Portal</a> )
<b>Signatory</b>	Divisional (i.e., the head of the academic unit, typically a Chair or Dean)
<b>Non-Disclosure Agreements (NDA)</b>	The Unpaid Student Placement Agreement includes language about confidential information. If a third-party requests additional non-disclosure language included in the agreement, the academic unit head would need to be consulted for approval and referral to the University's legal counsel.
<b>Intellectual Property (IP) Considerations</b>	Silent on IP because it is not anticipated that any will be created. The purpose of practicum is to gain experience in a professional setting and students do not have an independent workload / caseload while on a practicum.

**Remember that any agreements with the third party would need to be signed by the head of your academic unit and that neither students nor course instructors sign these agreements.**

# CHECK FOR UNDERSTANDING

## PROFESSIONAL PRACTICUMS

SCENARIO: A student is participating in professional practicum at a physiotherapy clinic, the student is engaging with clients while supervised by a licensed physiotherapist.

**Q: The student wants to discuss a client's case as part of their upcoming class project. Is the student allowed to do so without agreement from the third-party?**

**A:** No. The student's knowledge of the client's case would be considered confidential information and, therefore, the student would not be able to discuss the details of the case.

# PROCESS: PROFESSIONAL WORK TERM (CO-OP)

Students complete a full-time work experience, on or off-campus, for a minimum of one term as a component of an academic program (e.g., co-op work term). These experiences are typically paid.

<b>Paid or Unpaid</b>	Paid
<b>Agreement</b>	Employment agreement
<b>Signatory</b>	Student / Third Party (employer)
<b>Non-Disclosure Agreements (NDA)</b>	Details related to confidential information should be clearly laid out in a student's employment contract.
<b>Intellectual Property (IP) Considerations</b>	While on a professional work term, students are bound by the rules and policies of their employer which usually means that the third-party (their employer) owns any IP created. A student would need to negotiate directly with their employer if they wanted to adjust their employment contract.

**Remember that instructors do not have to vet employment contracts for students who are participating in a Professional Work Term. The contract is between the student and the third party.**

# CHECK FOR UNDERSTANDING

## PROFESSIONAL WORK TERM

**SCENARIO:** A student on a professional work term (e.g., co-op term) at a software company develops a new method of processing using the company's code.

The student's supervisor at the software company advises the student that the software company will be using the student's new method of analysis and does not need their permission to do so.

**Q: Can the organization use the student's work without permission?**

**A:** Probably, yes. While a student is on a professional work term, they are bound by the rules and policies of the software company's employment contract. This usually means that the company owns any IP created. For example, if the student created the new method while using the software company's computer, the site's policy likely states that the site owns the IP. The student should be encouraged to review their employment agreement to understand both IP implications and expectations related to confidentiality.

# LESSONS LEARNED: CURRICULAR PARTNERSHIP-BASED EXPERIENCES

- Curricular partnership-based experiences should be designed to support **teaching and learning**. This should be the basis of any discussion you have with a third party regarding agreements related to IP and confidential information.
- **Instructors do not have binding authority for the University** and should never sign an agreement with a third party. Agreements must be signed by the head of an academic unit, as laid out in your academic division's contract execution guidelines.
- **Students are never required to enter into a legally binding agreement** with a third party in order to take an academic course.
- Be sure students engaging with a third party for curricular experiences **understand the IP implications and confidentiality expectations** prior to them engaging with the third party.
- If you are uncertain about how to proceed when engaging a third party for a curricular Partnership-Based Experience, **reach out to your academic unit head or the IPO for support**.

# WHEN ELSE MIGHT I ENCOUNTER IP CONSIDERATIONS RELATED TO THIRD PARTIES?

IP considerations also arise in situations that are not curricular in nature. While these are beyond the scope of this module, we wanted to ensure you knew where to go to learn more:

- IP created as part of extra-curricular entrepreneurial activities (e.g., campus accelerators) is covered in more detail in [U of T Entrepreneurship's IP Education Program](#).
- IP created in the course of research is covered on the [Division of the Vice-President, Research & Innovation's website](#) where you will find information about ownership rights in intellectual property created during research.
- IP created during a [Mitacs Elevate or Accelerate Internship](#) while on the University's premises or from the use of the University's background IP is subject to the University's policies and inventions should be [disclosed to the University](#). IP created during a [Mitacs Elevate or Accelerate Internship](#) while on the third party's premises or using the third party's background IP, the third party's IP policies will apply. If the third party has concerns about the University's policies, [contact the Innovations & Partnerships Office \(IPO\)](#) who can negotiate an agreement with the third party to ensure a clear understanding of each party's rights and obligations. In the absence of such an agreement, the University's policies apply.



# UNIVERSITY RESOURCES AND SUPPORTS

## Where do I go for additional support and information?

- For information on the University's Inventions Policy and assigning IP, visit the [Innovations & Partnership Office \(IPO\)](#).
- For information on curricular unpaid student placements (e.g., Academic Internships), visit the [Student Placements](#) page facilitated by the Office of the Vice-Provost, Students.
- For information on non-disclosure agreements, visit the [Experiential Learning Hub](#).
- For information related to extra-curricular entrepreneurial activities (e.g., campus accelerators), check out the [U of T Entrepreneurship's IP Education Program](#).
- For information related to sponsored research, visit the [VPRI site](#).
- For information related to the Mitacs Elevate or Accelerate internships, visit the [Mitacs website](#).

**END OF PRESENTATION**



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