

Administrative
Regulation No.
1043

Classification:
General

Effective Date:
December 3, 2014

Intellectual Property including Copyright

1 | Purpose

The purpose of this Administrative Regulation is:

- To provide clarity and guidelines regarding the creation, use and sharing of Intellectual Property as a basic component of education.
- To outline the rights and obligations of creators and the CBE with respect to Intellectual Property, including copyright.
- To clarify the expectations and responsibilities of CBE employees, and students with respect to Intellectual Property developed or created in the course of carrying out their duties or studies with CBE.

2 | Scope

This Administrative Regulation applies to:

- All CBE employees,
- All CBE students, and
- Those individuals, corporations or other entities contracted by CBE to provide services to CBE.

This does not apply to not for profit sharing of Works developed by CBE employees or CBE students in the course of their employment or studies.

3 | Compliance

All CBE employees are responsible for knowing, understanding and complying with this Administrative Regulation.

4 | Principles

The following principles apply:

- CBE is an institution dedicated to the pursuit and development of knowledge, skills and competencies.
- CBE seeks to encourage a stimulating educational environment.
- CBE supports and recognizes the creativity and entrepreneurial spirit and contributions of its employees and students.
- CBE supports the development and sharing of Works that align with its values and Three-Year Education Plan.
- CBE believes the creation or invention of Works will add value to and enhance learning by students.
- CBE values the sharing of Works by employees and students within specified limits and subject to specified terms.
- CBE practices are guided by the current CBE regulations and applicable legislation regarding Copyright and other Intellectual Property.



5 | Definitions

CBE: means The Calgary Board of Education.

Copyright: means the ownership of an original Work (including traditional or digital forms of literary, artistic, musical, photographic, or dramatic Works) that is fixed in a tangible form and that gives the owner the exclusive right to reproduce, modify, distribute and display the Work, subject to certain exceptions such as Fair Dealing.

Creator: means the individual or individuals who create and originate a Work or invention.

Disclosure: means the sharing of certain information concerning the Work, with CBE by its employees or other third parties.

Fair Dealing: means the limited non-commercial copying of a Work that is otherwise subject to Copyright, in accordance with the Guidelines established by the Canadian Copyright Modernization Act.

Intellectual Property: means intangible rights protecting creations, inventions and other products of human intellect including, but not limited to, Copyrights, Trade-marks and patent rights in inventions.

Moral Rights: means rights protecting the Work from changes that may affect the creator's reputation and rights that allow the creator to claim "authorship" of the Work and prevent use of his or her name in reference to a modified version of the Work.

Publish: means to produce a resource for commercial sale or distribution

Student: means an individual enrolled in a CBE school, program or course.

Title: means the legal ownership of a Work.

Trade-mark: means a word, phrase, logo or symbol used to distinguish a product or entity.

Work: means any original creation or new invention.

6 | Regulation Statement

Ownership

- 1) With the exception of students' work, the CBE owns the Intellectual Property rights in:
 - a) any Work created or invented by CBE employees in the course of their employment, work or training with the CBE (subject to the terms of any applicable agreement);

- b) any Work commissioned by the CBE with employees that are created/invented using CBE funds, facilities, materials or resources including such work carried out by a CBE contracted third party, (subject to the terms of the contract); and
 - c) any contracts entered into by CBE with external service providers or any other third party (subject to the terms of the contract).
- 2) Moral Rights in the Works shall be waived, in writing, by the external service provider's applicable personnel.
 - 3) The external service provider shall be obligated to CBE in the contract to obtain waivers of Moral Rights from its personnel.
 - 4) Any CBE employee who creates or invents a Work whose ownership and Intellectual Property rights reside with CBE shall waive his or her Moral Rights by signing the Waiver of Moral Rights form.
 - 5) Without a waiver of Moral Rights by the creator of the Work, the distribution, commercial use or modification of the Work by or through CBE may be materially limited or prevented.
 - 6) Despite a waiver of Moral Rights, the name of the creator/inventor will be displayed or referred to in the Work if the Work is owned or the Intellectual Property rights therein reside with CBE.
 - 7) Section 6 does not apply to personnel of contracted service providers.
 - 8) Exceptions to ownership must be discussed in advance with the CBE Legal Services.
 - 9) An external service provider who creates or invents a Work that the service provider did not
 - (i) create, invent or customize for CBE;
 - (ii) create or invent using CBE funds, facilities, resources or materials; and/or
 - (iii) create or invent during and as part of the provision of the contracted services to CBE,

shall continue to be the exclusive owner of that Work and all Intellectual Property rights in that Work shall vest in the service provider.

- 10) A CBE employee who creates or invents a Work outside the employment responsibilities with CBE shall be the owner of the Work and hold the Intellectual Property rights in the Work, unless the Work was created or invented using CBE funds, facilities, resources or materials
- Disclosure**
- 11) If a CBE employee creates or invents a Work during the course of his or her employment responsibilities with the CBE or using CBE funds, resources, facilities or materials he or she shall disclose the fact as soon as possible to his or her supervisor by completing the appropriate Disclosure form.
- 12) Upon receipt of the Disclosure form, the service unit responsible for the applicable employee shall enter into discussions with the employee to develop a written agreement between the CBE and the employee, including:
- a) revenue sharing if licensing, sales or other commercialization of the Work is anticipated; and
 - b) the right to publish for profit or otherwise disclose the Work created or invented in whole or part by the employee.
- 13) If a Work of pedagogical nature is created/invented not in the course of employment or work with the CBE and not using CBE resources, facilities, funding or materials:
- a) the employee, at his or her option, may choose to sign and deliver a Disclosure notice; and
 - b) the employee, at his or her option, may choose to license to CBE (and its employees and staff) on a perpetual, royalty free, non-exclusive and non-transferable basis, the right to use the work for teaching or research purposes but not for commercial purposes.
- 14) Any such teaching or research use shall include notice in the Work attributing Title and applicable Intellectual Property rights in the Work to the employee by using the appropriate CBE license agreement form.
- Students**
- 15) Students hold exclusive Title to and Intellectual Property rights in original Works created or invented by them, whether or not created or invented in the course of CBE studies and whether or not using CBE resources, funding, facilities or materials.
- 16) Recording and publishing by CBE employees and staff of

student Work must comply with relevant CBE Administrative Regulations addressing publishing student Work, and all appropriate consent forms must be signed.

- 17) Submission by a student to a CBE teacher/instructor of any student work related to the course of study shall be considered to include the student's permission to the teacher/instructor to photocopy the materials for his or her future instructional and/or assessment use.
- 18) Unclaimed student work will be retained by CBE personnel for a maximum of 30 days after the return date, after which it will be disposed of as determined by CBE personnel.
- Dispute** 19) In the case of a dispute, or a conflict of interest regarding an Intellectual Property matter, including between the creator and his or her supervisor or his or her parent, if the creator is a minor, that cannot be resolved expeditiously, then a party to the dispute shall refer the matter to:
- a) the appropriate Director, who may facilitate further discussion in attempting to resolve the dispute, failing which:
 - b) the matter may be referred further to the appropriate Superintendent, who may facilitate and assist in a dispute resolution; and
 - c) if neither party is satisfied with the resolution, either party may refer the matter to the Office of the Chief Superintendent for review and determination.
- 20) The results of any decision shall be made in writing and delivered to the creator and the supervisor.
- Use of non-CBE Copyright Materials** 21) CBE employees may copy and distribute copies of published Works for educational study, research or review, or non-commercial purposes based on the principles of "Fair Dealing" which includes:
- i. making slides, overheads, LCD projections,
 - ii. microfiching/microfilming, scanning, saving, and
 - iii. posting materials to a secure network.
- 22) Reproduction and distribution right is limited to no more than 10% of a published work with the following exceptions:
- i. an entire newspaper article or page,
 - ii. an entire poem,
 - iii. an entire entry from an encyclopedia/dictionary,

- iv. an entire copy of an artistic work / photograph / print / sculpture or one chapter (consisting of no more than 20% of a book).
- 23) Any requirement for excess reproduction and distribution requires the prior consent of the creator or publisher.
 - 24) To the extent possible, copies made should include a credit to the creator.
 - 25) Use and display of Copyrighted audio-visual materials for non-educational purposes requires payment of public performance fees.

7 | History

DATES	
Revised (new title)	November 2014
Re-issued	February 15, 2003
Approved (as Copyright)	September 18, 1978
Next Review	January 2018

8 | Related Information

- CBE AR 1064 Recording and Publishing Student Images and Work
- *Copyright Modernization Act (Canada)*
- CBE Disclosure form (under development)
- CBE Waiver form (under development)
- CBE license agreement form (under development)