

# INTELLECTUAL PROPERTY AND YOU

Are you considering selling something you created? Sharing it? Are you concerned about how something you created is being used by your school division? This document provides basic information on intellectual property, in particular ownership and use of materials. Each case is unique. If you have questions, call the STF to discuss your situation.

Intellectual property refers to any product created and expressed by the human mind and may include, but is not limited to, invention and artistic, literary, musical or dramatic works.<sup>1</sup>

The type of intellectual property most relevant to PreK to 12 education is **Copyright**. Copyright is governed by the *Copyright Act*.

1 STF Policy (Intellectual Property)

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When it comes to teachers' intellectual property, each case is unique. If you have questions, call the STF to discuss your situation.

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## WHO OWNS THE COPYRIGHT OF MATERIALS YOU CREATE UNDER CONTRACT OF EMPLOYMENT?

The school board, as your employer, has sole ownership of the materials you produce when **all three** of the following conditions have been met:

- ✓ You have an employment contract with the school board.
- ✓ You create the material in course of your employment.
- ✓ There is no agreement between you and the school board to the contrary.

**Course of employment** extends beyond the four walls of your school and regular work hours. It can extend copyright ownership to materials that you create at any time that fall within your regular duties during the school day.

The owner of the copyright in a work has the exclusive right to sell and profit from that work. Nobody else can do so without the owner's authorization or where exceptions apply.



The school board may own works that were developed at home and without your employer's resources.

## CAN YOU SHARE OR SELL MATERIAL THAT YOU CREATE WHILE UNDER CONTRACT?

Teachers believe that the lawful sharing of intellectual property at a colleague's request supports the development of effective professional relationships and individual teacher competence.<sup>1</sup> However, you should be clear about personal ownership of materials before sharing or selling them.

### ALSO, GOOD TO KNOW...

#### Can you use, share or sell content that includes copyright owned by others?

When creating classroom materials, it may be okay to include works where copyright is owned by someone else; however, you must ensure that all copyright laws are followed when using, sharing or selling materials that include the intellectual property of others. **It is your responsibility to ensure that materials you create do not infringe on the copyright or trademark rights of others.**

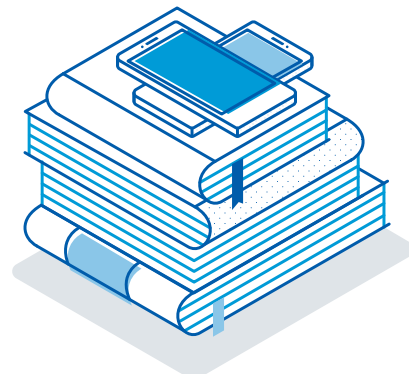
#### Are there privacy considerations?

When using, sharing or selling material, consider what personal information is involved and follow relevant privacy laws and school division policies.

For example, regardless of ownership, **any material that may identify students cannot be shared** without consent from the student or parent.<sup>2</sup>

- 1 as per STF Policy (Intellectual Property)
- 2 Local Authority Freedom of Information and Protection of Privacy (LAFOIP), s 28.1).

Teachers cannot sell materials that they do not own.



## DO YOU HAVE OTHER INTELLECTUAL PROPERTY RIGHTS?

Although you may not retain copyright in the materials you create as an employee, you may retain **moral rights**. This includes the right to be listed as the author of the work by name or by pseudonym, or to remain anonymous. Material for which you retain moral rights may not be (i) modified, or (ii) used in association with a product, service, cause, or institution – in a way that damages your reputation.<sup>3</sup>

## IN CONCLUSION

The *Copyright Act* describes ownership by the creator of the materials (i.e., you) and by the employer (i.e., your school board); provisions for sharing, selling and using materials; and moral rights retained by the creator. In addition to the *Copyright Act*, the intellectual property of materials you create may be impacted by other legislation and regulations, your contract of employment, as well as your provincial and local collective bargaining agreements. Each situation must be determined on a case-by-case basis. **If you have questions, call the STF to discuss your situation.**

- 3 *Copyright Act*, sections 14.1(1) and 28.2(1)

This document is not intended as legal advice. If you have questions about ownership of your works or your rights, you may want to consult with a lawyer.



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