

# Intellectual Property Regulations

## Definition of Intellectual Property

1 "Intellectual Property" includes patents, copyright, design right, registered designs, trade marks and service marks, and all similar property rights (whether registered or not) including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semiconductor topographies, plant varieties, confidential information, business names, goodwill and the style of presentation of goods or services and in applications for protection thereof.

## Preamble

2 It is the policy of the University that wherever possible and practicable Intellectual Property which arises in the course of work undertaken by staff or students of the University ("University Intellectual Property") should be exploited for the benefit of users and for the generation of revenue for the University and the individuals involved.

To that end:

- (1) the University will make provisions to identify and protect by patents and by other appropriate means University Intellectual Property which has a realistic potential for exploitation;
- (2) the University will seek, where it is practicable to do so, to retain ownership of the rights in University Intellectual Property;
- (3) the University will make agreements with originators of Intellectual Property to allocate to them and to their Schools a share of any revenue which may arise from exploitation of University Intellectual Property;
- (4) the University will seek to arrange for the exploitation of University Intellectual Property by licensing or by other means and will make arrangements to seek any necessary professional advice;
- (5) the University will encourage the negotiation with user organisations of appropriate contracts to develop University Intellectual Property to the point where it may be exploited;
- (6) the University will facilitate the establishment of spin-out companies to exploit University Intellectual Property by means of suitable licensing arrangements and by the provision of initial advice on procedures to be followed.

## University's ownership claims: staff

3 Subject to the qualifications below the University asserts its right to ownership of Intellectual Property generated by staff in the course of their employment in accordance with the provisions of the Patents Act 1977 and the Copyright, Designs and Patents Act 1988, which state respectively that ownership vests in the employing organisation when (and only when):

- an invention is made in the course of an employee's normal or specifically assigned duties;
- a 'work' [i.e. anything that is the subject of copyright protection, including computer software] is made by an employee in the course of his employment, subject to any agreement to the contrary.

4 The University's ownership rights shall be subject to the terms and conditions of any research contract or materials transfer agreement relevant to the IPR concerned. The University will seek to retain rights where it can and to minimise the ownership and usage rights of commissioning bodies, except where appropriate payment is made for those rights. Ownership should be reflected in the price charged for the research project concerned.

5 In accordance with normal academic practice, and unless agreed otherwise, the University does not assert its right to ownership of copyright in scholarly output produced by staff or students in the course of their employment or research work or in the course of studies at the University. Scholarly output shall include the following and other closely similar material:

- (1) personal lecture notes;
- (2) books, articles;
- (3) seminar papers;
- (4) theses, essays;
- (5) course materials produced for issue to internal students;
- (6) examination papers, questions, assignments;
- (7) examination responses in any form, including essays, scripts, designs, computer software, tape recordings.

In the case of (5) above, the University shall retain the right at any time to use, reproduce and adapt such materials freely for legitimate purposes.

In the case of (4), (5), (6) and (7) above, the University shall retain ownership (as distinct from copyright) of the materials themselves in accordance with the Regulations and for legitimate purposes.

6 Computer software shall be treated for the purposes of these regulations in the same way as patentable inventions.

7 The exception described in Regulation 5 above shall not apply to course materials produced for distance-learning (i.e. for courses, modules or programmes designed to be delivered predominantly to candidates studying at a distance from the University) or courses prepared for third parties or in cases where the author has been specifically assigned duties in order to produce the output. In these circumstances the University must be in a position freely to use the material for legitimate teaching purposes and to prevent its unauthorised use by third parties. Where the background research underpinning the course materials has also contributed to the production of scholarly output, as described in Regulation 5, the author shall discuss the copyright position with the

University to ensure that there is no conflict of interest. The University undertakes to protect the integrity of the material in which it claims copyright by reasonable consultation with the individual member(s) of staff about changes to such material.

8 If members of staff write distance learning materials which do not relate to their area of academic activity, or are not produced in the course of their employment by the University, or relate to courses which are not delivered in the University's name, they should discuss the copyright position with the University at an early stage.

9 The University may at any time assign its rights to third parties e.g. sponsors of research, commercial or otherwise, employers of placement students, teaching company schemes.

#### **University's ownership claims: students**

10 The University claims ownership of all Intellectual Property arising from work which is undertaken by students in the course of their studies, or utilising University space or facilities, or developed under a contract between themselves and the University or between the University and a third party (or third parties), or in carrying out or assisting in a programme of research, subject to the exceptions listed in Regulation 5 above. Where a University employee is concurrently registered as a student, the employee status shall take precedence for the purposes of these Regulations. The use of facilities offered by the Research, Enterprise and Engagement Office in supporting entrants for the Business Plan Competition shall not count as "use of University facilities" for these purposes, though other use of the Research, Enterprise and Engagement Office, including use of support after the competition, shall so count. Students studying at other institutions for awards which are validated or accredited by the University, or in the Institute of Food Research and the John Innes Centre, shall be exempt from the University's ownership claims; but students studying on franchised programmes elsewhere shall not be so exempt.

#### **Obligations to disclose inventions, etc and to maintain confidentiality**

11 A member of staff or a student ("Originator") who creates Intellectual Property which appears to be capable of commercial exploitation and which is covered by the University's ownership claims above shall report its existence at the earliest opportunity to the Head of the School and to the Research, Enterprise and Engagement Office via a Commercial Opportunity Disclosure form (available from the Research, Enterprise and Engagement Office). The document shall include the relevant details of how the Intellectual Property was created, who else was concerned in its creation and what equipment, materials and funding were used.

12 Unless otherwise agreed with the University, the Originator shall observe strict confidence in relation to such Intellectual Property in order not to jeopardise the validity of any form of protection which might be sought. The need for prompt academic publication shall be weighed carefully in any decision about protecting the Intellectual Property and unnecessary delay in publication

should be avoided. Originators should be aware that publication in academic journals, posters or conference presentations may inhibit the ability of the University to obtain Intellectual Property protection.

13 The Originator and the Research, Enterprise and Engagement Office (in consultation with the Head of School and the Pro-Vice-Chancellor, (Research and Knowledge Transfer) when appropriate) shall determine as quickly as reasonably possible whether and how the Intellectual Property might be protected and exploited. A decision shall normally be made within three months of the initial contact and a period of longer than three months shall be allowed only by mutual agreement between the Originator, the Head of School and the Director of the Research, Enterprise and Engagement Office.

14 The Originator shall co-operate with the University in applying for patent or other protection and in entering into any appropriate arrangements for protecting the secrecy of the Intellectual Property. He or she shall be required to collaborate with the University in the exploitation of the Intellectual Property.

**University's obligations to take appropriate action or to permit the originator to do so instead**

15 The University shall use all reasonable endeavours to exploit and protect Intellectual Property generated by its staff and students, and in which the University has an interest, subject to adequate resources.

16 If the University decides not to proceed with the protection and exploitation of any piece of Intellectual Property reported to it under these arrangements, the Originator shall have the right to undertake such protection and exploitation him or herself, requesting the assignment of ownership of the rights in the Intellectual Property to him or herself on reasonable terms which shall include a reasonable return to the University.

**Revenue-sharing arrangements**

17 If revenue arises from the exploitation of intellectual property through licensing, option or other similar agreements, any net benefit received by the University, after deduction of agreed costs, will be shared between the inventor, his or her School, and the University as stated below:

<i>Net income</i>	<i>Distribution</i>
First £2000	100% to Originators
Next £3000	90% to Originators, 5% School, 5% University
Next 30,000	70% to Originators, 15% School, 15% University
Next £65,000	50% to Originators, 25% School, 25% University
Next £1,900,000	33.3% to Originators, 33.3% School, 33.3% University
Beyond £2,000,000	By negotiation in the individual circumstances.

18 By way of example, the agreed costs that would be deducted (prior to the distribution of any remaining sum in accordance with Regulation 17 above) would normally include the receipted costs of any external legal, technical and

commercial advice, patent fees, expenses, and any past or future commitment of internal resources specifically used for commercialisation of the intellectual property. Such costs may also include the cost of any independent audit of deductible costs requested by the Originator.

This clarification shall be effective for all new commercialisation projects, but shall not retrospectively alter or reinterpret any clear arrangements that relate to existing commercialisation cases.

19 Where there is more than one Originator, the Originators shall agree amongst themselves on the apportionment of the Originators' share amongst them. The apportionment shall be confirmed by the Head of the School and there shall be procedures for the settlement of disputes amongst Originators, initially by reference to the Pro-Vice-Chancellor for Research and Knowledge Transfer and finally by appeal to the Vice-Chancellor.

### **Equity and Spin-Out Companies**

*The permission of the University of Bristol to reproduce parts of its regulations for spin-out companies is hereby gratefully acknowledged*

20 Where the circumstances suggest that it is a suitable way forward, the University encourages the setting up of a new company ("a Spin-out company") to implement the commercial development and exploitation of University Intellectual Property.

21 The University shall require an equity stake in every Spin-out company, in consideration for the licensing or vesting of Intellectual Property and for facilitating the company's formation.

22 Members of staff shall require authorisation from the University before setting up a Spin-out company and also before becoming an officer (director or secretary) of a Spin-out company. As part of the authorisation process, they must consult the Director of Finance. UEA Enterprises Ltd, a company wholly owned by the University to manage commercial exploitation activities, will be the vehicle used to own and control the UEA stake in a spin-out (see below). The interests of the University, the individuals and the Spin-out company must all be considered, and legal issues must be addressed. Issues to be considered by the University include:

- (1) the impact on existing and future duties of members of staff;
- (2) the use of University Intellectual Property;
- (3) the use of University resources, such as space and equipment.

23 The University shall retain the right to appoint a director or have observer status at board meetings; at the Spin-out company's request and expense, the University may provide a director.

24 No full-time University employee may also be an employee of a Spin-out company.

25 Subject to University regulations and codes of conduct, members of the academic staff may:

- (1) own shares or share options in a Spin-out company;
- (2) act as directors of a Spin-out company;
- (3) act as paid consultants to a Spin-out company.

26 No member of the administrative staff of the University in a position to influence the relationship between the University and a Spin-out company may own shares or share options in a Spin-out company; nor act as a director of a Spin-out company, except as the University's nominee.

27 The proportion of shares in any Spin-out company to be owned by the University and by an Originator shall be determined by negotiation in the light of the circumstances of company formation.

28 Where any net revenue arises for the University from the activity or sale of a spin-out company the revenue-sharing arrangement set out in Regulation 17 above shall apply, except that there shall be no revenue entitlement for any Originator holding shares or share options in the company.

#### **Vehicles and authority to act**

29 Where University Intellectual Property is identified as having commercial potential which merits protection and attempted exploitation the rights in that Intellectual Property ("the IPR") shall forthwith be assigned to UEA Enterprises Ltd.

30 The signatories to assignment agreements between the University and UEA Enterprises Ltd shall normally be the Director of the Research, Enterprise and Engagement Office for the University as transferor and the Company Secretary for UEA Enterprises Ltd as transferee.

31 The assignment shall normally be made at the point at which a potential exploitation project is identified wherever possible.

32 The office support for the IPR work associated with these arrangements shall be handled by the Research, Enterprise and Engagement Office as at present, with appropriate recharges to UEA Enterprises Ltd.

33 The Board of UEA Enterprises Ltd shall be asked to delegate authority to the Director of the Research, Enterprise and Engagement Office of UEA to act on behalf of the company in signing IPR agreements.

34 The University's revenue-sharing arrangements set out in Regulations 17 and 28 above shall apply with the originator share where applicable being paid by UEA Enterprises Ltd as set out in the table in Regulation 17. The balance in respect of University and School share shall be transferred by UEA Enterprises Ltd to the University by Gift Aid and the School share shall be paid by the University on receipt of the transfer from the company.