

Intellectual Property Policy - Employees

This policy applies to all University of Chichester (“University”) employees, academic and non-academic, including visiting and temporary/casual employees and research assistants.

It also applies to consultants and secondees from third party organisations unless specified differently in the contract governing their appointment. A separate guide is available for students.

1. **Background**

- 1.1 This guide for managing Intellectual Property embodies the University’s policy on intellectual property as it relates to employees. It is in a form intended to help employees identify and make the best use of creations arising from their work at the University.
- 1.2 In brief, it is University policy to make all reasonable efforts to identify potential practical applications arising from work at the University and to be business-like in the process of protecting and exploiting (or not) intellectual property.

2. **Definitions**

- 2.1 Intellectual Property (IP) is a general term and describes the outputs of creative endeavour in literary, artistic, industrial and scientific fields which can be protected under legislation. It also refers to know how.
- 2.2 Further information regarding intellectual property rights can be found at Annex 1.

3. **Ownership**

- 3.1 Intellectual Property is in principle like any other form of property. It is a valuable asset that underpins the basis of innovation. As a result appropriate steps should be included for its protection. The University takes the protection of intellectual property very seriously.
- 3.2 University policy is to claim ownership of all intellectual property created during the normal course of employment or where University resources and facilities have been used in its creation.
- 3.3 Intellectual property may arise as a result of employees carrying out their day to day activities. For example intellectual property rights may arise in:
 - 3.3.1 works generated by computer hardware or software owned or operated by the University;
 - 3.3.2 films, videos, performance works, multimedia works, notebooks and other presentations;
 - 3.3.3 patentable and non-patentable inventions;
 - 3.3.4 registered and unregistered designs;
 - 3.3.5 books, articles or other material to be published in an individual capacity; and
 - 3.3.6 Know-how and information associated with the above.
- 3.4 The University is committed to the continued development of course materials and modes of delivery which enable distributed and remote learning. Employees creating teaching materials, including e-learning materials, during the course of their employment with the University do not own the intellectual property rights in the materials they create.

However, employees will be granted a non-exclusive, royalty free licence to use such materials for non-commercial purposes.

- 3.5 Teaching materials, including e-learning materials, are normally protected through copyright. As stated in clause 3.2 above, the University as the employer holds the copyright in works produced by employees in the course of their employment.
- 3.6 The University does not lay claim to the copyright of teaching materials produced by employees in any previous employment. However, similarly, employees must have obtained the appropriate permissions from former employers to continue to use any copyright material during the employee's employment with the University. If such permissions have not been obtained then such material must not be used.
- 3.7 The University, in consultation with the relevant employee(s), may exploit teaching materials as it sees fit.
- 3.8 Upon leaving the employment at the University, former employees will not be entitled to use any materials in which the University owns the intellectual property rights, unless the written permission of the University has first been obtained. All such enquiries should in the first instance be directed to the Pro Vice-Chancellor.
- 3.9 Where work is supported by external bodies, the terms of the grant or contract will normally prescribe terms as to ownership and commercialisation of any intellectual property arising from the work being undertaken and arrangements for commercialisation and revenue sharing. Employees are responsible for ensuring that the University's rights in relation to intellectual property are preserved. The University will ensure the provision of support and advice on appropriate contractual arrangements. In this regard any queries should be submitted to the Pro Vice-Chancellor.

4. Identifying and Evaluating Intellectual Property

- 4.1 Premature disclosure of work can prevent intellectual property protection. Members of staff should therefore be vigilant of the need for preserving confidence.
- 4.2 In order to take appropriate action to protect intellectual property, employees must promptly report any work, including work created by their students during the course of their studies at the University, with anticipated potential for commercialisation. The steps to be taken to ensure work is safeguarded and commercial potential is assessed are:
- the employee is required to promptly report any work that could be exploited to the Pro Vice-Chancellor; and
 - a Disclosure Form must be completed (a copy of which may be found at Annex 2 to this Guide).
- 4.3 Annex 2 to this Guide sets out the assessment framework the University will use for the assessment of commercial potential. If the initial assessment leads to a recommendation to protect and exploit the work, the University may make arrangements with a Patent Agent or other professional adviser as to the most appropriate method to specify and protect the intellectual property. Initial protection provides a period of time in which the statement of claim can be refined and commercialisation possibilities explored. Employees are required to co-operate as required to fully maximise the potential commercial revenue that can be

obtained from any intellectual property rights. Employees must not do anything to jeopardise this.

4.4 In cases where the commercialisation potential arises from work supported by external bodies, the terms of the grant or contract will prescribe the arrangements to be followed. However, the grant or contract holder is still required to take the action described above so that the University can arrange for any formal negotiations as may be required.

5. Commercialisation of Intellectual Property Rights

5.1 Intellectual property can be commercialised in a variety of ways which include:

- A licensing agreement involving the granting of rights from one party (“the licensor”) to another (“the licensee”). A licensing agreement commonly controls the use (for copying, manufacture, sale etc) of an intellectual property right (eg a patent, design right, copyright material etc). It can be the most effective way of controlling intellectual property and generating royalty income from its use by industry. Licensing agreements require considerable care in drafting and will require the approval of the Pro Vice-Chancellor.
- Setting up a new company to develop and exploit intellectual property. This direct method of commercialisation requires more resources than licensing but if successful, can bring substantial rewards. It is unlikely that the University will wish to set up a company to market a new product unless a well researched business plan shows that it is capable of making a reasonable profit annually within the medium term. Spin-out companies require the approval of the Board of Governors.
- A collaboration agreement with an existing company that can take the idea or product to market. This is where employees work jointly with a company to pursue a commercial development objective that is mutually beneficial and jointly managed under a collaborative agreement. This kind of arrangement can provide the basis of an ongoing relationship between the University and a company and may also be eligible for support from one of a number of funding schemes designed to facilitate collaboration between companies and higher education institutions (eg Knowledge Transfer Partnerships). Collaboration agreements require considerable care in drafting and will require the approval of the Pro Vice-Chancellor.

6. Revenue Sharing

6.1 The University operates a revenue sharing scheme for the purposes of sharing any revenues arising from the successful commercialisation of intellectual property.

6.2 The basis of exploiting any form of intellectual property is that the University and the employee(s) involved will act in partnership and will jointly seek to pursue the commercialisation potential of the intellectual property.

6.3 Normally agreements with regard to the apportionment of net income arising from commercialisation will be on the scale set out below (however this is only guidance and the University reserves the right to vary this if it deems it to be appropriate):

Total Net Revenue (“TNR”)	Employee	Academic Subject Area	University
100.00%	1/3 of TNR	1/3 of TNR	1/3 of TNR

Worked example: If the total net revenue is £30.00, the employee(s) will be entitled to £10.00, the Academic Subject Area will be entitled to £10.00 and the University will be entitled to £10.00.

In the event that the intellectual property the employee creates is in conjunction with a student or students and/or other employee(s) and/or independent contractor(s) of the University then it is for the employee to agree with the other student(s) and/or employee(s) and/or independent contractor(s) of the University's the revenue share save that the total revenue to all such parties shall not exceed 1/3 of the total net revenue.

The University will be entitled to deduct from the gross revenue from commercialisation all expenses incurred by the University and any University subsidiary in connection with the registration, marketing and commercialisation of the relevant intellectual property (including all fees of patent agents and lawyers and costs of regulatory approvals) or any taxes or charges that the University is required to deduct by law.

7. **Breach Of Policy**

- 7.1 Any misconduct or breach relating to this policy may lead to disciplinary action. The University also reserves the right to seek legal redress and compensation where failure to follow policy and procedures results in the loss of monies or any other damage to the University.

8. **Ancillary Documentation**

This guide should be read in conjunction with the attached appendices and other relevant documents that have been referred to.

Annex 1

Intellectual Property Rights and Sources of Information

1. What are Intellectual Property Rights

1.1 Intellectual Property Rights (IPRs) are the legal rights that may exist in certain types of creative works. Some of these works exist automatically and others need to be registered to be effective. It is also possible that a number of these rights may exist simultaneously in one type of work.

1.2 There are five main categories of Intellectual Property Rights which are as follows:

Patents

1.3 Patents protect inventions. Inventions relate either to a product or a process to make a product. These products and processes should deal with new functional and technical aspects and so mainly relate to:

- how things work;
- what they are made of;
- how they are made;
- what they do; or
- how they do it.

An invention must be **new** and **inventive** to be protected by a patent. This means that the invention must not have been made available to the public anywhere else in the world and must not be an obvious product or process to have been invented.

1.4 A patent gives an absolute monopoly right. Protection is only available if registration is obtained and then lasts for 20 years starting from the date the patent application was filed.

1.5 As the invention must be new, it is **essential** that the details of the invention developed are kept secret until the application for the patent is made. Earlier disclosure of the invention will result in the patent being refused or becoming open to challenge if granted. Disclosure can mean making it available to the public in any form.

So, for instance:-

- publishing in a journal;
- giving a presentation to students; or
- even informing a colleague who is not a University employee, will be disclosure.

1.6 Here are some practical tips to safeguard the invention for patenting.

Practical Tips

- Keep all details of the invention secret.
- If you need to disclose details, you should do so after obtaining permission from the Pro Vice-Chancellor.
- Submit details of the invention to the Pro Vice-Chancellor.

- Keep both originals and copies of all notes, reports, drawings, lab books etc, and keep them in a secure location.
- Ensure all notes, reports, drawings, lab books, etc are dated and sufficiently detailed to identify the invention and how it works.

Copyright

- 1.7 Copyright protects a vast array of different works. Copyright only protects the form in which the ideas are expressed and not the idea or concept itself. However, ideas and concepts can often be protected as confidential information (see Know-how section below).
- 1.8 Copyright can arise separately in each of the following:-
- books, articles, theses, presentations, lecture notes, course materials, test results, research notes, computer software and examination papers;
 - diagrams, drawings, blueprints, charts, artwork and photographs; and
 - performance works, artistic works, videos and films.
- 1.9 Copyright also exists in music, broadcasts, sound recordings and typographical arrangements of published editions. Generally copyright does not protect against 3-D reproduction of items portrayed in industrial drawings or plans (e.g. models created from blueprints). They are instead protected by design right or as registered designs (see the section regarding designs below).
- 1.10 All of the above types of work are protected by copyright as soon as they are created, i.e. written down, drawn, filmed etc. Registration is not required. All that is required is that the work be original i.e. not copied from another source.
- 1.11 There are different periods of duration of copyright depending on the type of work. For instance, copyright in drawings (such as those of a surgical instrument) would last for the life of the “author” (i.e. the person who made the drawings) plus another 70 years.
- 1.12 As copyright is an unregistered right, it is harder to prove ownership of it than a registered right. So, here are some practical tips to protect the copyright.

Practical Tips

- Keep all originals of the copyright works such as notes, drafts, sketches, drawings, videos etc in a secure location.
- Record the date of creation of the copyright work - this is crucial.
- It also helps where practicable to clearly identify materials with a copyright notice on them such as:-
© [year] [*insert name of owner*]. All rights reserved.

Moral Rights

- 1.13 Personal rights (which attach to the author of a copyright work), called moral rights, exist alongside copyright works. They do not apply to works created as an employee or to computer software. These rights cannot be transferred but they can be waived. These are:-

Right of Paternity - the right to be identified as the author or director of a work. This right must be asserted by the author for it to be effective.

Right of Integrity - the right not to suffer any derogatory treatment of a work (i.e. not to have it amended or changed by others).

Right of False Attribution - the right not to have a work falsely attributed to someone who did not create it.

Right of Privacy - in relation to photographs and films commissioned for private and domestic purposes, the right not to have the work issued to or shown in public.

Database Rights

- 1.14 Information presented in a database format can be protected separately by a database right. The database right protects the collection of independent works, data or other materials which are arranged systematically or methodically. A database can be accessible by electronic or other means. As well as the obvious types of database, it has been suggested it could cover such things as collections of biological materials.
- 1.15 It is similar to copyright, in that this right arises automatically on its creation. There is no requirement for registration. The database right lasts for 15 years from when it is made. Like copyright (because the database right is unregistered), you will need to take steps to safeguard the database.

Practical Tips

- Keep records of all information, materials and data that are used to assemble the database to clearly show the date the database was created or updated.
 - Keep all such materials and information in a secure location - please refer to the Pro Vice-Chancellor for guidance.
- NB: Be careful not to extract materials or information to create or populate your database from other database sources - this could infringe database rights in that other database!

Designs

- 1.16 Designs of 3-D objects can be protected by unregistered design rights or by registered designs. These are explained more fully below.

UK Design Right

- 1.17 Any 3-D object can, in principle, be protected by design right. This right generally applies to industrial designs in place of copyright. The design must be original and it is automatic (like copyright) in that it is effective from the moment the design is created. It can exist in any aspect of the shape or the configuration of the object whether the design relates to an internal or external aspect in the whole or even part of the object. However, the design must not be a common design in the design field of that object at the time of its creation. For example, a design for a surgical instrument such as a scalpel would probably be commonplace in the surgical field.
- 1.18 There are exceptions to protection though. Using a surgical instrument as an *example* to demonstrate, UK design right will not apply to:-

- decoration on the surface of an object, i.e. any etchings or decoration on the surgical instrument would be excluded from protection; or
- a method of constructing the object, i.e. if the way the instrument is made dictates the design of it, that would be excluded from protection; or
- any features of the object which enable it to fit with or match with another object to be able to perform its function, i.e. if there is an interconnecting aspect of the surgical instrument which meant it could fit into another instrument this would be excluded from protection.

UK Design right protection lasts for 10 years from when the object was first marketed or 15 years from when it was created.

As it is an unregistered right, it will be very important to safeguard the creation of the design.

Practical Tips

- Keep all originals of the design drawings, sketches, samples, models and prototypes, etc.
- Keep all these materials in a secure location - please refer to the Pro Vice-Chancellor for guidance.
- Record all dates of creation.

EU Registered Designs

- 1.19 Protection under this right does not start until registration is secured. Like patents and registered trade marks, registration gives an absolute monopoly protection.
- 1.20 A registered design protects more of the design of an object than UK design right. It covers the appearance of the whole or a part of an object resulting from the features of it i.e. the lines, contours, colours, shape, texture or materials of the object or its ornamentation, for example packaging, get-up, symbols and even typographic type-faces. Taking the surgical instrument **example**, i.e. any decoration, etching or engraving on the instrument and even the material of the instrument could be protected by registered design.
- 1.21 A registered design must:-
- be **new**, in that it must not have been previously made available to the public through registration, publication, exhibition, trade use or any other disclosure; and
 - have **individual character** which means that if the object produces a notion of “*dejà vu*” it cannot be protected because it will be regarded as too similar to another object.

There is a 12 month “grace period” for disclosures made by the designer to enable a designer to exhibit and market the object, and apply for design registration if the object is then worth protecting.

However, such disclosure should still be made subject to confidentiality obligations to safeguard against potential abuse of the design.

- 1.22 There are certain exceptions to protection that are similar to UK design rights, such as where the design is dictated solely by the function which the object has to perform, for **example**, there would be no protection for the design of a surgical instrument where it had to be a certain shape for it to be used for its purpose in surgery.

As secrecy is key to protecting registered designs as it is for patents, here are some practical tips to safeguard the design.

Practical Tips

- Keep all details of the design secret.
- If you need to disclose details, you should only do so after obtaining the permission of the Pro Vice-Chancellor.
- Submit details of the design to the Pro Vice-Chancellor.
- Keep all original drawings, sketches, prototypes, plans, etc, and keep them in a secure location - please refer to the Pro Vice-Chancellor.

A registered design can last for up to 25 years if renewal fees are paid every 5 years.

European Design Right

- 1.23 This right is a hybrid between the design right in the UK and the EU registered design. However, it **only** applies to designs created after 6 March 2002. It is a European wide right which means that the design is protected throughout the whole of the European Union.

Like registered design, it covers the appearance of the whole or a part of an object resulting from the features of it i.e. the lines, contours, colours, shape, texture or materials of the object or its ornamentation.

- 1.24 This right is unregistered. It arises automatically from when the design is made available to the public. This means from when it is published, exhibited or used in trade. However, this right must satisfy the same criteria for protection as with registered designs. It must be:-

- new (in the same way as with registered designs - see above); and
- have **individual character** (in the same way as with registered designs - see above).

Also, the same exclusions apply to this right as with registered designs. So, for **example**, if a surgical instrument satisfies the criteria for registered design protection, it would also be protected by EU design right as well.

As this right is unregistered, you need to consider the same factors for protection of it as with design rights.

Know-how

- 1.25 Know-how is not IP as such, but can be just as valuable. Know-how is effectively technical information, i.e. a procedure, a process, a knowledgeable way of doing things. Therefore, research and development projects and course projects can result in extremely valuable technical information being created. Potentially anything which is not public knowledge

(which includes information which is scattered across a number of public sources but not drawn together) can be worthy of protection.

- 1.26 Protection only arises if before disclosing the confidential information, you inform the recipient of the information that it is secret and confidential. As the value is in the secrecy of the information, it is crucial to ensure that it is handled properly.
- 1.27 The most practical way to secure protection is through a written contract which stipulates what the information is and that it is to be held in confidence and how it is permitted to be used. This is commonly called a confidentiality agreement. Please refer to the University Secretary and Clerk to the Governors.
- 1.28 A confidentiality agreement should be used whenever any disclosure is to be made. In this way, any information which relates to a potentially patentable invention or registrable design or even a brilliant idea or concept (which may not be protected by any IP) can be protected and the value in it can remain secure.

Trade Marks

- 1.29 Trade marks can be registered or unregistered. The registered variety confers a monopoly right which is only effective once the trade mark is registered. Protection will then start from the date the application (for registration) was filed.
- 1.30 Registered trade marks protect amongst other things a word, logo, sign, shape, colour, sound or smell which is capable of being represented graphically on paper. A registered trade mark needs to be able to distinguish the goods or services of one person to those of another person.
- 1.31 A trade mark cannot be registered if there is already an existing identical or similar trade mark registered for identical or similar goods or services.
- 1.32 A registered trade mark can last indefinitely if renewal fees are paid. The initial period of protection is 10 years, with renewals every 10 years.

Useful Sources of Information

The initial point of contact in the University is the Pro Vice-Chancellor.
Information can also be found at:

<http://www.patent.gov.uk>

<http://gb.espacenet.com>

<http://www.intellectual-property.gov.uk>

For information on sources of funding, look at:

<http://www.bvca.co.uk>

<http://www.nesta.org.uk>

<http://www.evca.com/>

<http://www.nvca.com/>

<http://www.nbia.org/>

<http://www.venturesite.co.uk>

Annex 2

IP Reporting and Commercial Appraisal

Intellectual Property Disclosure Form

1. Project title and summary

Please describe your project in simple terms – eg, the product, service or technology and the work that has led to its development.

2. Status

Please tell us if this work has been disclosed or made available to any person other than employees of the University (eg at a conference, on the web or through publication).

3. Background information

Please tell us about any existing competing products that you are aware of.

4. Commercial potential

Please tell us about the envisaged application of the product, service or technology (eg what existing product/service/technology will you replace? What is the advantage of your product over existing ones in the market place?).

5. List all University employees involved in the project.

6. List all University students involved in the project.

7. List all non-University personnel involved in the project

I confirm that the details provided in this form are accurate to the best of my knowledge.

I agree to comply with University policy and not to involve third parties until further notice.

Signature:

Print Name:

Date:

This form should be submitted to the Pro Vice-Chancellor of the University of Chichester.

Intellectual Property Commercial Appraisal

In assessing commercial potential, the University will consider a range of factors, including:

- A. Uniqueness of the product, service or technology
 - B. Readiness
 - C. Market potential
 - D. Competitive edge
 - E. Customer behaviour
 - F. Commitment and experience of the team
- A. Uniqueness of the product, service or technology:
- Has the novel or inventive feature been clearly identified? The more that is known here, the easier it will be to establish if a patent or other registered right is likely to apply.
- B. Readiness:
- Has a prototype been tested or is the proposition still at concept stage? The more development and testing work has been undertaken, the lower the level of risk.
- C. Market potential:
- How much is known about the target market? For example, what is the size and value of the current market? Is the market new or relatively mature? How easy will it be to break into the market?
- D. Competitive edge:
- To what extent does the product / service / technology have advantages over those currently available on the market?
- E. Customer behaviour:
- How much is known about customer attitudes? For example, are customers likely to be conservative, tending to stick with tried and trusted methods, or do they tend to be innovative, willing to experiment and try out new products?
- F. Commitment and experience of the team:
- Does the team have previous experience of commercialisation? What is the level of experience of bringing new products / services / technologies to market? Is the team committed to seeing through commercialisation?