

## **Students' Guide to Intellectual Property**

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### **1. Introduction**

1.1 During the course of your studies at the University of Chichester ("the University"), you may generate work which is new, novel and creative. Such work is known as Intellectual Property (IP). This guide applies to all undergraduates and postgraduates including research students.

1.2 As the creator of IP you are considered to be an "inventor" or "creator" and together with the University you have rights to the IP. Intellectual Property Rights (IPRs) give legal recognition to the ownership of IP.

1.3 This Guide:

- tells you about the main categories of Intellectual Property;
- explains how the University can help you protect your Intellectual Property Rights; and
- explains how the University can help you to commercialise your Intellectual Property.

1.4 The Guide constitutes the University's policy on Intellectual Property in relation to all students registered on taught and research programmes.

### **2. What are Intellectual Property Rights?**

2.1 Intellectual Property Rights 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.

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

#### **Patents**

2.3 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.

2.4 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.

2.5 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 someone who is not a University employee,

will be disclosure.

2.6 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 Head of Planning & Campus Services.
- Submit details of the invention to the Head of Planning & Campus Services.
- 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**

2.7 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).

2.8 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
- videos and films.

2.9 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).

2.10 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.

- 2.11 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.
- 2.12 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**

- 2.13 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 (ie. 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**

- 2.14 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.
- 2.15 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 Head of Planning & Campus Services 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

2.16 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

2.17 Any 3-D objects 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.

2.18 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 Head of Planning and Campus Services for guidance.
- Record all dates of creation.

### EU Registered Designs

2.19 Protection under this right does not start until registration is secured. Like patents and registered trade marks, registration gives an absolute monopoly protection.

2.20 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.

2.21 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.

2.22 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 Head of Planning & Campus Services.
- Submit details of the design to the Head of Planning & Campus Services.
- Keep all original drawings, sketches, prototypes, plans, etc, and keep them in a secure location.

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

#### **European Design Right**

2.23 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.

2.24 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**

- 2.25 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.
- 2.26 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.
- 2.27 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. However no such contract should be signed with any third party without the prior written permission of the University Secretary and Clerk to the Governors.
- 2.28 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**

- 2.29 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.
- 2.30 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.
- 2.31 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.
- 2.32 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.

### **3. Who owns Intellectual Property?**

- 3.1 As a general principle, the University recognises the student as the owner of any IP he or she creates while registered as a student of the University.
- 3.2 This principle may be varied in certain circumstances – for example, where external corporate sponsorship is involved.
- 3.3 Where a student wishes to have a corporate sponsored studentship under which the sponsoring corporate body had a claim on arising IP, to enable the University to contract with the outstanding corporate body, the student must agree that such IP will initially belong to

the University and then be determined in accordance with the agreement with the sponsoring corporate body.

3.4 Students must keep secret any confidential information to which he or she has access and only use it for the purpose for which it was supplied.

3.5 Any queries relating to the ownership of intellectual property rights should be referred to the Head of Planning & Campus Services.

#### 4. **How can the University help with protecting your Intellectual Property?**

4.1 If you think you have created some IP with the potential for commercialisation there are three steps you should take:

- speak to your tutor and contact the Head of Planning and Campus Services.
- keep disclosure of your work to any third party to a minimum before seeking advice on IP protection; and
- make sure you have detailed records of your work (i.e. notebooks, drawings etc). These can be invaluable in establishing the date when the work was created and hence may help to obtain IP protection.

To protect your IP, the University will normally ask you to assign your Intellectual Property Rights to the University and to give the University all reasonable assistance to enable the University to obtain a patent or any other form of legal protection for the intellectual property. An Assignment Agreement is set out at Annex 1 of this Guide.

In return the University will normally seek to commercialise the IP and will reward you in accordance with its Revenue Sharing Scheme (described in Section 8 below).

#### 5. **Confidentiality Obligations**

##### **Arrangements with External Bodies**

5.1 Representatives of external bodies who visit the University (or receive visitors from the University) to discuss possible collaboration often request that the University and/or the member of Academic Staff sign a confidentiality agreement or understanding (sometimes described as a secrecy agreement or non-disclosure agreement). If such visits and discussions result in contracts, the external body will certainly insist on a secrecy clause in the contract itself.

5.2 These agreements and understandings can take many forms, but are all to be taken very seriously. Any information and discussions covered by such an understanding must be treated in confidence and not disclosed to anyone else, except as set out in the agreement or understanding. Whilst disclosures may be permitted to employees of the University, this would not automatically include other students.

5.3 If there is any breach of any agreement, the external body may be entitled to seek financial and other compensation (damages), not only from the University, but possibly from the employee or Student personally. This is obviously a very serious matter. The University treats all of its contractual obligations as very important. In an environment like the University, it is difficult to supervise closely the adherence to all the agreements and understandings that have been signed on behalf of the University. There is also, of course, a natural desire to publish and discuss work openly, which may on occasions give rise to individuals not realising the importance or the extent of any agreements that have been signed. Extra care therefore needs to be taken.

5.4 All employees are under a contractual obligation regarding confidentiality.

## **Student Obligations**

- 5.5 The University wishes to remind every student of confidentiality agreements or understandings with external bodies and that he or she must:
- 5.5.1 seek the advice of the University Secretary and Clerk to the Governors before signing any such documents;
  - 5.5.2 not contravene the terms of any agreement or understanding and must respect the confidentiality of any information and data supplied by external bodies and keep secret any data generated from any agreement or understanding with an external body (including keeping and storing such information and data in accordance with its confidential nature);
  - 5.5.3 keep accurate and comprehensive records of any agreements or understandings with which he/she is involved or associated, including lists of information received or disclosed and minutes of meetings where oral disclosures are made;
  - 5.5.4 alert the Head of Planning and Campus Services as soon as he/she becomes aware of any situations which he/she thinks may lead any external body to question the treatment of its information or the data generated under the agreement or understanding, (if appropriate); and
  - 5.5.5 check with the relevant external body first if he/she is in any doubt about the use, publication or mention of any information which might be sensitive or covered by a confidentiality agreement or understanding.

## **6. Confidential Information of University**

- 6.1 Likewise, all University information which is confidential should be treated sensitively and each student must:
- 6.1.1 keep secret all confidential information of the University, its subsidiary companies and their respective employees and students and only use such information for the proper purposes of their course of study;
  - 6.1.2 ensure that any valuable or potentially valuable information is protected by a suitable agreement before disclosure to others who are not University employees, including students;
  - 6.1.3 alert the Head of Planning and Campus Services at the University if he/she is concerned that external bodies, which have received University information through a confidentiality agreement, may be about to breach, or appear to have breached, an agreement or understanding; and
  - 6.1.4 return all University confidential information to the University on ceasing to be a student.

## **7. How can the University help with commercialising your Intellectual Property?**

- 7.1 The Head of Planning and Campus Services at the University can provide help and advice in the options available to commercialise your IP. Normally, there are three main options to consider:
- a licensing agreement involving the granting of rights from one party to another. A licensing agreement commonly controls the use (for copying, manufacture, sale etc) of an intellectual property right (e.g. a patent, design right, copyright material etc). Licensing can be a very effective way of controlling intellectual property and generating royalty income; or

- setting up a company to develop and commercialise intellectual property. This requires a well researched business plan; or
- a collaboration agreement with an existing company with the aim of taking an idea or product to market.

7.2 Successful commercialisation should result in benefits which will be shared according to the University's Revenue Sharing Scheme, described below.

## 8. What is the University's Revenue Sharing Scheme?

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

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

8.3 Normally agreements with regard to the apportionment of net income arising from commercialisation will be on the scale set out below:

Total Net Revenue("TNR")	Student	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 student(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 student creates the intellectual property in conjunction with another student and/or University employee(s) and/or independent contractor(s) of the University then it is for the student to agree with the other student(s) and/or employee(s) and/or independent contractor(s) of the University the split in revenue share between them save that the total revenue to all such parties shall not exceed 1/3 of the total net revenue. Until the student has provided satisfactory evidence to the University that all persons who created the intellectual property have agreed the royalty distribution between them, the University is under no obligation to pay any revenue. The University will be entitled to pay the revenue to any party it deems in its sole discretion as appropriate. Any interest earned on the revenue will be kept by the University.

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.

## 9. Advice and Information

Any queries should in the first instance be referred to the Head of Planning and Campus Services who can help you with any queries that may arise from this policy.

Further general information regarding intellectual property rights may also be found on the patent office website which is as follows:

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

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

## INTELLECTUAL PROPERTY ASSIGNMENT

TO: The University of Chichester  
College Lane  
Chichester  
West Sussex, PO19 6PE  
("the University")

[*Legal name of Outside Body*]  
("Outside Body")

[*Description of Project*]  
("Project")

### 1. **Acknowledgement**

[I wish to carry out work in connection with the Project.] [I wish to have a studentship sponsored by the Outside Body ("Studentship")]. As a condition of being allowed to do so, I understand that it is necessary to ensure that:

- 1.1 confidential information received in connection with or arising out of the [Project] [Studentship] is protected ("Confidential Information"); and
- 1.2 ownership of any intellectual property rights and know-how created by myself and others in the course of undertaking work [for the Project] [during the Studentship] belongs to the University and/or the Outside Body.

I agree to give my supervisor a written list of any IP which I already own which may be used in connection with the [Project] [Studentship] before the [Project] [Studentship] starts.

### 2. **Confidentiality**

- 2.1 I confirm that I shall keep all Confidential Information, which I receive or generate, secret and confidential. I shall not disclose it to anyone else, except to another person [who is involved in the Project] [who is supervising my Studentship] and has given an equivalent undertaking of confidentiality.
- 2.2 My obligation of confidentiality does not apply to Confidential Information which is public knowledge, unless it has become public because I have disclosed it. I may also disclose Confidential Information to the extent I have to do so by law.
- 2.3 I will deliver to the University all results arising from the Project which are in my possession or control, including (without limit) any intellectual property and know-how, interim results, data and source code.

### 3. **Assignment**

- 3.1 My IP means the intellectual property rights and know-how which have been created or invented or are in the future created or invented by me in the course of [my undertaking work on the Project] [the Studentship] [my using the equipment or facilities supplied by [NAME OF SUPPLIER]]. It includes any copyright, database rights, design rights, patents and applications or rights to apply for such rights and know-how existing in any part of the world.
- 3.2 I assign my IP to the University with full title guarantee.
- 3.3 I understand that, as part of normal practice, the University will generally wish me to be identified as the author of any work which contains any copyright which forms part of my IP if it is practical. However, I waive my moral rights in works containing such copyright so far as I can. This includes any rights I may have [to be] identified as the author of such works or to object to derogatory treatment of them, so far as I can.

- 3.4 [I grant to the University an irrevocable, royalty-free, non-exclusive licence to use any work created in connection with the [Project] [Studentship], because my performer's rights (if any) in such work remain with me. Such use can be for any [administrative, promotional, educational, teaching and research] purpose[s] of the University.]
- 3.5 I shall do all things and sign all documents which the University reasonably requires me to do or sign to confirm the University's [or the Outside Body's] ownership of my IP. This will be at the University's cost and expense.
- 3.6 The University will try to ensure that I receive a fair share of any benefits arising from my IP (which could include a share of any royalties) in accordance with the University's Intellectual Property Policy.

Dated.....

Signed.....

Student's Full Name.....  
(BLOCK CAPITALS)

Signed by.....  
for The University of Chichester