

Policy on Exploitation and Commercialisation of Intellectual Property

August 2015

This policy replaces the Code of Practice on Intellectual Property, Commercial Exploitation and Financial Benefits, with effect from 1 August 2010. The policy has been updated with effect from 1 August 2015.

A. Definitions

1. Intellectual Property (IP) includes inventions, inventive ideas, designs, patents and patent applications, discoveries, improvements, methods, processes, trademarks, designs and design rights (registered and unregistered), database rights, written work (including computer software) and know-how devised, developed and/or written by members of staff in the course of their employment, or students in the course of their education. IP can be a valuable asset, both in order to undertake teaching and research, and in enabling economic development through knowledge exchange.
2. Background Intellectual Property is IP that exists before an activity takes place, or is created outside of such activity. Foreground Intellectual Property is IP that is generated during and as a consequence of the activity.
3. A spin-out company is any company formed as a consequence of University activity or know-how, regardless of whether registered IP is involved. A start-up company is any company created by a third party in which the University is invited to participate (in equity terms) at time of creation.

B. Principles of the Exploitation of Intellectual Property

4. The University wishes to encourage the development and exploitation of its intellectual property, through whichever means is most appropriate, to the benefit of the University, to its staff and students, and as part of its contribution to economic development. However, the University's prime role is in the production and development of IP, and it is not generally equipped to exploit IP directly. It therefore enables the exploitation of IP in a variety of ways involving established and new companies, and other organisations. The University is open-minded about the means of exploitation, but is acutely aware of the need for speed to market when successfully commercialising research outputs. It also wishes to ensure that it has limited direct operational involvement in the commercialised activities.
5. Identification of potentially exploitable IP is a responsibility of staff and students. Staff and students are required to identify any potentially exploitable IP by completion of an IP Disclosure Record; assistance with this is available from the IP Manager in Research and Enterprise Services (RES).
6. Exploitation might take the form of licensing, assignment, or sale, to existing or newly-formed entities. It can also occur through a University Enterprise Unit (see Section E.3).
7. If the University is not able or willing to exploit the IP, it will normally grant a request that it is assigned (or licensed if that is a more appropriate arrangement) to the creator(s) for them to commercialise (without use of institutional facilities, time or name) or it is licensed under Easy Access or similar terms. Any such assignment will be subject to suitable terms and cost recovery if the commercialisation is successful, along with consideration of any effects on the individual's ability to undertake their normal duties.

8. Exploitation and commercialisation of IP should not damage the University's core activities of research, and learning and teaching.
9. Any interactions between a spin-out or start-up company must be at arm's length, to ensure charity, competition, and state aid rules are met, along with the University's policy on conflicts of interest. Additionally, in general, such companies should not operate from University premises, except under a specific licence to occupy, which would normally be in a defined incubator space.
10. Income received from the exploitation of IP will be shared with the creator(s) (see Section F).
11. Signature of contracts, agreements, and similar is by duly authorised officers only, and does not generally include academic staff, Heads of Department and Heads of School. Details of delegated authorities are available from RES.
12. If an internal dispute arises, for example in relation to beneficial ownership rights, and there is need for adjudication, this responsibility will rest with the Pro-Vice-Chancellor (Research).

C. Ownership of Intellectual Property Rights

C.1 General

13. Intellectual Property is defined in Section A above. In accordance with the Patents Act 1977 and the Copyright, Designs & Patents Act 1988 (and any relevant Regulations), IP generated through the course of employment in research, teaching and other related activities legally belongs to the employer (subject to third party rights).
14. Unless specifically agreed otherwise, the University does not claim its rights of copyright in books or articles for learned journals written by members of staff or students. In general, the University preserves the rights of staff and students to publish material arising from their research as they see fit. However, in some cases where commercial exploitation of the results is a possibility, the University may require the author(s) to withhold publication until appropriate protection can be put in place.
15. The University does claim ownership in all other forms of IP, including other forms of copyright (e.g. software and its documentation, distance learning material, e-learning material, web site content, recordings).
16. In relation to teaching material other than any specifically commissioned by the University, the University grants the individual who created the material a personal, royalty-free, non-transferable, right to use and copy such material for academic purposes whether or not the creator is still at or employed by the University.
17. For staff with joint appointments, agreement about ownership of IP should be reached at time of appointment by the University (through Human Resources and Research and Enterprise Services) and the other organisation(s) concerned.
18. Creators of IP need to be formally identified, by completion of an IP Disclosure Record, where there is a possibility of exploitation.

C.2 Student Ownership of Intellectual Property

19. In general, students own the IP that they generate, as they are not employees, and the University does not exercise any such conditions as part of registration. Students have the option to assign to the University the ownership rights to the IP they generate whilst at the University, and are generally required to do so if they wish to receive support from the University in exploiting their IP. In assigning their ownership rights to the University, a student is accorded the same rights as a member of staff, e.g. with respect to revenue sharing. While the University wishes to encourage assignment, it recognises that this is a personal choice for each student. It is recognised that where a student is externally sponsored or part of a research group that is subject to obligations to a funder, the terms of that sponsorship or funding may override this position, and require the student to assign to the sponsoring organisation or funder. Students are able and encouraged to publish their research work in journals or dissertations, subject to any appropriate prior protection of the IP in question. The policy applies to students registered at the University, whoever is their supervisor. Students registered elsewhere but whose supervisors include University employees are not subject to this policy.
20. Where a postgraduate research student is also an employee, the IP position will be that arising from the contract of employment if they have created the IP in the course of their employment.
21. Students of Brighton and Sussex Medical School (BSMS) are registered at both Sussex and Brighton, but are subject to the policies and processes of the University of Brighton, which asserts a right of ownership over their IP as a condition of registration. Any IP arising from the work of BSMS postgraduate research students is therefore subject to the policy of the University of Brighton, rather than to this policy. The Sussex-employed supervisors of BSMS students are subject to this policy. The two universities have an agreed process for handling IP arising from BSMS research.

C.3 Ownership of “Background” Intellectual Property

22. A project may make use of Background IP owned by someone other than the University. In this case (and where commercial use is intended), relevant contractual arrangements should be put in place with the owner. Where a member of staff or a student was involved in the creation of the IP whilst with a previous employer, that employer should be contacted to make these arrangements.

D. Development of Intellectual Property

23. There are a number of ways in which IP can be developed, to make it attractive to a potential customer, and to improve the return for the University and the creators. The University has created an Enterprise Development Fund (EDF) to support the funding of development and pre-development activity, using its Higher Education Innovation Fund (HEIF) allocation.
24. EDF investment decisions are taken by the Enterprise Panel (with other relevant advice taken as necessary, including from the Head of School in respect of the individual's time and any other resources required to undertake the project). Applications to the EDF should be approved in the same manner as applications to external funders and include all relevant direct costs, such as patent and legal fees. The funding from the EDF will cover the marginal directly incurred costs of the activity. The outcome of the application will be communicated to the member(s) of staff and the relevant School(s).

E. Protection and Exploitation of Intellectual Property

25. IP that is potentially exploitable should be identified and recorded using the IP Disclosure Record. As well as unprompted disclosures from staff and students, RES will monitor the University's externally-funded research projects to attempt to identify suitable opportunities. In doing so, all parties will be cognisant of not damaging the University's core research, and learning and teaching activities.
26. All identified IP will be reviewed by the Enterprise Panel, to consider its suitability and marketability. The presentation to the Panel will be supported by RES and / or the Sussex Innovation Centre (SInC), as appropriate. The Panel will take into account the wider strategies and policies of the University in determining the exploitation route. Any exploitation plans may also require the agreement of the original funder of the research. Protection of the IP will be determined and funded by the Panel, but there is an expectation of recovery of those costs from any subsequent licensee(s) or assignee(s), or from the Enterprise Unit, if that is the route for exploitation.
27. The University may make use of specialist external organisations, to take forward specific cases, where they bring detailed knowledge of the technology and/or relevant market. Interactions with such organisations will be managed by RES or SInC, as appropriate.
28. The timescale for exploitation of any given set of IP depends significantly on market conditions as well as the state of development of the IP. The discussions between RES, SInC, the creator(s), and their School(s) should include agreement of a reasonable initial timetable, with regular review points. All parties involved have responsibilities in achieving successful exploitation, and need to be aware that circumstances will change as the process develops.
29. Where a member of staff is to undertake an involvement with a licensee or spin-out company, it must be governed by a suitable agreement between the company and the University, e.g. for consultancy, services, or secondment.
30. Where a member of staff is involved in an Enterprise Unit, their time must be agreed by their Head of School, and be paid for by the Enterprise Unit on a full cost basis.

E.1 Commercialisation through Spin-out and Start-up Companies

31. Where a spin-out company is formed, the University will normally obtain an appropriate portion of the equity to reflect the University's input to the formation of the company. The level of this will vary on a case-by case basis. Allocation of this equity and related benefits is covered in Section F. In addition to the equity, the University will normally expect to recover any patent and related costs from the company. Similar provisions apply where the University is offered equity in a start-up company.
32. Decisions on the level of equity rests with the Enterprise Panel, on recommendation from the Director of Research and Enterprise. Similarly, if the University is offered the opportunity to invest cash for equity, or to provide a loan, the decision rests with the Enterprise Panel where the investment is funded by the EDF, or with the Vice-Chancellor's Executive Group (VCEG) where it is funded by University General Funds.
33. Creators are permitted to provide services (either as a non-executive director of the company or simply as an advisor), subject to the University's normal policy on consultancy activities. Creators may be seconded to the spin-out company, subject to the normal contracting and approval processes, and in particular that the secondment is

subject in all cases to the full recovery of cost (including the use of University facilities and services).

34. The University policy on conflicts of interest should be complied with in all circumstances. In particular, staff specifically employed to further the University's commercial activities are not normally permitted to acquire equity in spin-out companies whilst remaining as a full-time employee of the University or one of its subsidiaries. The Enterprise Panel will consider any such proposals, but the case will have to be exceptional to be recommended to VCEG for approval.

E.2 Company Directorships

35. University staff are permitted to accept appointment to non-executive directorships in third party and University companies, subject to the agreement of their Head of School, Professional Service Director, or the Vice-Chancellor or Registrar, as appropriate, as set out in the Policy on External Professional Activities. Individuals undertaking such roles should note that they are personally liable as a director, and should ensure that they fully understand the legal responsibilities involved.
36. Staff in senior positions and staff in business development roles undertaking third party directorships in companies where the University has a direct shareholding are likely to have actual or potential conflicts with their University position. Such situations must therefore be carefully managed and monitored. A member of staff who is a director should not be directly involved in the University decision-making processes relating to that organisation regarding procurement, contracting, investment, or disposal.
37. Where the University has the right to appoint a non-executive director, the appointment will be made following advice from the Enterprise Panel. The University may draw on relevant alumni for these purposes.

E.3 Commercialisation through University Enterprise Units

38. Exploitation of IP might take place through a University Enterprise Unit. These are operating structures within the University that allow commercial operation without the burden of company formation and operation. The University requires Units to operate on a self-supporting, full cost basis, against a business plan that is usually approved by the Enterprise Panel.
39. Operational and governance requirements and guidance for Enterprise Units are available from RES.
40. Distribution of surpluses from Enterprise Units are covered in Section F.

F. Distribution of Income from Exploitation

41. In general, the University will share the net proceeds of IP exploitation with the relevant staff and students, after recovering its costs. The form of income can be as equity, dividends, royalty payments, or share of surpluses.
42. Where IP has been sold, assigned or licensed, the University would normally expect to receive milestone and / or royalty payments. These will be distributed net of any relevant costs, such as legal bills, patent costs, and other protection and exploitation costs, plus any repayment of loans made as part of the development process. The distribution will also be net of any agreed revenue sharing with the funders of the original research. The

information in the IP Disclosure Record will be used to define the creators of the IP, and their share of the proceeds.

43. The net income from milestone and royalty payments to the University will be distributed on the basis of the prevailing rates, as set out in Annex 1, which may be changed from time to time.
44. This distribution will apply to each new agreement for any given item of IP. Renewals or extensions of existing licences will not be viewed as new agreements; i.e. where there is no substantive change to the subject, field, or territory.
45. The funds allocated to the creator(s) will be used to make a payment to the individual(s) and to pay the employer's National Insurance contribution. Creators can choose to waive some or all of their right to personal payment, in which case the funds will be placed in their Research Support Account.
46. Where the University receives equity as part of a company formation, the creator(s) will normally also receive equity, before any third party involvement or investment. These shares will be in their own name(s) and they will therefore be able to decide how to manage the shareholding, whether that be full or partial disposal or retention. The individual(s) will be liable for any relevant personal taxes.
47. By accepting shares in a spin-out company, the creator(s) will waive any right to share in the income received by the University through its holding (e.g. dividend income) or the disposal of its shares in the company. Any such payments received by the University will therefore be split (net of costs) between the creator(s)' School(s) and the University Research Development Fund, at the prevailing rates, as defined in Annex 1.
48. Where the University receives equity and a royalty stream, both distribution elements will apply, so that the effective overall distribution to the creator(s) is the same as if only one element existed.
49. The University's equity will be held in the name of the University, with the benefits to the School(s) and University Research Development Fund arising when the value has been realised, following a decision by the University to sell the equity.
50. For University Enterprise Units, a year-end position should be calculated annually on an accruals basis at activity level, including work-in-progress. Where a surplus has been achieved, the Unit's Management Group should agree how much should be retained by the Unit, for future reinvestment. Thereafter, any remaining surplus should be split on the basis of the prevailing rates as defined in Annex 1.

G. Annex 1: Prevailing Rates for Income Distribution

51. The following are the prevailing rates for allocation of net income and equity from exploitation and commercialisation activities.
52. For net income from milestone and royalty payments, the following table applies:

	Creator(s)	School(s)	University Research Development Fund	Strategic Development Fund
First £50k	80%	10%	10%	0%
£50k-£500k	40%	40%	20%	0%
£500k-£5M	35%	25%	15%	25%
Over £5M	20%	0%	5%	75%

53. For equity in spin-out companies, the University expects to receive a reasonable proportion of the founding equity. Typically, this will be equal to that of the academic founders, but may vary dependent on the contributions and risk involved. The corporate and contractual arrangements will necessarily vary between companies, and are likely also to reflect the nature of the relevant product(s) or service(s) involved.
54. For income from the sale of the University's equity and any related dividend or other income from that equity:
- 67% to the School(s) of the creator(s)
 - 33% to the University's Research Development Fund
55. For Enterprise Unit surpluses:
- 40% to creator(s)
 - 40% to School(s)
 - 20% to University Research Development Fund

This policy was first approved by Council on 2 July 2010, with the amendments (substantially to paragraphs 52 and 53) being approved on 30 April 2015.