

INTELLECTUAL
PROPERTY RIGHTS
POLICY

INTRODUCTION

- 1 This paper describes the Brunel University policy on intellectual property and intellectual property rights (IP). The policy covers:
 - a. **Copyright** in, for example, text, computer software, creative works and e-learning materials;
 - b. **Moral rights** which acknowledge the original authorship of IP;
 - c. **Patents** which protect inventions for products and processes;
 - d. **Know How** which covers specialist knowledge for which third parties may pay as long as it has previously been kept confidential.
 - e. **Design Rights**, for example the appearance of the whole or part of a product.

This Policy shall apply to all forms of IP in any format and in any media. IP includes all inventions capable of protection whether patentable or not, registered and unregistered designs and design rights, University-commissioned works, computer software, commercially exploitable knowledge and all copyrights including copyright in literary, musical, dramatic and artistic works, software, distance learning course materials and material circulated electronically e.g. via the internet. A fuller definition of IP can be found in "Intellectual Property & Confidentiality: A Researcher's Guide" which is available on the RSDO website at: <http://intranet.brunel.ac.uk/research/rsdo/home.shtml>.

This Policy applies to all staff with a University contract of employment, students and other third parties who contribute to the creation of IP jointly with or on behalf of the University.

- 2 The Policy does not cover the use of copyright materials owned by third parties for teaching, personal study or research purposes (by the University, its staff or students). Advice about the use of third party copyright materials for research or teaching purposes should be sought from the University Library; for further information refer to: <http://intranet.brunel.ac.uk/library/about/copyright.html>

General Principles

- 3 The University needs to protect its investment and rights in teaching and support materials, so that they can be enhanced, developed and improved over time as teaching students is a core activity. Similarly, the university needs to protect its rights to exploit IP when university facilities or resources have been used to develop the IP. However the University recognises that members of its staff need to pursue and develop their academic careers and that their use of the materials they have created is important to them. This Policy aims to satisfy all these requirements where reasonably practical.
- 4 The University is supportive of the aims of the creative commons movement, which seeks to expand the range of research and creative work freely available for others to build upon and share. Further information is available at: <http://creativecommons.org>. The Brunel University Research Archive (BURA) makes freely available data sets, working papers, conference papers, pre-prints and PhD theses produced by University staff and students.
- 5 Subject to the following paragraphs, the provisions of the Copyright, Design and Patents Act 1988 (as amended) shall apply to copyright matters, and the provisions of the Patents Act 1977 (as amended) relating to the ownership of employee's inventions shall apply to inventions produced by staff.
- 6 Under these Acts the originator of copyright materials, of inventions that might be patented, or of similar materials, owns the IP arising, except where the originators are employees, when the IP belongs to the employer. As a general principle, therefore the University owns the IP in works and inventions created by its staff under their contracts of employment where such works or inventions are created by employees whose job description envisages such an output, but makes exceptions to this rule for its staff in the specific cases described below.
- 7 Students are not employees and thus own the IP in materials that they create unless there is a written agreement to the contrary. Students enrolled with the University will be required to assign their IP to the University before they become involved in any activity in which the University may require use or control of the IP for teaching, research or commercialisation.
- 8 Third parties, such as contractors, are also not staff or employees in the legal sense and thus may own IP in work that they carry out under contract unless there is a written agreement to the contrary. The University's policy is that all contracts with contractors should explicitly state that the IP in materials that they produce under contract belongs to the University (or, as a minimum, that the contractor gives the University an irrevocable, non-exclusive licence to use the materials developed by them).
- 9 Where any such IP created is subject to an agreement with a third party which is approved by the University, the agreement with the third party

will take precedence over this Policy in so far as such agreements are at variance with it.

UNIVERSITY STAFF

- 10 The terms 'University Staff' and 'Staff' shall include all academic and non-academic staff who are employed by the University under formal contracts of employment, including part-time staff.
- 11 In exceptional circumstances, and where it is in the interest of the University, the provisions of this Policy may be varied by written agreement between a member of Staff and the University.

University Ownership of Intellectual Property

- 12 Except as otherwise specified below, IP created by Staff in the course of their employment with the University, commissioned by the University or produced under the terms of a research grant or contract between the University and an external third party shall belong to the University.

Exceptions

- 13 In accordance with normal academic practice, the University waives its rights to ownership of the following IP:
 - 13.1 The copyright in personal lecture materials created by Staff for the purposes of course delivery, other than distance learning course materials.
 - 13.2 The copyright in any publication, work or design produced by a member of Staff as a scholarly work where its intent is the furtherance of his/her academic or professional standing. Scholarly works include books, contributions to books, articles, conference papers and literary, musical, dramatic and artistic works whose principal intent is to add to the body of knowledge.
- 14 The University shall retain a free, non-exclusive, perpetual, irrevocable licence to use, copy, and modify them for teaching and research purposes and will respect the moral rights of Staff in such material, where asserted. The University shall, where practicable and appropriate, consult with individual members of Staff prior to making any modifications to such materials or works.

Publication

- 15 The University strongly encourages academic publication and dissemination of IP as being fundamental to the open exchange of research and educational material.
- 16 The University recognises the potential conflict between securing protection of intellectual property and academic publication. The risks of any such conflict can be minimised by early consultation. Particular care should be taken in the following circumstances and advice should be sought from the Research Support and Development Office (RSDO) as early as possible:

Publication by any method (verbal, including internal seminars, written and electronic) of information on research outputs may invalidate IP and result in the loss of the opportunity to protect it, for example by the filing of a patent application or registered design. If the work to be published describes IP of potential commercial value and in which the University has an interest, members of Staff must first consult with RSDO. Publication must be delayed until the IP has been protected or a decision has been made not to protect it.

Publication of IP generated in the course of externally-sponsored research projects may be subject to the terms of agreements between the University and funding bodies or collaborators. Members of Staff wishing to publish such IP should first establish whether any restrictions apply, for example on the publication of specific data or know-how.

Where the University has waived its right to the ownership of the IP in section 13 above, Staff may enter into agreements with third parties for the scholarly dissemination of those materials or works, in, for instance, academic journals, textbooks etc., subject to the University's right under section 14 to retain a non-exclusive licence for research and teaching purposes.

Arrangements for the Protection of IP

- 17 Where Staff create IP that is of a novel and potentially exploitable nature, it must be reported to their Head of School and RSDO as soon as possible in order that the interests of the Staff member and of the University can be established and safeguarded. Staff should maintain a laboratory note book while performing research that has the potential to be commercialisable and should ensure that it is regularly signed and dated by a senior colleague such as their Head of Subject, Deputy Head of School, supervisor or similar. The information relating to the IP must be kept confidential until such time as the IP has been evaluated and, where a decision is made to apply for legal protection (e.g. a patent application), this has been secured.
- 18 Where it is decided that the University will apply for legal protection for IP, it is expected that Staff involved in creating or inventing the IP will provide all reasonable assistance in the process, for example, by providing information promptly upon request, attending meetings, advising on further developments and maintaining confidentiality as required.

Commercialisation

- 19 The University is committed to exploiting the IP which it owns or controls in a way that optimises the benefits for itself and members of Staff. Where IP is successfully commercialised, the University will share the financial benefits with the Staff concerned – see sections 25 to 30 below. The University will evaluate the commercialisation potential of IP and determine whether it wishes to exploit it. IP may be exploited in a number of ways, for example through licensing, joint

ventures or the formation of spin-out companies. The Brunel Commercialisation Office manages the exploitation of University IP and should be consulted by Staff in the first instance.

- 20 The University may at any time assign the rights in its IP to third parties, for example, research sponsors, subsidiary companies or spin-out companies. Any income derived from such an assignment shall be distributed according to sections 25 to 30 below.
- 21 If the University does not wish to take an active part in exploitation and subject to any obligations to third parties, the University may assign its rights to the member(s) of Staff (and any others directly involved in creating the innovation) to secure exploitation by whatever means they consider appropriate subject to the revenue sharing formula in sections 28 and 29 below.
- 22 If a member of Staff wishes to commercially exploit (i.e. use for financial gain or for trading purposes) the IP in his/her personal lecture materials or in scholarly works created in the course of his/her employment, then s/he should consult with his/her Head of School and the Director of the Commercialisation Office in the first instance; agreement by the University shall not be unreasonably withheld subject to the revenue sharing formula in sections 28 and 29 below.
- 23 Where members of Staff engage in private consultancy with third parties, use of University copyright materials, such as the logo and letterhead, is not permitted. Further, any use of the University's name in writing in connection with the private consultancy activities of a member of Staff is subject to approval by the University.
- 24 Staff are not permitted to assign or licence to third parties rights in University IP. Staff are obliged to maintain strict confidentiality with respect to University IP and are required to ensure that non-disclosure agreements are in place before discussing matters relating to University IP with third parties.

Sharing of Financial Benefits

- 25 Staff shall be entitled to retain in full any financial benefit generated from the academic publication of scholarly works.
- 26 Any member of Staff who is responsible for generating IP that subsequently delivers any kind of financial benefit to the University as a result of commercialisation of that IP by whatever means, be it for example, via license fees, royalty income or the sale of shares owned by the University in joint ventures or spinout companies, shall be entitled to a share of that benefit.
- 27 Financial benefits accruing to the University under section 26 will be shared according to the following formula:

Cumulative Net Financial Benefit per Project	Staff %	University %	School %	BUEL* %
£0-£25,000	100	0	0	0
£25,001-£250,000	50	10	20	20
£250,001+	25	15	25	35

* BUEL (Brunel University Enterprises Ltd) is the wholly owned subsidiary company of the University that manages the commercialisation of University IP

- 28 Financial benefits accruing to a member of Staff under section 21 will be shared according to the following formula:

Cumulative Net Financial Benefit per Project	Staff %	University %	School %	BUEL %
£0-£25,000	100	0	0	0
£25,001+	80	10	10	0

In the event that a member of Staff forms a company to exploit IP assigned to him/her by the University, the University will receive 20% of the equity allocated to him/her for the IP.

- 29 For the above purpose, Cumulative Net Financial Benefit is defined as all financial benefits in connection with a single project or venture in excess of the direct commercialisation costs incurred, including but not limited to costs of securing legal protection and third party intellectual property rights, the enforcement and commercial exploitation of the IP and financial commitments to investors. Such costs will be reclaimed prior to any distribution taking place. In the event that two or more pieces of IP are combined in a single project or venture, then an agreement defining the distribution of Cumulative Net Financial Benefit to the contributing parties must be concluded before the start of the commercialisation process.
- 30 Where more than one member of Staff contributes to the creation of IP, the Staff share of the Cumulative Net Financial Benefit will be equally divided between these Staff unless there is a signed written agreement to the contrary.
- 31 Where IP is made jointly by a member of Staff and a Student or third party who may have rights of ownership in the IP, a written agreement between all parties is required before the start of the commercialisation process to address the ownership and revenue-sharing from any commercial exploitation of the IP. If no agreement is in place, then ownership and revenue-sharing between the interested parties shall be determined by the University

- 32 Shareholdings by members of Staff in University spinout companies and joint ventures will be agreed on the basis of the business and/or technical requirements of the respective spinout company or joint venture.

THIRD PARTIES

- 33 Third parties (i.e. individuals who are not employees of the University) may be involved in the creation of IP in conjunction with or on behalf of the University. They may include visiting academics, associate academics, Emeritus Professors, consultants and contractors.
- 34 IP produced by third parties will not belong to the University; unless a written agreement transferring the ownership is signed by both the University and the third party.

Visiting/associate academics and Emeritus Professors

- 35 Where visiting/associate academics or Emeritus Professors are appointed by the University and may create potentially exploitable IP, an agreement should be entered into transferring the ownership of IP arising in the course of their appointment to the University. The University will undertake to treat the appointees as if they are Staff for the purposes of the IP exploitation and revenue sharing arrangements.

Contractors and consultants

- 36 All contracts with outside contractors and consultants should explicitly state that the copyright and other IP in any work they produce will belong to the University (where this cannot be agreed with the contractor, contracts should say, as a minimum, that the contractor gives the University a non-exclusive licence to use such works).

UNIVERSITY STUDENTS

- 37 The term 'University Student' and 'Student' shall include all students registered/enrolled on University degree programmes.
- 38 Where a Student is also an employee of the University, it will be necessary to determine whether a piece of IP is produced as a Student or as an employee as this will determine whether regulations pertaining to Staff or Students apply.

Student Ownership of IP

- 39 The University acknowledges that Students, as non-employees, own the IP they create independently in the course of their degree studies, subject to a number of exceptions as detailed in sections 40 to 43 below.

Exceptions

- 40 Research projects form a part of many degree programmes at both undergraduate and postgraduate level. Such projects are usually

proposed by members of academic Staff and will often be connected in some way to that academic's on-going research interests. In such cases, Students may join a team to investigate one particular aspect of a much larger research programme, thereby drawing on the considerable expertise, reputation and infrastructure of the group

- 41 In these circumstances, as more fully set out in section 43 below, the University requires Students to assign their IP to the University and to complete and sign formal documentation to give effect to such an assignment.
- 42 In exchange, the University undertakes to treat Students in the same way as members of staff for the purposes of sharing any revenues arising from the commercial exploitation of that IP. This is done by applying the University's revenue sharing arrangements as described in sections 26 to 29, as if students are employees.

Circumstances where the University will require ownership of IP created by Students

- 43 These shall include the following:
 - 43.1 The IP developed by the Student may be needed to enable use to be made of the whole IP portfolio developed by the research team. The University seeks to avoid a position where a small gap in its IP portfolio precludes successful commercialisation.
 - 43.2 The IP will often be based on advice and ideas contributed by members of academic Staff and may be based on confidential, proprietary or otherwise valuable information that already belongs to the University or a sponsor
 - 43.3 The research programme may be conducted under the terms of agreements with, or research grants from, outside parties, including both commercial and non-commercial funding bodies. These terms may require that IP generated in the research programme be owned by the outside body or the University, or be licensed to the outside body.
 - 43.4 In developing the IP, the Student may be funded by the University or may make substantial use of University resources.

Procedure for assignment of IP

- 44 Where any of the above circumstances arise, the University will require that Students complete and sign a confidentiality and intellectual property agreement before commencing work on the project. In signing that document, Students will:

- 44.1 agree to maintain strict confidentiality with respect to University IP and to ensure that non-disclosure agreements are in place before discussing matters relating to University IP with third parties.;
- 44.2 agree to assign ownership of the IP to the University if and when requested and not to assign or licence any rights in University IP to third parties; and
- 44.3 benefit under the University's revenue-sharing arrangements detailed in sections 25 to 30 as if they are a member of Staff.

Commercialisation

- 45 In addition, Students may at any time approach the University with a view to seeking support for the commercialisation of IP belonging to them. This will generally involve the Student assigning ownership and exploitation rights in the IP to the University. In consideration for this assignment, the Student will benefit under the University's revenue sharing arrangements as if s/he is a member of Staff.
- 46 Students should consult with their supervisor or tutor in the first instance on any matter relating to this Policy.

DISPUTE RESOLUTION

- 47 In the event that a dispute arises in connection with the provisions of this Policy, this should be raised initially with the Head of School and the parties concerned shall themselves seek to resolve the issues in the first instance. All internal procedures should be exhausted before resorting to external resolution processes. Should no acceptable outcome be reached, the dispute may be referred to an independent expert who shall:
 - 47.1 be appointed by the Pro Vice-Chancellor (Research) in consultation with the Staff or Students in dispute
 - 47.2 make a determination that shall be final and binding on the University and the creators/ inventors in dispute and which shall include the apportionment of the cost and the expenses payable by each of them.

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