

INTELLECTUAL PROPERTY POLICY

This paper sets out Brunel University London's ('Brunel' or the 'University') policy on intellectual property ('IP'). The policy is set out as follows:

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A. Introduction & Purpose

- 1 Intellectual property (IP) is the output of creative thought, for example, a story, an invention, an artistic work or a symbol¹. Intellectual property rights (IPR) are legal rights that allow the owner of IP to control and benefit from the use of their IP. The type of IP results in varying forms of IPR². Some IPR arise upon creation of a work automatically (e.g. copyright), others are only granted following successful registration (e.g. a patent). This Policy sets out a framework to address the ownership, use and commercialisation of all IP created by Staff and Students at Brunel University London.
- 2 In doing this 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

¹ Intellectual Property Office 'Intellectual property: an overview' <https://www.gov.uk/intellectual-property-an-overview>

University facilities or resources have been used to develop the IP. Notwithstanding this, the University recognises that 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 were reasonably practical.

- 3 The University also wishes to encourage the development and exploitation of its IP, to the benefit of the University, its Staff, Students, and society. The University enables the exploitation of IP in a variety of ways including, *inter alia*, through licensing, sale, or the establishment of spin-out companies. While the University is flexible on the means of exploitation it is acutely aware of the need to do so in a timely fashion. The University also wishes to actively encourage the use of its IP to generate positive economic and/or societal benefit and to this end is supportive of the Open Science movement³.
- 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 share⁴. 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 This Policy does not cover the use of copyright materials owned by third parties for teaching, personal study or research purposes by the Staff or Students. Advice about the use of third-party copyright materials for research or teaching purposes should be sought from the University Library.

B. Ownership of IP

B.1 Staff

- 6 Staff shall mean all Brunel employees, officers, individuals seconded to Brunel, where an appropriate secondment contract has been agreed, or those working under any honorary contract at Brunel. The provisions of the Copyright, Design and Patents Act 1988 (as amended) and the Patents Act 1977 (as amended) provide that all IP generated in the course of employment belongs to the employer (subject to third party rights). As a general principle, therefore the University owns the IP in works and inventions created by Staff under their contracts of employment where such works or inventions are created by Staff whose job description envisages such an output but makes exceptions to this rule for its Staff in the specific cases described in provision 8 below.

³ Further information is available at: <https://www.orion-openscience.eu/resources/open-science>

⁴ Further information is available at: <http://creativecommons.org>

- 7 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.
- 8 In accordance with normal academic practice, the University waives its rights to ownership of the following IP such that ownership resides with the creator of the copyright material:
- copyright in personal lecture materials created by Staff for the purposes of University course delivery, other than distance learning course materials whether delivered in person or online.
 - the copyright in any publication, work (including inter alia software) 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, inter alia, 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.
- 9 In relation to the exceptions in section 8 the University shall, where possible, be granted 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, unless such rights are waived by the author. The University shall, where practicable and appropriate, consult with individual members of Staff prior to making any modifications to such materials or works.
- 10 To the extent permissible by law, Brunel shall own IP created by Brunel Staff outside the course of their duties where additional University support has contributed to the development of such IP. Where such rights do not vest in Brunel automatically members of Staff shall assign these rights to Brunel upon request. For these purposes additional University support means support from Brunel which is more than incidental and which is over and above that normally provided to Staff for activities outside the course of duties, and could include *inter alia*:
- provision of funding;
 - use of Brunel IT resources;
 - use of Brunel premises, facilities, equipment and/or capabilities; and/or
 - use of Brunel IP, including use of Brunel name and/or branding.

B.2 Students

- 11 Students shall mean all students registered/enrolled on University degree programmes. Students are not normally employees of the University and therefore own the IP they create. This position may be varied by written agreement, which will be necessary in a number of circumstances.
- 12 Where Students are engaged in an activity that is funded by or is otherwise supported by a third party, they may be required to assign ownership of IP generated by them from such activity. Whether assignment is necessary shall be determined by the University taking into consideration the terms of any relevant contract or funding arrangements with the third party. Situations where assignment will be necessary shall include the following:
- Where the IP developed by the Student may be needed to enable use to be made of the 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.
 - Where the IP is based on advice and ideas contributed by a member of academic Staff and may be based on confidential, proprietary or otherwise valuable information that already belongs to the University or a sponsor
 - Where the research programme may be conducted under the terms of an agreements with, or research grants from, third 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, the University or be licensed to the outside body.
 - In developing the IP, the Student may be funded by the University or may make substantial use of University resources.
- 13 In addition, Students may at any time approach the University with a view to seeking support for the commercialisation of IP belonging to them. Any decision to assist a Student in the commercialisation of their IP will be at the University's sole discretion. Should assistance be provided by the University this will typically 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.
- 14 Where a Student is also an employee of the University, it will be necessary to determine whether IP is produced as a Student or as an

employee as this will determine whether regulations pertaining to Staff or Students apply.

- 15 Where Students assign IP to the University, the University shall undertake 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 shall be done by applying the University's revenue sharing arrangements as described in section 33, or section 37 as appropriate, as if Student(s) is a member of Staff.
- 16 Students should consult with their supervisor or tutor in the first instance on any matter relating to this Policy.

B.3 Third Parties

- 17 Third parties, engaged by the University who are not employees or Students at the University 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 agreements with third parties should where possible explicitly state that the IP in materials that they produce under any such agreement belongs to the University, or prospective commercial licensing arrangements are agreed (or, as a minimum, that the third party gives the University an irrevocable, non-exclusive licence to use the materials developed by them).
- 18 Where any such IP created is subject to an agreement with a third party 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.
- 19 Where visiting/associate academics are appointed by the University and may create potentially exploitable IP, as per section 6, 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.

C. Publication Exceptions

- 20 The University is required to publish the outputs of its research work for the general public and relevant beneficiaries by virtue of its charitable status. The University therefore strongly encourages academic publication and dissemination of IP as being fundamental to the open exchange of research and educational material.
- 21 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 prejudice the protection of IP resulting 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 during externally sponsored research projects is subject to the terms of agreements between the University and funding bodies or collaborators. Members of Staff wishing to publish such IP should refer to the publication terms of any such agreement first to establish whether any restrictions apply, for example on the publication of specific data or know-how.

D. Protection and Exploitation of IP

- 22 Where Staff or Students create IP ('Inventor') that is of a novel and potentially exploitable nature, it should be reported to their Head of Department and RSDO as soon as possible in order that the interests of the Inventor and of the University can be established and safeguarded. Staff and Students should maintain a dated laboratory notebook (physical or electronic) while performing research as it records information for eventual publication purposes, can help defend against possible accusations of academic fraud and plagiarism and clearly sets out arising novel IP what the IP is and importantly exactly what date it arose during the research work. The information relating to 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.
- 23 Where the University decides that it will apply for legal protection for IP, the Inventors 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.
- 24 Where the University exploits any IP, it is acknowledged that market conditions as well as the state of development of the IP are significant variables. The University and the Inventor(s) should agree a reasonable initial timetable, with regular reviews as circumstances change as the

development proceeds with success being dependant on all parties fulfilling their respective responsibilities.

D.1 Principles of Commercialisation

- 25 The University is committed to exploiting the IP which it owns or controls in a way that optimises the benefits for itself, the Inventor(s) and the good of society. Such exploitation may include, inter alia, licensing, assignment or a spin-out company. RSDO manages the exploitation of University IP and must be consulted by Inventor(s) in the first instance. RSDO will evaluate the commercialisation potential of IP and determine whether and how 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.
- 26 Where IP is successfully commercialised, the University will share the financial benefits with the Inventor(s) concerned – either as detailed in section 33 below or in relation to a spin-out company in accordance with section 37.
- 27 The University may at any time assign the rights in its IP to third parties, for example, research funders, subsidiary companies or spin-out companies. Any income derived from such an assignment shall be distributed according to section 33 below.
- 28 If the University does not wish to take an active part in exploitation and subject to any obligations to third parties, the University may at its sole discretion assign its rights to the Inventor(s) (and any others directly involved in creating the innovation) to secure exploitation by whatever means they consider appropriate subject to the agreement of reasonable terms. Any Staff taking assignment of IP shall not be entitled to benefit under section 33.
- 29 If a member of Staff wishes to commercially exploit the IP in his/her personal lecture materials or in scholarly works created in the course of his/her employment, then s/he is advised to inform their Head of Department.
- 30 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.

D.2 Sharing of Financial Benefits

- 31 Subject to section 29 Staff shall be entitled to retain in full any financial benefit generated from the academic publication of scholarly works.

- 32 Any Inventor 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 either as detailed in section 33 below or in relation to a spin-out company in accordance with section 37.
- 33 Financial benefits accruing to the University under section 26 and/or 27 will be shared according to the following formula:

Cumulative Net Financial Benefit per Project	Staff%	University %	Department %
£0-£25,000	100	0	0
£25,001-£100,000	70	15	15
£100,000 and above	50	25	25

- 34 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 deducted 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.
35. 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. This division shall also be reflected in the Departmental share in section 33.
36. Where IP is created jointly by a member(s) 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.
37. Where the University opts to exploit IP through a spin-out company Inventors may choose to benefit either by taking a personal

shareholding in the spin-out company or benefit under section 33. Where there is more than one inventor they are each free to select their preferred option.

38. For equity in spin-out companies, the University expects to receive a reasonable proportion of the founding equity, which at the University's sole discretion may be held by the University or by Brunel University Enterprises Limited. Shareholdings by members of Staff and third parties in University spin-out companies and joint ventures will be agreed on the basis of the business and/or technical requirements of the respective spin-out company or joint venture. Any decisions regarding the foregoing must be consistent with the University's conflict of interests policy.

E. Dispute Resolution

38. In the event that a dispute arises in connection with the provisions of this Policy, this should be raised initially with the Head of Department 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:
- 38.1 be appointed by the Vice-Provost (Research) in consultation with the Staff or Students in dispute.
 - 38.2 be able to make a determination in the dispute.

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.