

UNIVERSITY OF CUMBRIA

INTELLECTUAL PROPERTY RIGHTS POLICY

Library and Student Services

NB. This policy is available on the University of Cumbria website and it should be noted that any printed copies are uncontrolled and cannot be guaranteed to constitute the current version of the policy.

POLICY SCHEDULE	
Policy title	Intellectual Property Rights
Policy owner	Vice Chancellors Office
Policy lead contact	Director of Library and Student Services (LiSS)
Approving body	Research and Enterprise Committee
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Related Guidelines, Procedures, Codes of Practice etc.	<ul style="list-style-type: none"> - Code of Practice for Research (Research Office) -Conditions of Contract for the Purchase of Consultancy and Professional Services (Human Resources) -Record Retention Schedule (VCO) -Offsite Delivery Agreement (AQD) -Academic Regulations 13-14: para F3.2 (AQD) - University of Cumbria Contracts of Employment (Human Resources) -Ethics Information (Research Office)
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Intellectual Property Rights Policy

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1. Introduction

- 1.1 Knowledge Transfer (KT) is a particular area of the University's activities in which the Intellectual Property (IP) of the institution needs to be safeguarded while realising the desirable and mission critical goals of sharing of ideas and expertise with external organisations and agencies and encouraging entrepreneurship both internally and externally.

2. Aims and Objectives

- 2.1 For University staff (as defined below in para 4.2) Intellectual Property Rights (IPR) generated by them during the course of their employment or work with the University belongs to the University. (See exception in para 5.8a).
- 2.2 The University recognises that students generally own the IPR they create as part of their studies unless sponsored (internally or externally) or in a collaboration or other third party contract, or employed (excludes student ambassadors) in which case they will be treated equally under this policy as for staff and be expected to assign their IPR to the University. The contribution of University staff for example by supervision of studies/projects is dealt with in para 5.6
- 2.3 Students shall be offered the opportunity to assign their IP rights to the University by completing a statement in conjunction with the relevant Personal Tutor. Following such assignment the University shall become the owner of the relevant IP and shall be able to deal in it and licence it. Any student who for any reason did not assign at the completion of their course shall continue to have the right at any time to offer to assign any of his or her IP in whole or in part to the University.
- 2.4 In the specific case of students and University staff registered as postgraduate research students, the Accreditation Arrangement between the University of Cumbria and Lancaster University determines that such students are subject to the IPR Policy of the latter institution. In this case the IPR is invested in the student, unless the student wishes it assigned to the University. (Without prejudice to ongoing discussions between all relevant parties).
- 2.5 The University does not normally seek rights to student inventions however variation to this arrangement is possible for example where University partners/placement providers stipulate transfer or where a student is engaged specifically for the purpose of conducting research, in which case IPR will be assigned by the student to the University. In these cases, students will sign appropriate documents to confirm such assignments.
- 2.6 The wide dissemination of IP is fundamental to the work - and indeed the idea of - a Higher Education Institution; and (subject to only limited exceptions) the University has in this context granted members of staff and students freedom to publish academic publications and take income derived from these publications.

- 2.7 In the context of furthering its objectives as an academic and charitable institution, the University is committed, both for its own sake and in the interests of its staff and students, to maximising the benefits which can be derived from its IP which may include commercial exploitation. This may be done either by the University itself or by a duly approved and appointed representative or subsidiary. Thus, when IP is exploited commercially, the University is committed to sharing the benefits of that exploitation with the staff concerned. The University's policy on IPR is based on those commitments - and they mean for example that the University and its staff must take all reasonable measures to protect the University's IP. The policy is shaped also by the consideration that the University, its staff and students must in any event respect IPR belonging to others.
- 2.8 In short, the University encourages active identification of commercially-valuable IP, suitable protection and robust exploitation to the mutual benefit of the University, students and staff. It should be noted in this context that commercial exploitation (for example, on the basis of patents) need not be incompatible with either the University's charitable purposes or academic activities such as the publication of academic papers.

3. Scope

3.1 This Policy applies to:

- a) all Staff employed by the University including Research Assistants
- b) all University Students (except those identified in para 2.4 above where the Accreditation Agreement applies)
- c) personnel working off site whereby their organisation receives payment from the University for (typically) learning and teaching delivery eg in Schools
- d) unpaid personnel who may be Honorary, people seconded to the University or working in a voluntary capacity for the University
- e) Consultants or Contractors: Suppliers of Goods and Services to the University
- f) Alumni (in respect of publications)

3.2 This Policy is incorporated into:

- a) all employees' contracts of employment and any legal relationship between the University and its students
- b) all Conditions of Contract for the Purchase of Consultancy and Professional Services

- c) all unpaid personnel contracts, with whom the University has a relationship
- 3.3 It is expected that staff and students will cooperate with the University in the effective delivery of the Policy.
- 3.4 This Policy recognises and is consonant with the University's position on academic freedom.

4. Definitions

- 4.1 There are numerous definitions of intellectual property (IP). In essence, IP may be regarded as 'knowledge and its creative application'. In practical terms all material generated by staff should be regarded as potentially being IP and generating intellectual property rights (IPR). Examples of IPR include patents (of particular products or processes), copyright (of particular publications, online materials, broadcasts etc), performance rights (of particular creative works), design rights (of particular product designs or creative artefacts) and trade marks (of particular products or artefacts).
- 4.2 In the context of this policy Staff means employees of the University and personnel who carry out unpaid/honorary work on behalf of the University.
- 4.3 Students mean students of the University registered for an award of the University or undertaking non credit bearing activity and/or research projects or equivalent.
- 4.4 Substantial use of University facilities in paragraphs: 5.7, 5.8 (b) and 5.8 (e) includes substantial use of office and/or laboratory space (or equivalent), use of corporate and/ or specialist IT systems/software, use of library resources, access and use of University expertise or any combination of these,

5. The Policy Principles

The legal position

- 5.1 Although the legal position is inevitably complex, the law is such that, unless there are specific agreements to the contrary, the University would normally be regarded as owning all intellectual property generated by Staff during the course of their employment, or if unpaid, during their work period with the University. (Students are not normally employees, but the effect of the contract between the University and its postgraduate research students is, in this connection, to place these students in the same position as staff, except as in 2.4above.)
- 5.2 However, not all IPR generated by staff during the course of their employment necessarily belongs to the University. There are two exceptions to the general rule set out in 5.1 above:

- a) The University may, as a matter of policy, determine that particular categories of IPR should be vested in the staff who produce them. Nonetheless, the University's capacity to waive its claim to IPR is limited: partly for pragmatic financial reasons, but also because it is a charitable body (and therefore obliged by law to do so), the University has to take all reasonable measures to seek to maximise the returns on its assets (which, of course, include IPR) in order to meet its charitable purposes. In practice, the University has decided not to make any claim over income earned by members of staff from academic publications.
- b) Some IPR is generated on research or other third-party contracts the terms of which may give third parties (usually the funding body in question) rights over some or all of the IP. (In practice, such third-party rights will be negotiated and documented between the University and the funding body before the research contract in question is signed.)

IPR and students

- 5.3 The University's position on students and the ownership of IPR is as set out in paragraphs 2.2 to 2.5 of this policy. It is stated there that in most circumstances, for students, the ownership of IPR rests with the individual.

In discharging this policy:

- 5.4 The University will endeavour to involve the student body through membership of the Research and Enterprise Committee and the University shall endeavour to make students aware of the IPR policy
- 5.5 Where practical the University may help students to exploit IPR and in doing so may request that the student assigns IPR to the University. It is important that discussions are held as early as possible and documented.
- 5.6 For student research projects involving substantial supervision and/or collaboration between staff and students and/or partners or use of staff background IPR (see Notes and guidance), IPR will typically be assigned to the University and be subject to the reward sharing scheme set out in para 5.12 below.

Conditions of ownership, use and ownership of IP

- 5.7 The University's conditions on the ownership, use and exploitation of IP created by Staff are designed to reflect the general position under the law: the University asserts its right to ownership and use of all IP generated by staff during the course of their employment, and/or unpaid work carried out for the University. Likewise the University asserts its right to ownership and use of all IP generated by staff outside the course of their employment where substantial University resources have been used. The University is however committed to sharing with the staff concerned the rewards derived from successful commercial exploitation of IP which they have generated.
- 5.8 Against this background, the following specific conditions apply to the

ownership, use and exploitation of IP:

- a) Except as may be provided in a contract with a third party (for example, a funding body), or in cases where an individual has been employed specifically for the purpose of producing a particular academic publication, or where publication might result in the loss of an opportunity for commercial exploitation, the University freely allows members of staff and students, to publish academic publications which they produce and to keep any or all income (eg royalties) from those publications. (Cases of doubt or cases requiring interpretation should be referred to the University Registrar and Secretary in the first instance.)
- b) Subject to (a) above, the University owns and therefore has the right to use all material that is generated by staff during the course of their employment and any material that is generated by staff outside the course of their employment but which is based upon substantial use of University resources.
 - i. Patents and Inventions: The University's position on Patents and Inventions is as detailed in relevant sections of the Contract of Employment.
 - ii. Copyright: The University's position on Copyright is as detailed in relevant sections of the Contract of Employment. (See Notes and Guidance for details).
- c) The University when using material generated by staff or students will wherever practicable give due acknowledgement to the authorship of material. Where this leads to the formation of a 'spin-out' or 'spin-in company' the constitution of that company shall be as agreed or reasonably required by the University. The IPR should transfer to the company on incorporation following negotiations on split between parties and protecting the University's interests.
- d) Where the University commercially exploits material generated by members of staff or students it will share a percentage of the income it derives from such commercial exploitation with the author(s)/inventor(s) in accordance with para 5.12 below.
- e) If a member of staff wishes to claim ownership of IP on the grounds that that IP was not generated during the course of that member's employment/relationship with the University and did not require substantial use of University facilities, he or she should in the first instance approach their Head of Department (HOD)/ Head of Service The (HOD) or Head of Service may assent to any such claim may but only after consultation with the University Registrar and Secretary who will make appropriate approach to University legal advisers. Any dispute will be referred for resolution to a panel consisting of a member of the University Executive Group; the Director of Research and Head of the Graduate School and the Executive Dean /Head of Service.
- f) Subject to compliance with the requirements of any third party funders, for the effective operation of the Policy, it is required that the 'intellectual

property' generated shall remain confidential between the generator(s) of the material and the University of Cumbria until any exploitation is determined.

- 5.9 If members of staff or students wish to seek the commercial exploitation of any IP owned in whole or in part by the University, they must do so with the consent of the University obtained through the University Registrar and Secretary, following consultation with their Dean/Head of Service. The precise mechanism for exploitation will vary: in some cases it may be through the creation of a new company, and in others through the licensing or assignment of IPR to a third party.
- 5.10 Students' works (i.e. works of art, artefacts and designs) created in fulfilment of assessment or other requirements of a University programme generally belong to the student, however up to the time of the student's final academic assessment, the University shall have the final right to decide whether or not works should be exhibited. During this time, and as a requirement of every course, the works may be held in the possession of a student but shall be made available to the University when requested with reasonable notice.
- 5.11 Notwithstanding, the University supports the display, exhibition and sale of student work, subject to the requirements of assessment and as outlined in the Notes and Guidance appended to this policy. Commercial relationships, exhibitions and sales outside the university will require specific permission and agreement in advance between the student and the university.

IPR from Collaborative and Knowledge Exchange activity

- 5.12 Where an individual or group of University staff see opportunities to develop knowledge exchange partnerships or other such collaborative arrangements for the sharing of the IP of the University, then there should be early discussion with the line manager and subsequently other University personnel, appropriate to the particular circumstances.
- 5.13 Collaborative projects may involve commercial and non-commercial partnerships with different levels of IPR at different stages of the initiative requiring variable assignment of rights (see Notes and Guidance). This needs to be agreed and documented before the project commences.
- 5.14 Decisions of the University on the sharing of any benefits from the exploitation of IPR will be made case by case within the following framework:
 - a) The individual(s) concerned (hereinafter referred to as the 'inventor(s)') will be required at the outset to warrant that they and only they have contributed to the generation of the IP in question and/or disclose in full any involvement of third parties, and to agree between themselves (where there is more than one 'inventor') the distribution of the inventors' share of any income or capital gain arising from the exploitation of that IP. Where the inventors cannot agree the matter will be referred to the University Registrar and Secretary for a decision. Those who are identified

as 'inventors' may include any staff and students of the University.

- b) As a guide the inventor(s) will receive a minimum of 33 per cent of the net proceeds from exploitation (after meeting all costs, including University overheads), the residue accruing to the University. (Without prejudice to discussions between relevant parties). This para 5.12 b applies from the date the Project started.
 - c) The University's share of the net revenue and any capital gain arising from the exploitation of IP will, in general, be shared with the resource centre(s) in which the IP was generated. The precise share will be determined in accordance with guidelines laid down from time to time by the Finance and Resources Committee.
 - d) In cases where a new company is formed to exploit the IP in question, the inventor(s), subject to the University's Financial Regulations and subject to negotiations with the University, may receive shares in that company in accordance with the formula determined in (para 5.12b) above.
 - e) Any disputes about the sharing of benefits will be referred for resolution to a panel consisting of a member of University Executive Group, the Director of Research and Head of Graduate School and the Executive Dean /Head of Service.
- 5.15 The principles in para 5.12 will apply to the sharing of the University's benefits from the exploitation of IP which is owned jointly by the University and a third party for example a business.
- 5.16 With the consent of the Executive Dean /Head of Service members of the University are entitled to use IP for the purposes of carrying out consultancies having due regard for current contractual requirements regarding exclusivity of service.
- 5.17 Members of staff are expected to take all reasonable steps to ensure that the University's IPR is properly protected.
- 5.18 Members of staff who enter into agreement with the University for the exploitation of any IPR are bound by this Policy for the duration of that exploitation.
- 5.19 The University acknowledges and accepts that in the case of any inconsistency, it is bound by its legal responsibilities and obligations to staff and students contained within the general law that cannot be varied by these conditions.

6. Equality, Diversity and Inclusion (with particular reference to disability reasonable adjustments) and Equality Assessment Statements

- 6.1 The Equality Act 2010 covers the "protected characteristics" of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (including lack of belief), sex and

sexual orientation. The University has developed a Single Equality Scheme and Equality Objectives to implement the Equality Act within the University practices and procedures.

- 6.2 Within the Equality Act it remains permissible to treat a disabled person more favourably than a non-disabled person. It remains lawful to make reasonable adjustments in relation to employment, education and services to ensure that there is true equality of opportunity for disabled people.
- 6.3 This policy and its implementation will be monitored, as appropriate, in line with relevant legislation for its impact on different equality groups. This process will provide a check on whether there are any differences and allow the University to assess whether these differences have an adverse impact on any particular group such that appropriate action is taken.
- 6.4 These are important issues and further information should be sought from the University's Diversity, Equality & Inclusion Manager, as required.

7. Records Management Statement

- 7.1 The records associated with this policy are controlled by The Vice Chancellor's Office and will be created, stored and disposed of in line with the University's Records Management guidelines and procedures.
- 7.2 The University is committed to complying with the requirements of Data Protection legislation and regulations and any personal data created as part of this policy will be processed in accordance with the University's Data Protection Act procedures. This includes ensuring that data is held securely, is not disclosed unlawfully and is destroyed when no longer needed.
- 7.3 The University also aims to ensure that users of this policy are aware of Data Protection, Freedom of Information and Records Management issues associated with this policy.

8. Risk Management Statement

- 8.1 Failure to comply with this policy could lead to:
 - University IP not being sufficiently protected
 - Loss of opportunity to exploit IPR leading to reduced University reputation and loss of potential income streams
 - Student IP and enterprise not encouraged, developed or supported, and student outcomes and employability not maximised
 - Reduced competitive advantage which other organisations may seize resulting in missed opportunities and loss of market share
 - Reduced opportunities for business engagements, knowledge transfer and growth and thus reduced socio economic advantage for the region
- 8.2 This policy mitigates risk(s) to
 - RDAP and development of the research infrastructure

- Litigation and disputes

8.3 Risks in the University's Risk Register.

- Failure to achieve RDAP
- Loss of or failure to create a high quality reputation

9. Roles and Responsibilities

It is the responsibility of:

- *The University Board to oversee the IPR Policy via Governance structures*
- *University Executive Group to endorse and support the Policy's implementation*
- *Managers to work within the Policy and encourage IPR generation and dissemination; ensure all staff are aware of the Policy especially new staff and part time/fractional and hourly paid staff, honorary/visiting academics and project staff.*
- *Document IPR (current and potential) and lodge with VCO Legal Services*
- *Staff members: work within the Policy and ensure IPR is explicitly discussed, agreed and documented as appropriate*
 - *make other staff, students and partners aware of their responsibilities under the policy*
 - *encourage students to disclose IPR and work with the University in the context of the Policy*

(as appropriate)

10. Contact Details

For further information regarding any of the issues covered by this policy please contact:

Director of Library and Student Services

Library and Student Services

Harold Bridges Library, Lancaster campus

Tel: 01524 384238

Fax:

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The Policy and associated documents are on Staff Net

UNIVERSITY OF CUMBRIA

POLICY DOCUMENT CONTROL SCHEDULE

All University of Cumbria Policies must include a completed Policy Document Control Schedule consisting of the Policy Schedule (see front cover), Review Schedule and Drafting Schedule (see below) which should be completed as appropriate.

REVIEW SCHEDULE				
Review no.	Due date	Reviewed by	Approved by	Completion date
1.0	01/08/12	M. Weaver and Task and Finish group	Research and Enterprise	May 2013

			Committee	
2.0	01/08/13	M. Weaver and Task and Finish group	Research and Enterprise Committee	May 2014
3.0	01/08/14	M. Weaver and Task and Finish group	Research and Enterprise Committee	May 2015
4.0	04/08/16	M. Weaver and Task and Finish group	Research and Enterprise Committee	September 2016

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1.0	23 May 2012
1.1 5.11 word change. IPR deleted projects inserted	07 Nov 2012
2.0	May 2014
3.0	May 2015
4.0	August 2016