



**University
of Worcester**

Intellectual Property Policy

Version 3.1

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This draft Intellectual Property Policy embodies the University's responsibility to exploit and develop its Intellectual Property to the benefit of the University and wider community and to encourage innovation through systems and equitable share of reward. This draft is for consultation through the Executive / Heads of Departments Group, Research Policy and Knowledge Transfer and Innovation sub committees of the Academic Board. It is intended that the policy should be in a form designed to help staff identify and make best use of inventions and discoveries arising from their research and teaching. It may be most appropriate to progress this as a pilot policy with a review period. The Policy will need to be referred to the Solicitors for scrutiny.

1.0 What is Intellectual Property?

"Intellectual Property" protects the expression of ideas and information that may be of commercial value. It includes rights such as patents, trade marks (both registered and unregistered), design rights (both registered and unregistered), copyright and database rights. Intellectual Property Rights generated by teaching, research and other types of work carried out at the University are important assets that need to be protected. Those rights most relevant to the University's activities include copyright, which arises automatically and for which there is no formal procedure of grant; patents, which are only granted after an extensive legal process; and 'know how' which can be protected by confidentiality agreements.

Further information relating to the main types of intellectual property can be found in Appendix 1.

2.0 The purpose of this Policy

The University is committed through its Strategic Plan (2007 – 2012) to contributing to the regional and national economy and to the health and wellbeing of individuals and communities who engage with the University. Our University's greatest asset is its staff and students and their skills and ideas. Success is dependent upon protection and exploitation of innovative ideas.

The effective management of Intellectual Property will contribute to the University's wider social objectives through knowledge transfer, enhancing research and teaching and helping to retain and recruit staff. It will also bring financial rewards to the institution and its staff.

2.1. The central features of the policy are:

- Clear incentives to staff to create intellectual property and ensure the appropriate use of University Intellectual Property assets.
- Effective and efficient university services which can evaluate and protect the intellectual property, and then decide on the most appropriate arrangements for its transfer into use.
- Arrangements for net revenue sharing as a result of commercialisation.

3.0. Ownership of Intellectual Property

The University relies on the Patents Act 1977 (as amended) and the Copyright, Designs and Patents Act 1988 (as amended), which state respectively that ownership belongs to the employer when

- an invention is made in the course of an employee's normal or specifically assigned duties;
- a 'work' (i.e. anything that is the subject of copyright protection, see Appendix 1 for further information) is made by an employee in the course of his/her employment, subject to any agreement to the contrary.

Employers have similar rights in relation to 'know how'.

This policy applies to the following categories of people:

- persons employed by the University;
- postgraduate research student members in relation to work produced in the course of or incidentally to their studies. All intellectual property rights arising out of this work shall belong to the University. A research student will be treated in the same way as a member of staff. The position of students sponsored by an employer or under a research grant arrangement

will be governed by the terms of the grant or support funding. If there is any doubt, the student should contact the University for advice;

- other persons engaged in study or research in the University who, as a condition of their being granted access to the University's premises or facilities, have agreed in writing that this policy shall apply to them; and
- persons engaged by the University under contracts for services during the course of or incidentally to that engagement.

This includes any activities carried out as a part of research wholly or partly under University auspices.

Note: Consultancy activity is not covered by this policy: a separate guidance note is being developed for this area. Undergraduate and taught postgraduate students are not automatically covered by this policy. Appendix 2 deals with Intellectual Property arising from their work.

4.0 The Intellectual Property to which this policy applies

The University will assert its rights over all relevant Intellectual Property created by the persons defined in clause 3 above.

Relevant Intellectual Property includes, but is not limited to, the following: inventions, patents or potentially patentable innovations, discoveries, copyright in software programmes, know how of a commercially valuable nature, databases, electronic publications, design rights, software algorithms, trade marks (whether registered or non-registered), domain names, formulations and method of formulations of materials and compounds, business methods, brands, commercial graphics including logos, fonts etc, research log books, audiovisual materials and all teaching materials ("Relevant Intellectual Property").

The following Intellectual Property will not be considered to be relevant: paintings, poems, sculptures, novels and other work of a primarily artistic nature not included above.

If there is any doubt as to whether the Intellectual Property is deemed to be relevant, the guidance of the Business Partnerships Office should be sought. If the form of Intellectual Property is not listed above, it should be presumed that it is Relevant Intellectual Property.

This is subject to the following exceptions:

4.1 In accordance with academic practice, the University may permit Relevant Intellectual Property to be published in books and other published material (subject to any third party rights) by the creator of the work (the "Creator"), provided that the Relevant Intellectual Property does not form part of a University course or teaching materials. The Creator shall consult with the Business Partnerships Office, who will consider each case and provide consent if applicable.

The University recognises and encourages the longstanding tradition for academic publication in journals, e-journals, conference papers, academic books and other forms of academic dissemination. However, the University expects to receive full value from its investment in the development of teaching materials where commercially viable and will assert its right to its Intellectual Property Rights in this situation.

4.2 In the case of computer software, the University will be the owner of the copyright, but may grant to the Creator, again subject to any third party rights, a non-exclusive licence to use and to deal in the copyright material for the purpose of academic publication and for use in non-commercial applications, including making software freely available if he/she so chooses. The Creator should consult the Business Partnerships Office if this situation arises.

4.3 The Intellectual Property in any teaching materials (including e-learning materials) created by University staff will be owned by the University. However, the Creator may be granted a non-exclusive royalty free license to use such materials for non-commercial purposes. If there is net income generated from the exploitation of the teaching materials beyond the normal teaching activities of the University, then an equitable income-sharing arrangement will be prepared on the

basis of the revenue sharing arrangements detailed in this policy. The Creator should consult the Business Partnerships Office if this situation arises.

4.4 Research supported or commissioned by external agencies including the Research Councils, Government Departments, industrially based research organisations, the European Community, charitable foundations and companies will prescribe terms as to the ownership and exploitation of any intellectual property arising from the work being undertaken and the arrangements for exploitation and revenue sharing within the grant.

4.5 Work contracted on a commercial basis is likely to be on terms that require the ownership of any intellectual property to be assigned or licensed to the organisation paying for the research. Academic staff are responsible for ensuring that University contracting procedures are followed when contracting with any other parties, and the University's rights in relation to Intellectual Property are recognised. The University will provide support and advice on appropriate contractual arrangements and will support sourcing research funds.

5.0 Procedure upon the creation of Relevant Intellectual Property

Upon the creation of any Relevant Intellectual Property (or any Intellectual Property which the Creator is unsure as to whether it is relevant) , the following procedure is to be followed:

The Creator shall notify the Business Partnerships Office upon the creation of Relevant Intellectual Property. The Business Partnerships Office shall carry out an initial investigation to determine the scope for exploitation of the Relevant Intellectual Property. The outcome of this investigation shall be reported by the Business Partnerships Office to the Risk and Innovation Committee. The Risk and Innovation Committee shall decide whether the Relevant Intellectual Property is to be exploited by the University and the means by which any revenue received from the Relevant Intellectual Property is to be shared between the University and the Creator. The Risk and Innovation Committee shall then provide the Creator with a written agreement setting out the terms and conditions of the exploitation and the basis upon which any revenue will be shared between the University and the Creator.

The University may decide at its discretion to pay such sums as it deems appropriate to protect such Relevant Intellectual Property by whatever means it should so choose.

The University may decide at its discretion to pay such sums as it deems appropriate to develop such Relevant Intellectual Property by whatever means it should so choose. However, the nature of such development is such that it may often not be possible for the University to prudently invest such funds as this requires.

The University shall have the sole right to decide how such Relevant Intellectual Property is managed, developed and exploited. In particular, the University shall be the final arbiter of whether to patent any item of the Relevant Intellectual Property. Any decision not to patent does not automatically infer that the University is declining to exploit the invention, and therefore no automatic reversion shall take place. Alternative forms of protection will be considered by the University.

All Relevant Intellectual Property that is not otherwise constrained by the ownership of third parties is the legal property of the University until or unless the University should decide to dispose of such Relevant Intellectual Property. Should the University no longer wish to proceed with protection or exploitation of a given piece of Relevant Intellectual Property then, on the request of the Creator, the University will normally assign all rights in this Intellectual Property to the Creator. Any such requests should be directed to the Business Partnerships Office.

6.0 The Obligations of the Creator

6.1 Obligation to report

The Creator shall, without delay, report the creation of any Relevant Intellectual Property to the Business Partnerships Office.

6.2 Obligation to document

The Creator is obliged to ensure throughout his/her employment or study that he/she promptly documents any such Relevant Intellectual Property as may arise in a form that would enable the date of creation and the nature of the Intellectual Property to be clearly established. This may be through regular dating and signatures on log-books, or through writing-up and self-addressing of posted descriptions as appropriate. It must be noted that keeping of documentation solely in electronic form in a private repository is not acceptable. Copyright should be asserted using the © symbol, followed by 'University of Worcester' and the year of the creation of the work on all relevant documents.

6.3 Obligation to maintain confidentiality

The Creator's attention is drawn to the crucial importance of maintaining strict confidence over the Relevant Intellectual Property. Early Publication can compromise Intellectual Property and Creators need to be mindful of this. The University will provide advice in such situations.

All publication must be approved in advance by the Registrar and Secretary. The University shall be the final arbiter of what constitutes a disclosure in whole or in part. The Creator is obliged to take all reasonable steps to ensure that confidentiality is maintained. The Business Partnerships Office will assist with the correct confidentiality requirements should external confidential disclosure be required.

The Creator is not authorised to enter into confidentiality agreements with third parties on behalf of the University.

6.4 Obligation to support the protection

The Creator shall take all reasonable steps to support the protection of the Relevant Intellectual Property, including assisting with patent specifications and amendments and any applicable supporting documentation.

6.5 Obligation to support the exploitation

The Creator shall support the endeavours of the Business Partnerships Office to exploit the Relevant Intellectual Property in whatever manner it might reasonably require.

6.6 Obligation to maximise the financial and academic benefit

The Creator accepts that the Relevant Intellectual Property will be exploited to the maximum net benefit to the University, and that the University alone shall be the final arbiter of what shall constitute maximum net benefit.

6.7 Obligations in relation to the use of third party material

Documents, information or materials belonging to third parties should only be used in connection with University activities or incorporated into University promotional, teaching or research materials with the consent of the third party. Failure to do so could lead to the University being sued for unauthorised use and damage to the reputation of both the University and the individual concerned.

6.8 Internet Materials

It is sometimes thought that material posted on the internet is freely available for use. This is not true. The copyright in most material will be owned by the author of the material and his or her permission must be sought before such material is used in any University promotional, teaching or research materials. The University may assist with advice and suitable acknowledgement wording.

6.9 Trade marks and brands

A trade mark is a designation of goodwill. The permission of the trade mark owner must be sought before third party trade marks such as logos, company or product names or other branding are used in any University promotional, teaching or research materials. University may assist with advice and suitable acknowledgement wording.

6.10 Newspaper, Journal and Magazine Articles and/or Photographs

The copyright in most newspaper, journal and magazine articles and/or photographs will be owned by the publisher and its permission must be sought before any such material is used in any University promotional, teaching or research materials. University has arrangements with some periodicals but if such use is not covered by these arrangements, University may assist with advice and suitable acknowledgement wording.

6.11 Open source materials

Some software and databases are freely licensed under what is called open source licences. Where such materials are used, it is often a requirement that the end product produced with them is also made available under open source. Any proposed use of open source materials in University teaching or research materials, especially those with external funding, should be discussed with University before any such use.

7.0 Revenue Sharing

Exploitation of the Relevant Intellectual Property is taken to mean any sale, transfer, assignment, licence or other dealing in the Relevant Intellectual Property and/or the supply, sale or licence of goods or services involving the use of the Relevant Intellectual Property. The form of exploitation of the Relevant Intellectual Property will be decided by the Risk and Innovation Committee.

The University will apportion revenue generated from the exploitation of the Relevant Intellectual Property with the Creator in accordance with the following guidelines. The final decision as to any revenue sharing agreement will be taken by the Risk and Innovation Committee.

Revenue is taken to mean any capital and/or income received or receivable by the University in respect of the exploitation of the Relevant Intellectual Property. Any revenue received from a company in which the Creator has an interest (whether as shareholder or otherwise) will be excluded.

The apportionment of net income arising from the exploitation of the Relevant Intellectual Property, will be on the scale set out below.

The following costs (including VAT, where recoverable) will be recouped from the revenue received in relation to the Relevant Intellectual Property:

- The costs associated with protection of the Intellectual Property;
- The costs of defence of the Intellectual Property;
- The costs of marketing the Intellectual Property;
- The costs of any legal agreements associated with the Intellectual Property;
- The costs of any development work that is not externally funded or recoverable;
- Any other costs that are deemed by the Business Partnerships Office to be necessary to the successful commercialisation of the Intellectual Property;
- An appropriate apportionment of the costs of the Business Partnerships Office.;
- Overheads on all of the above;
- The risk cost of any capital sums applied as appropriate at the appropriate market rates;
- Any other expenses directly related to the obtaining or exploitation of the Intellectual Property; and
- Any payment due under a revenue sharing agreement to a third party involved in the research leading to the Intellectual Property.

Note: Two options given below are for discussion, it is not intended that there would be a choice in practice.

Any remaining Revenue shall be apportioned as follows:

Revenue Sharing Arrangements

Net Revenue	Creator(s)	Department(s)	University
Any value	50%	25%	25%

These thresholds may be varied where, for example, there has been substantial financial support and infrastructure investment by the University, or depending on the extent of external funding drawn upon, or the extent to which work preparatory to the Relevant Intellectual Property has been carried out elsewhere.

Where there is more than one Creator, the percentage shown will be divided between the Creators. Unless there is a written agreement to the contrary between the Creators, any such division will be made in equal portions.

8.0 University Subsidiary Spin-Out or Start-Up Companies

This shall be at the discretion of the Executive Group and will be based on the nature of the Relevant Intellectual Property, the role (past, present and future) of the Creator, and the need for start-up investor finance. Priority will be given to providing attractive equity stakes for risk capital investors and each equity negotiation will be based on rewarding investors and management teams.

The University is prepared to establish subsidiary companies to exploit developments in specific areas; for example, the NPARU commercial development and MARRC are the results of this endeavour. This direct method of exploitation requires much more in the way of resources than licensing or assignment but if successful can bring substantial rewards, both in terms of income and of management and market experience. In the event of a company being formed, the staff originally concerned with the Relevant Intellectual Property will have the right to remain on their existing contracts of employment, but in so doing they may well give up being directly involved in its further exploitation. Short term secondments will be considered. It is recognised that success in this type of organisation is substantially dependent on staff and management skill and motivation. It is unlikely that the University will wish to divert its energies into setting up a company to market a new product unless a well researched business plan shows that it is capable of making a minimum of £100,000 profit annually within four or five years. Advice is available within the University.

9.0 Dispute Resolution

In the event that there is a dispute between the University and the Creator concerning the ownership, exploitation or protection of the Relevant Intellectual Property, the **University's grievance procedure will apply.**

10.0 Operation of this Policy

This policy is in pilot form and will be reviewed as required but as a minimum after one year of operation. The Business Partnerships Office Venture Development Manager will be responsible for initiating the review through the Risk and Innovation Committee. The IP Registrar is the University officer responsible for the governance of this policy.

Appendix 1 - Definitions

Summary of the main classes of Intellectual Property Rights.

Patent

A patent is a monopoly right to the exclusive use of an invention. "Invention" encompasses machines, products, processes and their component parts. A patent gives its owner the exclusive right to prevent others from using or exploiting the invention. Not all inventions are patentable; for example business methods and mathematical methods are not patentable. The invention must be shown to be new, to involve an inventive step, be capable of industrial application and not be of an excluded type.

The invention must not have been made available to anyone anywhere in the world other than pursuant to a valid confidentiality agreement prior to the date upon which the patent is filed.

Patents are available in the United Kingdom and in many other jurisdictions. UK patents last for 20 years (provided they are renewed at the appropriate intervals) from the date of filing of the application. Certain medical and plant protection patents attract supplemental periods of protection.

The right to apply for a patent usually lies with the inventor. However, an invention made by an employee employed to invent or made during the course of his normal duties will usually belong to his employer.

Copyright

Copyright is time limited (varies between 25 and 70 years according to the material) and arises without the need for registration. It will subsist in any original literary, dramatic, artistic or musical work, sound recording, film, broadcast and cable programme, computer software and database and the typographical arrangement of published editions.

The author of the copyright work is usually the first owner of the copyright save that where the work is created during the course of employment, the employer will be the first owner of the copyright.

The © mark and owner's name and date is the internationally recognised way of alerting the public to the copyright ownership but the protection (the right to preventing unauthorised copying) exists regardless of the symbol.

Performance Rights

Performers such as actors, musicians and dancers also enjoy protection of their performance. The consent of the performer is required to the exploitation of the performance.

Moral rights

These include the right to be identified as the author of the work. The right of integrity means the copyright owner may have the right to object to changes to the work without permission.

Database Right

This right belongs to the person who creates the database or invest in obtaining it or to his employer when made by an employee in the course of employment. It lasts for 15 years.

Designs

Registered designs

Protection is available for a "design" i.e. the appearance of the whole or part of the product resulting from features of or in particular lines, contours, colours, shape, texture or materials of the product or its orientation. Designs of component parts can be registered but those rights cannot be enforced where the use is for repair purposes. There is a 12 month grace period during which the owner can test the market without losing the right to apply for protection. The right to apply for a registration belongs to the designer or the designer's employer when the design is created during the course of

employment. Where the design is commissioned by a third party, the commissioner is the owner of the right to apply for a registered design. Registered design protection lasts for 25 years and runs from the date that the application is first filed at the Designs Registry. Protection is granted in periods of 5 years which can be extended by further 5 year periods up to the maximum of 25 years on payment of the renewal fee.

Unregistered Design right

Unregistered Design right arises without any need for registration and is a right subsisting in any aspect of a shape or configuration. However, the design must be original and not commonplace; not a method or principle of construction; not have its shape or configuration dictated by function or the need to match nor consist of surface decoration. Design right normally lasts for 10 years from the first marketing of the article to which the design is applied with an upper limit of 15 years from creation. The first owner is the creator of the design unless it is created by an individual in the course of employment. In this situation, the employer will normally own the right. When the design is commissioned, the design right belongs to the commissioning party.

Trade Marks

A trade mark is any sign which can be represented graphically and is capable of distinguishing goods and services. It can be a word, a design, letters, numbers or, in some cases, the shape of goods or its packaging.

Trade marks can be either registered or unregistered. An unregistered trade mark will be acquired by usage in relation to a business and will be the property of the business. A registered trade mark must be distinctive and not generic. A trade mark is capable of lasting in perpetuity subject, in the case of registered trade marks, to payment of the renewal fees.

Other types of intellectual property

These include categories such as know how and confidential information, both of which are protected by contract and, in some cases, the general law. Know how is usually a particular kind of information which relates to the application of an industrial process or another form of active technology. Both know how and confidential information will usually be the property of the creator except where the creator is employed, in which case it will belong to the employer. Information of this sort can generally be protected as long as it does not enter the public domain.

Further information can be obtained from the sources listed in Appendix 3.

Appendix 2. Research and other students

Post Graduate Research students are governed by the Intellectual Property policy in the same manner as staff. Taught Undergraduate and Taught Post Graduate students are not governed by this or aspects of this policy unless specifically invited to be so arising from a particular activity creating Relevant Intellectual Property with commercial potential. If this case arises students will be guided through the proper protection and exploitation routes. The following exceptions may apply:

1. **Students who are sponsored.** A condition of sponsorship may be that the sponsor may own any Intellectual Property developed during the period of sponsorship. Sponsored students are, therefore, advised to check the terms of their sponsorship agreement.
2. **Students working on a sponsored project as part of their coursework or research.** In this case, the sponsor may own any Intellectual Property that they develop. In such cases the students agree to assign any resultant Intellectual Property to the University.
3. **Students who are working on a project that derives from the Intellectual Property of academic staff.** This will mainly involve doctoral students but does not exclude undergraduates or taught postgraduates. If such projects result in a commercialisable opportunity that the University wishes to exploit, the student will be required to assign their Relevant Intellectual Property to the University.

The University is keen to encourage entrepreneurial and enterprising work and recognises the importance of developing such skills and aspirations of all students whilst studying with the University and on graduation. The University is actively developing methods to support students through enterprise related curriculum, Enterprise Festivals, Business Games (Bizcom), supporting business start up through SPEED project and developing incubation facilities as part of the strategic plan. Students can access support through the Business partnerships Office and through Enterprise events within the SU and as part of their course of study.

Where a student assigns their Relevant Intellectual Property to the University otherwise than in the circumstances listed above), they will receive the same benefits as outlined in the Revenue Sharing (section 7.0 of this Policy).

If students are in any doubt they are advised to consult the Business Partnership Office Venture Development Manager in the first instance. If there is a prima facie case for the Intellectual Property to be owned by either the University or a sponsor, the student will be advised to discuss the matter with their School. This may result in the student withdrawing from participation in a project, for example.

Appendix 3 Further Support

University Support Available from Business Partnerships Office

- identifying opportunities for commercial exploitation of the University's research;
- advising staff and students on Intellectual Property related issues, including ownership and protection of research results;
- managing the University's Intellectual Property portfolio; and
- finding commercial partners for Intellectual Property licensing.

Useful sources of further information

Sources of further information on Intellectual Property

- <http://www.intellectual-property.gov.uk/>
- <http://www.european-patent-office.org/index.en.php>
- The World Intellectual Property Organisation <http://www.wipo.int/>
- Patent Database search <http://gb.espacenet.com/>
- [Copyright Licensing Agency](http://www.cla.co.uk/) <http://www.cla.co.uk/>
- The US Patent and Trade Mark Office <http://www.uspto.gov/>
- The Software Patent Institute <http://www.spi.org/>
- The Chartered Institute of Patent Agents <http://www.cipa.org.uk/pages/home>
- [UK association of composers, songwriters and music publishers](http://www.prs.co.uk/) <http://www.prs.co.uk/>