Intellectual Property (IP) Policy

2011
**DOCUMENT TITLE**

Intellectual Property (IP) Policy

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<tr>
<td>Contracts and IP Manager, Research and Innovation</td>
<td>Pro Vice-Chancellor</td>
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**Please email:**
Sarah.duckering@port.ac.uk.

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Tick as appropriate

**OR**
For staff access only (intranet)?
Tick as appropriate

**For public access on request copy to be mailed**
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**Password protected**
Tick as appropriate

The latest version of this document is always to be found at:
http://policies.docstore.port.ac.uk/policy-090.pdf
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Intellectual Property Policy: Ownership, protection and exploitation of the University’s knowledge

One of the University’s four headline aims is ‘To promote the discovery, development and application of knowledge through high quality research’. In working towards accomplishing this aim, University employees will generate knowledge. It is the University’s policy to encourage and facilitate the successful exploitation of knowledge and in formulating this policy, the University seeks to provide a framework to promote the recognition, protection and exploitation of potentially valuable intellectual property produced by staff of the University of Portsmouth.

Notes: This Policy supersedes University Circular Ref: 38B10 September 2001 (Intellectual Property Protection and Exploitation, and its Annexes) and should be read in conjunction with University Copyright Policy at:

http://policies.docstore.port.ac.uk/policy-086

University employees should also refer to their individual Contract of Employment.

Postgraduate research students should refer to the Student Handbook (additional information for research students), the Regulations for Higher Degree by Research and, where applicable, their individual Bursary Agreement.

Further information and practical guidance in support of this Policy can be at:

http://www2.port.ac.uk/research/ris/

This policy should be read in conjunction with the University’s Declaration of interests policy available at:

http://policies.docstore.port.ac.uk/policy-104.pdf

1. Definitions

In this document the following capitalised words, acronyms and phrases shall have the meanings attributed below:

‘Creators’ means such person or persons, responsible for and contributing to the creation of certain Intellectual Property, which may be commercially valuable.

‘Income’ shall mean income actually received by the University (or one of its wholly-owned subsidiary companies) upon exploitation of Intellectual Property (e.g. royalties, upfront payments, sale of equity, traded rights or dividends) after deduction of identified costs including, but not limited to: legal costs and fees, Intellectual Property Rights costs (including official fees, agent fees), the recovery of loans to the project (including contingent repayable loans due to a third party). For avoidance of doubt, ‘Income’ as defined in this document, shall not be deemed to include consideration in exchange for research, services or facilities.

‘Intellectual Property’ (hereinafter ‘IP’) means any inventions, designs, information, know-how, specifications, formulae, data, processes, methods, techniques, and other technology that are conceived, or developed by Staff, alone or jointly with others and the Intellectual Property Rights therein.

‘Intellectual Property Rights’ means any patent, registered design, copyright, database right, design right, trade mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.

‘Staff’ shall mean all employees of the University and its subsidiary companies, including part-time staff, acting in the course of their employment and other individuals to whom this Policy applies in accordance with section 2, below.

‘R&KTS’ shall mean Research & Knowledge Transfer Services department of the University’s central administration or such other service department as nominated by the Vice-Chancellor’s Office from time to time, for the purpose of managing the process and procedures relating to University knowledge transfer.

2. Applicability

2.1 This Policy shall apply equally to all persons employed by the University under a contract of service and also to holders of visiting and honorary positions, who have signed a written agreement with the University and have thereby agreed to be bound by its regulations, policies and procedures.

2.2 At the time of enrolment, postgraduate research students in receipt of financial support via the University bursary scheme will sign any necessary documents in order to give effect to the claim made by the University in the Bursary Agreement. In exchange, such students will be entitled to be treated in the same manner as Staff for the purposes of this Policy.

2.3 Unless otherwise agreed in writing, this Policy shall not apply to undergraduate and taught postgraduate students of the University.

3. Ownership of Intellectual Property

3.1 Unless otherwise agreed in writing and subject to the provisions below and to the UK Patents Act 1977 (Section 39) the University asserts ownership of the following IP, where such IP may reasonably be considered to possess commercial potential, including but not limited to:

i) patentable and non-patentable inventions;

ii) IP which the University has called upon the Creators to produce, whether in return for additional payment or otherwise, including University course and curriculum materials (hereinafter ‘University-Commissioned IP’);

iii) IP created using University resources, including such IP which may result from activities funded, commissioned or produced in collaboration with a third party (hereinafter ‘University-Supported IP’);

iv) films, videos and multimedia productions made with the aid of University facilities;
v) works generated using computer hardware or software owned or operated by the University;
vi) computer software, firmware and related material;
vii) registered and unregistered designs and silicon chip topographies; and
viii) trade marks relating to University core business and services.

3.2 The University will assert ownership in the first instance (or will assert joint ownership) where it is required to grant or assign certain rights to third parties; for example in the case of University-Supported IP which is created in collaboration with a third party and/or commissioned and/or funded by an external sponsor by virtue of a research, collaboration or services agreement.

3.3 If there are any questions over ownership of University-Supported IP, it is the responsibility of the relevant member of staff to contact R&KTS as soon as possible.

3.4 The University will not assert ownership of copyright in 'scholarly works' such as books, academic papers, articles and similar works, excepting University-Commissioned IP and/or University-Supported IP (the latter, as set out in 3.2).

4. Acknowledgement of sources

4.1 The University’s academic community operates in an environment based on courtesy, honesty and mutual respect. An inherent feature of intellectual integrity is that it is standard practice in the publication of academic material for appropriate acknowledgement and recognition to be given by all authors, irrespective of institution, discipline and publication.

4.2 Acknowledgement of sources is covered in:
- the Ethics Policy at: http://policies.docstore.port.ac.uk/policy-028.pdf
- the Code of Practice for Research published by the UK Research Integrity Office at https://ukrio.org/publications/code-of-practice-for-research/

5. Identification and protection of IP

5.1 Where Creators generate IP, which they believe may be potentially exploitable, they shall:
i) report its existence to R&KTS as soon as possible and prior to any proposed disclosure to a third party of any invention;
ii) complete an IP Disclosure Form, where requested to do so by R&KTS;

iii) at all times take all steps reasonably necessary to maintain the confidentiality of any potentially exploitable IP and shall do nothing which will prejudice the right to apply for its registered protection;
iv) at the request and expense of the University, assist the University in the application for and prosecution of any registered Intellectual Property Rights;

v) execute all documents and do all acts as may be necessary to obtain the acceptance of and procure the grant of such applications for Intellectual Property Rights.

5.2 Following notification of the IP to R&KTS, suitably experienced members of University staff (e.g. Contracts & IPR Manager) shall work together with the Creators and with internal and external advisors, to establish inter alia: the ownership of the IP (including any obligations to third parties); the relative contributions of Creators to the generation of the IP; novelty and patentability of any invention; commercial viability and marketability; the level of commitment from the Creators to exploitation of the IP; and such other due diligence as may be appropriate.

5.3 In the case of IP solely owned by the University and based upon R&KTS due diligence and recommendations (in accordance with 5.2), the University will normally decide within six months from the proper completion of the IP Disclosure Form whether or not it should proceed with an application for Intellectual Property Rights protection and the timing of such application.

5.4 In the case of IP solely owned by the University, and where the University decides to pursue Intellectual Property Rights protection, following a process of due diligence and taking external advice where necessary, R&KTS will instruct appropriately qualified professional advisors and fund (where funds allow, from a budget held within R&KTS for the purpose) the application for formal registered Intellectual Property Rights protection. R&KTS will liaise with the professional advisors and administer the application, maintenance and renewal process. The University may at any time, at its sole discretion but in consultation with the Creators, decide to discontinue support for any Intellectual Property Rights registered and/or funded by the University.

5.5 In the case of IP solely owned by the University and in circumstances where the University decides not to apply for or maintain registered protection of such IP, nor to otherwise support the exploitation of such IP, the University will, upon the written request of the Creators, and at the Creators expense and upon terms and conditions to be agreed, arrange for the assignment of the IP to the Creator(s).

5.6 In cases where IP is jointly owned by the University and a third party or wholly owned by a third party (e.g. University-Supported IP), the University, in consultation with the Creators, shall endeavour to negotiate with the third party to agree the terms of Intellectual Property Rights protection and exploitation.
6. Exploitation of IP and reward for Creators

6.1 Potential routes to the exploitation of IP by the University may include, without limitation, assignment or grant of a licence to a commercial third party in exchange for consideration. Such licensing or assignment may be made to an existing legal entity (company, partnership or person) or to a newly formed company that is incorporated for the specific purpose of exploitation (often termed ‘spin-out’ company). Such consideration may take the form an up front payment, royalty income or equity participation in a limited company. The University in consultation with the Creators, and appropriate external advisors, shall determine the choice of exploitation route; such decision shall be informed by due diligence and may be subject to revision at any time.

6.2 Where a spin-out company is the preferred exploitation route, formal approval by the Board of Governors acting through its Finance Committee must be obtained prior to incorporation of the company. Such approval will be made only in response to the submission of a detailed, written request produced by the Creators (wishing to found a company) in conjunction with R&KTS, and accompanied by written confirmation of the support of the relevant Head(s) of Department/Dean(s) of Faculty. R&KTS must approve the format and content of the plan, which should be based upon the pro forma document, entitled ‘Request for University Approval of a Spin-Out Company’ and will submit the proposal to the Finance Committee for consideration, on behalf of the founding Creators. [See also Knowledge Transfer Guidance Document: Spin-Out Company Formation.]

6.3 The University recognises the valuable contribution, which Creators, Faculties and Departments make towards achieving the University’s knowledge-transfer mission and towards the successful exploitation of University IP and potential subsequent Income generation. Whilst it is not obliged by law to do so, the University’s policy is to financially reward Creators, in one of two ways (but not both, for the same individual):

i) Where a spin-out company is formed to exploit the IP, the founding Creator(s) may accept an equity stake (shares) in the spin-out company.

ii) Where the IP is exploited other than by formation of a spin-out company, or where the Creator is not a founder of the company and/or does not wish to receive equity, the Creators will receive a portion of the Income, according to the following sliding scale:

<table>
<thead>
<tr>
<th>Cumulative Income (£)</th>
<th>Creators (%)</th>
<th>*University (%)</th>
</tr>
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<tbody>
<tr>
<td>First 5,000</td>
<td>100</td>
<td>0</td>
</tr>
<tr>
<td>&gt; 5,000 to 15,000</td>
<td>85</td>
<td>15</td>
</tr>
<tr>
<td>&gt; 15,000 to 55,000</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>&gt; 55,000 to 100,000</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>&gt; 100,000</td>
<td>25</td>
<td>75</td>
</tr>
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*Up to £100,000 cumulative Income, and unless otherwise agreed, the University’s share shall be shared equally (i.e. 1/3, 1/3, 1/3) between the central University, the contributing Faculty/Faculties and Department(s) which have supported the creation and exploitation of IP; with such portion retained by the central University to be used to support further knowledge transfer activity. Above £100,000 cumulative Income, the internal division of Income between the central University, contributing Faculties and Departments shall be determined by Directorate, on a case-by-case basis, to allow such Income to be used strategically and to best impact and effect.