

22. INTELLECTUAL PROPERTY

22.1 Statement of Principles

The principles underlying this Ordinance include, except where otherwise agreed, the following undertakings made by the University and the obligations placed on its staff and students.

The University undertakes to:

- ensure fair treatment for all parties
- use all reasonable endeavours to exploit and protect intellectual property generated by its staff and students, and in which the University has an interest, subject to adequate resources
- provide a supportive environment
- maintain fairness and adequate incentives in the distribution of residual income
- consider proposals from individual staff with respect to exploitation and protection of intellectual property

The University's staff and all students who are subject to clause 22.3(b) of this Ordinance are required to;

- report any work undertaken on behalf of an external body/any other commercial interest, as specified in Ordinance 18
- report any potentially exploitable results and/or other intellectual property unless otherwise agreed with the University keep key information confidential until it is protected or released into the public domain with the approval of the principal investigator or supervisor (unless first released by a third party through no fault of the University)
- report any potential conflict of interest (Financial Regulation G7)

22.2 Definition of Intellectual Property

This Ordinance applies to the widest possible concept of Intellectual Property (IP) and that current at the relevant time. IP has been defined simply as the creations or fruit of the human mind. An internationally accepted definition is as follows:

‘the rights relating to: literary, artistic and scientific works; the performance of performing artists, phonograms and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks; service marks and commercial names and designations; and all other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields.’

(World Intellectual Property Organisation (WIPO) 1967).

This Ordinance applies to all types of new IP (such as, without limitation, copyright in software and database rights) as well as to the traditional forms and to all media.

The five main types of IP protected either by registration or otherwise are: Patents, Copyright, Design Rights, Trademarks and Confidential Information and Know-how.

22.3 Ownership of Intellectual Property

- (a) The University claims ownership of all IP arising from work undertaken by staff, whether academic or non-academic, in the course of their employment by the University, or which relates to their area of academic activity, or which is specifically assigned to them, in their contract of employment or otherwise, or developed under a contract between themselves and the University or between the University and a third party(ies), subject to the exceptions listed in Ordinance 22.3 (e)
- (b) In respect of all IP generated by students in the following categories (including, for the avoidance of doubt, in the case of (i) and (ii) studentships funded or partially funded by the UK Research Councils):
 - (i) which arises under a sponsored studentship agreement and/or
 - (ii) which arises where the student is sponsored and financially supported in his/her studies by the University or a third party under a student sponsorship arrangement. This includes the University's own scholarship scheme, any waiver of fees by the University or any other scheme of sponsorship whereby the University or any third party makes a financial contribution in respect of a student's fees and/ or living expenses; and/or
 - (iii) which arises under a sponsored research programme whereby the University is in receipt of funds and/or any other contribution from a third party in respect of the conduct by it of certain research and/or
 - (iv) which arises in connection with the placement of a student in arrangements undertaken by the University with an individual partner, business or other person and/or
 - (v) which arises under any other arrangements undertaken between the University and any other party whereby that party makes available to any student of the University work experience opportunities and/or facilities and/or equipment and/or funding and/or background IP under arrangements with the University and/or
 - (vi) which builds on existing IP generated by a member of staff or is jointly invented or generated with a member of staff

subject to the exceptions listed in Ordinance 22.3 (e), the University claims ownership of all such generated IP and students may be required to confirm

the University's ownership by way of a confirmatory assignment of the IP to the University.

- (c) In respect of any IP generated by students in other circumstances (and subject to 22.3 (d) below) the University will not make a claim to ownership of IP, though where the IP was generated by a student in the course of his/her studies or using University facilities (other than the computer network) the University shall have the irrevocable perpetual royalty free right to use such student generated IP for further research.
- (d) Where a University employee is concurrently registered as a student, the employee status takes precedence for the purposes of this Ordinance.
- (e) In accordance with normal academic practice, and subject to 22.3(f) below and unless agreed otherwise, the University does not claim copyright in scholarly output per se produced by staff or students in the course of their employment or research work or in the course of studies at the University. Scholarly output includes the following:
 - (i) personal lecture notes
 - (ii) books, articles, academic publications
 - (iii) seminar papers
 - (iv) theses, essays
 - (v) course materials produced for issue to internal students
 - (vi) examination papers, questions, assignments, model examination responses
 - (vii) examination responses by those examined in any form, including essays, scripts, designs, computer software, tape recordings

In the case of (iv) - (vii) the University shall retain ownership (as distinct from copyright) of the materials and in the case of (v) – (vi) shall retain the right at any time to use, reproduce and adapt such materials freely for legitimate purposes.

For the avoidance of doubt, whilst the University does not claim copyright in the categories of scholarly output described at (i) – (vii) above and agrees to enter into a confirmatory assignment of such copyright to the author(s), such agreement is entirely without prejudice to the University's rights to and ownership of all other IP subsisting in connection with such scholarly output (for example but without limitation any inventions described in an academic publication).

- (f) The exceptions described in Ordinance 22.3 (e) do not apply to course materials or e-learning materials (including examination papers and assessment tools) produced for distance-learning or virtual learning courses whether prepared for third parties or for students of the University in cases where the author has been specifically assigned duties in order to produce the output. In these circumstances the University shall wholly own all IP in such materials and must be in a position freely to use the material for any purpose whatsoever (including the right to license).

- (g) Where background IP underpins the course materials and research underpinning the course materials has also contributed to the production of scholarly output, as described in Ordinance 22.3 (e), the author should discuss the copyright position with the University to ensure there is no conflict of interest.
- (h) If members of staff write course materials and/or distance and/or e-learning materials which do not relate to their area of academic activity, or are not produced in the course of their employment by the University, or relate to courses which are not delivered in the University's name, they should discuss the copyright position with the University at an early stage.

22.4 Recording of Lectures

Lectures, seminars, workshops and other presentations delivered by staff are a category of scholarly output to which special provisions apply:

- (a) A staff member shall not subject to (h) below agree to the making of a recording by any person other than the University;
- (b) Students and others attending the lecture, seminar, workshop or other presentation shall not be permitted to make recordings (subject to (h) below).
- (c) Where a lecture, seminar, workshop or other presentation is recorded pursuant to 22.4(a) above, two separate works are protected under the law of copyright: the University (or other person making the recording pursuant to 22.4(h) owns copyright in the digitised recording and the lecturer or presenter owns any copyright that may subsist in the spoken words once fixed by the recording as a category of scholarly output (being course materials which the University retains the right to use, pursuant to 22.3(e) above).
- (d) Where a lecture, seminar, workshop or other presentation is recorded (in addition to compliance generally with 22.5 of this ordinance) the lecturer or presenter shall follow all reasonable directions of the University in relation to the use of any third party copyright materials.
- (e) In accordance with 22.3(e) the University has the right to make the recording available to any registered students of the University who are following the same or a related course of study or module or segment until the end of the second academic year after the recording takes place. The recording must not be redistributed or copied further by the student recipients.
- (f) The University acknowledges that all performers' rights in any lectures or other presentations are owned by the staff member delivering the lecture or presentation. Where a member of staff has allowed the recording of a lecture each staff member authorises the University to record his/her lecture or presentation and to issue copies of the recording to students of the University who are following a relevant course of study.

- (g) The owners of copyright in works of scholarly output assert and the University acknowledges the moral rights of its staff members and students in all works of scholarly output and in the performers' rights described at 22.4 (f).
- (h) The University has a statutory obligation to make reasonable adjustments in respect of providing equal treatment and equal access to educational opportunity for all students regardless of their disability status. Each staff member acknowledges the right of the University to permit students who have a disability as defined in the Equality Act 2010 to record lectures and other presentations for this purpose and authorises such recordings. In such circumstances the lecturer or presenter will be informed that the lecture or presentation is being recorded, the student may use the recording only for the purpose of personal study and (for the avoidance of doubt) copyright in the content of the lecture or presentation shall be the property of the lecturer or presenter delivering it.
- (i) The University will retain any recording made in accordance with 22.4(a) above for up to two academic years following the year in which the recording was made and reserves the right to make the recording available to registered students undertaking the same or a related course of study or module or segment during that period.

22.5 Third Party Intellectual Property

- (a) Where Intellectual Property has been created by a third party and is copied, reproduced, adapted, distributed or used by the University's staff or students (including use or reproduction via any IT system or network of the University) such use must be licensed by the owner and/or must otherwise be lawful.
- (b) The University reserves the right to remove and to require any of the University's staff or students to remove material which risks Intellectual Property infringement proceedings or claim for breach of contract from all material used or disseminated and/or from the University's websites or from any IT system or network of the University and /or from personal websites.
- (c) In the event of an allegation being made that the University is infringing the Intellectual Property of a third party the staff member or other person in receipt of notice of such allegation shall promptly inform the University Secretary who shall investigate and determine the University's response.

22.6 Assignment of IP rights by the University

- (a) The University may at any time assign and/or licence any of its IP rights to third parties e.g. (without limitation) sponsors of research and other collaborators in research projects, commercial or otherwise, employers of placement students, companies participating in Knowledge Transfer Partnerships, and companies contributing (whether financially or in kind) in respect of Masters and doctoral programmes including, without limitation,

PhD, EngD and Masters (Res) programmes. Where the University awards to such parties any rights to or in its IP in circumstances where the contractual provisions may give rise to royalty payments being made by such person to the University, the University shall treat such embedded right to commercialise as a commercial exploitation arrangement (as described at 22.7 and 22.8 below) in respect of the distribution of residual income to the staff (and students subject to 22.3(b)) who have contributed to the IP the subject matter of the revenue stream to the University.

- (b) If, in respect of particular IP, the University decides, after the University and the originators (whether staff or students subject to 22.3 (b)) have discussed and co-operated with a view to the commercialisation of such IP, that the University shall not proceed with activities, such as (without limitation) the support of any patent filing with a view to the commercial development and sale or licence of such IP, it may assign its rights in such IP to the originators thereof (being either members of staff and/or students subject to 22.3(b)).

The University may attach conditions to such assignment as it may at its sole discretion (but acting reasonably) determine which terms may include (without limitation):-

- (i) a licence by the assignee(s) back to the University permitting the University to use the IP the subject matter of the assignment for academic and collaborative further research (including the right to sub-licence such right to the University's research collaborators) but for the avoidance of doubt not including the right on the part of the University and/or any of its collaborators to use such IP for or in connection with any commercial sale of goods or services.
- (ii) provision for the recoupment by the University of disbursements (for example without limitation, patent filing and patent agents' fees) from the assignee(s) contingent upon the assignee(s) (or his/her/their successors in title) making commercial sales (whether of goods or of services) attributable to the assigned IP.
- (iii) in the exceptional circumstances described at 22.6(b) provision for a revenue share to Bath upon commercialisation by the assignee of the assigned IP (or his/her successors in title).

For the avoidance of doubt it shall be open to the University, acting reasonably, to come to a decision that in view of its other strategic research interests in the field of the IP in question, the IP should not be assigned to any person including the originators but either released into the public domain (by way of patent abandonment or academic publication) or maintained by the University as confidential for a period of time with a view to furthering its strategic interests.

- (c) In exceptional circumstances the University may consider the preferred method of exploitation of particular IP to be other than as described at 22.7(b) below. In such circumstances acting reasonably the University and the

member of staff or student (subject to 22.3(b)) will co-operate with a view to entering into arrangements for the commercialisation of such IP by the originator(s) of the IP and/or their licensee(s) or assignee(s) subject to the reservation or licence to the University of such research rights as may be necessary for it to continue to pursue its research interests in the field of the IP in question. In such circumstances the University shall be entitled to a revenue share and prior to any assignment of the IP in question the University will negotiate with the academic originator(s) the revenue share to which it shall be entitled pursuant to 22.6(b).

22.7 Arrangements for Commercial Exploitation by the University

- (a) Intellectual property may be commercially exploited in a number of ways, for example:
 - (i) copyright arrangements e.g. publishing contracts
 - (ii) patent licences
 - (iii) software licences
 - (iv) design rights
 - (v) joint ventures
 - (vi) spin-out companies
 - (vii) embedded commercialisation rights of the University under a contractual entitlement e.g. (without limitation) Sponsored Research Agreements, Collaboration Agreements, KTP Agreements, arrangements with companies in respect of doctoral programmes of all types.
- (b) Where staff and/or students report the existence of IP capable of exploitation by the University pursuant to 22.1 discussions shall be held between the staff and/or student originators and representatives of the University to determine the appropriate action to be taken with a view to exploitation of such IP.

This may include one or more of the following:-

- (a) control over disclosure;
- (b) the filing of a patent application with the researcher as named inventor;
- (c) the identification of potential licensees;
- (d) the formation of a company to exploit the technology.
- (c) Once there is consensus as to the appropriate route forward or as to options in relation thereto, the proposed exploitation arrangement shall where

appropriate be put forward for consideration by the University Ventures Board or such other decision making committee as may be nominated by the University from time to time where applicable.

- (d) Where a staff member or student (who is subject to clause 22.3(b) of this Ordinance) has been specifically assigned duties in order to produce specific output including (without limitation) course materials or e-learning materials (including examination papers and assessment tools) for distance learning or virtual learning courses whether for third parties or for students of the University, s/he shall not have any entitlement to share in residual income of the University upon the commercialisation of such IP.

22.8 Distribution of Residual Income

- (a) Residual income, whether in the form of periodic payments or a capital sum, will be calculated on the basis of gross income from an exploitation arrangement less those costs which are directly attributable to the exploitation. By way of example, such costs may include external legal technical and commercial advice, patent fees, expenses and any past or future commitment of internal resources specifically used for commercialisation of the IP. Such costs may also include the cost of any independent audit of deductible costs requested by the staff team.

- (b) The distribution of total residual income to staff from a given piece of IP will be made in accordance with the following schedule:

Residual income up to the first threshold level 100% to staff team
Residual income between the first 75% to staff team
And second threshold levels
25% to Faculty/School
Remainder of residual income 1/3 to University
1/3 to Faculty/School
1/3 to staff team

The threshold levels will be reviewed every three years and published in the Financial Regulations. The distribution of residual income shall normally apply to the total residual income from a given piece of IP (and not to periodic income payments).

- (c) Arrangements for the distribution of residual income to members of the staff team and in accordance with (d) below any students subject to 22.3(b) of this Ordinance will be agreed at the outset of the exploitation arrangement on the following basis.

The staff team leader (the major contributor to the IP) notifies the Faculty Dean and the Head of Department in writing of which staff should be paid and in what proportions, with a justification in terms of contribution to the inventive step (in the case of patentable IP) and/or effort and/or ideas input to the IP the subject matter of the exploitation arrangements. The proposed distribution is at the discretion of the staff team leader but the members of the

team are entitled to comment on it. In case of dispute, the Faculty Dean will take steps to resolve the matter; the recommendations of the team leader will be followed unless there is a clear case of injustice. Any proposed payment to a Faculty Dean should be authorised by the Deputy Vice-Chancellor. There will be one internal level of appeal against any decision taken under the procedure described in this paragraph.

- (d) The scheme for the distribution of residual income derives from the right under general law of an employee to share in benefits linked to intellectual property. A student has no such automatic entitlement to a share of such income. The University will, however, take a sympathetic view of any proposal from a staff team leader or from an external sponsor to include a student subject to 22.3(b) of this Ordinance in the distribution of residual income. A student may also initiate such a proposal.
- (e) Staff who do not have academic contracts may be eligible to be included in the distribution of residual income provided that this does not conflict with their contract of employment or 22.7(d).
- (f) Payments made by the University to staff and/or students may be subject to tax. The University reserves the right to deduct and account to HMRC in respect of basic rate tax and higher rate tax and any further withholdings and/or payments to HMRC and any other relevant taxation authority in respect of any tax and/or National Insurance Contributions. If National Insurance Contributions are required to be made the University shall be entitled to deduct both employer and employee contributions from any staff or student entitlements prior to payment.
- (g) The University will make payment to staff or students on a quarterly basis when they have an entitlement under this Ordinance 22.8.
- (h) A staff member or student's entitlement under this Ordinance 22.8 shall continue to be paid to him/her should he/she leave the University, and in the event of death, the entitlement shall continue for the benefit of his/her estate.
- (i) The University will use reasonable endeavours to obtain and maintain contact details for students in respect of whom a notification of IP has been made and staff who have reported IP but who have left the University and for the estates of such persons who have died. If despite such endeavours contact is lost for six consecutive months, the University may send notice to the last known address that the IP originator's entitlement may be reallocated. If no contact details are received by the University within a month after such notice the University shall allocate the share to the other staff/students entitled to participate or if there are no other originator to the University's General Revenue Account.

22.9 Shareholdings

Where pursuant to 22.7(b) IP is licensed or assigned to a company formed to exploit the Intellectual Property in consideration of the allotment of shares to the University,

then in lieu of any entitlement on the part of the staff and any students who have contributed to the creation of such IP contributing to a share of residual income pursuant to 22.8 above the staff/students contributing to the IP, shall as part of the spin-out arrangements be entitled to subscribe at par value for shares in the spin out company. The proportion of shares to which the staff and student contributors to the IP the subject matter of the spin-out arrangements shall be entitled to subscribe shall be 33.3% of the pre-cash investment, the University holding the remaining 66.6% on account of any nominal cash investment (at par) and in consideration of the licence and/or assignment of IP. Where a third party (e.g. a sponsor of research) has rights to such IP then shares shall generally be allotted to such third party, which allotment shall be equally dilutive of the University and the staff/student IP originators.

Financial Regulation G 7.2 governs the holding of financial or other benefit in a commercial entity with which the University has a commercial relationship.

22.10 Reporting Procedures

The University's Research and Innovation Office will maintain a record of all arrangements for the exploitation of intellectual property where an invention disclosure has been made and shall keep a copy of any embedded commercialisation arrangements in research contracts (as described at 22.7(a) (vii)). The Finance Office will prepare an annual financial report for Council.

Approved by Council
1 August 2017