

# INTELLECTUAL PROPERTY POLICY

## Introduction

1. The University of Stirling (“our” or “us” or “we”) recognises the value and importance of intellectual property to our research and knowledge exchange activities. We are committed to managing our intellectual property assets and resources effectively.
2. Intellectual Property (“IP”) includes, but is not limited to, patents, registered designs, registered trade marks and applications and the right to apply for any of the foregoing, copyright, design rights, topography rights, database rights, brands, trade marks, utility model rights, rights in the nature of copyright, know how, rights in proprietary and confidential information and rights in inventions. We treat our IP as an asset and a resource to further our objectives and to protect the interests of our employees, partners, sponsors, collaborators and other stakeholders.
3. We manage our IP effectively and take steps as appropriate:
  - to secure ownership of IP arising out of our activities as set out in this policy;
  - to ensure suitable IP arrangements are in place for all activities;
  - to identify IP or potential IP;
  - to protect and preserve the value of IP or potential IP;
  - to build the value of IP or potential IP;
  - to avoid infringing IP rights owned by third parties;
  - to utilise IP as a business tool.
4. This policy addresses: (i) IP owned by us; (ii) IP owned by others but which is relevant to our work; and (iii) potential IP and other issues related to the administration of IP at the University of Stirling.

## Protection of Intellectual Property

5. IP is the output of intellectual endeavour in literary, artistic, dramatic, industrial, scientific and engineering fields, which is generally capable of being identified and protected. The protection of IP is provided through certain legal rights many of which are established under legislation, common law and international treaties.
6. Often new IP arises from work which is based upon (although separable from) pre-existing IP and it is usually important to be able to distinguish between the new IP, which is generally known as “Foreground IP”, and the pre-existing IP, which is generally known as “Background IP”. Foreground IP is usually defined as IP which is created, found, produced, devised, developed, or made during or generated in the course of the carrying out of the particular project or activity. Background IP is usually defined as any IP conceived, created, developed, or reduced to practice prior to, or independently of, any work performed pursuant to the particular project or activity it is being used in.

## **General Principles**

7. IP is important to us and to our employees:
  - We are a generator of IP and a user of IP;
  - IP is a key input to and output from our research, teaching, knowledge exchange and other activities;
  - IP is integral to our research and knowledge exchange activities;
  - IP can be utilised to help further our research and knowledge exchange objectives.
  
8. IP is important to our funders and collaborators:
  - In accepting funding we agree to take on certain obligations in relation to IP that might be generated by the work undertaken in relation to such funding;
  - When undertaking research on behalf of a third party we may be under IP related obligations to such third party purchaser of that research;
  - When we enter into agreements with external bodies, including research funders and/or purchasers of our services, we will often be entering into IP related agreements;
  - Research funders will often not claim ownership of IP that might be created by the research they are funding but will generally require us to identify, protect, and where applicable, commercially exploit the IP generated by such research. In other cases, transfer of IP to a funder will be an explicit condition of the funding, and so protecting the IP from its point of creation will be essential for fulfilling contract terms and conditions.

## **Responsibility and accountability for Intellectual Policy**

9. This policy identifies and acknowledges that all our employees have responsibilities with regard to IP arising from and/or used by them in the course of their employment.
  
10. This policy also recognises that our employees will require support and assistance to help them to meet their responsibilities, and this will be provided to them by University Services.

## **Identification of IP**

11. We expect that IP identification will generally take place when our employees are involved in creating and developing IP. Much of the IP which will be created by our employees may be able to be anticipated prior to its creation by considering the nature of the project in question and outputs and results that are expected to be generated. Examples of outputs which are likely to have potential IP implications include (but are not limited to):
  - Software;
  - Modelling tools;
  - Recordings;
  - Educational/training materials and tools;
  - Methodologies;
  - Solutions to technical problems;

- Environmental remediation technologies;
- Quality/accreditation systems or processes;
- Design/artistic projects; and
- A new name for a product, service or program, logo or slogan.

### **Ownership of IP**

12. Ownership of IP created by an individual who is an employee is generally determined by considering three things:
  - Who created the IP?
  - Was the IP created in the course of the creator's employment?
  - Are there any contractual conditions that affect ownership?
  
13. It should be noted that clarity of ownership of IP and related rights is essential to enable IP to be effectively utilised, whether or not we are considering commercial exploitation of the IP.

### **Staff**

14. Under UK law, we own the IP created by our employees in the course of them fulfilling their duties of employment to us (whether such duties are normal duties or duties that have been specifically assigned to them). We will also generally own IP that was developed by an employee at the direction of an employee's manager.
  
15. Except as provided in Clause 16, we normally do not assert ownership or ask for assignment of copyright in some academic/scholarly material such as:
  - Journal articles, conference papers, presentations etc;
  - Notes for employees' personal use (not including laboratory notebooks);
  - Theses and dissertations;
  - Works of art, novels, poems; or
  - Books.
  
16. Material deposited in the University Library, or in any digital research repository established by the University, or in University Faculties, becomes our property and will be available for loan and possible copying in whole or in part for private study or research unless, with our agreement, the author wishes to restrict access. For the avoidance of doubt, our ownership of such material will be of the physical or electronic copy of the material, not of the copyright or IP which it contains, unless that otherwise belongs to us.
  
17. Where ownership is unclear, for example, where it is not clear if the IP was generated during the course of our employee's employment with us, any dispute relating to ownership of the IP will, in the first instance, be attempted to be resolved through negotiation. In the event that such negotiations result in an acknowledgment by us that the IP is rightfully owned by an employee it will be our preferred approach to encourage such employee to utilise or commercialise the relevant IP through us.

18. When a member of staff leaves our employment we will generally retain ownership of any IP created during their employment. However, we will transfer ownership of IP where so required by the terms and conditions of sponsors and funders and will not normally seek to restrict the use of IP in which we have not previously asserted ownership.

## **Students**

19. For the avoidance of doubt, where a member of our staff is also our student, they shall be governed by all of the provisions of this policy. In such instances, in case of any actual or potential conflict between the provisions relating to staff and the provisions relating to students, those relating to staff shall take precedence.
20. Students own any IP that they create in the course of their studies.
21. We will seek assignment of student owned IP to us if required to do so by the terms of agreements with funders or other external bodies and in other appropriate circumstances. Any such agreements must be entered into before the commencement of the project or activity. In such cases, it will be a condition of a student's participation in the project or activity that IP arising out of their work is assigned to us.
22. There may be occasions where IP will be created jointly between a student and us, for example where the IP has been created and/ or developed jointly between our students and our employees through our supervision of a student research project. In these instances we may wish to negotiate with the student with a view to obtaining an assignment of the IP to us. It will be our usual approach in these cases to treat students on the same basis as our employees for purposes of distribution of any rewards and revenues.
23. Except when required by a funder or commercial collaborator, we will generally not seek to obtain an assignment of students' ownership of copyright in academic/ scholarly product such as:
  - Journal articles, conference papers, presentations etc;
  - Notes for personal use (including laboratory notebooks);
  - Theses and dissertations;
  - Works of art, novels, poems;
  - Textbooks or
  - Meta-data and raw data generated during research work.
24. In the case of work submitted for assessment, students agree (a) that we may submit the work to an external service for the purpose of checking for plagiarism or similar purposes and (b) that the University may retain copies of work for administrative and private study or research purposes which may be made available to third parties for those purposes, and in accordance with applicable law.

### **Visiting Fellows/Contractors/Volunteers**

25. Generally, we do not automatically own any IP developed by personnel working for us on our projects who are not our employees, such as independent contractors, volunteers or visiting fellows. If such individuals are involved in work which is likely to involve the creation of IP, then we will seek to address this contractually, in advance of such individual commencing any such work and we may seek an assignation of this IP to us from such an individual in appropriate circumstances.

### **Collaborations**

26. In any collaboration, we own the IP that is created by our employees, and in order for us to effectively implement our IP Policy it is necessary for us to enter into suitable agreements with any of our collaborators under which all and any IP created in the course of such collaboration is dealt with. Such agreements will be entered into before work on a project commences.

### **Agreements/Contracts**

27. The preparation and negotiation of any IP agreements or contracts involving the allocation of rights in and to IP will be undertaken by a competent person or persons authorised for this purpose by the University Court.
28. Issues that will be addressed in such agreements include, but will not always be limited to:
  - ownership of Foreground IP;
  - licences to Foreground IP for uses outside the project or activity in question;
  - ownership of Background IP;
  - licences to use Background IP in the project or activity in question and in relation to the use of the Foreground IP arising from such project or activity;
  - allocation of rights to use or commercialise IP arising from any such project or activity and the sharing of revenues; and
  - publications arising from the relevant project or activity and the rights arising from such projects or activities.
29. The terms of such agreements may be subject to negotiation. However, it should be noted that some collaborators, purchasers or funders are not prepared to deviate from their standard terms and conditions relating to IP. If the terms of any agreement are not acceptable to us we will not enter into the agreement.
30. General principles for negotiation of IP provisions in collaboration agreements are as follows:
  - We will seek to protect IP arising from research projects and activities;
  - We will seek to own Foreground IP arising from research projects and activities;
  - Rights to Background IP owned by us may be licensed for specific

use but will not normally be assigned to any party. As a rule such licences to Background IP will not be exclusive licences and they will be for specific purposes only;

- The purchaser of research or other projects should not be entitled to any more IP than that which arises from the specific purposes of such research or projects and should not, generally, obtain ownership of 'chance discoveries' even if such 'chance discoveries' are made in the course of such research or projects;
- Joint ownership of IP arising out of research or projects will generally be avoided but when joint ownership is agreed the rights of the respective parties to use or exploit the IP will be set out in a formal agreement and will generally not require us to seek another party's consent to use the IP in any manner whatsoever; and
- We will normally avoid agreeing to limit our rights to use the IP arising out of research or projects 'for research purposes only' as this may preclude our involvement in some future knowledge exchange or other activities.

31. We respect the IP of others and expect our staff and students to. In particular:

- Staff and students may only use the IP of third parties in accordance with licences we have agreed with its owner(s).
- If staff or students wish to incorporate in their published work, teaching materials or assigned work material produced by others, responsibility will rest with them to establish and acknowledge the ownership of copyright of the material incorporated. They will be responsible for ensuring that any such incorporation from whatever source does not breach any relevant law and that appropriate Copyright Licensing Agency or other licences are not infringed. Such sources shall include, but are not restricted to, paper material, Internet and electronic mail sources, distance learning and other computer based materials, and graphical, musical and artistic materials.

### **Protection/registration of IP**

32. Some forms of IP require active steps to be taken to obtain protection (e.g.: patents, registered trademarks and registered designs). Other forms of IP rights are protected on creation (e.g. Copyright) but still require appropriate management in order to maximise the protection available.

33. All materials made publicly available by any of our employees must include a copyright notice.

34. Any decisions relating to the registration of any IP rights such as making an application for a patent or a registered trade mark or a registered design (including any decisions to continue or discontinue any such application) should be made in consultation with the person or persons appointed for this purpose by the University Court. The IP registration process can be very expensive and IP protection costs should not be incurred without appropriate consideration of how we will recover such costs of protection.

*Approved by the University Court: June 2008; Updated 2016*