

THE UNIVERSITY OF LEEDS

THE SECRETARIAT

Exploitation and IPR

Policy on Intellectual Property Rights

Status of this Policy

This Policy is specifically incorporated into all employees' contracts of employment and any legal relationship between the University and its students.

Intellectual Property Rights (IPR)

- 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, copyright, performance rights, design rights and trademarks.

The University's General Approach

- 2 The University treats students and staff equally in relation to IPR. Where reference is made to members of staff under this policy, students are to be granted and subject to the same rights and responsibilities.
- 3 The wide dissemination of IP is obviously fundamental to the work - and indeed the idea of - a university; and (subject to only limited exceptions) the University has in this context granted members of staff freedom to publish academic publications and take the income derived from these publications.
- 4 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, to maximising the benefits which can be derived from the exploitation of IP. 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 and its staff must in any event respect IPR belonging to others.
- 5 In short, the University encourages active identification of commercially-valuable IP, suitable protection and robust exploitation to the mutual benefit of the University and staff. It should be noted in this context that commercial exploitation (for example, on the basis of patents) need not be incompatible with academic activities such as the publication of academic papers.

Ownership of IPR and the sharing of benefits

The legal position

- 6 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 University staff during the course of their employment. (Students are not normally employees, but the effect of the contract between the University and its students is, in this connection, to place students in the same position as staff.)
- 7 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 6 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 practice, the University has decided not 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-part rights will be negotiated between the University and the funding body before the research contract in question is signed.)

Conditions of ownership, use and ownership of IP

8 The University's conditions on the ownership, use and exploitation of IP 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 it likewise 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.

9 Against this background, the following specific conditions apply to the ownership, use and exploitation of IP

(I) Except as may be provided in a contract with a third party (for example, a funding body), except in cases where an individual has been employed specifically for the purpose of producing a particular academic publication, and except where publication might result in the loss of an opportunity for commercial exploitation, the University freely allows members of staff to publish academic publications which they produce and to keep all income from those publications. (Cases of doubt or cases requiring interpretation should be referred to the relevant HoRC in the first instance.)

(II) Subject to (I) above, the University owns and therefore has the right to use without limitation 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.

(III) The University when using material generated by staff will wherever practicable give due acknowledgement to the authorship of material.

(IV) Where the University commercially exploits material generated by members of staff it will share a percentage of the income it derives from such commercial exploitation with the authors in accordance with 11 below.

(V) 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 with the University and did not require substantial use of University facilities, he or she should in the first instance approach the head of the resource centre [HoRC] concerned. The HoRC may assent to any such claim at his or her absolute discretion, but must inform the Opportunities Appraisal Group and is expected to consult the University's Legal Adviser and other officers in cases of doubt. Any dispute will be referred for resolution to a panel consisting of the Pro-Vice-Chancellor for Research; *either* the Dean for Research of the relevant

Research School *or* the Dean for Teaching and Learning of the relevant Faculty; a nominee of the Leeds AUT; and a lay member of the University Council appointed by the Council.

- 10 If members of staff 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's Opportunities Appraisal Group, following consultation with the HORC. The precise mechanism for exploitation will vary: in some cases it may be through ULIS, in others through a new company, and in others through the licensing or assignment of IPR to a third party.
- 11 Decisions on the sharing of any benefits from the exploitation of IPR will be made case by case within the following framework

(I) The individuals concerned (hereinafter referred to as the 'inventors') will be required at the outset to warrant that they and only they have contributed to the generation of the IP in question, and to agree between themselves the distribution of the inventors' share of any income or capital gain arising from the exploitation of that IP. Those who are identified as inventors may include academic and related staff, support staff and postgraduate and other students of the University.

(II) The inventors will receive no less than 25 per cent and no more than 40 per cent of the net proceeds from exploitation (after meeting any costs, including University overheads), the residue accruing to the University. In cases where a new company is formed to exploit the IP in question, the inventors, subject to the agreement of the Committee on University Companies, will receive shares in that company in accordance with the formula agreed for sharing the net proceeds between inventors.

(III) 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 by the Opportunities Appraisal Group in accordance with any guidelines laid down from time to time by the Planning and Resources Committee, but revenue and capital gains arising from the exploitation of IP will in any event be subject to a contribution to the University's Exploitation Fund and other central funds designed to facilitate the exploitation of IP.

(IV) Any disputes about the sharing of benefits will be referred for resolution to a panel consisting of the Pro-Vice-Chancellor for Research; *either* the Dean for Research of the relevant Research School *or* the Dean for Teaching and Learning of the relevant Faculty; a nominee of the Leeds AUT; and a lay member of the University Council appointed by the Council.

- 12 Similar principles 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.
- 13 With the consent of the HoRC (or where it is the HoRC seeking consent, the consent of the relevant Dean for Research) members of the University are entitled to use IP for the purposes of carrying out consultancies in accordance with current University policy on consultancy.
- 14 Members of staff are expected to take all reasonable steps to ensure that the University's IPR is properly protected, consulting the Opportunities Appraisal Group.
- 15 For the avoidance of doubt, the University acknowledges and accepts that in the case of any inconsistency, it is bound by its legal responsibilities and obligations to staff contained within the general law that cannot be varied by these conditions.