

## Intellectual Property Regulations

It is the University's policy to encourage and facilitate the successful exploitation of Intellectual Property (IP). In formulating this policy, the University seeks to provide a framework to encourage exploitation of potentially valuable research results by providing financial incentives to those involved in the generation of IP. These Regulations, Research and Innovation Services and Southampton Asset Management (SAM) have been established as part of that framework to promote the recognition, protection and exploitation of potentially valuable research results produced by staff and students of the University. Further information regarding these Regulations and any aspect of IP can be obtained from Research and Innovation Services.

These Regulations shall apply equally to all persons employed by the University under contracts of service, also visiting academics and others, such as retired members of staff who use University facilities, who have signed an agreement with the University and have thereby agreed to be bound by these Regulations.

At the time of registration, students will sign any necessary documents in order to give effect to the claim made by the University in Regulation 6. In exchange Students will, unless otherwise stated, be entitled to be treated in the same way as Staff for the purposes of these Regulations.

### 1. Definitions

The following words, acronyms and phrases shall have the meanings described below unless the context requires otherwise:

- 1.1 **"Intellectual Property" ("IP")** shall refer only to the items detailed in 3.1.1 to 3.1.6 of these Regulations and to any associated know-how and information.
- 1.2 **"R & IS "** shall mean Research and Innovation Services, University of Southampton.
- 1.3 **"SAM"** shall mean Southampton Asset Management.
- 1.4 **"Staff"** shall mean all employees of the University and its companies, including part-time staff, acting in the course of their employment.
- 1.5 **"Students"** shall mean full and part-time registered students of the University acting in the course of or incidental to their studies.
- 1.6 The expressions "in the course of employment" and "generated by computer" are to be interpreted as used in Copyright, Designs and Patents Act 1988. An explanatory note is available from Research & Innovation Services.
- 1.7 "University Commissioned works" shall mean, for the purposes of Regulation 3, works which the University has specifically called upon the person concerned to produce, whether in return for special payment or not.
- 1.8 Where notices are to be given to, or discussions undertaken by, or decisions made by or with "the University", these shall be given to, undertaken or taken by the Director of Research and Innovation Services in consultation with the Dean (or Associate Dean Enterprise) of the relevant Faculty or Head of Professional Service or the equivalent.
- 1.9 Headings are inserted for convenience only and shall be ignored in interpreting the terms of these Regulations.

## 2. Use of IP and Confidential Information

Staff and Students may wish to use IP and/or proprietary information which is not owned by the University. In such circumstances, the following directives shall apply:

### 2.1 Photocopying & Copyright Clearance

These are regulated by licence from the Copyright Licensing Agency Limited. The name and contact number of the Licensing Co-ordinator for the University is posted on the Copyright Licensing Agency (CLA) Copying User Guidelines at all photocopying machines. Further information is obtainable from Research and Innovation Services.

Where the CLA Copying User Guidelines are not applicable, such Staff and Students must obtain copyright clearance from the appropriate Copyright Owner.

### 2.2 Copying Of Computer Programs

This is covered by University Regulations for the use of Computers and Voice and Data Communications Networks (see University Calendar) and Guidelines on Management of Software and Licensed data products (available from iSolutions).

### 2.3 Recording Of Radio And Television Broadcasts

These are covered by Regulations for Off-Air Recordings of Radio and Television Broadcasts for Educational Purposes (see University Calendar).

### 2.4 Trade Marks

Prior to any use of any name, acronym or logo proposed for a product or service to be produced or provided by the University, such name, acronym or logo shall be cleared with Research and Innovation Services against any potential infringement of third party rights.

### 2.5 Confidential Information

Where the conduct of sponsored research work results in Staff and/or Students gaining access to confidential information belonging to the sponsor, the head of the project, supervisor or principal investigator shall ensure that all Staff and/or Students engaged in such work are provided with an unpriced copy of the contract and requested to sign supplemental confidentiality agreements where the relevant contract so requires. Such Staff and/or Students shall familiarise themselves with the terms of such agreements and adhere strictly to them. In particular, the head of the project, supervisor or principal investigator shall be responsible for ensuring that the handling and storing of confidential information is in accordance with the terms of the contract. Staff and/or Students shall not disclose to any third party any confidential information, for example through giving a lecture, presenting or publishing a paper or holding discussions, unless authorised in writing.

## 3. IP Generated By Staff and/or Students

IP generated by Staff and/or Students will be dealt with as follows:

### 3.1 Subject to Regulation 3.2 below and to the Patents Act 1977 and unless otherwise agreed in writing between Staff and/or Students concerned and the University, the University owns the following forms of IP:

- 3.1.1 films, videos and multi-media productions made with the aid of University facilities;
- 3.1.2 patentable and non-patentable inventions if the latter may reasonably be considered to possess commercial potential;
- 3.1.3 University-commissioned works;
- 3.1.4 works generated by computer hardware or software owned or operated by the University;

- 3.1.5 computer software, firmware and related material not within 3.1.1. to 3.1.4 but only if it may reasonably be considered to possess commercial potential; and
  - 3.1.6 registered and unregistered designs and silicon chip topographies.
- 3.2 However, the University will not assert any possible ownership of copyright in books, articles, lectures and other similar works apart from those specifically commissioned by the University, or in computer related works apart from those specified in Regulation 3.1 above.
- 3.3 The University shall have a right to acquire ownership of, on fair and reasonable terms, the physical work in any artistic works produced by Students, including without limitation paintings, photographs, sculptures, fabric patterns and multimedia works, but excluding musical scores. For the avoidance of doubt, the copyright in all such artistic works shall remain with the Student.

In order to assert the University's copyright claim all relevant works owned by the University pursuant to Regulation 3.1 above shall be marked by the relevant Staff and/or Students "Copyright (year of creation) University of Southampton".

#### **4. Procedure for Identification and Protection of IP**

Where Staff or Students create IP, they shall report its existence to their Head of Academic Group or Head of Professional Service and to Research and Innovation Services as follows:

- 4.1 Staff and Students shall promptly provide written reports to (i) their Head of School or Head of Professional Service, and (ii) Research and Innovation Services detailing any IP generated using University resources and or any IP funded by a sponsor but owned by the University.
- 4.2 In consultation with Staff and/or Students, the University will decide, normally within 3 months and no later than 6 months from the date of receipt of such notification, whether applications for registered protection are appropriate in the circumstances. Research and Innovation Services will thereupon inform Staff and /or Students in writing of the decision. All costs involved in the protection of IP will be determined in advance by the University and, where appropriate, SAM
- 4.3 Staff and Students shall at all times take all steps reasonably necessary to maintain the confidentiality and registrability of any IP and shall do nothing which will prejudice the right to apply for its registered protection. At the request and expense of the University, Staff and Students shall assist the University in the prosecution of any application for registered protection made by the University until official publication. They will also execute all documents and do all acts and things as may be necessary or proper to obtain the acceptance of such applications for registered protection and procure the grant of patents, registered designs, trademarks, and or copyright registrations abroad under such applications.
- 4.4 Where IP is jointly owned by the University of Southampton and a third party, the University, in consultation with Staff and Students, shall endeavour to negotiate with the third party to agree the terms of exploitation.
- 4.5 Where IP is generated jointly by Staff and/or Students, they will each be responsible for informing the University of their individual contributions to its generation. For the purposes of distribution of compensation in respect of IP generated jointly amongst Staff and/or Students, it shall be their responsibility to agree their pro rata shares and to inform the University in writing. In the absence of such notification, Research and Innovation Services may make a written request for such information to be furnished and, failing receipt thereof within 30 days of such request, Research and Innovation Services shall be entitled to assume that Staff and/or Students jointly made equal contributions.
- 4.6 In the case of IP solely owned by the University and in circumstances where both the University and SAM do not wish to continue ownership or to apply for or maintain registered protection of such IP, the University will, on the written request of Staff and/or Students, at their expense, arrange for the assignment of the IP to them within 90 days. They will then be free to protect, exploit and exclusively benefit from the IP in any way that they see fit subject to the interests of third parties.

## 5. Exploitation of IP and Recovery of Costs

Exploitation of IP may without limitation be by way of (i) assignment for consideration, and or (ii) licensing for consideration, and or (iii) equity participation in a limited company. The exploitation route shall be determined by the University in consultation with Staff and/or Students and SAM. As soon as the route of exploitation is determined, Staff and/or Students creating the IP shall co-operate fully, at the University's expense, with the University and SAM to facilitate the exploitation of the IP.

Subject to Regulation 6.1 and 6.2 below, for the purposes of the distribution arrangements in this Regulation all payments to the University relating to any IP in respect of any royalty, premium or otherwise shall be treated as royalties. The first charge on royalty payments will be the recovery of costs associated with protection of any IP, legal fees and the direct costs of exploitation of the IP including the cost of formation of "spin off" companies. Any other costs to be deducted shall be determined in advance by the University and, where appropriate, SAM.

## 6. Compensation on Assignment or Licensing of IP

- 6.1 For Staff and Students who have created IP but who are not contractually obliged to create and develop it, or who are not otherwise referred to in Regulation 6.2, compensation shall, unless otherwise agreed in writing, be distributed as follows, after deduction of all costs detailed in Regulation 5.

Net Income Band (Cumulative)	Staff	University
£0 - £10,000	80%	20%
£10,001 - £50,000	70%	30%
£50,001 - £1,000,000	50%	50%
£1,000,001 - £∞	33.3%	66.6%

- 6.2 In the case of staff who have created and who are contractually obliged to create and develop IP, or who are employed in circumstances where creation of IP is reasonably expected to result in the course of their employment eg: (but without limitation) engineers in Industrial Advisory Units and production staff in Teaching Support and Media Services, compensation shall, unless otherwise agreed in writing, after deduction of all costs detailed in Regulation 5, be distributed on an ad-hoc basis to be agreed by the University taking into account the following matters:
- i. The nature of staff duties, their remuneration and the other advantages they derive or have derived from their employment or have derived in relation to the IP.
  - ii. The effort and skill which staff have devoted to creating the IP.
  - iii. The effort and skill which any other person has devoted to creating the IP jointly with staff concerned, and the advice and other assistance contributed by any other staff who is not a joint creator of the IP.
  - iv. The contribution made by the University to the making, developing and working of the IP by the provision of advice, facilities and other assistance, by provision of opportunities and by its managerial and commercial skill and activities.

## 7. Compensation on Equity Participation

If it appears to Research and Innovation Services and SAM after consultation with staff and/or students and the University that, in practice, the most commercially satisfactory way of exploiting any IP would be by way of equity participation in a limited company, then Research and Innovation Services may do so provided that the method by which staff and/or students are to be compensated (by way of equity participation, royalty or otherwise), and the proportion of such compensation, shall be fair and equitable taking all the circumstances into account. Where

the formation of a limited company is supported with investment from IP Group Ltd then any shares due to the University such limited company will normally be held by SAM.

## 8. Rights on Termination of Employment or Registered Studies

For the avoidance of doubt:

- i. any right to compensation which may accrue to staff and/or students under the University IP Regulations in force from time to time; and
- ii. any obligation to assist the University in the exploitation of the IP at its expense shall continue in force and effect after the employment and/or registered studies have been terminated.

## 9. Authorised Signatories

The authorised signatories on behalf of the University on matters relating to IP (assignment, licensing and confidentiality agreements) shall be the Director of Research and Innovation Services and the Chief Operating Officer or their nominated deputies. Contracts and agreements executed under seal shall be subject to the University's usual procedures as set out in the University's Charter and Statutes.

## 10. Arbitration

- 10.1 Any unresolved disputes, deadlock or failure to agree between the Dean or Head of Professional Service and the Director of Research and Innovation Services regarding any issues where their joint agreement is required under these regulations, or consultation as defined in Regulation 1.8, shall be referred for determination to the Vice-Chancellor or nominated deputy and such determination shall be final.
- 10.2 Any unresolved disputes where staff and/or students disagree with any determination made by the University and/or SAM under these Regulations shall, in the first instance, be referred to the Vice-Chancellor or nominated deputy.
- 10.3 In the event of disputes between the University and/or SAM and staff and/or students which remain unresolved, they shall be settled by an independent third party Arbitrator mutually agreeable to both the University and/or SAM and staff and/or students. If not so agreed within 30 days of a written request by any party to do so, then the matter shall be referred for determination by an Arbitrator to be appointed at the request of any party by the Chartered Institute of Arbitrators. In making a determination, the Arbitrator shall have the right to require the parties to provide relevant documents and to present oral evidence but shall not be bound by the rules of evidence and shall seek to resolve the dispute in an expeditious and informal manner. The Arbitrator shall agree that any information made available, and the conclusions reached, shall be kept confidential. The determination of such third party Arbitrator shall be final and binding upon both the University and/or SAM and staff and/or students. The costs and expenses of the Arbitrator shall be apportioned between the parties in such proportions as the Arbitrator shall consider appropriate, and the Arbitrator's allocation of the costs shall be binding. In all other respects, the arbitration shall be subject to the provisions of the Arbitration Acts 1950 to 1996 or any re-enactment or modification of them for the time being in force.

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