



STUDENT INTELLECTUAL PROPERTY
INFORMATION
&
POLICY
&
REGULATIONS

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INDEX

	PAGE
1. What is Intellectual Property?	3
2. What is the University's Policy on Student Intellectual Property?	6
3. Regulations Relating to Student Intellectual Property	7
4. Appendix – Guidance on Recording the Creation of IP	13
5. Student Acknowledgement Form	18

1. WHAT IS INTELLECTUAL PROPERTY?

Intellectual Property (IP) is a term used to cover any inventive product of the human mind. IP can either be tangible such as a physical work of art, or intangible such as a scientific process.

1.1 How is Intellectual Property used?

The ownership and control of IP is expressed in terms of Intellectual Property Rights (IPR) e.g. copyright. The recognised system of ownership and licensing means that a right to use IP can be distinct from its legal ownership; for example the author of a novel can license a film company to make a film of the book.

1.2 Who is the owner if Intellectual Property in law?

Generally the creator of IP is its legal owner (often called the "first owner"). However, dependent upon the "type" of IP created, there are two important exceptions to this rule: the general rule that a person's employer owns IP where the IP is created as part of, or through the auspices of, the person's employment; and that where a work is "commissioned" the commissioner may be the first owner of the IPR.

The first owner can assign ownership rights; this assignment is often made, for example, as a condition of research funding or under the terms of a consultancy agreement.

1.3 How is ownership of Intellectual Property protected?

Legally recognised IPRs can arise automatically, as with copyright, or can arise through registration, as with patents. Other rights are capable of enforcement either as unregistered or registered rights, as with design rights.

Where there is no legally recognised right of ownership in a particular type of inventive or creative asset, the only way to protect the value of the ownership is to keep the nature of the asset secret. This means that trading with or discussing the asset must be done under terms of strict confidence, usually emphasised by the parties entering into a formal confidentiality agreement. For example there is no legally recognised way of protecting "know-how" so it is prudent to disclose valuable "know-how" only under an obligation of confidence. The law recognises obligations of confidence and offers remedies for a breached obligation.

Even where a legally recognised system of protection exists, some owners still choose to rely on secrecy rather than take advantage of protection offered where (as with a patent) disclosure is a condition of the protection. Once IP is disclosed the “Keeping it secret” option has gone.

1.4 What are the main classes of Intellectual Property Rights?

1.4.1 Patents

A registered patent provides a time (up to 20 years) and geographically defined monopoly right to exploit a new commercially valuable invention or process. The basis of permission to exploit is that the inventions workings are disclosed, although as a noted above, patenting is not possible if there has been ANY prior disclosure of the invention. Regulated by the Patents Act 1977

1.4.2 Copyright:

This time-limited right (varies between 25 and 70 years depending on the material) arising automatically on the physical creation (not the idea) of software, original literary, dramatic, artistic or musical work, and its recorded (e.g. film) or published (e.g. layout) derivations. Use of the © mark and the owners name and date is the internationally recognised way of alerting the public to the copyright ownership, however the protection exists regardless of use of this symbol. See: Copyright Designs and Patents Act 1988

1.4.3 Database Right:

This time-limited right (15 years) arises without registration to protect the compilers of non-original information from losing the benefit of their work through unauthorised copying or re-use (governed by the Copyright and Rights in Databases Regulations 1997)

1.4.4 Industrial Designs:

There is an automatic time-limited (15 years) protection (the right to prevent unauthorised copying) for unregistered designs, provided authorship can be proved. This covers the functional shape or configuration. See: Copyright Designs and Patents Act 1988

Alternatively on registration under the Registered Designs Act 1949, the designer of a new pattern or shape which has aesthetic appeal (can be 2 or 3 dimensional) acquires a monopoly right of exploitation for 25 years.

1.4.5 Trade Marks:

Registering a trademark under the Trade Marks Act 1994, gives a monopoly right for the use of graphically distinct trading identification signs.

Unregistered trademarks have some protection through court actions for "passing off" provided that their use has not lapsed for a period of 5 years.

1.4.6 Domain Names:

Registering a domain name for Internet use gives a monopoly right for its use (registered with bodies such as ICANN and NOMINET).

1.4.7 Know-how:

Know-how is the information, practical knowledge, techniques and skills required to achieve some practical end especially in industry or technology. Know-how is considered intangible property in which rights may be brought and sold.

1.4.8 Moral Rights:

Section 94 of the Copyright, Designs and Patents Act 1988 confers personal rights on the authors of primary copyright works and the directors of films. These rights are distinct from any economic or ownership interest in the work. There are four key moral rights:

- Right of Paternity – the right to be identified as the author of a literary, dramatic, musical or artistic work or director of a film.
- Right of Integrity – the right to object to derogatory treatment of the work.
- Right to object to false attribution.
- Right to privacy in photographs and films –the commissioner of photographs or a film has certain rights of privacy where they were commissioned for private purposes.

For further explanation as to what intellectual property is and what the implications may be in a particular situation, please refer to Karen Turnbull in Business Development & Planning.

2. WHAT IS THE UNIVERSITY'S POLICY ON STUDENT INTELLECTUAL PROPERTY?

It is University of Wales, Newport policy that:

1. The product of work created by a student shall belong to that student unless the work has been created by the student and a member of staff, in which case the student and the University shall jointly own the intellectual property rights in the work.
2. Where appropriate, the University will seek an assignment of a student's intellectual property rights in a work in return for the payment of consideration so that the work may be commercially exploited for the benefit of the University specifically and for the benefit of society more generally.
3. Intellectual property rights in a work should always be protected.
4. Students / the University should not infringe the rights of others who own and control Intellectual Property.

5. The University will meet its obligations to those bodies providing funding, which may include, where appropriate, the management and exploitation of Intellectual Property.

The following regulations are designed to implement this policy through the acquisition, protection and use of Intellectual Property generated by the University. This student policy should be read in conjunction with the separate policy pertaining to staff members where appropriate.

3. REGULATIONS RELATING TO STUDENT INTELLECTUAL PROPERTY

It is intended that these Regulations will apply to all student members of the University of Wales, Newport (meaning all persons enrolled on a course of learning, to include both undergraduates and postgraduates). By signing the form of agreement at the end of this manual, the student agrees to be bound by the Regulations.

A RESPONSIBILITY

1. Business Development & Planning (part of the University's Commercial & External Services Department) is responsible for the development and implementation of all policies and regulations relating to intellectual property and for directing the protection, management and exploitation of Intellectual Property for the University.
2. Students shall have a responsibility to identify and protect Intellectual Property; this includes a duty of confidentiality.
3. When undertaking work from which Intellectual Property may arise, students must:
 - 3.1 keep the nature of and matters relating to the Intellectual Property confidential until the fact and manner of the disclosure is agreed by the Deputy Director of Business Development & Planning or the Dean of School; and

- 3.2 assist in protecting the University's rights to Intellectual Property by keeping proper records of creation (such as lab books or other written evidentiary documents), please refer to the Appendix for further information.

B OWNERSHIP

1. The University recognises that it cannot automatically assume ownership of student generated Intellectual Property. As such, the general policy shall be that a student shall be free to exploit the intellectual property rights in a work created solely by that student. However, the student agrees to acknowledge that the work was created whilst a student of the University of Wales, Newport when exploiting such work.
2. Where a student has (as defined by the law relating to the intellectual property rights in such work) created a work jointly with a tutor / member of staff of the University of Wales, Newport:
 - 2.1 the student may not deal with the work (meaning, without limitation, the discussion of the work with a third party; the publication of the work; or the entering into of any contract regarding the work) without the express consent of the Deputy Director of Business Development & Planning in writing; and
 - 2.2 the University may claim fair and reasonable interest in the Intellectual Property and any revenue arising from exploitation; and / or
 - 2.3 the student may be required to sign an agreement assigning ownership of the intellectual property rights in the work to the University (as sole proprietor) in return for the payment of appropriate consideration.
3. Any student may be required to sign an agreement assigning first ownership of intellectual property rights in a work to the University as a condition of participation in a specific project or course of study (including but not limited to final year projects, postgraduate theses, projects involving third parties, work requiring the use of the University pre-existing Intellectual Property, know-how or facilities). The University as first owner reserves the right to exploit such Intellectual Property. In such cases the University will normally collaborate with the student originator(s) and where appropriate, share benefits deriving from exploitation as if the student(s) were employees.

4. Where in receipt of funding for a particular project or work from any source, the student shall not deal with that project or work without the express authority of the Dean of School and Deputy Director of Business Development & Planning.
5. Any student asked to assign Intellectual Property Rights to the University are advised that they are responsible for seeking their own independent legal advice, as appropriate, and that they can approach the Student Union for information how to proceed.

C DISCLOSURE

The public disclosure of information relating to the existence of Intellectual Property (other than under the terms of an explicit confidentiality agreement) will invalidate any subsequent patent application and/or diminish the potential commercial value and benefits accruing to the University and the inventor(s). To prevent such:

1. Students should not disclose details relating to their work to third parties (defined as anyone other than their supervising tutor and / or Dean of School and / or Business Development & Planning).
2. Students should endeavour to discuss all projects involving or potentially involving third parties with their supervising tutor and / or Dean of School before embarking upon the project. Students should also ensure that an appropriate Confidentiality Agreement is signed at the earliest possible stage in any project involving a third party. The Business Development Manager and Business Development & Planning can assist in the preparation of these agreements.
2. All students are responsible to the University for disclosing in writing to their supervising tutor and / or Dean of School at the outset of the work or as soon as they become aware of it:
 - 2.1 Any actual or potential Intellectual Property arising from their work;
 - 2.2 The ownership by a third party of any Intellectual Property referred to or used in their work;
 - 2.3 Any use to be made of existing University Intellectual Property during their work; and

- 2.4 Any Intellectual Property which they themselves own which is proposed to be used by University

Such information will be passed to and be held by the Deputy Director of Business Development & Planning who will review it and assess it for protection and commercialisation issues.

D PROTECTION OF INTELLECTUAL PROPERTY

It is the purpose of these regulations to ensure all efforts are made to establish the ownership of Intellectual Property; this is essential to ensure Intellectual Property is managed and protected correctly. As such:

1. Where appropriate, the University will make all applications necessary to protect and register its interest in Intellectual Property. Where required, students must join the University in the making of any such applications.
2. Notwithstanding the above, students must display the following markers on relevant works:

<i>IPR</i>	<i>MARKER</i>	<i>EXAMPLE</i>
Copyright	© [Copyright owners name] [date]	© University of Wales, Newport, January 2009
Database Right	Database Right, [Right Holder] [date]	Database Right, University of Wales, Newport January 2009
Design Right	Design Right, [Right Holder] [date]	Design Right, University of Wales, Newport January 2009
Reg Design	[Right Holder] Registered Design [Design Number]	University of Wales, Newport, Registered Design 12345
Patent	[Right Holder] Patent Pending Or [Right Holder] [Patent Number]	University of Wales, Newport Patent Pending University of Wales, Newport Patent 12345
Trade mark	TM Or ® [Right Holder]	TM University of Wales, Newport ® University of Wales, Newport – do not use

		unless mark is registered, as this will be an offence
Moral Rights	[Authors Name] has asserted his right, under the Copyright, Designs and Patent Act 1988, to be identified as the author of this work	University of Wales Newport has asserted its right, under the Copyright, Designs and Patent Act 1988, to be identified as the author of this work

3. Students must inform their Dean of School upon becoming aware that the intellectual property rights solely or jointly owned by the student are being infringed by a third party. Where appropriate, the University may initiate legal proceedings, whereupon the student may be required to join the University in the proceedings issued against the third party.
4. Students must inform their Dean of School upon being notified by a third party that the third party considers the student to have breached their intellectual property rights. Where appropriate, the University may defend the allegations / claim, whereupon the student may be required to join the University in defending any proceedings commenced by the third party / initiated by the University as a counterclaim against the third party.

E UNIVERSITY FACILITIES & MATERIALS

1. The University is willing to consider requests from its students for a license to use specific University owned Intellectual Property and/or its facilities for their use (outside the scope of their normal studies). The terms and decision to grant any such license is wholly a matter for the University.
2. Initial requests should be made in writing to the Dean of School who shall within 20 working days of receipt give an initial ruling or reasons for refusal.
3. Any appeal of the decision by the Dean of School should be made in writing to the Pro Vice-Chancellor (Resources and Planning) & Director of Finance who shall respond within 30 days of receipt of the appeal. The Pro Vice-Chancellor (Resources and Planning) & Director of Finance's decision is final and cannot be appealed.

F BREACH OF THESE REGULATIONS

1. Breach of these regulations is a disciplinary matter for University students under normal procedures.

2. The University shall consider all avenues available, including legal action by injunction, damages action or otherwise, in respect of persons bound by these regulations acting in breach of them.

G AMENDMENTS TO THE REGULATIONS

The Vice-Chancellor on the recommendation of a Deputy Vice-Chancellor, the Pro Vice-Chancellor (Resources and Planning) & Director of Finance or the Deputy Director of Business Development & Planning may amend these regulations.

APPENDIX
GUIDANCE ON RECORDING THE CREATION OF IP

1. Background

This note explains how to properly use and keep laboratory notebooks and records in order to facilitate proof of invention. This is particularly important for patents in the USA, but the same notebook records can be used for establishment creation dates for other forms of intellectual property.

For all forms of Intellectual Property (IP), the onus is on the creator to prove ownership and date of creativity or inventiveness. The onus is rarely on the infringer to prove innocence. This is particularly true for naturally occurring rights such as Copyright and (unregistered) Design Rights. However, even for rights that require registration such as patents, registered designs and registered trademarks the onus is still on the creator – just at an earlier stage.

It is generally considered good practice by researchers, developers and engineers to keep a notebook to log their activities, and many already do this – but they often do not do it in a way that will stand up in court.

Establishing good practice with respect to the recording of R&D will help to ensure that the intellectual property that is created is not inadvertently lost, and any potentially valuable intellectual property identified at an early stage.

2. How to Keep the Notebook

It should be possible to keep records in reasonably complete and clear form without becoming too time-consuming and burdensome.

The following is intended as a general guide on how to keep a notebook. From a legal standpoint, a laboratory notebook entry should be sufficiently competent to prove certain factors, such as the conception of an idea, the testing of a model, and the results of the test.

2.1 *The book itself*

- It is important to use a laboratory notebook that has a permanent binding. Loose-leaf, spiral bound or other temporarily bound books allow for page removal, insertions and substitutions, and are therefore not suitable.
- The pages of the notebook should also be numbered. Such a system helps to reduce the possibility of any successful challenge to the validity of the notebook entry.
- Laboratory books should never be mutilated, for example by tearing or cutting out pages.
- The performance of the records is a prime consideration and it is therefore important that good quality paper should be used.

2.2 *Ink quality*

- Do not use pencil or strange-coloured inks.
- Ensure that the ink is permanent, not water or solvent reactive, and does not smear. The ink should be light stable.

2.3 *The Entries in the Book*

- As a general guideline, there should be enough information in the book to enable someone working in the field to duplicate the work.
- All data should be identified with respect to the project to which it relates, for example, by a project or experiment number or by a descriptive heading.

- Do not use slang, abbreviations and unduly technical jargon. The notebook must be understandable to others, not only patent attorneys, but judges and sometimes to jurors and potential licensees.
- Entries should be consecutively dated.
- Any subsequent data added to the notebook, for example results of analysis, should be entered on a separate page with reference to the original entry.
- Don't leave blank areas on a page. Draw lines through unused pages or parts of pages.
- The entries in the book should be legible and factually complete.
- It is important to describe in as full detail as possible all experimental procedures. This should include all conditions of experiment and all apparatus, sketched if necessary. Full details of the apparatus used should also be given.
- If an invention is made, the dates of "conception" and "reduction to practice" are very important in the USA. The record must show that there has been no "abandonment" between these dates. Diligence in the reduction to practice of an invention means that, as far as possible, generally steady, uninterrupted and constant work occurred following the conception of an invention.
- In an interference action, unexplained periods of activity could lose the case, especially where competing invention dates are separated merely by a matter of days. All activities must be accounted for; even if it is only to notes that you were waiting for something that resulted in a delay in the proceedings. Even apparently irrelevant entries noting "on vacation" or "at the dentist" should be included.
- Avoid making negative notes such as "No good", "Doesn't work" which might be later construed as indicating you were abandoning the idea.

2.4 *Facts not options*

- Do not express opinions in notebooks. This could lead to misinterpretation.
- The book should be limited to factual, quantitative and qualitative results. Statements like “the idea is obvious”, “I think it is unpatentable”, “perhaps would infringe patent X” should be avoided.

2.5 *Inserts and supporting information*

- If a record needs to be kept of computer-generated output – or other inserts such as graphs, drawings, photographs or other loose pages – each insert should be dated and attached in a permanent way (e.g. glued, stapled) onto successive numbered pages of the permanently bound laboratory notebook. The witness should write and sign across the join.
- If support records cannot be added to the notebook itself (e.g. large engineering drawings, computer source code, related reports, theses etc) then reference to them should be made in the notebook in a consistent way and they should be stored in an orderly, readily retrievable manner.

2.6 *Errors, Changes and Additions*

- Errors should not be erased or obliterated beyond recognition. Neither should tipex/correction fluid be used. Simply cross out an error so that it is apparent what the error was.
- Explain all errors and mistakes as they occur and initial them.
- Never remove pages from the notebook.
- Entries should never be changed or enlarged at a later date. It is better to make a new entry, pointing out the change.

- Pencil diagrams or sketches should never be retraced in ink.

2.7 Signing off

- The US Patent Office has ruled that another witness who is independent must corroborate an inventor's testimony. For example, if the worker is a PhD student then the witness should not be his or her supervisor, since the supervisor is likely to become a co-inventor, and therefore not independent.
- Therefore, someone working on an unrelated project should witness the notebook. People involved in the same project are potential co-inventors and their signatures could be worthless.
- The witness must, of course, understand the need to maintain confidentiality.
- Ensure that each page is signed and dated by the author and witnessed as soon as possible, preferably every week.
- Do not leave any pages undated, unsigned or unwitnessed.

2.8 Safe keeping

- The notebook should be regarded as a confidential legal document and as such its use should be controlled. When completed, it should be stored in a safe place. It should not be treated as a freely available publication.

DECLARATION:

I confirm that as part of the University of Wales, Newport's enrolment procedure, I have read the above information, understand it and agree to be bound by the Regulations as set out at Section 3.

I understand that by signing this document I am entering into a legally binding agreement.

I also understand that should I fail to comply with the Regulations, this will be considered to be a disciplinary matter and will be dealt with under the University's standard procedures.

Signed:

Date:

Counter-signed by the University's Academic Registrar: