

## Code of Practice relating to Intellectual Property, Research Results and Computer Software

### Preamble

The Institute's Mission Statement provides that the Institute will engage in 'the promotion of new ideas...grounded in its research'. The Institute accordingly seeks to invest in its intellectual capital as an indication of the value it places on its human resource.

### 1. Defining Intellectual Property

- 1.1 *Copyright:* This is the automatic and exclusive right of the creator to own and control their literary, artistic, dramatic or musical work and to authorise others to publish, copy, broadcast, perform or adapt the work. Copyright does not have to be registered. It may be transferred either by **assignment** to a third party, when all rights in the work are exchanged for money, eg a royalty or by **licence** when the original copyright owner retains an element of control over the work. Copyright lasts for the creator's lifetime plus 70 years.
- 1.2 *Moral rights:* The personal right, in addition to copyright, to be identified as 'the author' and to object to derogatory treatment of a work.
- 1.3 *Patent:* A monopoly right, acquired by registration, to prevent any dealing in an original and novel invention during a period of 20 years (in the United Kingdom).
- 1.4 *Registered design:* The features of shape, configuration, pattern or ornament applied to any article by any industrial process can be registered as a Registered Design and protected for up to 25 years.
- 1.5 *Design right:* This covers an original design of any aspect of the shape or configuration of the whole or part, internal or external, of an article whether functional or aesthetic. Like copyright, this is a property right not dependent on formal registration. Protection, which can coexist with copyright protection, lasts for 15 years from when the design is first recorded in material form or if the work is marketed within five years from when it is recorded, for 10 years from first marketing.

### 2 Ownership of Intellectual Property

- 2.1 Under the terms of the Copyright, Designs and Patent Act 1988, intellectual property created by an employee in the course of his/her employment belongs to the employer. The Institute therefore initially owns all inventions that could be patented and copyright in all outputs in written and electronic form, created in the course of employment.

- 2.2 Intellectual property can be defined here as any intellectual output or associated skills that may be of strategic or commercial value to the Institute. This includes books, articles, multimedia packages, courseware, lecture notes, web-based materials, computer software, designs, video and similar material, animations, still images, audio items, research results and associated background material, and professional knowledge and skills.
- 2.3 While in principle the Institute owns the copyright of all works created in any form by staff in the course of their employment, it recognises the long-standing tradition that ownership of copyright in works created through the intellectual effort of a member of the academic staff shall with some important exceptions be vested in that individual, who is then free to assign it to publishers or other third parties and receive royalties or other payments in return. Such works shall be defined to include textbooks and academic articles and works of a similar nature.
- 2.4 The exceptions to the traditional treatment of copyright ownership set out in the previous paragraph will apply to the following material and in each case copyright will be owned by the Institute:
- 2.5 institutional material defined to include any document printed or electronic, which is produced for administrative purposes, including promotion and marketing of the Institute's courses, student and staff recruitment, papers prepared for any internal committee or similar body, material included in any University, Faculty or Departmental handbook for students and any other Institute purpose;
- 2.6 any copyrightable material created by a member of staff whose job description specifically includes the creation of printed or electronic materials;
- 2.7 teaching materials including course guides, handouts, lecture notes, slide shows, video and audio materials, assessment and examination questions, presentations over the intranet and similar materials;
- 2.8 any copyrightable material which is produced specifically for academic programmes to be delivered over the internet, directly or indirectly through conversion of existing printed material.
- 2.9 material generated by prior agreement for which the Institute provides additional resources, including content commissioned from members of staff in the course of their employment for inclusion in courseware.
- 2.10 material falling under paragraph 2.4 of this policy may not be copied or in any way utilised externally to the Institute without permission of the Institute Secretary.
- 2.11 in the event that a staff member leaves the Institute, the Institute retains its right, stated in 2.4 above, to use that material under implicit licence.
- 2.12 in return for having vested in them the copyright in all work which does not fall under the exceptions in paragraph 2.4 of this policy, members of staff grant the Institute an irrevocable royalty-free licence to copy their copyright work for administrative purposes, including distribution to staff and students on a non-profit basis, to governmental and

non-governmental bodies, accreditation agencies and for similar or related purposes whether required by law or not.

- 2.13 where content has been developed as an aid to teaching, and is subsequently included in courseware, including distance learning materials, the Institute will licence this use from the member of staff free of charge and will expect to be granted a perpetual licence for the use of the content including a waiver of moral rights to allow for future re-use and re-editing.
- 2.14 the ownership of copyright in material generated by research and other activities initiated and funded by external sponsors may rest with the sponsor, or the sponsor and the Institute may agree joint copyright.
- 2.15 contracts governing support given by outside bodies should make clear (i) who owns intellectual property arising from the work and (ii) how this might be exploited.

### **3 Commercial Exploitation**

- 3.1 If a member of staff acting in the course of his/her employment or using Institute resources, creates intellectual property which can be protected and/or commercially exploited, they should immediately inform (i) their Head of School or Department and (ii) the Dean of Research and Consultancy who will arrange an initial discussion to review the ownership of the intellectual property and prospects for commercialisation.
- 3.2 If the Institute decides not to proceed with protecting and/or exploiting the intellectual property on the basis of information supplied by the creator, the creator will be informed in writing by the Dean of Research and Consultancy, normally within three months of the commencement of detailed consultation with the Institute. In this event the creator may then proceed on their own account and at their own expense with protecting and exploiting the intellectual property if they wish to do so. For the avoidance of doubt, the creator shall not be entitled to proceed on their own account until they have received written notification from the Dean of Research and Consultancy that the intellectual property has been assigned to them. The Institute will be entitled to invoke its statutory rights in any intellectual property if it becomes evident that important material facts were not disclosed by the inventor when the decision was taken to assign it.
- 3.3 One of the conditions generally attaching to work supported by grants from the Research Councils and Government Agencies is that the exploitation of any intellectual property arising from the work shall be the subject of an agreement between the Institute and the sponsoring body. The Dean of Research and Consultancy must be notified before any negotiations about commercial exploitation take place with sponsoring bodies or other interested parties. All arrangements concerning commercial exploitation must be ratified by the Dean of Research & Consultancy.
- 3.4 The usual means of exploitation will be by way of a licence agreement or an assignment with revenue-sharing agreement. An assignment is the transfer of intellectual property to a third party in return for money. A licence is the grant of certain rights to a third party; the original owner retaining an element of control. Detailed terms will vary with each case and will require the approval of the Finance & General Purposes Committee which will have received a report from the Secretary of the Institute.

- 3.5 Where a student is a member of a team or working in collaboration with a member of staff and their work has resulted in the creation of exploitable intellectual property, the student will be treated in the same way as the member(s) of staff in the team and will participate in the revenue-sharing arrangements that are agreed. The Institute makes no claim to ownership of an invention or copyright arising from a student's own research project. However, if a student makes an invention or produces copyright material while employed by the Institute in the capacity of a research assistant or demonstrator then the position is the same as for a member of staff.
- 3.6 A number of universities have set up companies to exploit contract and consultancy work and also to act as exploiting agencies for intellectual property. This is not a route that the Institute has considered it worthwhile to take, but in common with many universities it is prepared to set up companies to exploit developments in specific areas. This direct method of exploitation requires much more in the way of resources than licensing or assignment but if successful can bring substantial rewards both in terms of income and of management and market experience. However, a trading company needs managing in a very different way from a research Centre or team and its success will depend much more on the motivation and management ability of those involved than on the intrinsic merit of the product being developed. In the event of a company being formed the staff originally concerned with the intellectual property will have the right to remain on their existing contracts of employment, but in so doing they may well give up being directly involved in its further exploitation. It is unlikely that the Institute will wish to divert its energies into setting up a company to market a new product unless a well researched business plan shows that it is capable of making a reasonably substantial profit annually within four or five years.
- 3.7 Design right is a new right established by the Copyright, Designs and Patents Act, 1988 which applies to original, non commonplace designs of articles other than artistic works. The right is similar in its application to copyright. Registered designs have also been affected by this legislation which provides that protection will in future only be available for aesthetic, stand-alone designs. Designs of parts where there is no design freedom because the design is determined by the design of the whole are excluded. This area of intellectual property is only likely to concern the Institute in so far as it may be related to development work undertaken in connection with a patent or patent application.

## 4 Income

### 4.1 *Income arising from Patent or Know-how Commercialisation*

The net income from the exploitation of Intellectual Property by a member of the staff of the Institute of Education will be distributed as follows:

<b>Net Revenue</b>	<b>Inventor(s)</b>	<b>School</b>	<b>Institute</b>
Up to £500k	33 1/3 %	33 1/3 %	33 1/3 %
Over £500 k	By negotiation		

#### 4.2 *Income arising from Computer Software Commercialisation*

4.2.1 The costs of drawing up a Licence Agreement may in the first instance be borne by the Institute.

4.2.2 The royalty from sales of specialist software originating in the Institute, or the return from an outright sale, is normally relatively low value. The income received will be allocated as set out in paragraph 4.1 above.

### **5 Confidentiality: Safeguarding Intellectual Property**

5.2 Members of academic staff are normally expected to publish the results of their work and the Institute does not wish to restrict this freedom while at the same time ensuring that in cases involving material with commercial potential appropriate action is taken to evaluate and protect the information. It should be borne in mind that the terms of most, if not all, research contracts restrict communication to third parties. Publication including conference contributions which of necessity involves communications to third parties, and theses, raises important and complicated considerations. Advice should be sought through the Institute Secretary's office to avoid premature disclosure which will prevent protection and/or commercial exploitation being sought. In addition, staff should be mindful of the contribution that colleagues may have made and should not take any action that could prejudice their interests or rights.