



NORWICH
UNIVERSITY
OF THE ARTS

Vice-Chancellor: Professor John Last

INTELLECTUAL PROPERTY POLICY AND REGULATIONS

Director of Innovation and Engagement

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Intellectual Property Policy and Regulations

Preamble

Norwich University of the Arts (“the University”, “the institution”) has a responsibility to ensure the effective management of all its assets, of which Intellectual Property (“IP”) is one. The University aims to ensure that all IP that arises from the creativity of its staff and students and through the use of its facilities and resources is protected and used for the benefit of all. This policy document aims to provide a policy framework for the Institution. An accompanying document, “*A Guide to Intellectual Property*”, offers an introduction and general guide to staff and students on the main categories of IP and provides details of sources of further information.

The University is keen to ensure that students, members of staff and anyone else that comes into contact with the institution, understands how IP can arise, how it should be identified and, where appropriate, how it should be protected and commercialised.

To ensure clarity on IP matters, this policy document sets out the rights and responsibilities in relation to IP created with the University’s resources, to which, for example, facilities, funding, time or expertise have contributed. In the United Kingdom, Higher Education Institutions are normally regarded as being in ownership of the IP generated by members of staff during the course of their normal employment duties. A lack of clarity on IP matters may limit the University’s involvement in future projects and constrain the development of new ideas and their potential applications.

There may be tax considerations which arise from the exploitation of IP and these will require careful consideration by all parties. The nature of these issues will reflect the particular set of circumstances, and these matters are not addressed within the current policy. Tax issues in relation to specific circumstances will need to be considered at the appropriate time.

INTELLECTUAL PROPERTY POLICY

1. The University Policy is as follows:

- 1.1. The policy of the University is that it shall own all IP, generated by work carried out under its auspices, for the benefit of the institution as a whole. This will include the activities of any trading subsidiaries except where otherwise agreed. The University will use such IP for the benefit of the institution as a whole.
- 1.2. The scope of this policy covers all forms of IP, including, for example:
 - Copyright
 - Performance Rights
 - Registered and unregistered design rights
 - Trade marks
 - Patents
 - Domain Names
 - Confidential Information
 - Know How

- 1.3. The University will seek to recognise and reward
 - 1.3.1. persons who create IP within the University that has a commercial value, and
 - 1.3.2. persons who bring into the University, for the benefit of the institution, IP which they own.
- 1.4. The University shall use reasonable endeavours to ensure that it does not infringe the IP rights (“IPR”) of others.
- 1.5. The University shall use reasonable endeavours to meet its obligations to the funders of research. This will include the management and commercial exploitation of the results of research in accordance with the agreed Terms and Conditions of such research.

The University’s regulations relating to its Intellectual Property Policy are set out below.

INTELLECTUAL PROPERTY REGULATIONS

2. RESPONSIBILITY

- 2.1 The Deputy Vice Chancellor (DVC) is responsible for directing the implementation, management and commercialisation of the University’s IP.
- 2.2 The first points of contact for IP issues is the Director of Innovation and Engagement, who is responsible for day-to-day implementation of the IP Policy and Regulations.
- 2.3 An ad hoc IP Management Group is responsible for making decisions on IP. The Group is chaired by the DVC and includes the Director of Finance, Research Director and the Director of Innovation and Engagement.

3. OWNERSHIP OF INTELLECTUAL PROPERTY AND SCOPE OF THE REGULATIONS

- 3.1 Where any IP is created by **individuals in the employment of the University (whether on a permanent or contract basis)**, directly or indirectly as a result of
 - 3.1.1 their employment by the University (for example, in carrying out teaching activities, or research and knowledge transfer including business and community projects); and/or
 - 3.1.2 using the resources and/or facilities provided by the University;such IP will be owned by the University.
- 3.2 Where IP is created by **students of undergraduate and taught postgraduate courses** in the course of their studies, it will be owned by the students unless the University specifies otherwise in advance of the creation of the IP in question, and subject to the student granting the institution a non-exclusive, royalty free, irrevocable, licence to use the IP in the course of its normal activities.

- 3.3 Where IP is created by students of **postgraduate research programmes** in the course of their studies, it will be owned by the students in partnership with the University unless the University specifies otherwise in advance of the creation of the IP in question, and subject to the student granting the institution a non-exclusive, royalty free, irrevocable, licence to use the IP in the course of its normal activities.
- 3.4 The apportioning of IP between the student and the University will be agreed on a case-by-case basis according to an evaluation of the student's use of resources and/or facilities (including staff expertise) provided by the University.
- 3.5 In any project where IP created, or jointly created, by students may eventually be transferred to an external client, the University will communicate their expectation about ownership of IP at the outset. All students are offered support in understanding the creation and ownership of IP as part of their professional practice teaching.
- 3.6 Circumstances where the IP created by students of any course will belong to the University will include:
- 3.6.1 Where the student specifically agrees to assign any IP created; for example, where the individual is involved in projects which involve third party funding or requires the use of pre-existing University-owned IP. It is the responsibility of the Research Director to ensure that students give informed consent using an "*Assignment of Intellectual Property Rights Agreement*" before becoming engaged in the project or activity.
 - 3.6.2 Where the student is employed by the University and IP rights or material arises from that employment.
 - 3.6.3 Where work is jointly created with members of staff of the University, in which case the University will normally seek to obtain an assignment of the students' rights in the work.
 - 3.6.4 Where the work and/or the programme of study is supported by a University studentship, bursary or fee waiver.
 - 3.6.5 Where the student is involved in University research and knowledge transfer activities including business and community projects.
- 3.7 In seeking to safeguard the interests of students, the University may, at its discretion and in partnership with the student, enter into a voluntary arrangement with a student whereby the University may represent the student in return for the provision of services relating to the protection or commercialisation of IP."
- 3.8 The University's policy on rewarding creators of IPR is set out in Appendix 2 of this document.
- 3.9 The University will not unreasonably withhold permission for students to use work where they have created or jointly created IP as part of their portfolio or job search activities.

4. EXCEPTIONS

- 4.1 There are, however, a number of circumstances in which the general policy of the University on ownership may not apply:
- 4.1.1 The University will not normally exercise its right of ownership in respect of copyright in scholarly works such as books, articles and learned papers which are non-commercial and solely intended for academic purposes. Copyright shall belong to the author.
 - 4.1.2 The University will not exercise its right of ownership where it has reached agreement with the creator that the creator should remain the owner of specified IP. In these circumstances a *“University Waiver Agreement”* should be completed and signed by the Chair of the IP Management Group.
 - 4.1.3 The University will not normally assert its ownership over work where the copyright is subject to a pre-existing agreement, such as a contract of employment with a previous employer. In these circumstances a *“University Waiver Agreement”* should be completed and signed by the Chair of the IP Management Group.
 - 4.1.4 The University will not normally have ownership of the IP of any work generated outside the normal employment duties of members of staff, except where significant and substantial use has been made of the University’s facilities or resources. In such circumstances proportional ownership should be agreed using an *“Assignment of Intellectual Property Rights Agreement”*.
 - 4.1.5 The University will not normally have ownership of unique or original works of art, design or media produced in the course of research, which members of staff are entitled to sell or retain, as the owner of the moral rights in those unique or original pieces. However, the University will retain ownership of its IP rights in the research outcomes and reserves the right to develop and commercialise these.
- 4.2 There may be circumstances in which the University works in collaboration with an external body, in which case the ownership of IPR resulting from such collaboration will usually be the subject of an individual written agreement. The University’s policy is that the external body should not normally own or be assigned ownership of IPR generated through the collaboration unless it funds the full economic cost of collaborative work. If commercial organisations are to own intellectual property rights deriving from research commissioned by the University, there may be a case to charge the commercial organisation a cost that exceeds the full economic cost of the research. All staff and students need to be aware of this policy.
- 4.3 Where IP is jointly created by University staff working in collaboration with persons who are exempt from this policy, discussions will take place to determine a way of assigning, protecting and commercialising such IP. The exploitation of such IP must be agreed in writing by all parties.

5. DISCLOSING, IDENTIFYING, PROTECTING AND SECURING UNIVERSITY INTELLECTUAL PROPERTY

5.1 University staff and students should notify the Research Director or the Director of Innovation and Engagement using a “*University Intellectual Property Disclosure Form*” as soon as they are aware of:

5.1.1 Any commercial potential in any IP created through activities governed by these regulations

5.1.2 Any third party involvement in the creation of IP

5.1.3 Any use of pre-existing University IP relevant to the creation of new IP

5.1.4 Any use of their own pre-existing IP.

5.2 When engaged in University work which might reasonably be expected to create IP, appropriate steps should be taken to protect the University’s position:

5.2.1 All matters relating to the potential IP must be kept confidential until advised otherwise by the DVC.

5.2.2 Adequate records of the creation of the IP must be kept

5.2.3 The Director of Innovation and Engagement will maintain a database of all IP disclosed. IP disclosed is reported to each meeting of the IP Management Group as a standing item.

5.3 Persons subject to these regulations are required to work with the Director of Innovation and Engagement in conjunction with the IP Management Group to

5.3.1 Ensure where possible that any IP created is owned by, assigned to, or licensed for the University’s use, on satisfactory terms. This includes the commercialisation of the IP.

5.3.2 The terms referred to above should be agreed prior to the commencement of any work and should form part of any bid or collaborative proposal.

5.3.3 The DVC and the Director of Finance are the authorised signatories for all collaborative proposals in respect of IP, on behalf of the University.

6. REWARD FOR CREATION

6.1 The Finance Office will administer the reward for creation process. This process and the profit sharing arrangements are described in Appendix 2.

6.2 Where IP is jointly created by staff, or by staff and students, the IP Management Group shall be responsible for determining the quantum of the reward but the creators of the IP shall be responsible for determining the allocation of the reward.

7. NOTIFICATION OF INFRINGEMENTS

7.1 Persons bound by these regulations must inform the University, in writing, addressed to the DVC , if they become aware of, or reasonably suspect

7.1.1 Any infringement of the University's IP rights

7.1.2 The infringement by the University of any third party's IP rights.

8. APPLICATION OF POLICY

8.1 The University will consider submissions to use its IP under license by staff or students. Decisions on such submissions will rest with the DVC, who will consult as necessary, and such decisions will be solely at the discretion of the University.

9. ASSIGNMENT

9.1 The University may assign or license its IP rights to the creators or others if it has reason to believe that there would be no benefit to retaining the IP, or if better use of the IP would be achieved thereby.

9.2 Applications for the assignment or license of University IP rights should be made in writing to the DVC.

10. DISPUTES AND APPEALS

10.1 Disputes arising from the application of these regulations will be communicated in writing to the DVC as Chair of the IP Management Group, and will be considered by the IP Management Group.

10.2 Appeals against the decision of the IP Management Group will be heard by the Vice-Chancellor.

11. DISPOSAL OF IP

11.1 Permission for the disposal of the University's IP and the rights to exploit the University's IP must be given in writing by the Vice-Chancellor (or nominee). For these purposes the nominee will normally be the DVC.

Appendix 1

1. HOW THE POLICY IS APPLIED – INCLUSION IN CONTRACTS

- 1.1 Whilst this document sets out the policy of the University, it needs to be applied and implemented in practice. The University believes that the most simple and straightforward approach to implementing this policy is to ensure that everybody is aware of it and understands it, and to ensure its incorporation into all contracts with the University. The following contracts will incorporate the principles of this policy document:
- Contracts of employment;
 - Contracts of enrolment/education/research;
 - Contracts with any legal entity to commission or undertaking the preparation of work;
 - Contracts with any other individual or legal entity.
- 1.2 IP created by consultants and other third parties, (including for example software programmers, seconded staff, vacation placement interns or advertising/design agencies) will, in the absence of any agreement to the contrary, usually belong to the third party who created it, even though the University has paid that third party to undertake the work on its behalf.
- 1.3 For external contracts, the University's standard terms & conditions, should be used whenever possible. These state that IP belongs to the University. Care is needed in relation to the agreements governing University relationships with such third parties as:
- Service providers and agencies;
 - Consultants, including IT consultants; and
 - Other third parties, including with regard to collaborative projects (with industry or other academic institutions) where the problem of jointly owned IP rights can arise.
- 1.4 Advice from the Research Director or the Director of Innovation and Engagement should be sought on such agreements at an early stage, to ensure that the question of the ownership of any arising IP is properly negotiated and dealt with. Third parties will often try to rely upon an agreement drafted to the "industry standard" to argue that they cannot assign any arising IP rights to the University. It is, however, generally speaking, within their discretion to assign such rights if they want to and so the ownership of arising IP will often come down to a question of how valuable your business is to the party in question.
- 1.5 When licensing third parties to use the University IP rights, for example trademarks or patented inventions, it is important that their use of such rights is closely monitored and controlled under the terms of the licensing agreement. The licence should ensure that the rights are not used in a way that is damaging either to the right itself or to the reputation of the University and again, the Director of Innovation and Engagement should be consulted at an early stage.

Appendix 2

1. FINANCIAL REWARDS TO CREATORS

1.1 Whilst the University's policy is to own IP, it also wants to be fair. It recognises that staff, students and researchers, who innovate and put forward work and ideas for exploitation, must be justly rewarded. The University recognises the contribution that resourceful innovative individuals make to the institution and firmly believes that such effort should be recognised.

1.2 It is, therefore, important to be able to correctly identify the "creator(s)" of any IPR that arise. A person will not be considered the creator merely because he/she contributes advice or assistance. A "creator" needs to do more than that. A creator is the person who realises that when certain details/information is brought together in a particular way, it results in an invention. The "creator" for each type of IPR is as follows:

- Patents – the creator is the inventor or the actual deviser;
- Copyright – the creator is the author, the person who has the original idea and records it in some form;
- Database right - the creator is the person making the arrangements for the compilation of the database e.g. deciding what information will be collated and in what format;
- Design Right, Registered Design Right and Trade Marks – the creator is the designer.

1.3 The University's policy is to share net revenue with creators. Net revenue is the amount of income generated by the exploitation of IPR after deduction of, for example,

- Costs involved in the creation and development of the work;
- Application and registration costs (e.g. the actual cost of obtaining legal protection);
- Renewal fees (e.g. fees paid to maintain legal protection);
- Publication and marketing costs;
- Tax including additional PAYE, National Insurance contributions. IP payments will not normally be pensionable;
- Professional fees including due diligence.

1.4 Using the following table as a guideline, the University will divide the surplus income after deduction of the above costs as follows:

Net Revenue	University	Creator(s)
First £500.00	0%	100%
Next £2,000.00	25%	75%
£2,501.00 and above	50%	50%

Payments will be made once a year in December.

NORWICH UNIVERSITY OF THE ARTS

A Guide to Intellectual Property

1. WHAT IS INTELLECTUAL PROPERTY?

1.1 Essentially, "intellectual property" means products of the human brain, whether it is an advance in technology or a design for a kitchen unit. The intellectual property rights (IPR) which are likely to arise in the context of the University and include for example:

- Copyright
- Performance Rights
- Registered and unregistered design rights
- Trade marks
- Patents
- Domain Names
- Confidential Information
- Know How

1.2 Further information:

1.2.1 The UK Intellectual Property Office makes available a considerable amount of material on line to assist those who are unfamiliar with intellectual property issues. You may find it useful to look at the IPO website using the following link:

<http://www.ipo.gov.uk/>

1.2.2 A good introduction to IP issues is provided at <https://www.gov.uk/intellectual-property-an-overview>

2. MAIN CLASSES OF INTELLECTUAL PROPERTY

2.1 Copyright

2.1.1 Tangible expressions of ideas are automatically protected by copyright. There is no need to apply for registration for the work to be protected. Copyright protects literary, artistic, & musical works, sound recordings, films, works of artistic craftsmanship and importantly, computer programs for 70 years from the death of the creator of the copyright.

2.1.2 Compilations of information in the form of a database are protected by Database Right. Because of the lesser standard of creativity, protection is only for 15 years. Database right protects the contents of the database from unauthorised extraction or re-utilisation. The protection period runs from creation of or substantial investment in the database (e.g. verifying the accuracy of the contents).

2.1.3 Copyright and database right can subsist side by side:

- Copyright may protect the structure of a database if there was sufficient creative input or the contents themselves; and

- Database right may further protect the contents if there was a substantial investment in obtaining, verifying or presenting them.
- 2.1.4 All significant material in which there is copyright belonging to the University should include a copyright claim. This includes prospectuses, brochures, academic papers or posters, but not internal notes and working documents. The claim should be on each page if the document is loose-leaf.
- 2.1.5 The MINIMUM to display clearly on documents and packaging should be:
- "Copyright (or ©) Norwich University of the Arts [Year] All Rights Reserved."**
- Or:
- "Database Rights property of Norwich University of the Arts [Year] All Rights Reserved".**
- 2.1.6 For HIGHLY SIGNIFICANT or valuable copyright works such as computer software, strategy documents, examination papers, & wherever space allows, the following wording should be used:
- "Copyright © Norwich University of the Arts [date]. The copyright in this work is vested in Norwich University of the Arts. This work, either in whole or in part, must not be used, sold, transferred, copied or reproduced for purposes other than that for which it is supplied, without the prior written permission of Norwich University of the Arts."**
- 2.1.7 Any document (in whatever media) which is revised or updated outside of the year of its first publication should be dated with the year of each revision. For example the notice for a document created in 2012 and updated annually should read:
- "© 2012, 2013, 2014 Norwich University of the Arts All Rights Reserved".**
- 2.1.8 It is important to avoid infringing the copyright of others. There are circumstances where acts are exempted from copyright infringement and these are described as exemptions for "fair dealing". Where fair dealing is claimed, the purpose of the copying must be for:
- Research or private study where the purpose is non-commercial
 - For criticism or review. This must be for a non-commercial purpose, & only applies to published work and so things like private letters would not be exempted.
 - For the educational purposes of instruction or examination. This must be accompanied by an acknowledgement of the source material and author wherever possible.

The regulations do not define 'non-commercial', but commercial activities could include research sponsored by industry, conference or summer schools. Caution should be exercised when using copyright material for any purpose which may be deemed to have a commercial element. Advice can be sought from the Director of Innovation and Engagement or by checking the terms of the University's licences with regulatory organisations such as the Copyright Licensing Organisation.

2.1.9 More information can be found here: <http://www.patent.gov.uk/copy.htm>

2.2 Performance Rights

2.2.1 Performance rights are the reproduction right, distribution right, rental and lending right and the making available right. These are proprietary rights that may be sold, licensed or otherwise dealt with as personal property. Agreements to do so must be in writing.

2.2.2 Performances are defined in section 180(2) of the Copyright, Designs and Patents Act as a live performance of:

- a dramatic performance
- a musical performance
- a reading or recitation of a literary work, or
- a performance of a variety act or similar performances.

2.3 Designs

There are 2 forms of protection:

2.3.1 Registered Design Right

- a. Registered designs protect the outward appearance of articles. A design can be registered if it is new and has “eye appeal” – that is, the design is meant to be aesthetically pleasing. For example, you would normally take into account the look or design of a vase when deciding whether to buy it – but you wouldn’t normally care what a plug looks like.
- b. Like the owner of the patent, the owner of a registered design will have a monopoly right, this time for 25 years – no-one else will be able to sell, manufacture or use the design without permission – subject to renewal every five years.

2.3.2 Unregistered Design Right

Most people are familiar with the concept of a trade mark, for example the word “McVitie’s” and “Cadburys” and the bottle used for Coca Cola. Trademarks are the brand names and images used by businesses to distinguish their goods and services from those of competitors. A trade mark can take many forms; it can be a symbol or logo, a phrase, or even a distinctive shape (for example, Toblerone chocolate). As with patents a trade mark must be registered to be protected. But if it is, the owner can have a monopoly right for an indefinite period, provided the registration is kept up to date.

2.4 Trademarks

- 2.4.1 Trademarks are “signs” that are capable of distinguishing goods and/or services of one company from that of another. They can be registered for certain classes of goods or services, & unlike patents they can be registered for the whole of the EU. Trade marks can be renewed, protecting for long terms. The UK’s oldest registered trade mark (the red triangle logo for Bass ale) is over 100 years old. A trade mark needs to be distinctive and capable of graphic representation to be registerable. Trade marks for colours (Cadburys purple), smells (beer for darts), and sounds (the Direct Line jingle), have been granted in the UK. Trade marks must be registered to be protected.
- 2.4.2 All references to unregistered trademarks, including, applications for registered trademarks prior to grant, should include the symbol TM.
- 2.4.3 If the mark is registered (not necessarily in UK) you can use the ® symbol or the abbreviation "RTM" (for Registered Trade Mark) to show this. The ® symbol usually is usually placed on the right-hand side of the trade mark, in a smaller type size than the mark itself, and in a raised (superscript) position. If you do not have the ® symbol available, you can use the abbreviation "RTM". **It is an offence to use ® or "RTM" on a mark that is not registered anywhere in the world.**
- 2.4.4 When making reference to third party trademarks, include a footnote indicating that:
- “X, Y, Z is a trade mark belonging to A, B, C”.**
- 2.4.5 Even where marks are not registered, the law of passing off can help to protect the “look and feel” of goods and services by preventing competitors from taking unfair advantage of the goodwill that has been build up.
- 2.4.6 More information can be found here: <http://www.patent.gov.uk/tm.htm>

2.5 Patents

- 2.5.1 Inventions like engineering components or manufacturing processes can be protected by patents. It is not possible to patent an *idea*. Once the product has been made, the product itself, together with the method or process for making it, could form the subject matter of a patent.
- 2.5.2 The holder of a patent is granted a 20 year monopoly, which has been renewed annually. This means that during that period nobody can sell, manufacture or use the product or process without the patent holder's permission.
- 2.5.3 A patent will not be granted if the invention already forms part of the "state of the art", i.e.:
- it has already been created by somebody else and so it is not new, or
 - it has been disclosed to the general public in enough detail that someone reading the information could clearly see how to make or use the invention.

- 2.5.4 Because patent rights may be lost if any details are disclosed to anyone outside of the University who is not bound by confidentiality obligations, it is important that anyone who believes that a patentable invention has been made should:
- Not discuss any work that may be patentable with anyone who is not an employee of the University ;
 - Not discuss the work with other members of staff or students unless they are involved in the development;
 - Not publish anything regarding the idea.
- 2.5.5 If discussions do take place with an external third party, a “*Non-disclosure agreement (NDA)*” should be signed, prior to any dialogue or exchange of information taking place. Copies of the University’s NDA can be obtained from the Director or the Director of Innovation and Engagement
- 2.5.6 If public disclosure has been made in breach of an obligation of confidentiality then the University may still have a grace period in which to apply for a patent if it can demonstrate to the patent office that such disclosure was in breach of this policy or a contract of employment. This may happen if a colleague inadvertently disclosed something at a conference or in a paper.
- 2.5.7 Staff working in areas where it is likely that a patentable invention may be created should make regular notes setting out the nature of the creative work that they do. The University should retain all records, drafts, flow charts, notebooks and any other working papers filed in an orderly manner (although it is accepted that this may not be possible in respect of key research work forming the 'stock in trade' of an academic).
- 2.5.8 More information can be found here: <http://www.patent.gov.uk/patent.htm>

2.6 Domain Names

- 2.6.1 A domain name works like a company name and is a name by which a company or organisation is known on the Internet. It is a convenient "short-hand" way of identifying a company’s web site address e.g. "amazon.co.uk".
- 2.6.2 There are many registrars who can register domain names. Each country has a central registry to store unique names and addresses on the Internet. Nominet UK is the Registry for .uk Internet domain names, and provides a dispute resolution service for .uk domain names. More information can be found here: <http://www.nominet.org.uk>

2.7 Confidential Information

- 2.7.1 Although not strictly an intellectual property right as such, confidential information is closely related to IP and protected by the law provided that the information is kept confidential or communicated to someone who is bound by a duty of confidence. The recipient of the information is legally obliged to respect that confidentiality. Examples include marketing plans, student details.

2.7.2 All confidential material should be marked as such. If possible anyone outside the University who receives key confidential information should sign a confidentiality agreement. Standard agreements are available on the staff information point.

2.8 Know-How

2.8.1 Know-How is an accumulation of information, knowledge, and experience that enables its possessor to achieve practical results which cannot be obtained by one not possessing it. Know-how is the essence of what makes an organisation's company's most valuable employees valuable. It is a term for practical knowledge on how to accomplish something.

STRATEGY & POLICY REVISION SHEET

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