

INTELLECTUAL PROPERTY POLICY (COMMERCIAL EXPLOITATION)

General Introduction

1. The regulations covered by the Intellectual Property Policy (Commercial Exploitation) identify the appropriate route for notification, protection, and commercial exploitation of Intellectual Property.
2. This policy should be read in conjunction with the University of Suffolk Intellectual Property Policy (Research and Scholarly Outputs and Learning and Teaching Materials), which defines the University of Suffolk approach to Open Access, Copyright and Intellectual Property inherent within research and scholarly outputs, course materials, teaching and other support materials.

Policy Statement

3. The University of Suffolk will seek, wherever possible, to exploit Intellectual Property (IP) commercially for the benefit of society, end users of the University of Suffolk research and enterprise outputs and for the generation of revenue.
4. The University of Suffolk is the owner of any IP created by University of Suffolk employees in the normal course of their employment. Exceptions to these principles include, but are not limited to, the following:
 - a) When an agreement has been entered between the University of Suffolk and an employee, or between the University of Suffolk, an employee and a third party regarding ownership of IP rights that expressly refers to and varies from the general policy of the University of Suffolk (e.g. a research contract).
 - b) The IP is related to work created independently (outside the course of the University of Suffolk employment and not in conflict therewith), and therefore, is not subject to this policy.
5. A student undertaking undergraduate or taught postgraduate programmes of study at the University of Suffolk will be the owner of the Intellectual Property created by that student during such academic activity. Exceptions to this principle include, but are not limited to, the following:
 - a) When the student is sponsored and the sponsorship agreement with their sponsor states otherwise.

- b) When the student is engaged in research that is governed by an agreement that states otherwise and has been entered between the University of Suffolk, the student and a third party.
 - c) When the student is working in collaboration with others in a way that gives rise to joint or interdependent creation of IP. Such collaboration may be with other students, with University of Suffolk staff members, where the work being undertaken derives from the Intellectual Property of the University of Suffolk staff member, or with third party collaborators.
 - d) When the student is undertaking a study module which has as a primary or substantial purpose, the creation of Intellectual Property, such as dissertation projects.
6. The University of Suffolk reserves the right to use student works for the purposes of education or quality assurance.
7. The University of Suffolk Intellectual Property Policy (Research and Scholarly Outputs and Learning and Teaching Materials) defines the University of Suffolk approach to Open Access, Copyright and Intellectual Property inherent within research and scholarly outputs and teaching/support materials.
8. Under the Copyright, Designs and Patents Act 1988 the copyright in work produced by University of Suffolk employees in the course of their employment belongs to the employer unless there is agreement to the contrary.
9. The Research and Enterprise Committee will oversee the University of Suffolk policy and procedures relating to IP and the commercial exploitation of IP.

Scope

10. The term 'employee' within the IP policy will refer to University of Suffolk staff. Ownership of IP can be assigned to the University of Suffolk contractually. The University of Suffolk will have the right to require Visiting Professors, Visiting Researchers and Visiting Senior Fellows to enter a contract of assignment with University of Suffolk. Specific assignment provisions will be included in individual contracts between the University of Suffolk and Visiting Professors/Visiting Researchers/Visiting Senior Fellows.
11. The term 'student' within the IP policy will extend to undergraduate and postgraduate

taught students (PGT) subject to the terms of clause 16 in respect of students working on sponsored research projects.

12. University of Suffolk postgraduate research students (the University of Suffolk PGR students) registered with the University of East Anglia or Essex are subject to the University of East Anglia or Essex's regulations governing Intellectual Property Rights (dependent on the PGR student's registration status).

Definition of Intellectual Property

13. Intellectual Property (IP) is the novel or previously undescribed tangible output of any intellectual activity. IP includes, but is not limited to, patents, copyright, design rights, registered designs, logos and image rights, trademarks, service marks, industrial processes, internet domain names, software, database rights, rights in designs, copyright (including rights in software), rights in confidential information, trade secrets, inventions, inventions and intellectual property rights whether registered or unregistered and including any applications for registration and all other rights or forms of protection having equivalent or similar effect anywhere in the world.

Types of IP

14. **Intellectual Property Rights (IPR)** include the following related areas: copyright, patents, designs, trademarks, plant variety rights, database right and analogous rights.

- a) **Copyright** is an unregistered intellectual property right, which arises automatically by operation of law in the UK when a protectable work is created by a qualifying author, and there is no registration required. 'Protectable' describes the class of copyright work, these are: literary, dramatic, musical and artistic works, films, broadcasts and cable programmes. 'Qualifying' refers usually to whether the author is recognized under the **Copyright, Designs and Patents Act 1988**. A copyright work must be original. Computer software is treated as a literary work and as such is protected by copyright in the same way as literary and artistic works. Sometimes computer programs may also be protected as patents. Copyright is governed by the Copyright, Designs and Patents Act 1988.
- b) **Databases** protected by Database Right tend to protect the content, as opposed to the organization and structure of a database. Database Right is a valuable intellectual property right that is governed by the **Copyright and Rights in Databases Regulations 1997**.

- c) **Patents** protect original inventions (subject to some exclusions) with industrial application. They have to be applied for and are granted by the state through the Patent Office. Patents are governed by the **Patents Act 1977**. An invention or details about it should not be disclosed, for example in a scientific paper, poster, presentation (oral or written) or exhibition before an application is made to protect the invention.
- d) **Know-How** refers to technical expertise or practical knowledge and can encompass a broad and vague body of knowledge. In some cases this may be commercially valuable and can be exploited through consultancy or licensing and can be protected through the law of confidentiality.
- e) **Design Rights** under English law can exist in unregistered or registered form. Design rights are in some ways similar to copyright but for three-dimensional articles. Registered designs protect the shape, configuration, pattern or ornament of an article to the extent that they are new and have "individual character". The main legislation in the UK is the **Registered Designs Act 1949**.
- f) **Unregistered Design Right** arises automatically by operation of law and, it does not require to be registered anywhere. Unregistered design right is a proprietary right which subsists in an original design. "Design" for these purposes means the "design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article." Unregistered design right does not subsist unless and until the design has been recorded in a design document or an article which has been made to the design. Unregistered Design Rights are governed by the **Copyright, Designs and Patents Act 1988**.
- g) **Trade Marks** can be registered or unregistered. A registered trade mark is often much more valuable than an unregistered trade mark which can only give the owner a right to sue for passing off. Registered trade marks are governed in the UK by the **Trade Marks Act 1994**. There is also a Community Trade Mark which gives a mark protection throughout the EU.
- h) **Assignment** is the term given to the outright transfer of ownership of IPR from one person or party to another. It is often, but not always, done in return for a fee. Whilst transfer of ownership of physical property is achieved by delivery of the property from one person to another, intellectual property must be transferred in a written document which is referred to as an assignment.

- i) **Licence and licensing** are the terms given to the permission, which the owner of an intellectual property right may give to any other person or parties to use that IPR. Someone using an intellectual property right without a licence infringes that intellectual property right. There is no transfer of ownership, just a licensing of use and it can be thought of as similar to hiring or renting out other forms of property. Licenses are usually divided as follows. A non-exclusive licence means that the licensor himself can use the rights and he can have any number of licensees. A sole licence means that the rights owner can use the rights but can only create one licence in favour of his licensee. An exclusive licence means that the licensor himself cannot use the rights and only one licence can be created.

- j) **Moral Rights:** A moral right is not an intellectual property right but is something which allows authors or film directors to assert their rights to be known as the author (the "paternity right") and to object to any derogatory treatment of the right ("the integrity right").

Principles for staff and students

15. Where IP is generated during the normal course of an individual's employment with University of Suffolk, such IP shall belong to the University of Suffolk except where a written agreement to the contrary is entered between University of Suffolk, the employee and another party. Where appropriate, the University of Suffolk will pursue the commercial exploitation of IP. Employees wishing to pursue the commercial exploitation of IP should approach Research and Enterprise Services as the main internal and external contact for the support of the commercial exploitation of IP.

16. The IP Regulations should be read in conjunction with all other University of Suffolk regulations, an individual's contract of employment, and the terms and conditions of any agreements or contracts with external sponsors or other third parties. All staff agree to abide by the IP Regulations by virtue of their employment at the University of Suffolk and undertake to provide the University of Suffolk with every assistance in protecting the University's intellectual property rights.

17. The University of Suffolk can decide not to exploit any IP which it owns and, instead license or assign the IP to its creators. The University of Suffolk is the vehicle for holding patents and other IP rights but is free at its absolute discretion to engage another party to exploit its IP on its behalf.

18. Where an employee of the University of Suffolk holds employment contracts for projects funded jointly by University of Suffolk and another party or funded entirely by another party, the University of Suffolk will enter a formal agreement with the employee and the other party as to the ownership and management of any IP generated during the period of employment.

19. An employee of University of Suffolk may have an honorary contract with another organisation. IP generated by such an employee will normally be owned by the University of Suffolk. Specific arrangements may be required for the management of IP rights in this situation. The University of Suffolk may claim/hold the IP for work created by people holding such appointments with the University of Suffolk. The ownership of IP generated by Honorary staff (if they are not employees of the University of Suffolk) is determined by their contractual relationship or terms of their appointment with the University of Suffolk.

20. IP generated by an employee acting outside the normal course of their University of Suffolk duties and/or work will be owned by the employee, subject to the terms of employment. The University of Suffolk claims ownership of IP generated by employees unless otherwise agreed, arising from work undertaken at the University of Suffolk inside their normal work duties and from work outside their normal work duties where the employee has used substantial the University of Suffolk resources.

21. During study a student may devise an invention, or part of an invention, which could be commercially exploited. The IP in such an invention belongs to the student, unless otherwise agreed in writing. Exceptions to this are listed in clause 5 of this policy. Such exceptions may include work that has been sponsored by a commercial organisation. In this case Research and Enterprise Services will help draw up a contractual agreement with the student and the organisation concerned which will cover any specific IP provisions. The position on ownership and management of IP rights generated during commercially sponsored projects will depend on the specific contract with the parties involved. The University of Suffolk will ensure that students are informed of the IP rights position as early as possible in the admission stage, and in any case prior to the start of their research. Commercial exploitation is often difficult and costly to achieve and the University of Suffolk may seek to reach a written agreement with the student to support the commercial exploitation of the invention and share the benefits per the principles established by the revenue sharing model.

Student-Employee

22. University of Suffolk's students who are also Employees of the University are subject to the Employee sections of this Policy in connection with their employment, not those relating to students, and should refer to them as necessary. If any IP is created by a student and not as part of their employment contract then then clause 21 will apply.

Support for and identification of the potential commercial development of IP

23. An employee who produces novel work which appears to have a potential for commercial exploitation should report its existence to the Head of Department and to Research and Enterprise Services via an 'Intellectual Property Disclosure' form at the earliest opportunity.

24. The employee shall keep the nature and matters relating to the identified opportunity confidential, until a disclosure, and the manner thereof, has been agreed with the relevant University of Suffolk authority.

25. Employees should be aware that publication in academic journals, posters or conference presentations may inhibit the ability of the University of Suffolk to obtain IP protection. Prior public disclosure may invalidate any subsequent patent application and diminish both potential commercial value and benefits accruing to the University of Suffolk and the employee. The confidentiality obligations of employees and students extend not only to existing IP but also to ongoing work which may be reasonably expected to raise IP.

26. When a license agreement has been entered, the employee, with support from Research and Enterprise Services, shall be responsible for ensuring that its terms are complied with.

27. Research and Enterprise Services is responsible for maintaining a register of all IP rights owned by the University of Suffolk and of those which have been licensed or assigned to a third party where a University of Suffolk employee is a named inventor or originator.

28. Research and Enterprise Services can offer employees and students support for the protection, development and commercialisation of IP through guidance, referral, training and support from Research and Enterprise Services. This may include advice on contractual obligations, researching the market, entering discussions with potential licenses, support for the negotiation of appropriate licenses or other agreements, advising on spin outs and company formation and monitoring progress. Workshops for staff and students on IP and the commercial

development of inventions will be provided within the annual Research and Enterprise development programme.

29. Learning Services can support employees and students on how they can publish and disseminate their research, providing guidance on the publication process, including selection of publication, copyright licensing, open access and publication.

Receipt and apportionment of revenue

30. Any revenue sharing resulting from the commercial exploitation of the University of Suffolk IP will be calculated on a case by case basis and through negotiations. The baseline revenue sharing model that forms the starting point of negotiations is as follows.

	EMPLOYEE	ACADEMIC DEPARTMENT	THE UNIVERSITY OF SUFFOLK
In all cases	33.33%	33.33%	33.34%

31. If revenue arises from the exploitation of IP through licensing, option or other similar agreements, any net benefit received by the University of Suffolk, after deduction of eligible costs (including all costs incurred during the commercialisation process including legal, technical or commercial advice, patent fees and associated expenses), will be shared between the employee, his or her academic department and the University of Suffolk. Reward/profit sharing provisions apply to all students who have originally owned commercially exploited (by the University of Suffolk) IP.

Dispute Resolution

32. Any question of interpretation or claim arising out of or relating to the University of Suffolk's IP regulations, or as a dispute as to the ownership of rights to IP under the University of Suffolk's IP regulations shall be settled by the University's standard grievance procedures.

Other literature

33. Further information and guidance on IP can be found on the UK Intellectual Property Office website at www.ipo.gov.uk.