



UNIVERSITY OF
LINCOLN

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POLICY ON INTELLECTUAL PROPERTY RIGHTS

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1. INTRODUCTION

The University of Lincoln (“the University”) has as its primary goals (i) the teaching of students in various disciplines at under- and post-graduate levels, (ii) the expansion of knowledge through scholarly studies and research, (iii) the support of the business and wider community throughout its region and beyond, and (iv) the publication and other dissemination of the products of its studies and research.

In accomplishing these goals, University staff members, researchers, students and any other persons employed, enrolled or appointed by the University may produce innovative or novel work or ideas which could give rise to patentable or commercially viable inventions. This Policy addresses the ownership of rights in and to such intellectual property (“IP”) together with the arising commercial exploitation.

“Intellectual Property” is the product of the human intellect that may have commercial value, including copyrighted property such as literary or artistic works, and ideational property, such as patents and industrial processes” and is defined in detail as any:

- Concept, discovery, invention, process, procedure, development or improvement in process or procedure;
- Data, design, formula, model, plans, drawings, documentation, database, computer program or software (including related preparatory and design materials); and
- Idea, method, information or know-how;

made, discovered or created by a person whether alone or with others whether or not in the course of their employment which relates to the business or other affairs of the University.¹²

¹ The Legal definitions relating to IP are given in section 5 of this document

² Further definitions of the type of IP are given in Section 13

2. PURPOSE

2.1 The university wishes to encourage the promotion and commercial exploitation of inventions, inventive ideas and intellectual property developed by members of staff to the mutual benefit of the inventor and the university.

2.2 This policy defines the university's position on intellectual property rights (IPR). There are important benefits for both staff and the university from the recognition, protection and exploitation of IPR. This policy helps the university to realise these benefits.

2.3 It is the university's policy that:

2.3.1 That staff should be encouraged to undertake the creative processes which lead to the generation of intellectual property, and, where appropriate, its exploitation

2.3.2 The product of work carried out with the benefit of the University environment (including facilities, resources, expertise and intellectual assets) constitutes Intellectual Property that should be owned, protected and used by the University for the benefit of the University specifically and for the benefit of society more generally.

2.3.3 The University should not infringe the rights of others who own and control Intellectual Property.

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

2.3.5 The University should make provision to recognise and reward persons who create work that is patentable and/ or have proven commercial value.

The University respects the fact that academic staff are normally expected to publish the results of the research and scholarship and the University would not wish to restrict this freedom, but there is a balancing requirement to ensure that in all cases involving material with commercial potential that appropriate action is taken to evaluate and protect that information as is described later in this document.

2.4 The policy is guided by the following objectives:

2.4.1 To ensure that the Mission of the university with regard to research and commercial activities is realised effectively.

2.4.2 To bring the products of creative efforts into practical use as quickly and effectively as possible; and

2.4.3 To protect the interests of the university through an equitable recovery by the university of its investment in research and other activities.

2.5 This policy will be given effect through the following measures:

2.5.1 Contracts of employment;

2.5.2 Contracts of enrolment/education/research;

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- 2.5.3 Contracts with any legal entity for the supply of services where the University is commissioning or undertaking the preparation of work;
- 2.5.4 Contracts with subsidiary undertakings, institutions and charities of the University and their office holders, employees and contractors;
- 2.5.5 Contracts with any other individual or legal entity.

3. SCOPE AND APPLICATION

- 3.1 The policy sets out the university's position regarding such inventions, discoveries and other expressions of ideas and their commercial exploitation.
- 3.2 The policy will cover all aspects of intellectual property (IP)³.
- 3.3 This policy applies to all employees of the university. The extent of application will reflect the nature of the staff members contract e.g., whether for example, they are part-time, fixed term or visiting employees. This provision relates to clauses 3.4,3.6,3.7 and 3.8.
- 3.4 Where a member of staff leaves the University, he/she shall be required not to enter into any agreement with any third party (including a new employer) to exploit IP generated while a University Employee and not previously disclosed in accordance with this policy (Section 7) until at least two years have elapsed. The University will exert its full powers of assignment in the event of any attempts by a University Employee to conceal the existence or worth of IP generated in order to evade his/her obligations to the University. (Staff contract 15.3 refers).
- 3.5 Students of the University are covered by this policy to the extent that any part of this policy is incorporated into regulations applying to their programme of study
- 3.6 The university recognises that personnel will engage in consultancy work for external organisations. In such cases an agreement covering the provision of such services shall be produced by the university which itself will enter into the agreement with the external organisation. All such agreements, including the sharing of any revenue arising there from, shall be governed by the university's regulations. All university personnel involved in such consultancy work must refrain from making use of the university's intellectual property, or from disclosing any of the university's intellectual property, during the course of such consultancy work, unless such use or disclosure is expressly agreed by the university with the external organisation⁴. Furthermore, it should be recognised that in conducting consultancy work, the university will retain all of its intellectual property used in such work unless the university expressly agrees otherwise, and the university personnel involved must not convey a contrary impression to the external organisation concerned
- 3.7 In cases where the member of staff undertakes consultancy or external work on their own behalf, with the approval of the university and where there is no conflict of interest or use of university facilities, the member of staff may claim the intellectual property generated, if having received the consent of their head of department and the university's senior officer with responsibility for finance and resources, the latter decides that it has no interest in this IP⁵.
- 3.8 The university is willing to consider requests from its staff and students for a license to use specific university owned intellectual property and/or its facilities for their use (outside the scope of their normal employment or studies). The terms and decision to grant any such license is wholly a matter for the university to decide upon.

³ Patents are regarded as an important form of IPR but there are also important IPRs in the form of 'know how' relating to products and processes and also copyright works which includes manuals and computer software etc. Other IP such as designs and trade marks may also be relevant forms of IP

⁴ See Academic Contract – Section 14

⁵ Currently the Director of Finance

- 3.9 This policy also applies to individuals and organisations providing a service to the university unless specific contractual terms relating to their engagement state otherwise.

4. OWNERSHIP OF INTELLECTUAL PROPERTY

- 4.1 It is essential to have a clear understanding of who owns IP. The University will normally assent its rights to ownership where it is permitted in law, unless agreed otherwise.
- 4.2 In compliance with the Copyright, Designs and Patents Act of 1988, sections 11 and 215, the legal position on the ownership of Intellectual Property is as follows:” *Ownership of any such property that has come into existence in the course of employment is vested in the employer*”; however, not all IPR generated by staff during the course of their employment necessarily belongs to the University. There are two exceptions as set out below:
- (a) Where the University agrees to waive its right to IPR generated by employees, for example, the University does not make any claim on the rights of employees, or income earned by members of staff, from academic publications or other creative works, unless commissioned by the University; or where the staff member has undertaken private consultancy and the University has no interest in the IP generated. (See sections 3.6, 3.7, 4.5) or as given in the Academic Contract Section 17.6 relating to copyright.
 - (b) Some IPR may be generated on research or other third party contracts which give the third party (usually the sponsor or funder of the research) rights over some or all of the IP.
- 4.3 Under the terms of the Patents Act 1977 where an invention is made by an employee in the course of his employment it is likely that ownership belongs to the employer. Given the conditions of employment for academic and research staff applying at the university an invention made in the course of research will belong to the university. Similar considerations apply to computing, technical and support staff provided an invention is made during working hours. The Patents Act 1977 requires that the employee benefits adequately from the exploitation of any invention. However, the university will have no claim on inventions or other forms of intellectual property which have no connection with university work or facilities and for which prior consent of the University is not required⁶. Members of staff, however, are reminded that prior approval of both their Head of Department, and the University’s Senior Officer for Finance and Resources⁷, is required in order to undertake private consultancy work.
- 4.4 The university’s claim to an ownership interest in all forms of intellectual property rest on the facilities provided in addition to the terms of any research grant or contract supporting the work in question. The general provisions of this policy in respect of exploitation and revenue sharing will apply equally to inventions and other forms of intellectual property.
- 4.5 Where IP arises out of research funded by research council grants or by external industrial collaborators or commissioners of research with whom a written contract is in place dealing with matters of ownership of intellectual property, ownership will first be determined by the conditions under which funding of the research work is granted.
- 4.6 If it is established by the university that it has not contributed to the IP in terms of funds, office space and facilities, equipment, materials, or the time or input of university employees, other than the IP generator(s) working in their own time, or if the IP is not directly or indirectly connected with the regular or other assigned work of the particular university employees who generated the same and is not within the area or areas of their specific professional expertise (as evidenced by a specialised training or educational background, or the areas of the university employee's research or practice), then the university shall have no claim to exploitation rights over the IP and the university

⁶ See Academic Staff Contract Section 14

⁷ Currently the Director of Finance and Resources

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employees shall be free to deal with the IP at their own expense and as they see fit within the requirements of clause 3.7 of this policy.

5. UK STATUTES AND INTELLECTUAL PROPERTY RIGHTS

5.1 KEY LEGISLATION RELATING TO IPR

There are three key pieces of legislation relating to IPR: (1) the Patents Act 1977; (2) Copyright, Designs & Patents Act 1988; and (3) the Patents Act 2004 which effectively consolidates the previous 2 acts and related legislation. The key aspects of these Acts are as follows:

‘An invention made by an employee shall be taken to belong to his employer if it was made in the course of normal duties of the employee or specifically assigned duties in circumstances where an invention might reasonably be expected to result.’ (**Patents Act 1977, section 39 [paraphrase]**)

Where a literary [includes computer programs], dramatic, musical or artistic work is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.’ (**Copyright, Designs & Patents Act 1988, section 11 (2)**)

‘Where a design is created by an employee in the course of employment, his employer is the first owner of any design right in the design.’ (**Copyright, Designs & Patents Act 1988, section 215 [paraphrase]**)

5.2 UNIVERSITY INTELLECTUAL PROPERTY RIGHTS

Under section 39 of the Patents Act 1997 and section 11 of the Copyright, Designs & Patents Act 1988 (see above), the University claims ownership of the following forms of Intellectual Property:

- 5.2.1 Works generated by computer hardware or software owned or operated by the university;
- 5.2.2 Films, videos, multimedia works typographical arrangements and other works created with the aid of university facilities;
- 5.2.3 Patentable and non-patentable materials;
- 5.2.4 Registered and unregistered designs, plant, varieties and topographies;
- 5.2.5 University-commissioned works not within 5.2.1), 5.2.2), 5.2.3) or 5.2.4);
- 5.2.6 Databases, computer software, firmware, courseware, and related material not within 5.2.1), 5.2.2), 5.2.3), 5.2.4) or 5.2.5), but only if they may reasonably be considered to possess commercial potential; and
- 5.2.7 Know-how and information associated with the above.

5.3 INDIVIDUAL INTELLECTUAL PROPERTY RIGHTS

However, the University agrees to allow individuals to retain intellectual property rights on:

- 5.3.1 Copyright and royalties from books, articles, artefacts, dramatic, musical or artistic works and other scholarly work produced in furtherance of the member of staff’s professional career (apart from those commissioned by the University);

- 5.3.2 Audio or visual aids to the giving of lectures; or
- 5.3.3 Computer-related works other than those listed in 5.2.1 – 5.2.7 above.

6. RIGHT TO PUBLISH

Members of academic staff are normally expected to publish the results of their work and the university does not wish to restrict this freedom while, at the same time, would wish to ensure that all 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 some 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 University Secretary to avoid premature disclosure, which will prevent any patent protection 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.

7. **DISCLOSURE OF INTELLECTUAL PROPERTY**

Any University Employee who has developed IP which may be patentable or subject to other protection or which may be in any way capable of commercialisation should approach their Head of Department and/or Director of Research, who shall consider the approach in confidence. The University Employee and the Head should then, if it is proposed to exploit the IP, disclose as fully as possible details of the IP to the Pro-Vice Chancellor - Research. All information concerning IP shall be deemed confidential and no publication or disclosure shall be made without the express prior written approval of the person or persons to whom the disclosure is made.

For the purpose of this policy, confidential information is that which the University would not wish to disclose or disseminate without prior consent.

8. EXPLOITATION OF INTELLECTUAL PROPERTY

8.1 Whichever form the exploitation of the research takes, the university will strive to ensure that the core mission of the university remains uncompromised. Assignment and licensing arrangements will be non-exclusive in all but exceptional circumstances and the university will maintain its right to publish research results where possible

8.2 Until the university has a wider experience of promoting and exploiting its IP each new example will be treated individually. This approach also applies to situations relating to the distribution of net revenues between the University and the IP generator, resulting from the exploitation of such IP.

8.3 Some possible examples of IP exploitation are:

8.3.1 Consultancy

8.3.2 Licensing

8.3.3 Contract Research

8.3.4 Company Information

9. INFRINGEMENT

9.1 Any person bound by this policy must alert the University immediately on suspecting or becoming aware of an infringement of intellectual property rights either:

9.1.1 Infringement of intellectual property owned by the university or

9.1.2 The university's infringement of intellectual property rights owned by a third party
in order to minimise the impact and extent of infringement.

9.2 Any person bound by these regulations will be responsible for monitoring the content of license agreements, confidentiality agreements and any other agreements and/or arrangements to ensure that they are aware of their obligations under the terms of such agreements and that the risk of the university infringing intellectual property rights is minimised.

9.3 The university will ensure it has adequate insurance to cover actions and claims against the university for infringement of intellectual property rights. The university will ensure its intellectual property rights are defended against infringement. Where appropriate the university will take legal action to defend its proprietary rights.

10. TRANSFER OF RIGHTS

IP, patents, copyrights, trade secrets, etc. may not be transferred to third parties by assignment, license, sale or otherwise, without the advice and written approval of the relevant member(s) of staff of the University, who will consult, as appropriate with inventor(s) and author(s).

11. **CONFLICT OF INTERESTS**

To avoid conflicts of interest the University staff are requested to inform the University if they are connected with any company or commercial organisation. For clarification “connected with” includes where a member of staff has a significant shareholding in, or is a director of a company, or intends establishing any commercial body whether or not related to his/her work with the University. Such information regarding the existence and nature of the link should be passed to the University Secretary as soon as practical and will be noted in the University’s Register of Interests.

12. **DISPUTES AND RIGHT TO APPEAL**

All interested parties shall have the right to appeal against any decision to the University Secretary or University's Senior Officer with responsibility for Finance and Resources.⁸ The appeal will be considered by the Academic Board of the University whose decision shall be final and binding.

⁸ Currently the Director of Finance and Resources

13. DEFINITIONS OF FORMS OF INTELLECTUAL PROPERTY

13.1 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).

13.2 COPYRIGHT

The right, without need for registration, enabling the author or subsequent owner to prevent the copying of other substantial reproduction of certain forms of expression such as literary (which includes computer programs), musical and artistic works, sound recordings, films and typographical arrangements of published editions. Duration will usually be the life of the author plus 50 years.

13.3 REGISTERED DESIGN

The monopoly right, acquired by registration, to prevent any dealing in an original design consisting of features of shape, configuration or ornament (other than as dictated by function) applied to at least 50 articles by industrial process such that the finished articles appeal to the eye. Duration is 25 years.

13.4 DESIGN RIGHT

A new right arising on or after 1 August 1989, without the need for registration, in 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. Features required to make the article fit or match another or of surface decoration only are excluded. Duration will either be 15 years from the end of the year when the design was first recorded in a material form or 10 years from the date of first marketing, provided that was within 5 years of the creation of the design.

13.5 MORAL RIGHT

The right of the author (and personal to him) to be acknowledged as such and to ensure that his work is treated in a suitable fashion. This right, being personal, is separable from any copyright concern.

14. NOTICES

All notices which are to be sent pursuant to the terms of this policy, or any contractual provision designed to implement this policy addressed to the University Vice Chancellor, should be sent to the Director of Human Resources.

15. COMMUNICATION OF THE POLICY

15.1 THIS POLICY SHALL BE COMMUNICATED AS FOLLOWS:

15.1.1 Paper copied of the procedure shall be distributed to:

- Academic Registrar
- Admissions and Customer Services Manager
- Assistant Registrar (Partnerships and Portfolio)
- Deans of Faculty
- Director of the International Institute for Educational Leadership
- Director of Riseholme Park
- Director of the Office of Quality and Standards
- Faculty Registrars
- Head of Legal Services
- Head of Regional and Research Offices
- Heads of Academic Department
- International Recruitment Manager
- Pro-Vice Chancellors
- Registrar
- Vice Chancellor

15.1.2 Electronic communication will be achieved through a copy of the Policy being placed on the portal pages of both the Research Office and the Secretariat.