

# JISC Legal Investigation into Student Work and IPR



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## 0 Foreword

This report has been produced as the result of a project undertaken by JISC Legal for the JISC Development IPR Consultancy from September to December 2006. JISC Legal is a body funded to assist UK further and higher education institutions in dealing with legal issues which arise through the development and use of information and communications technologies in teaching, learning and research.

JISC Legal would like to acknowledge the assistance of numerous people who have given their time and effort to help in the research of this report; in particular Professor Charles Oppenheim for his insightful guidance, Alan Rae for his detailed review of an earlier draft of this report, and to Naomi Korn and Lou McGill for their comments on the same draft.

References in this report to the masculine include the feminine for clarity of presentation. Also, the term 'assignment' should be taken to include assignation under Scots law.

### 0.1 *Disclaimer*

We wish to remind you of the clear distinction between supplying information related to the law and legal developments and the provision of professional legal services. The legal material contained in this report is general comment only and, where faced with a risk-bearing decision, the institution is advised to seek appropriate professional advice concerning the particular circumstances.

### 0.2 *Currency*

This report endeavours to state the law as it stood at 1 March 2007.

## 1 Executive Summary

This report is an analysis of the intellectual property rights (IPR) issues associated with student created work in UK further and higher education. Initial research showed that the majority of UK higher education institutions have relevant policies, but many of these lack

detail in dealing with the variety of situations which may arise. The research showed no evidence of relevant policies within the further education sector as yet.

The review or development of an IPR policy in relation to student work is important for two reasons:

1. It will determine with some certainty the ownership and rights of the institution and student in relation to reuse of the work.
2. It will signal that the institution has recognition of the value of IPR, and will increase awareness of IPR issues.

Increased IPR awareness may assist in raising levels of compliance in the institution, and may encourage thinking about better opportunities afforded by good use of intellectual property.

It was found from the **focus group discussions** that student IPR issues are perceived as important. Participants showed an active interest in discussing student IPR issues, and expressed the need to adopt an IPR policy. The most common reason stated for this was to protect the interests of the student and the institution when dealing with third parties.

A common thread was that student work should be made part of the IPR policy. Achievement of parity in the treatment of staff and students as regards the provisions in the IPR policy was stressed during the discussions. Members of staff from some institutions expressed concerns that the IPR policy at institutions contained complex provisions potentially incomprehensible to students. They recommended that IPR policies should avoid legal language and should be expressed in clear and simple terms. It was agreed that the provisions of an IPR policy must be explicit on ownership of IPR and students are made aware of their IP rights at the time of offer of admission.

Institutional policies will have to take into account the varieties of situations in which students create intellectual property throughout their learning and research. The context may vary according to the type of work, the level of work, the discipline and the department in which it is produced. Institutions should be aware of the possible risks which arise through non-consideration or poor consideration of IPR issues. Also, whatever the eventual policy of the institution, it needs to be recognised that the student will not be able to grant rights in third party material contained in his work, and that the institution must develop procedures for recognising and respecting those third party rights in reuse of the work.

**An institutional student IPR policy must be validly incorporated** within the student-institution contract, and this will require giving proper notice of the policy. The Unfair Terms in Consumer Contracts Regulations 1999, which are likely to apply to the student-institution contract, make unfair contract terms void in non-negotiated contracts. Institutions will therefore have to ensure that the terms of their policy are defensible as being a fair division of ownership, reward and recognition for the IPR created by students. Ideally, this justification should be made explicit in the policy, or in guidance accompanying the policy.

Particular issues may arise in a number of areas:

**Work-based Learning and Research** will often create issues of ownership, due to the interaction with s.11(2) of the Copyright, Designs and Patents Act 1988, which deems the employer as the first owner of copyright in materials created in the course of employment. The student will not therefore may not be able to grant or assign rights to the institution, and an agreement with the employer may be required.

The use of institutional claims on IPR to prevent **the sale of completed assignments** online will have to be approached carefully in order to comply with the test of fairness under the

Unfair Terms in Consumer Contracts Regulations, and should generally be restricted to clear cases of abetting or inciting plagiarism.

Where IPR is created through **the collaboration of staff and students**, the IPR policy in respect of staff, and that in relation to students, must complement each other in giving certainty as to ownership of the resulting IPR.

Institutions should ensure that an explicit licence is granted to allow **copying for quality control purposes** within the institution and for funding body or examination body purposes.

In respect to **student-written submissions to online communication tools** such as discussion boards and chat rooms, in the absence of a clear interpretation in law to the contrary, institutions should treat these as copyright works in the institution's policy.

Particular consideration may be given to the IPR in **student theses** as being substantial pieces of work which are created in a context where publication is often desired, and may even be expected. The IPR policy should take into account these objectives, and the subject of IPR should be addressed prior to the commencement of the research.

For many reasons, **digitisation of student work** may be desirable. Institutions should ensure that an explicit licence is provided for in the policy to allow such copying for stated purposes.

In terms of **the operation of the policy**, institutions must ensure that procedures are in place to identify where important IPR in student work is being created, and for this to be recorded. Respect for a student's moral rights in copyright work will be ensured by appropriate acknowledgement, and this should be extended to all cases where the student has provided input. In order for the student IPR policy to be effective, it has to be enforced and has to provide mechanisms to resolve disputes and allow further negotiation of rights between the student and the institution.

To conclude, institutional policies may:

a) Require assignment of all rights to the institution.

Although an assignment may be appropriate and fair in some circumstances, a blanket requirement of assignment is unlikely to meet the test of fairness in the Unfair Terms in Consumer Contracts Regulations 1999. Any requirement of assignment should be accompanied by an explanation of why this is being requested.

b) Require a licence to be granted in favour of the institution

This is likely to be a fair and effective approach in most instances. The terms of the licence should cover all uses and potential future uses, and will still be subject to a test of fairness as a term in a consumer contract.

Future changes to the law may assist institutions marginally, particularly with regard to orphaned works used within student submissions, and with respect to digitisation of archives.

Institutions need to identify an appropriate person or group to take forward review or development of the IPR policy. An institution should then look to:

1. Review the uses and potential future uses of IPR within the institution
2. Review these uses and potential future uses against the current IPR policy
3. Develop an IPR policy to enable these uses and potential future uses

4. Review the IPR policy in respect to test of fairness in the Unfair Terms in Consumer Regulations 1999, particularly with the input of student representatives where possible
5. Adopt and Disseminate the policy, and ensure the incorporation of it into the student contract
6. Maintain awareness throughout the institution of the IPR policy

## **2 Introduction**

### **2.1 Background**

With increasing awareness of intellectual property rights (IPR) issues, a growing focus on creativity, and a broadening variety of student categories, the question of ownership of student work cannot be ignored. This report, commissioned by the JISC IPR Consultancy, investigates the current situation, the legal background, and provides guidance to institutions.

### **2.2 Research Methodology**

The research methodology adopted in this JISC-funded project has been three-fold. It involved an e-mail and telephone survey; the design, organisation and hosting of two focus group discussions and a review of the prior work and literature in the area, including the IPR policies of various institutions.

The project began with an e-mail survey consisting of questions relating to students and intellectual property rights. The same survey was posted on the website of JISC Legal and 45 replies were received from staff at various institutions. This was followed by a telephone interview of ten members of staff from both the further and higher education sectors. Twelve questions relating to aspects of student IPRs were posed to the interviewees. Thereafter, two focus group discussions were held, one in London and one in Manchester. This facilitated a detailed understanding of the current IPR policy and practices at institutions. Apart from these primary research outputs, the report also incorporates the legal analysis of various literature, and a comparative table which outlines the current IPR policy of twenty selected institutions.

## **3 Scope of the Report**

This report sets out to provide guidance for both the further and the higher education sectors (including undergraduate study, and postgraduate study and research).

For the purposes of this report, a student is defined as a person formally enrolled by an institution on a course of study or research, and subject to the rules and regulations of the institution. This includes part-time, full-time, college, undergraduate, postgraduate, and distance learning students. The report does not address the issues associated with intellectual property rights in relation to employees' rights, except to the extent that an employee is also a student and is acting in his or her capacity as a student.

For many of the issues dealt with in this report, the legal analysis is the same for all UK jurisdictions. As a default, the report considers the position under English and Welsh law, and for conciseness and clarity English law terminology will generally be used. However, it also highlights any areas of significant difference in Scots law or in Northern Irish law.

### **3.1 Intellectual Property Rights**

This report addresses the issues relating to the different categories of intellectual property rights. These are:

#### **3.1.1 Copyright**

Copyright is the right to control copying and certain types of dissemination in relation to original works. It does not require registration, and can be transferred by agreement (known as assignment, or assignation in Scotland). The acts restricted by copyright (such as copying) can also be permitted by agreement (known as a licence). Copyright is therefore pertinent to nearly all types of original student work.

#### **3.1.2 Moral Rights**

Moral rights refer to the inalienable rights of the author or creator of a copyright work to be recognised as such, the right to object to derogatory treatment of the work and the right not to be falsely attributed with the authorship of a work. For example, a student may assert his or her right to be acknowledged as the author of an original report which he submits. Any reuse of this work would need to include a credit to the student.

#### **3.1.3 Performance Rights**

Where a person performs (live) dance, mime, music, a reading or recital of a literary work or a performance of a variety act or similar, the performer has a right which requires his or her consent for the performance to be exploited. Protection is also granted to those who have recording rights in the performance. In particular this right will be relevant to performing arts students, but may have implications beyond this with the growing variety of learning activities being used in further and higher education.

#### **3.1.4 Database Rights**

The database right is a right in the collection of independent works, data or materials arranged in a systematic or methodical way and are individually accessible by electronic or other means. In order to gain protection, there must have been substantial investment in the obtaining, verifying or presenting of the contents in a database by its creators. The database right prohibits the acts of unauthorised extraction or reutilisation of the contents of a database, and lasts for fifteen years (which is renewed by substantial investment in updating). Database rights are most likely to arise in relation to the work of research students.

#### **3.1.5 Patents**

Patents are monopoly rights granted to protect new inventions. In order to gain protection, the invention has to meet legal tests of novelty. Patent protection is not automatic. An application has to be made, and the invention must meet the legal requirements of patentability before the patent is granted. Patent protection is most likely to arise in relation to the work of postgraduate research students. This form of protection is very important, given the potential commercial value of inventions.

It should be noted that software in itself is not patentable under UK law, but may be protected by copyright as a literary work.

### 3.1.6 Trademarks

A trademark is a registered right in an identifying mark (text, graphic, sound, shape), and it protects the link between the mark and certain, specified classifications of goods and services. Beyond this, the law of passing off gives some protection to unregistered identifying marks. There are few situations, in reality, where trademark ownership between an FE or HE institution and a student is likely to be an issue. One example might arise if a student uses an institutional logo in relation to a business set-up as part of their studies on an entrepreneurship course.

### 3.1.7 Rights Related to Design

The law recognises a variety of types of design right, all of which involve rights in the appearance, shape, and internal or external configuration of an article. This area is complex, and involves both rights available through registration (registered designs) and non-registration rights (design rights). These rights may be relevant to students on art and design courses, or technical courses involving design (such as many applied engineering courses). There are also particular rights in relation to the design of computer circuit-boards (known as semiconductor topography rights), which are likely to be relevant to electronic engineering students

## **3.2 Types of Student Work**

With a growing diversity of learning and research activities, it is useful to consider the types of student work that might be created. The occasions when students may submit original work to an institution include:

- a. participation in collaborative activities as part of the learning process  
*e.g. a student writes about his experiences of travel on the discussion page of a VLE as part of his tourism course*
- b. submission of material as formative assessment  
*e.g. where a student emails graphics representing a game character for critical feedback as part of his computer game graphics course*
- c. submission of material as part of summative assessment  
*e.g. a business studies student submits a business plan as part of a marked coursework assessment*
- d. the completion of portfolios, learning logs and research logs (in some cases permanently given over to the institution, and in other cases, where the institution only has temporary possession before returning the work to the student)  
*e.g. an arts student creates a portfolio of work as part of their learning which is given to the institution for display as part of a course show; computing students are required to keep a group work log in order to settle disputes relating to participation in a collaborative exercise; a postgraduate research student is required to keep a detailed record of laboratory work undertaken for both funding reasons and for any potential patent application.*

The types of work which may be submitted on the occasions noted above might take many forms, including traditional written materials (such as course works examination answers, reports, projects, learning logs, research logs), creative literary materials (prose and poetry), traditional artistic creations (in any artistic medium, including fine art, craftwork, sculpture, installation art, photography and film), digital artistic creations (digital graphics, sound, music), and composite work including the above.

In addition to the submission of these types of student work, students may also perform as part of their studies and/or assessment, and intellectual property rights may exist in such performances (such as musical and dramatic performances).

We recommend that institutions ensure that their IPR policies cover all the situations in which students might create work related to their studies or research.

### **3.3 Uses of Student Work by Institutions**

Before analysing current policies and possible approaches, it is worth considering what uses further and higher institutions may have for student work. This will clearly shape the attribution of rights desired by the institution. The following uses are foreseeable:

- a. The commercial exploitation of a student's work  
*e.g. where a postgraduate student's research reveals a patentable innovation*
- b. The use of student work as part of an institution's marketing activity  
*e.g. the use of a former art student's painting as the institutional Christmas card*
- c. The inclusion of student work as part of learning materials, whether incorporated into new learning materials, or simply made available as submitted.  
*e.g. the inclusion of a student-taken photograph as part of the VLE learning materials on a geology course, or the development of a bank of example course work to guide later students*

We recommend that institutions review their policy to ensure that all current and future reuses of student created work are permitted by either a licence or assignment of relevant IPR, or that a procedure is included for future negotiation of such rights.

### **3.4 Issues Concerning IPR in Student Work**

The following issues are considered pertinent to an institution's adoption of a policy governing intellectual property rights in student produced work:

- The extent to which students may (legally) and should (ethically, politically and practically) claim all or a share of intellectual property rights in student produced work.
- Whether an assignment of intellectual property rights by way of an agreement contained in a student's registration document or similar is legally valid.
- The extent to which the policy should vary by type of student, type of student produced work, the context in which the work is produced, the discipline to which the work is related, and the department in which it is produced.

### **3.5 Third Party IPR in Student Work**

Students may, of course, submit work which includes material subject to third party IPR, particularly third party copyright material. In many cases, the submission of third party copyright material will be part of an assessment, and this is likely to be a permitted act by virtue of s.32(3) of the Copyright, Designs and Patents Act 1988. In other cases, the student may be relying on a licence held by the institution, a specific grant of permission to use, or one of the copyright exceptions. Beyond copyright, there may be instances of students submitting work containing material with third party database rights,

For the institution, it should be noted that more rights cannot be claimed from the student than the student is permitted to grant. In most situations, the student will not be entitled to assign or licence rights in the third party material included in his or her work.

We recommend that, where an institution wishes to make use of a student's work in a commercial or high-profile context, the institution has in place a procedure to flag-up third party material in the student's work, and to acquire appropriate IPR permissions before use.

### **3.6 Risks in Relation to Student IPR**

A question arises as to the potential consequences of institutions failing to adopt an IPR policy in relation to student work, or the adoption of inappropriate, invalid or ineffective policies.

- a. The institution misses out on a share of revenue following the successful commercialisation of the student work
- b. There is a failure to commercialise valuable intellectual property, because the student, as rights owner, lacks the inspiration, motivation or skills required to exploit the value
- c. The institution has to engage in protracted legal proceedings in order to verify its ownership of IPR due to an ambiguous or challengeable IPR Policy
- d. There is a failure to make use of a valuable collection of potential learning materials, because academics are uncertain of the ownership of the intellectual property rights in the student-submitted material
- e. Students and staff fail to appreciate the value of intellectual property rights in general due to the institution's apparent lack of priority in addressing the issue in its policies.

Student created materials may be a valuable asset to an institution and the potential intellectual property rights attached to them therefore deserve explicit consideration. In some contexts, students' creative output can bring a source of income to institutions, for example in the form of research contracts, royalties from inventions, licence fees, and the sale of rights.

There may also be public interest aspects in the protection of student created intellectual property. Firstly, students' contributions serve the public interest by being a part of the chain of "useful products, services and processes"<sup>1</sup> that might be used by the public at large and therefore demands adequate intellectual property protection. Secondly, the transfer of knowledge from students to institutions when enrolled at the institution makes a significant contribution to the creation of national wealth and to national development.

Today institutions run numerous collaborative projects where there is an increasing involvement of several stakeholders. These projects might involve students interacting with research and development institutions, industry and with governmental and non-governmental institutions, creating valuable intellectual property during their term. In such situations involving third parties, the rights and interests of both the student and institution can be best protected through intellectual property laws and policies.

We recommend that institutions review their policy in respect to IPR in student created work to ensure that the above noted risks are avoided to an appropriate extent.

### **3.7 Non-IPR Issues Related to Student Submissions**

This report is restricted to an investigation of the IPR questions in relation to student produced work. However, institutions should be aware that other non-IPR legal issues may be involved in the submission and reuse of student produced work. These might include:

- Data protection issues, where the work contains personal information relating to a living person (whether the student author, or about a third person)
- Freedom of information issues, as submitted work is information held by the institution, and which may therefore be subject to the duty of disclosure under freedom of information legislation

- Disability discrimination law, in ensuring that reuse of student submitted work complies with the legal duties imposed with regards to accessibility of education provision and services.
- Liability issues, in relation to reuse of material with obscene or defamatory content, for example.

## 4 Current Policies and Approaches

This section sets out an analysis of the current student intellectual property policies and practice in the UK further and higher education sectors. The information in this section is based on both primary and secondary research. The empirical research comprised an e-mail survey of over 40 UK higher and further educational establishments, a telephone interview of 15 members of staff from various institutions and two focus group discussions. The secondary research output is a comparative sketch of the intellectual property policy of two selected institutions (the University of Cambridge and the University of Bristol) with regard to some of the key issues relating to student intellectual property rights.

### 4.1.1 A Comparison of Response Between the Further and Higher Education Sectors

This section of the report is based on an analysis of the current situation. At the outset, it is worth noting that there is a significant difference between the further education sector, in which there was very little evidence of the development of such policies, and the higher education sector where the majority of institutions proved to be at least aware of the issues, and a significant proportion had an explicit policy.

### 4.1.2 An Expanding Community

Student created materials form a major part of an institution's research and scholarship enterprise. The institution's research and scholarship bears fruit in the form of new ideas, findings and inventions.<sup>2</sup>

Within higher education at least, educational institutions have relied on their staff members to undertake research that resulted in valuable intellectual property. With time, this has grown to include research based post-graduates, those doing course work and postdoctoral fellows. The student community generating significant intellectual property is likely to grow, and is likely to further include the input of undergraduates.

In addition to intellectual property created through research, there is also an increasing awareness of the intellectual property value of creative endeavour, particularly within areas of rapid economic growth, such as the computer games industry.

### 4.1.3 Increasing Variety in Student IPR Producing Contexts

In terms of research, some of the factors that influence the creation of student intellectual property are research or study undertaken at different universities, in third-party locations, through a variety of sources of funding, those created from joint research project with supervisors and fellow students and ones that the student create while in the course of his/her study or home.

### 4.1.4 An Analysis of Institutional Policies

The table on the following page summarises the analysis of twenty institutions' intellectual property policies in relation to student created work:

Institution	First Owner of Student IPR	Total Assignment	Staff-Student Combined policy	Separate UG and PG provisions	Separate Taught Student & Research Student Provisions	Discipline Specific	Reward Sharing Provision
University of Aberdeen	Student	Yes (1)	No	No	No	No	Yes
University of Bath	University	Not Applicable	Yes	No	No	No	No
University of Bristol	Student	Yes	No	Yes	Yes	No	Yes
University of Cambridge	Student	No	Yes	No	No	No	Yes
Coventry University	University	Not Applicable	No	Yes	No	No	Yes
University of Durham	University	Yes	No	No	No	No	Yes
University of Glamorgan	University	Not Applicable	No	No	No	No	Yes
Heriot-Watt University	Student	No	Yes	No	No	No	Yes
University of Leeds	University	Not Applicable	Yes	No	No	No	Yes
London South Bank University	Student & University (2)	Yes	Yes	Yes	No	No	Yes
Robert Gordon University	Student & University (3)	Yes	No	Yes	Yes	No	Yes
University of Oxford	University	Not Applicable	Yes	No	No	Yes (4)	Yes
Sheffield Hallam University	University	Yes	No	No	No	No	Yes
University of Stirling	Student	No (5)	Yes	No	Yes	No	Yes
University of Southampton	University (6)	No	Yes	No	No	Yes (7)	Yes
University of Ulster	University	Yes	Yes	No	No	No	Yes
University College, London	Student (8)	No	No	No	No	Yes	Yes
University of Wales, Bangor	University	Yes	No	No	No	No	Unclear
University of Wolverhampton	University	Yes	No	No	No	No	Unclear
University of York	Student (9)	No	Yes	No	No	No	Yes

(1) Students have the right to opt out and assignment is limited to intellectual property arising from the student's course and studies.

(2) The University treats undergraduate and postgraduate students separately and claims ownership of all intellectual property created by taught and research based postgraduate students.

(3) Undergraduate and taught post-graduate students can retain ownership of their IPR and are not asked to assign IPR at offer stage. Post-graduate research students are required to assign their IPR to the University.

(4) Given that the University claims the right to acquire ownership of material elements in artistic works produced by students, including paintings, photographs, sculptures and multi-media a works, the policy could be said to be discipline specific.

(5) Postgraduate research students, however, are required to assign their IP to the University prior to the start of any research projects.

(6) The exceptions where a student may own the IPR is limited to books, articles, lectures and artistic works.

(7) Given that the University claims ownership in certain categories (films, videos, patentable and non-patentable inventions) but excludes others (books, articles and lectures) the policy could be said to be discipline specific.

(8) The University, however, claims ownership in students' creative works such as artistic works, photographs, sculptures and multi-media works.

(9) The exceptions are when a student devises, makes or creates intellectual property in the course of their studies where a member of staff is also involved.

## **4.2 Students as Creators of Intellectual Property**

Student created literary, dramatic, musical and artistic works, sound recordings, and films all may constitute copyright works. Some examples include:

- courseware (including PowerPoint slides)
- handouts<sup>3</sup>
- examination scripts
- dissertations and theses

The growth of online and virtual learning environments (VLEs) further expands student copyright contributions into software, web pages, databases, digital art portfolios, multimedia, computer games and even postings to an online course discussion forum.<sup>4</sup>

Discoveries, scientific theories, algorithms, mathematical methods, a scheme, rule or method for performing a mental act or business method may contribute to the application for patents”.<sup>5</sup>

Aesthetic creations like graphic designs calling for protection under the design law and that which form the trademark logo for institutions make up a further array of student created material.

## **4.3 The Objective of Student IPR Policies**

Intellectual property rights are the mechanism which allows the translation of basic research into market innovations of commercial potential. Intellectual property policies are guidelines framed to implement this objective, to realise the worth of the work. The IPR policy of an institution must recognise the input of the parties developing the intellectual property, the intellectual property created by each, the respective and initial entitlement of each party to the intellectual property right, the regulation and recognition of their ownership rights and the share of profits or royalties that each party might receive upon exploitation of the particular intellectual property.

The policy must also be workable, in meeting these objectives, and therefore must provide the basis upon which institutional procedures can be established to implement good IPR practice.

## **4.4 IPR Policy and Practice at UK institutions**

A large majority of the universities surveyed during this investigation had a policy which covered IPR in student work. The opposite position was found in relation to UK further education colleges, though many colleges were found to be aware of the growth of student related intellectual property issues and are in the process of developing a student IPR policy. This became more evident when one college stated that any student issues relating to copyright law were currently dealt with under the existing copyright and licensing policy of the college. The college went on to say that it was in the process of developing a specific IPR policy to deal with student work.

## **4.5 Awareness of the Institutional Policy**

Methods of making students aware of the student IPR policy include institutional websites, student handbooks, prospectus CDs and registration booklets. The IPR policy is generally also provided in the university regulations or in separate student regulations. However, responses were mixed from both the further and higher education communities to the question asking if students were actually aware of the institution's IPR policy and their intellectual property rights in any work created by them.

#### **4.6 Reasons for Creation of a Student IPR Policy**

Two of the main reasons mentioned by institutions for developing an IPR policy were to regulate and protect the intellectual property rights of the students involved in obtaining third-party funding. This had arisen due to the interest of third-party companies in developing student projects. In such situations, institutions felt the need to have an IPR policy to safeguard their and the students' intellectual property interests when dealing with third-party companies. Other reasons for having an IPR policy are to match changes in IPR legislation with an appropriate policy. It was also apparent that some institutions were not aware of the reasons for creation of their institutions' IPR policy.

#### **4.7 Requirement to Disclose Intellectual Property**

None of the institutions surveyed indicated placed an obligation on students to disclose to the institution any intellectual property created by them as part of their studies. However, one of the universities said that they expected students to inform their superiors of any intellectual property which they had created. From research, no evidence was found of an institution requiring notification of the use of third party IPR material in student submissions.

#### **4.8 Scope of the IPR Policy**

Most institutions have a single IPR policy that stipulates provisions covering both staff and student creations. However, a participant from one of the universities stated that his university was in the process of developing a distinct policy for students.

Although staff and students are treated as co-inventors (where the intellectual property was a collaborative creation) in one of the member institutions, the institution expected the student to assign their rights to the institution. The position at another institution was to treat students involved in projects as a member of staff and in the case of any joint creation the student was to receive any royalties arising from the commercialisation of the intellectual property. The royalty shared in this case would be dependent on the agreement entered into between the student and the university. The sharing of royalty was not governed by the IPR policy of the institution but was to be decided by a separate agreement. It was also observed that some institutions allowed students to own any intellectual property created by them unless the student wanted it to be university property.

On the question of copyright ownership, one of the institutions responded that it was the first copyright owner in any student work, but the institution would assign the rights back to them, if the student wished. In another institution, the copyright in student created works was owned by the institution for a period of three years subsequent to its creation.

With regard to theses, one of the institutions mentioned that it held copyright on all student works which included a student thesis. It was added that this was never challenged by the students. Some institutions said, however, that they did not use student assessments or projects and that the student owned copyright in their written work. It was also gathered that the practice at an institution was to allow students to own copyright in their theses. However, the institution in this case would obtain a licence from the student to publish it in the institutional library.

Although most of the institutions surveyed appear to be using new technologies (e.g. VLEs such as Moodle or Blackboard), there was no evidence that the institutional IPR policies are taking account of any particular issues which might arise in relation to student IPR with the use of these new technologies.

## **4.9 Student-Related Intellectual Property Enquiries and Issues**

### 4.9.1 Enquiries:

Primary research revealed that in the majority of the institutions which took part in the survey, student enquiries regarding IPR in their own material averaged between two and five a year. The enquiries covered patent and copyright aspects relating to computer software, new scientific devices, commercialisation of work such as sculpture, painting and graphic designs.

### 4.9.2 Issues:

The survey also highlighted occasions when institutions have had to deal with students IPR disputes. Listed below are some of these disputes for illustration.

1. A university lecturer gave details of his research work (which he had been working on for several years) to a student for a research project. The student's father owned and ran a company. When the student presented the results of the project, it was discovered that he had purportedly signed any rights in an invention arising from the project to his father's company.
2. A college ran a design exhibition and a final year student of the college won an award for one of her exhibits. After she left the institution, she discovered that one of the students studying at the college had copied her design.
3. A student won an award for his design in the institution's advertising competition. The judges were from the industrial sector and had signed confidentiality agreements prior to agreeing to judge. It was later found out by the university that a company had used the winning student's idea in their advertising design.

## **4.10 Enforcement of the policy**

None of the institutions surveyed had ever had to enforce their policy in legal proceedings, with any disputes being settled prior to the initiation of formal legal action. Student IPR disputes have mostly been settled through arbitration between the author, creator or inventor and through the institution's intellectual property, commercialisation or research contract offices and through external arbitrators.

## **4.11 Secondary Research Output – A Comparison of Two Policies**

### 4.11.1 Subject-Matter Covered by the Policy

#### **University of Cambridge:**

The University of Cambridge has a single IPR policy<sup>6</sup> covering both staff and students. Specific reference to student intellectual property is provided in the policy. Rather than describe the subject matter covered by the policy, it defines the terms 'creator', 'creates' and 'relevant creator'. Phrases like 'material created by a student'<sup>7</sup> and 'subject matter invented, devised, made, or created'<sup>8</sup> that are used in the policy cover a wide range of student work.

#### **University of Bristol:**

The University of Bristol is one UK university with a separate IPR policy for staff and students.<sup>9</sup> The subject matter covered by the policy has been broadly and legally defined under the term 'intellectual property' to cover anything that can be protected through intellectual property laws.

#### 4.11.2 Category of Students Covered by the Policy

##### **University of Cambridge:**

The policy does not provide for separate classification between the various categories of students. It merely expands the application of the IPR policy to students in general.

##### **University of Bristol:**

Undergraduates and taught course (non-research) postgraduates are dealt with separately under the policy when compared to research based postgraduates.

#### 4.11.3 IPR Ownership and Assignment of IPR under the Policy

##### **University of Cambridge:**

Under the terms and conditions of the IPR policy, students at the University of Cambridge are entitled to IPR in any material created by them.<sup>10</sup> The exceptions to an entitlement to IPR apply where the rights are regulated by external agreements and in the case of intellectual property created through collaborative projects.

In the case of external sponsorships or sponsored projects, the terms of the agreement and research contracts regulate the ownership claim. This could mean that the university could own the intellectual property created by the student where the students' research was funded or sponsored by the university.

The policy requirements that ownership claims are agreed at the time of admission or prior to the start of research are beneficial to each party – they know where they stand.

With regard to jointly or collaboratively created IP, the students are treated in a similar manner to the staff members and 'may be required' to assign the IP to the university or place the results in the public domain without restriction.<sup>11</sup> This approach towards ownership seems to be liberal towards the students in the sense that it gives enough space for negotiation even where the university finds it necessary and appropriate that an assignment is required from the student.

##### **University of Bristol:**

Under the terms of the IPR policy at the University of Bristol, students can claim ownership rights in any IP created independently by them. But in the case of joint creations, the policy makes a distinction between undergraduates and taught postgraduates on the one hand and research based postgraduates on the other. The IPR policy requires that undergraduates assign their IP subsequent to its creation<sup>12</sup> and research based postgraduates prior to its creation. An assignment of IP rights by an undergraduate student without any prior warning given to him before the start of a project or research or at the time the offer of admission is made could result in legal uncertainty if the student is not willing to assign his IP rights in the material created. Further, the IP policy requires that research based postgraduates execute an assignment of intellectual property as a condition of participation in university research projects.<sup>13</sup>

## **5 Particular Issues**

This section will consider particular issues which need to be considered in defining the relationship between students and their institution in respect to an intellectual property policy.

## 5.1 Understanding the Student-Institution Relationship

The nature of an institution's relationship with its students may not be a simple matter. A contract might not be the sole basis for the relationship; there may also be questions of public law, especially in the case of institutions established by a statute.<sup>14</sup>

The position at some colleges and universities in the UK demonstrates the existence of a contractual relationship between the establishment and its students. For example, the statement in the University of Sheffield website

“When you sign your registration form, you enter a contract, promising to obey the University regulations”

clearly points in this direction.<sup>15</sup> Adherence to the Charter, Statutes, Regulations and Policies forms part of a students' contract with the University of Leeds.<sup>16</sup> The University of Hull implies registration as the point at which a student enters into a formal contract with the university to begin their studies.<sup>17</sup> A number of FE colleges which were surveyed indicate that they require students to sign a contract binding both parties to comply with the college policies and procedures.<sup>18</sup>

Moreover, there are various authorities under UK law that establish the contractual relationship between students and institutions.<sup>19</sup> One of the recent and leading cases is *Clark v University of Lincolnshire and Humberside*.<sup>20</sup> This decisive authority establishes a student- institution contractual relationship. The court had to decide on its jurisdiction to deal with contractual claims between a student and his university as governed by the university student regulations. It is worth pointing out that where institutions provide an IPR policy within its regulations<sup>21</sup> they would thus form a part of the student-institution contract<sup>22</sup>.

In such cases, students, when agreeing to be bound by the regulations of the institution, could be bound by the institutional IPR policy as well.

## 5.2 Rationales for Institutional IPR Claims over Student Work

By law, with few exceptions, intellectual property rights vest in the author, creator or inventor of work, performance or recording. Transfer of those rights is generally by contract, i.e. by a voluntary agreement. The report now considers why the student, who is in general, the first holder of the intellectual property rights in his or her work, might want to agree to a transfer or sharing of those rights. Another way of putting this issue is to ask what justification an institution has in making any sort of claim over a student's work.

The following are possible rationales for institutional claims on the IPR in student produced work:

- **Provision of opportunity and inspiration**

It can be argued that the institution has set up the context in which the work is produced. By setting the learning framework, the assignment exercise or the research objective, the institution has played a part in the production of the intellectual property.

- **Provision of facilities**

Often, the IPR protected work will have been produced using the facilities of the institution, such as the physical campus, information and communication technologies, the library and e-resources, and research laboratory facilities. The institution's investment in these facilities has allowed the student to produce the intellectual property in question.

- **Provision of supervision and guidance**

The completion of student produced work is often with the assistance of staff – the very point of a learning provider. Whether this assistance is active, in terms of individual discussion of the work, or passive, in terms of prewritten general guidance, the student will benefit from this education in the production of the intellectual property. Where there is a significant input from supervising staff, it may be that the intellectual property is subject to joint ownership, and this is considered as an issue below.

### **5.3 Legal Issues Concerning Compulsory Assignment and Licensing**

In institutions with a policy covering intellectual property in student produced work, the procedure is commonly to require students, as part of their registration, to agree to the assignment of rights or the licensing of rights. These statements can range from a total assignment, such as with University of Durham:

“The intellectual property rights of any work [...] produced by any student in the course of his/her study rest with the University.”

Though it may involve a more selective assignment or a licence. The report now considers the legal status of such statements.

This type of statement is frequently found in UK higher education institutions with an intellectual property policy covering student work. There are three particular issues which need to be addressed in considering the legality of such a clause:

- 1) Whether it is validly incorporated as a binding contractual statement
- 2) Whether it is challengeable as an unfair consumer contract term
- 3) Whether it is challengeable on other legal grounds
- 4) To what extent a claim on future intellectual property rights is valid

#### **5.3.1 The Valid Incorporation of an Assertion of Assignment**

In order to be valid, the statement purporting to assign intellectual property rights from the student to the institution has to be incorporated into the contract which is agreed between the parties. Clearly, such an assignment will not be valid if it is not included in the agreement between the parties.

This issue is relatively straightforward where the purported assignment is included in the actual registration document, which the student signs. Where the assignment is contained in a separate document (for example, a separate IPR Policy document), the institution must ensure that sufficient notice is given, so that a reasonable person would be aware that there are further terms that apply to the contract, and that reference to those terms is possible if the student wishes to inspect them.

One potential difficulty is in respect to the (common) situation whereby a student has gone through a long college or university application process, has perhaps moved into student accommodation, and then turns up to register at the institution in the first few days of term. It may be argued in this circumstance that the institution will be exercising a dominant influence in giving students no choice but to sign over their intellectual property rights. That dominant influence may affect the validity of an assignment or licence under consumer law, and under competition law. These issues are addressed below.

### 5.3.2 Validity of Assignment and Consumer Contract Law

A further issue arises due to the possible application of the Unfair Terms in Consumer Contract Regulations 1999 to assignments of students' intellectual property rights by way of standard form registration documents.

The first question is to whether the student-institution relationship is a consumer contract for the purposes of these regulations. By virtue of Regulation 4(1), the provisions apply

“in relation to unfair terms in contracts concluded between a seller or a supplier and a consumer.”

Regulation 3(1) on Interpretation states, in defining the terms “seller or supplier” and “consumer”:

“seller or supplier” means any natural or legal person who, in contracts covered by these Regulations, is acting for purposes relating to his trade, business or profession, whether publicly owned or privately owned;”

“consumer” means any natural person who, in contracts covered by these Regulations, is acting for purposes which are outside his trade, business or profession;

This is likely to apply to the usual student-institution relationship, and there is evidence for this contained in the Office of Fair Trading publication on Unfair Contract Terms in Entertainment Contracts,<sup>23</sup> which gives a student-institution contract as an example of the application of the Regulations.

Regulation 5(1) of the Unfair Terms in Consumer Contracts Regulations 1999 states that:

“A contractual term which has not been individually negotiated shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract, to the detriment of the consumer.”

A policy which requires a blanket assignment of all rights from the student to the institution has a high risk of being deemed unfair. In order to meet this test of fairness, it is suggested that the institution considers what claim of intellectual property rights might be considered appropriate by a reasonable student.

We recommend that the institution makes a distinction between intellectual property which is or is likely to be the subject of commercial exploitation, and that which is not, in determining a fair policy. Where the institution is likely to gain financially from the exploitation of intellectual property rights in student-created work, the risk of an assignment or licence in the registration document being held to be unfair will be decreased if a reward-sharing provision is included.

In Schedule 2 to the Regulations,<sup>24</sup>

“irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;”

is presented as an example of an indicative unfair contract term.

We therefore recommend that institutions take steps to ensure that prospective students have a fair opportunity, prior to committing to study at that institution, to consult the terms of the student intellectual property policy. This policy will need to be explained in clear and unambiguous terms, otherwise the regulations provide that ambiguity will be construed against the institution,

and it may be held that the student has had no real opportunity to become acquainted with the provision.

The consequence of a term of a contract being held to be unfair is set out in Regulation 8(1):

“An unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.”

We therefore recommend that institutions with an existing IPR policy review the provisions to ensure that a fair balance is achieved, and that any assignment or licensing of intellectual property rights is not likely to be ineffective as a consequence of the Unfair Terms in Consumer Contracts Regulations 1999.

We recommend that institutions involve the student body in the development and review of their policies in order to ensure compliance with the fairness test, and to provide a workable policy. This involvement may take the form of general consultation with the student body, and consultation with student representatives.

We recommend that institutions make explicit in their policies, or in guidance accompanying their policies, the justification for the approach adopted.

### 5.3.3 Challenge on Further Legal Grounds

There may be further grounds of appeal related to human rights law and to competition law.

The UK recognises, by virtue of the Human Rights Act 1998, both the right to property and the right to expression. It is possible that an assignment of intellectual property rights contained in a student's registration document may be held as a breach of the right of property, if it is decided that the student has no real choice and is therefore subject to the provision under duress. Likewise, where the intellectual property rights in a student's creative expression produced as part of his or her studies are automatically transferred to the institution, this may be seen as a breach of the right of expression.

In terms of competition law, the Competition Act 1998 prohibits the abuse of a dominant economic position. It could be argued that an institution which 'forces' assignment of intellectual property rights may be seen as an abuse of a dominant position it holds.

### 5.3.4 Claims on Future Intellectual Property Rights

Another issue is whether a claim on future intellectual property rights (i.e. intellectual property rights in work not yet done or work not yet written) is valid in law. Future assignments of copyright are clearly permitted by s.91(1) of the Copyright, Designs and Patents Act 1988. However an assignment of future patent rights might not be valid. Where a student has agreed (in a registration document or similar) to the transfer of future patents, there may be contractual remedies open to the institution upon failure to assign. In general, institutions should avoid making vague claims on future intellectual property rights.

We therefore recommend that institutional policies should clearly demarcate what (in terms of type of work, context, and time) is being claimed by the institution.

## **5.4 Giving Students Sufficient Notice of IPR Policies**

From the above, it will be clear that sufficient notice of institutional IPR policies will be an important part of ensuring the legal incorporation of the policy into the staff-student relationship, and ensuring the student has (to some extent) a choice.

In general, the signing of a written document is binding on that party. However, for practical reasons, an institution may not want to include the entire text of its policy in its registration document (or equivalent). Where institutions issue an IPR policy as a separate document, they must ensure that the student has sufficient notice of that policy, and sufficient reference must be made in the registration document to that policy.

We recommend that, prior to enrolment at an institution; prospective students are sent a copy of the institution's IPR policy. We further recommend that at registration (or equivalent) students are asked to sign to confirm both receipt of and agreement with the policy.

We recommend that a statement as to ownership of IPR is included on the research proposal form or equivalent, in relation to the enrolment of research students.

## **5.5 Work-Based Learning and Research**

Particular issues may arise where study includes work-based learning. Where work submitted has been created by an employee in the course of employment, the intellectual property rights may belong to the employer. For example, by virtue of the Copyright, Designs and Patents Act 1988, s.11(2), copyright in original work created by an employee as part of his or her contract of employment will belong to the employer, unless there is an agreement to the contrary. In such a case, moral rights will not normally accrue either.<sup>25</sup>

In respect to patentable inventions, s.39 of the Patents Act 1977 provides that the right of patent application will fall to the employer where the invention is part of the employee's duties, and when the invention could be expected to come out of performance of those duties,<sup>26</sup> or where the employee is in senior position, such that they could be taken to be furthering the interests of the employer.<sup>27</sup>

Where the intellectual property rights in work or research submitted by a student do not belong to that student, the student will not, in general, be able to transfer any intellectual property rights to the institution.<sup>28</sup>

We recommend that institutions consider explicitly the intellectual property rights implications of students undertaking work-based learning. In designing work-based learning units, the department of the institution involved should consider whether any specific provisions need to be made in addition to the institution's general student IPR policy. The specific provision may derogate from the standard policy by claiming lesser rights, or by requiring the student's employer's agreement to the assignment or licence of the IPR in the student-produced work.

## **5.6 The Disclosure and Location of IPR Significant Work**

Most student work will be produced without intellectual property rights being at issue, with the only reuse being perhaps for quality control purposes. An issue for institutions will be the design of procedures to identify work that is notable in terms of its IPR. On the one hand, an institution should avoid creating unnecessary bureaucracy to track non-valuable IPR, but on the other, should ensure that valuable IPR is not missed.

We recommend that institutions review the types of intellectual property work that students are likely to create, and consider what procedures need to be in place so that the institution can identify such intellectual property and deal with it appropriately”.

It is likely that some student work will be created outwith the physical confines of the institution, and indeed, without using the institution’s network and servers. Where institutions intend to adopt a policy claiming some or all IPR in student produced work, it should be careful to ensure such claim is fair and justifiable (to avoid the claim being struck down under the Unfair Terms in Consumer Contracts Regulations 1999). An institutional claim on IPR created by a student independently of their studies is not likely to meet the fairness standard in the Regulations, and is therefore likely to be ineffective.

However, subject to an institution meeting the requirement of fairness under the Unfair Terms Regulations, it will be possible for an institution to license or claim assignment of student work conducted

We recommend that institutions ensure that their policy does not attempt to claim IPR in work done by the student independently of his studies. We further recommend that the policy does not define a licence or assignment by reference to the location of the work, or the system on which the work is completed, but rather by reference to the relationship with the student’s studies.

## **5.7 Collaboration with Staff**

Collaborative research at institutions can involve a multitude of combinations in terms of the creators involved. Staffs, students, members of staff from various institutions, visitors to the institution, employees from funding organisations and industrial sectors could all form a part of a collaborative research group.<sup>29</sup>

The responses from the survey concentrate, however, on some of the IPR issues generated by collaborative research between students and faculty members.

When members of faculty and students work in a collaborative research atmosphere, they might share resources ranging from equipment and facilities to intellectual and research capabilities. Their collaboration could be at different levels. Students might assist academic staff in their research projects and also in the external research projects of staff with outside partners or other university staff (for example, an inter-disciplinary research project between the law and sciences faculty might involve students from the law faculty or from the sciences faculty or both). One of the most common student-staff collaborations that can be seen in institutions is where students receive staff supervision for a higher degree through research (MPhil, PhD, post-doctoral research). Students may also act as co-authors with members of academic staff when drafting articles for publication.

Comingled student-staff IPR can also arise in discussion lists involving students and audio and video records of in-class discussions.<sup>30</sup>

One of the most common IPR issues here is the student’s right to authorship and ownership of any intellectual property contributed by him towards collaborative projects. A student who contributes to a common data pool might wish to claim ownership in the submitted content. It could however be the case that the submitted content incorporates material that is inseparable and is created by other members of the team or a faculty member.

In such joint creations, the attribution of rights and ownership to a single person in the contributed material could be considered inequitable when compared to the other members of the team. <sup>31</sup> In a similar vein, it is possible that a faculty member (who is bound by the terms of

his employment agreement) might have assigned his rights in a co-invention with the student to the institution. At the same time, the student by virtue of not being an employee of the institution could control the commercial exploitation of any intellectual property arising from the collaborative work. This could pose a difficult situation for the institution that is financing the collaborative work.

We recommend that institutions address collaboration issues in their IPR policy. The effectiveness of the IPR policy must provide for both a fair sharing of reward, and for a practical approach to further rights clearance in the exploitation of the rights.

We recommend that the provisions should be fair to both staff and students, ensuring that each contributor receives equitable treatment with regard to both attribution of input, but also with regard to proper valuation of any intellectual property contributed by them. In institutions that operate separate IPR policies for staff and students, the relevant provisions relating to joint staff-student creations should be embodied in both the policies.

### **5.8 Copying of Work Submitted for Quality Control Purposes**

Commonly, student produced work may be copied to allow inspection by an external examiner, an external verifier, or to keep a bank of work as part of a future teaching and learning quality inspection. Assuming that the student's work is original, copyright will belong to the student in the absence of any agreement to the contrary.

The student's enrolment at a college or university may imply agreement to submit to quality control procedures, and it may therefore be possible to imply a licence which allows the institution to copy work for this reason.

We recommend, however, that a licence to copy for quality control purposes is made explicit in the institution's policy. This will give the student fair notice of the copying, and will make the institution's position more certain.

### **5.9 Specific Digital Based Materials**

In general, there are no specific issues which arise from the fact that student-produced work is submitted or produced digitally and/or online. However, one particular area for consideration is that in relation to postings to discussion boards, chat rooms and similar online communication tools. There is some academic discussion as to whether these qualify for copyright protection.

We recommend, in the absence of a clear interpretation in law to the contrary, that student-written submissions to online communication tools such as discussion boards and chat rooms are treated as copyright works for the purpose of the institution's policy.

### **5.10 Theses**

Theses form one of the major contributions by students during their term in an institution. As such, they may raise legal issues relating to aspects of copyright, patent and database rights.

One of the primary issues is the copyright ownership of the student's thesis. The first owner of copyright in a work is the person who created the work<sup>32</sup> and a work may have joint owners when more than one author is involved in creating the work. Thus, a student as the creator of the thesis will own copyright in it. However, the research which leads to the publication of the student thesis might contain staff-contributed material, especially from the student's supervisor. In such a case, issues might arise if a faculty member considers that since he or she has contributed to the thesis they have the right to make and redistribute copies of the thesis or even publish separately their contributions to the student thesis.

There is also the possibility that any third-parties who have funded the doctoral research may wish to lay claim to any intellectual property arising from the doctoral research. In the absence of express contractual agreements and a clear IPR policy outlining ownership rights in theses, it will become difficult to draw a line on the copyright ownership of these particular works.

Theses created by students in the sciences and medical disciplines might hold the potential for commercial exploitation. There is also the issue of patent law when the student or institution might wish to publish the thesis and the student's sponsor might wish to apply for a patent. One of the requirements for the grant of a patent is that an invention must not be made available to the public before the application for a patent is filed. In such a case, a prior disclosure of the invention in the form of publication by an institution or by the student could adversely affect the patent application of the industrial sponsor.<sup>33</sup>

Theses that are made available in databases and in institutional repositories may attract protection under the database laws and could therefore raise legal concerns relating to these laws. A database is defined as a collection of independent works, data or materials arranged in a systematic or methodical way and which are individually accessible by electronic or other means.<sup>34</sup> Intellectual creativity is not a required to attract protection under the database right.

The qualifying condition for database protection is that the owners must demonstrate substantial investment in obtaining, verifying or presenting the contents in a database. Further, the right prohibits the unauthorised acts of extraction or re-utilisation of the contents of a database.

It is an infringement under the database right to extract or re-utilise substantial data or insubstantial data through a repeated or systematic process. Therefore, if the thesis deposited in a repository contains substantial data extracted from another database and without permission from the owner of that database, it can pose legal implications of infringement of the database right for both the student and for the institution hosting the thesis in a repository.

So that the IPR issues are not perceived as stumbling blocks and they do not create bottlenecks on the free use of thesis works of students, we recommend the following steps.

We recommend that institutions make their students aware of their rights and responsibilities when starting a research project, and recommend an early and open dialogue between the supervisor and his student on the ownership of intellectual property to serve as the starting point towards this.

We recommend that institutions use end-user licence agreements for reuse of theses which do not go beyond the rights actually held by the institution. Where further rights are required, further clearance should be sought from the student, and the institution's policy should be reviewed.<sup>35</sup>

Finally, we would emphasise that instrumental to all of the above recommendations is the requirement that the institution has an established IPR policy with provisions explicitly regulating the ownership of IPR in student theses.

### **5.11 Digitisation of Student Work**

For many reasons,<sup>36</sup> institutions may wish to digitise student work. In order to do this, there are two IPR issues to be addressed:

1. The institution must have the right to digitise (and disseminate, if appropriate) the student's work. This may come either through an assignment of the IPR to the institution, or by a licence of the right to the institution.

2. The student's work may contain material subject to third party rights. The material may have been included legitimately under an educational permitted act, but reuse of the student's work is likely to infringe the third party IPR.

Institutions must therefore ensure that they have the right to digitise from the student, and that there is a procedure to identify student work containing material subject to third party rights. Where third party rights are involved, permission will have to be sought from the third party rights holder, or the third party material removed.

The use of s.42 and s.43 of the Copyright, Designs and Patents Act 1988 on making copies for preservation may, in some limited circumstances, permit copying of student work. However, this will only apply to situations where the work has been added to the institution's library collection, and the digitisation is for preservation, and it may be difficult to show that an electronic version will be more enduring than a paper version of an essay or thesis. It will not apply where the purpose of the digitisation is to reduce storage space or for ease of dissemination of the work.

We recommend that institutions require students to license the rights to digitise the work to the institution for stated purposes. We further recommend that institutions include a procedure which requires students to flag-up the inclusion of material with third party IPR in their work.

### **5.12 Students Selling Their Work Online**

An increasing issue arises in relation to students selling their completed assessments and theses on online market places (such as eBay). Some institutions wish to prevent this, as it is seen as an aid to plagiarism. One strategy that has been seen<sup>37</sup> is for the institution to claim IPR in the student work, with an indication that the claim will not be exercised except where the institution "deems publication to be unethical and/or likely to promote improper use of the work".

The owner of IPR is generally entitled to assign or license those rights. It is unlikely that an institutional prohibition on the assignment or licence of IPR in student work is likely to meet the test of fairness under the Unfair Terms in Consumer Contracts Regulations 1999. It will generally be difficult for an institution to demonstrate that the selling of work online is intended to assist plagiarism.

We recommend that where institutions wish to use a claim on IPR as a mechanism to prevent the sale of student work, that this should be limited to instances where clear intention to assist plagiarism is present.

### **5.13 Disputes and Negotiating Further Clearances**

A clearly stated and communicated policy, meeting the legal requirement of fairness where appropriate, is likely to avoid significant numbers of disputes arising. However, institutions should have a procedure and a mechanism to deal with disputes arising in relation to IPR in student work, and a person or department given responsibility for negotiating further rights clearance with students.<sup>38</sup>

We recommend that institutions include in their policies a clear procedure to be followed in cases of dispute in relation to intellectual property rights in student produced work.

## **6 Conclusion**

As institutions require students to produce and submit learning, assessment and research work in the UK's further and higher education sectors, each must decide on the ownership of the resulting IPR created. This decision will be implemented through the contract between the

institution and the student, and as a prerequisite, the institution's IPR policy must be a part of that contract. There are three approaches which may be adopted by institutions:

### **1. An assignment of rights by the student to the institution**

Although this seems most beneficial to the institution, this is likely to fall foul of the test of fairness in the Unfair Terms in Consumer Contracts Regulations 1999, and possibly also under other laws. There may be situations which warrant the assignment, where the institution's input to the work is significant, and particular provision may be made as appropriate. Where assignment is required, the test of fairness is more likely to be met where a fair reward is offered for the student's input, and/or where there is a licence-back of the rights to the student for stated purposes. Institutions should also note that the student may retain moral rights in the work, and should therefore credit the student's input in any reuse.

### **2. A licence of rights by the student to the institution**

A licence of rights will generally be the most appropriate mechanism in balancing the input of the institution and the student. It recognises the student as the creator of the IPR, but will grant the institution use of the work in recognition of its input, or its position in being able to exploit the work further. The licences sought will still be subject to the fairness test in law. Institutions need to identify current and future uses for each type of student work, and ensure that the licence of rights enables that reuse. In some cases, it may be possible to use pre-existing licences, such as Creative Commons, but the institution should ensure that the licence achieves the outcome desired. Where commercial exploitation occurs, the policy should provide for fair reward sharing between the institution and the student, not least to act as a positive incentive.

### **3. No assignment nor licence of rights**

Where no policy exists, the institution may, in limited circumstances, be able to rely on an implied licence for obvious uses (such as copying for quality control purposes). However, this lacks certainty and transparency. It may also lead to failure of exploitation of valuable IPR, where the student does not have the necessary facilities, knowledge or experience to take this forward. Further, the lack of a policy demonstrates a lack of value being placed on IPR at the institution, and this may have its own costs in terms of non-compliance and a lack of efficiency in using other people's materials.

To conclude, institutions need to identify an appropriate person or group to take forward review or development of the IPR policy. An institution should then look to:

7. Review the uses and potential future uses of IPR within the institution
8. Review these uses and potential future uses against the current IPR policy
- or*
9. Develop an IPR policy to enable these uses and potential future uses
10. Review the IPR policy in respect to test of fairness in the Unfair Terms in Consumer Regulations 1999, particularly with the input of student representatives where possible
11. Adopt and Disseminate the policy, and ensure the incorporation of it into the student contract
12. Maintain awareness throughout the institution of the IPR policy

## 7 Summary of Recommendations

<i>Paragraph</i>	<i>Recommendation</i>
3.2	We recommend that institutions ensure that their IPR policies cover all the situations in which students might create work related to their studies or research.
3.3	We recommend that institutions review their policy to ensure that all current and future reuses of student created work are permitted by either a licence or assignment of relevant IPR, or that a procedure is included for future negotiation of such rights.
3.5	We recommend that, where an institution wishes to make use of a student's work in a commercial or high-profile context, the institution has in place a procedure to flag-up third party material in the student's work, and to acquire appropriate IPR permissions before use.
3.6	We recommend that institutions review their policy in respect to IPR in student created work to ensure that the above noted risks are avoided to an appropriate extent.
5.3.2	We recommend that the institution makes a distinction between intellectual property which is or is likely to be the subject of commercial exploitation, and that which is not, in determining a fair policy. Where the institution is likely to gain financially from the exploitation of intellectual property rights in student-created work, the risk of an assignment or licence in the registration document being held to be unfair will be decreased if a reward-sharing provision is included.
5.3.2	We therefore recommend that institutions take steps to ensure that prospective students have a fair opportunity, prior to committing to study at that institution, to consult the terms of the student intellectual property policy. This policy will need to be explained in clear and unambiguous terms, otherwise the regulations provide that ambiguity will be construed against the institution, and it may be held that the student has had no real opportunity to become acquainted with the provision.
5.3.2	We therefore recommend that institutions with an existing IPR policy review the provisions to ensure that a fair balance is achieved, and that any assignment or licensing of intellectual property rights is not likely to be ineffective as a consequence of the Unfair Terms in Consumer Contracts Regulations 1999.
5.3.2	We recommend that institutions involve the student body in the development and review of their policies in order to ensure compliance with the fairness test, and to provide a workable policy. This involvement may take the form of general consultation with the student body, and consultation with student representatives.
5.3.2	We recommend that institutions make explicit in their policies, or in guidance accompanying their policies, the justification for the approach adopted.
5.3.4	We therefore recommend that institutional policies should clearly demarcate what (in terms of type of work, context, and time) is being claimed by the institution.
5.4	We recommend that, prior to enrolment at an institution; prospective students are sent a copy of the institution's IPR policy. We further recommend that at registration (or equivalent) students are asked to sign to confirm both receipt of and agreement with the policy.
5.4	We recommend that a statement as to ownership of IPR is included on the research proposal form or equivalent, in relation to the enrolment of research students.
5.5	We recommend that institutions consider explicitly the intellectual property rights implications of students undertaking work-based learning. In designing work-based learning units, the department of the institution involved should consider whether any specific provisions need to be made in addition to the institution's general student IPR policy. The specific provision may derogate from the standard policy by claiming lesser rights, or by requiring the student's employer's agreement to the assignment or licence of the IPR in the student-produced work.
5.6	We recommend that institutions ensure that their policy does not attempt to claim

	IPR in work done by the student independently of his studies. We further recommend that the policy does not define a licence or assignment by reference to the location of the work, or the system on which the work is completed, but rather by reference to the relationship with the student's studies.
5.7	We recommend that institutions address collaboration issues in their IPR policy. The effectiveness of the IPR policy must provide for both a fair sharing of reward, and for a practical approach to further rights clearance in the exploitation of the rights.
5.7	We recommend that the provisions should be fair to both staff and students, ensuring that each contributor receives equitable treatment with regard to both attribution of input, but also with regard to proper valuation of any intellectual property contributed by them. In institutions that operate separate IPR policies for staff and students, the relevant provisions relating to joint staff-student creations should be embodied in both the policies.
5.8	We recommend, however, that a licence to copy for quality control purposes is made explicit in the institution's policy. This will give the student fair notice of the copying, and will make the institution's position more certain.
5.9	We recommend, in the absence of a clear interpretation in law to the contrary, that student-written submissions to online communication tools such as discussion boards and chat rooms are treated as copyright works for the purpose of the institution's policy.
5.10	We recommend that institutions make their students aware of their rights and responsibilities when starting a research project, and recommend an early and open dialogue between the supervisor and his student on the ownership of intellectual property to serve as the starting point towards this.
5.10	We recommend that institutions use end-user licence agreements for reuse of theses which do not go beyond the rights actually held by the institution. Where further rights are required, further clearance should be sought from the student, and the institution's policy should be reviewed.
5.11	We recommend that institutions require students to license the rights to digitise the work to the institution for stated purposes. We further recommend that institutions include a procedure which requires students to flag-up the inclusion of material with third party IPR in their work.
5.12	We recommend that where institutions wish to use a claim on IPR as a mechanism to prevent the sale of student work, that this should be limited to instances where clear intention to assist plagiarism is present.
5.13	We recommend that institutions include in their policies a clear procedure to be followed in cases of dispute in relation to intellectual property rights in student produced work.

## 8 Bibliography

### 8.1 Relevant Legislation

Copyright, Designs and Patents Act (CDPA) 1988

Human Rights Act 1998

Patents Act 1977

Unfair Terms in Consumer Contracts Regulations 1999

## 8.2 Relevant Cases

*Clark v University of Lincolnshire and Humberside* (2000) 3 All ER 752, CA  
*Herring v Templeman* (1973) 3 All ER 569  
*Moran v University College Salford* (1994) ELR 187

## 8.3 Useful Websites

JISC Legal Information Service [www.jisclegal.ac.uk](http://www.jisclegal.ac.uk)  
World Intellectual Property Organisation [www.wipo.int](http://www.wipo.int)  
Oxford Centre for Higher Education Policy Studies <http://oxcheps.new.ox.ac.uk/>

## 8.4 Useful Books and Articles

Please note that references preceded by an asterisk are from outside the UK, and readers should be aware of the different legal jurisdiction under which the material was published.

Andrew, T., (2004), *Intellectual Property and Electronic Theses*. Glasgow, JISC legal Information Service, available at:  
<http://www.jisclegal.ac.uk/publications/ethesesandrew.htm>

\* Australian Vice-Chancellors' Committee (AVCC), (2002), *Ownership of Intellectual Property in Universities, Policy and Good Practice Guide*. Canberra. AVCC, available at:  
[http://www.avcc.edu.au/documents/publications/IP\\_ownership\\_discussion\\_paper.pdf](http://www.avcc.edu.au/documents/publications/IP_ownership_discussion_paper.pdf)

Bently, L. and Sherman, B., (2004), *Intellectual Property Law*. Oxford, Oxford University Press

Canadian Association for Graduate Studies, (1999), *A Guide to Intellectual Property for Graduate Students and Postdoctoral Scholars*. Ottawa, Canadian Association for Graduate Studies, available at:  
<http://www.cpsc.ucalgary.ca/Grads/Policies/public/A%20guide%20to%20intellectual%20property%20for%20grad%20students-December%202005.pdf>

Canadian Association for Graduate Studies, (2004), *“Protection of Students’ Intellectual Property Rights – The McGill Perspective”*, November 3 – 6, 2004, St. John’s, Newfoundland and Labrador

Lynch, C., (2002) “The Afterlives of Courses on the Network: Information Management Issues for Learning Management Systems”, *EDUCAUSE Centre for Applied Research Bulletin*, Vol. 2002, No.23, available at:  
<http://www.cni.org/staff/cliffpubs/ECARpaper2002.pdf>

Monotti, A. and Ricketson, S., (2003), *Universities and Intellectual Property: Ownership and Exploitation*. Oxford, Oxford University Press

Patel, S.H., (1996), “Graduate Students’ Ownership and Attribution Rights in Intellectual Property”, *Indiana Law Journal*, Vol.71, p.481.

Varvel, V.E., (2001), “Who’s Words – Who Owns Student Posts in an Online Course?”, *Pointer and Clicker*, 2001, November/December, available at:  
[http://www.ion.illinois.edu/resources/pointersclickers/2001\\_11/index.asp](http://www.ion.illinois.edu/resources/pointersclickers/2001_11/index.asp)

World Intellectual Property Organization (WIPO), *Guidelines on Developing Intellectual Property Policy for Universities and R&D Institutions in African Countries*, WIPO Publication No. 848(E). Geneva, WIPO, available at:  
[http://www.wipo.int/freepublications/en/intproperty/848/wipo\\_pub\\_848.pdf](http://www.wipo.int/freepublications/en/intproperty/848/wipo_pub_848.pdf)

Higher Education Online Casebook - <http://oxcheps.new.ox.ac.uk/casebook/>

## **8.5 Institutional Student Regulations (General)**

### **City College Manchester**

*Student Contract 2006/2007 (Student's Copy)*  
<http://www.ccm.ac.uk/files/behaviour.pdf>

### **Luton Sixth Form College**

*Student Contract (September 2006)*  
<http://lutonsfc.ac.uk/lutonhome/CollegeLife/StudentContract/Index.html>

### **The University of Chester**

*Student Contract Conditions of the University*  
<http://www.chester.ac.uk/undergraduate/conditions.html>

### **The University of Hull**

*Student Registration Information*  
<http://student.hull.ac.uk/handbook/newstudents/registration.html> and  
<http://www.student-admin.hull.ac.uk/reg.html>

### **The University of Kent**

*University Regulations*  
<http://www.kent.ac.uk/regulations/>

### **The University of Leeds**

*Student Contract*  
<http://www.leeds.ac.uk/qmeu/studentcontract.htm>

### **The University of Sheffield**

*Student Regulations*  
<http://www.shef.ac.uk/ssid/international/regulations>

## **8.6 Abbreviations Used**

CDPA	Copyright Designs and Patents Act 1988
IP	Intellectual Property
IPR	Intellectual Property Rights
JISC	Joint Information Systems Committee
WIPO	World Intellectual Property Organisation

## 9 Appendices

### 9.1 Focus Group Participants

Both Focus Groups were led by Mahesh Madhavan from JISC Legal.

#### London (27 November 2006)

Alan Lee	London South Bank University, London
Jeremy Kuper	King's College, London
Emily Goodhand	North Warwickshire & Hinckley College
Letitia Baldock	University of Southampton

#### Manchester (28 November 2006)

Dave Howells	Coleg Sir Gar
Dr Brian More	Coventry University
Sue Final	University of York
David Carson	Keele University
Janet Jurica	University of Leeds

### 9.2 Focus Group Agenda and Scenarios

#### 9.2.1 Agenda for Student IPR Focus Groups

- Introductions
- Introduction to the project
- Objective of the focus group
- Scenarios and Questions
- Summary

#### 9.2.2 Scenarios

##### Scenario 1

'X' is an undergraduate student. He is involved in assisting academic staff and research-based postgraduate students involved in a scientific research project. His research work allows him access to the institution's patents in a way which is not available to the other students. Part of X's research work also involves travelling to third-party locations and working at their premises on the research project which is funded by the project. Through the project, X comes up with a new scientific invention which has a high commercial potential and to which the contribution from the other postgraduate students and academic staff is also equally substantial. The institutions IPR policy requires only staff and post-graduate research students to assign to the university all rights in any discoveries made using university equipment or on university premises. X is therefore exempt from assigning the IP created by him to the university. X wishes to commercialise the invention and wishes to prevent publication of the results by the university and also wishes to move to another university and where he can develop the invention further.

1. Should there be separate policies for staff and students?

2. Should undergraduate students who currently play a significant role in research projects also be governed by the institution's IPR policy and if so, how?
3. When there is a team of people involved in the creation of an IP, how can the ownership of IPR be regulated?
4. How should the two institutions regulate IPR when X has moved to a new institution to develop his work from the current project?
5. What if the invention was developed by X at his home? Should he then grant an exclusive licence to the university when the fees paid by X for his study might account for this?
6. How can the IPR resulting from the work that X has done in third-party locations be regulated?

## Scenario 2

The IPR policy of the 'College B' states that copyright work created by students belong to the student. When creating the IPR policy, the college had only pictured a scenario where students created materials for publication in hard print. The college currently produces a number of courseware and text that is administered over the VLE. Students of the IT faculty are made a part of the team in creating material for the VLE. This includes the IT students assisting and preparing the design of web pages, developing software for the VLE and contents for the VLE. The college wishes to use the material and other content available on the VLE and the software created by the students without complications of competing ownership rights from the IT students.

1. As per the law, the first owner of copyright in a work is the person who created the work. So, students who are involved in creating content for the VLE is the copyright owner of it. How can the college regulate the ownership of online materials among the students involved in creating the work for the VLE?
2. Can the IT students own the software that has been created by them?
3. Can the IT students control the making available of copyright material online?
4. Should the IP policy explicitly cover the situation of students writing content for the Internet and electronic courseware?
5. Do we need a new IPR policy explicitly determining ownership in online materials?

## Additional Questions

1. What are the kinds of student-created materials where IPR issues might arise?
2. Do you claim copyright ownership in all materials created by students whilst registered with you?
3. If yes, where/how is this claim asserted? Is it by means of information provided in student registration handbooks or any other university documents?
4. Why would a higher or further education institution want a student to assign all their rights in their work to the institution?

## 9.3 List of Policies

### University of Aberdeen

*Policy for Student Intellectual Property Rights*

[http://www.abdn.ac.uk/AURIS\\_Research/documents/Policy%20for%20Student%20Intellectual%20Property%20Rights.pdf](http://www.abdn.ac.uk/AURIS_Research/documents/Policy%20for%20Student%20Intellectual%20Property%20Rights.pdf)

### University of Bath

*Policy on Intellectual Property*

[http://www.bath.ac.uk/research-support/manual/rights\\_app.pdf](http://www.bath.ac.uk/research-support/manual/rights_app.pdf)

**University of Birmingham**

*Intellectual Property*

<http://www.ppd.bham.ac.uk/policy/regs/currentregs/5.htm>

**University of Bradford**

*Regulation Relating To Intellectual Property Rights In Work Produced By Students*

<http://www.brad.ac.uk/admin/recruitment/calendar/regs/reg14.html>

**University of Bristol**

*Intellectual Property Policy for Students*

<http://www.bris.ac.uk/secretary/studentrulesregs/intelprop.html>

**Brunel University**

*Intellectual Property (Students)*

<http://www.brunel.ac.uk/studenthandbook/learning/notices/intellectual>

**University of Cambridge**

*Intellectual Property Rights*

<http://www.rsd.cam.ac.uk/about/policies/ip/ApprovedRegs.pdf>

**City University**

*City University: A Guide for Managing Intellectual Property*

[http://www.city.ac.uk/hr/dps/policies/IPR%20Guidelines\\_August%2006.pdf](http://www.city.ac.uk/hr/dps/policies/IPR%20Guidelines_August%2006.pdf)

**Coventry University**

*Appendix 14: Intellectual Property Rights Policy: Students*

<http://corporate.coventry.ac.uk/content/1/c6/01/33/87/Appendix%2014%20GR%20Student%20IPR.doc>

**Cranfield University**

*Regulations on General Matters: Regulation 35 - General Regulations on Theses and Other Work of Students*

[http://www.silsoe.cranfield.ac.uk/student\\_cd/document/regulations/reg35.htm](http://www.silsoe.cranfield.ac.uk/student_cd/document/regulations/reg35.htm)

**Derby University**

*Intellectual Property Rights – Student Regulations*

<http://www.derby.ac.uk/qed/3Rs/S29%20Intellectual%20Property%20Rights%20UG.PG.C.FE.pdf>

**University of Durham**

*Intellectual Property Rights*

<http://www.dur.ac.uk/resources/university.calendar/volumei/current/regs.intellectual.pdf>

**University of East Anglia**

*Intellectual Property Regulations*

<http://www.uea.ac.uk/ltq/Calendar/Calendar%202005-06/CalRegs/4INTELLECTURALPROPERTYTREGS.pdf>

**University of Glamorgan**

*Student Regulations on Intellectual Property Rights*

<http://www.glam.ac.uk/academic/265/regulations>

**Glasgow Caledonian University**

*Intellectual Property and Copyright Advice*

<http://www.learningservices.gcal.ac.uk/policies/copyright.html>

**Heriot-Watt University**

*The University Policy on Intellectual Property, Confidential Information and Commercialisation*

<http://www.hw.ac.uk/hr/htm/policies/IP%20Policy%20Commercialisation%20Policy.pdf>

**The University of Huddersfield**

*Handbook of Intellectual Property and Related Matters*

<http://www.hud.ac.uk/registry/research/docs/ipr.pdf>

**The University of Kent**

*Intellectual Property Rights*

<http://www.kent.ac.uk/regulations/Regulations%20Booklet%202005/6-Intellectual-Property-Rights.pdf>

**Kingston University**

*Intellectual Property Rights*

[http://www.kingston.ac.uk/about\\_ku/structure/policies/intellectual\\_property.pdf](http://www.kingston.ac.uk/about_ku/structure/policies/intellectual_property.pdf)

**University of Leeds**

*Exploitation and IPR: Policy on Intellectual Property Rights*

<http://www.leeds.ac.uk/research/hbook/ipr3.htm>

**The University of Liverpool**

*Intellectual Property Rights*

[https://www.liv.ac.uk/rbs/intellectual\\_prop.htm](https://www.liv.ac.uk/rbs/intellectual_prop.htm)

**London South Bank University**

*Policy on the Management and Commercial Development of Intellectual Property*

[http://www.lsbu.ac.uk/rbdo/docs/SBUEL\\_Final\\_Final\\_IP\\_policy.doc](http://www.lsbu.ac.uk/rbdo/docs/SBUEL_Final_Final_IP_policy.doc)

**The University of Manchester**

*Intellectual Property Policy*

<http://www.campus.manchester.ac.uk/staffnet/policies/intellectualpropertypolicy/ownershipofip/>

**Manchester Metropolitan University**

*Guidelines for Research Supervisors, Appendix 1: Copyright and Intellectual Property Rights*

<http://www.rdu.mmu.ac.uk/superguidelines/app1.htm>

**Napier University**

*Policy for the Ownership and Exploitation of Intellectual Property*

<http://www.napier.ac.uk/depts/ent/intranet/Intellectual%20Property%20Policy%20May%2006.doc>

**Northumbria University**

*Guidelines for the Treatment of Intellectual Property*

[http://northumbria.ac.uk/static/worddocuments/int\\_prop](http://northumbria.ac.uk/static/worddocuments/int_prop)

**University of Northampton**

*Intellectual Property Rights Policy*

<http://oldweb.northampton.ac.uk/admin/registry/WebAG2/AcGuide2/Pol/IPR/IPRConts.htm>

**Nottingham Trent University**

*Intellectual Property Policy*

<http://www.ntu.ac.uk/studenthandbook/rights/obligations/24377gp.html>

**Oxford Brookes University**

*Intellectual Property Policy and Regulations*

[http://www.brookes.ac.uk/res/policies/ip\\_policy.pdf](http://www.brookes.ac.uk/res/policies/ip_policy.pdf)

**University of Plymouth**

*Students and Intellectual Property*

<http://www.plymouth.ac.uk/IPR>

**University of Oxford**

*Statute XVI: Property, Contracts, and Trusts*

<http://www.admin.ox.ac.uk/statutes/790-121.shtml>

**Robert Gordon University**

*Intellectual Property Rights (IPR) policy – Students*

<http://www.rgu.ac.uk/credo/students/page.cfm?pge=8623>

**University of Salford**

*Regulations Regarding Intellectual Property Rights*

<http://policies.salford.ac.uk/display.php?id=248>

**University of Sheffield**

*Regulations Relating to Intellectual Property Rights*

<http://www.shef.ac.uk/calendar/iprights.html>

**Sheffield Hallam University**

*Intellectual Property Policy*

<http://students.shu.ac.uk/rightsrules/othercodesandpolicies/it/19.html>

**Staffordshire University**

*General Regulations for Students*

[http://www.staffs.ac.uk/images/generalstudentregs\\_tcm68-12714.pdf](http://www.staffs.ac.uk/images/generalstudentregs_tcm68-12714.pdf)

**University of Stirling**

*Regulations: Intellectual Property for Staff and Students*

<http://www.calendar.stir.ac.uk/2006-2007/rules-and-regulations-intellectual-property.pdf>

**University of Southampton**

*Section IV: Intellectual Property Regulations*

<http://www.calendar.soton.ac.uk/sectionIV/part22.html>

**University of Surrey**

*Code of Practice In Relation to the Protection and Exploitation of Intellectual Property Rights*

<http://portal.surrey.ac.uk/policies/unispolicies/codeofpracticeinrelationtotheprotectionandexploitationofintellactualpropertyrightsv0.5.jsp>

**University of Sussex**

*Code of Practice on Intellectual Property, Commercial Exploitation and Financial Benefits*

<http://www.sussex.ac.uk/rrdd/documents/ipcode.doc>

**University of Ulster**

*Intellectual Property: Policy and Procedures*

[http://www.ulster.ac.uk/hr/pdfs/3\\_3.pdf](http://www.ulster.ac.uk/hr/pdfs/3_3.pdf)

**University College, London**

*Policy Statement on Intellectual Property Rights / Copyright in Relation to Students*

<http://www.ucl.ac.uk/current-students/rights/ipr>

**University of Wales, Bangor**

*Student Guide*

<http://www.bangor.ac.uk/ar/main/ssc/studentguide>

**University of Wolverhampton**

*Intellectual Property / Spin-out Policies & Procedures*

<http://www2.wlv.ac.uk/university/regulations/IPPoliciesProcedures.pdf>

**University of York**

*University of York – Intellectual Property Regulations*

<http://www.york.ac.uk/admin/aso/ordreg/r12.htm>

**ENDS - 19 April 2007**

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<sup>1</sup> See Canadian Association for Graduate Studies “*Protection of Students’ Intellectual Property Rights – The McGill Perspective*”, November 3 – 6, 2004, St. John’s, Newfoundland and Labrador

<sup>2</sup> See Canadian Association for Graduate Studies “*A Guide to IP for Graduate students and Postdoctoral students*”, p.3

<sup>3</sup> *Ibid.*

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- <sup>4</sup> See Virgil E. Varvel Jr. “Who’s Words – Who Owns Student Posts in an Online Course?” November/December 2001 Pointer and Clicker Article at
- <sup>5</sup> See Section 2 Patents Act 1977
- <sup>6</sup> See University of Cambridge IPR policy at
- <sup>7</sup> See para 13 of the regulations
- <sup>8</sup> See para 16 (scope of application) of the regulations
- <sup>9</sup> See The University of Bristol Intellectual Property Policy for Students at
- <sup>10</sup> See University of Cambridge IPR policy para 14 of the regulations
- <sup>11</sup> See University of Cambridge IPR policy para 14(c) of the regulations
- <sup>12</sup> See The University of Bristol Intellectual Property Policy for Students para 2.1, The relevant part reads “In the event that an undergraduate student or a postgraduate student on a taught course generates intellectual property in the course of a University project, either solely or in collaboration (where the collaborators may be fellow student, members of University of Bristol staff, employees of a sponsoring organisation or collaborative partner or a combination thereof), he or she is asked to assign to the University any intellectual property that he or she may generate”
- <sup>13</sup> See The University of Bristol Intellectual Property Policy for Students para 3.1, The relevant part reads “Postgraduate students will be required to execute agreements and assignments of intellectual property as a condition of participation in University research projects, a copy of which is available from the Research and Enterprise Development Office”.
- <sup>14</sup> See *Clark v University of Lincolnshire and Humberside* (2000) 3 All ER 752, CA, Also See Ann Monotti with Sam Ricketson “Universities and Intellectual Property Ownership and Exploitation” (Oxford University Press) p. 104 - 105
- <sup>15</sup> See and
- <sup>16</sup> See
- <sup>17</sup> See and
- <sup>18</sup> See City College Manchester, Student Contract 2006/2007 (student’s copy) and Luton Sixth Form college Student Contract September 2006
- <sup>19</sup> See *Clark v University of Lincolnshire and Humberside* (2000) 3 All ER 752, *Herring v Templeman* (1973) 3 All ER 569, *Moran v University College Salford* (1994) ELR 187
- <sup>20</sup> (2000) 3 All ER 752, Also See Higher Education Online Casebook at
- <sup>21</sup> See The University of Kent at Canterbury University Regulations , wherein the IPR policy of the institution is provided within the university regulations.
- <sup>22</sup> See The Student Contract Conditions of the University of Chester whereby the student is bound by the intellectual property policy of the institution when accepting the offer of place at the university.
- <sup>23</sup> On page <http://www.oft.gov.uk/NR/rdonlyres/5D8A22BD-4AD3-4993-B43F-EE849C0AA389/0/oft667.pdf>
- <sup>24</sup> In paragraph (i)
- <sup>25</sup> Copyright, Designs and Patents Act 1988, s.79(3)(a) in relation to the right of attribution, and s.82 in relation to the right to object to derogatory treatment of the work.
- <sup>26</sup> Patents Act 1977, s.39(1)(a)
- <sup>27</sup> Patents Act 1977, s.39(1)(b)
- <sup>28</sup> Except where a student has authority to act on behalf of his employer in this regard.
- <sup>29</sup> See Ann Monotti with Sam Ricketson “Universities and Intellectual Property Ownership and Exploitation” (Oxford University Press) p. 124

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<sup>30</sup> See Clifford Lynch, "The Afterlives of Courses on the Network: Information Management Issues for Learning Management Systems" EDUCASUE Centre for Applied Research Bulletin Volume 2002, Issue 23, November 26, 2002

<sup>31</sup> See Sandip H. Patel, "Graduate Students' Ownership and Attribution Rights in Intellectual Property" 71 Indiana Law Journal 481, Spring 1996

<sup>32</sup> See s.11(1) of the Copyright, Designs and Patents Act 1988

<sup>33</sup> See Dr. Theo Andrew, "Intellectual Property and Electronic Theses" paper

<sup>34</sup> See s.3(a)(1) of the Copyright, Designs and Patents Act 1988

<sup>35</sup> For more on End-User licence agreements see Dr. Theo Andrew

<sup>36</sup> Such as wider dissemination, plagiarism checking, efficiency of storage, and indexing

<sup>37</sup> In University of Durham's Student IPR Policy, Section B at

<sup>38</sup> An example can be found in UCL's policy, at paragraph 8 of the Guidance to Students on IPR issues, and in Annex 1 of the document