

 **Policy on Staff Rights in Respect**

**of Intellectual Property**

POLICY COVERSHEET

# Key Details

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**Human Resources**

**Policy on Staff Rights in Respect**

**of Intellectual Property**

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**Mae'r ddogfen hon hefyd ar gael yn Gymraeg / This document is also available in Welsh**

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Policy on Staff Rights in Respect to Intellectual Property

# Purpose and scope

## The Staff Rights in Respect of Intellectual Property Policy and the Fair Share Scheme have been produced to encourage Cardiff Metropolitan University staff members to undertake innovative and commercially viable work within their role at the University. The policy also applies to doctoral researchers and students where the intellectual property is either entirely or jointly owned by Cardiff Metropolitan University. The policy sets out details in relation to ownership, exploitation and division of revenue in respect of intellectual property developed by staff members during their employment. The policy provides for both the staff member and Cardiff Metropolitan University to benefit from the exploitation of such intellectual property.

# Intellectual Property Rights

## Intellectual Property is an umbrella term which is used to describe a range of legal rights that attach to certain types of information and ideas and to their particular forms of expression. Intellectual property can consist of patents, trade marks, copyright, design right and know-how. Certain intellectual property, including patents, trademarks and registered designs are provided with a full system of legal protection by way of registration, whereas others such as copyright, know-how and trade secrets can be protected even without registration.

## Ownership of intellectual property allows the owner to exploit his/her property and to prevent others from doing the same. Like any other property, intellectual property can be traded (i.e. bought, sold, licensed).

## Although intellectual property rights are intangible rather than tangible property, they can be valuable business assets.

## The primary forms of intellectual property are:

* Registered Rights – these are granted on application to an official body such as the UK Intellectual Property Office. They are monopoly rights which means that once registered the owner can stop others from using the right without permission. They include patents, trademarks and registered designs. Further information on these rights is set out in Appendix 2.
* Unregistered Rights – these arise automatically and give protection against copying or using the right and include copyright, unregistered designs, unregistered trademarks and confidential information/know-how. Further information on types of unregistered right can be found in Appendix 3.

## For the purpose of this Policy “IPR” means all or any rights including but not limited to any rights in or to inventions, patents, registered and unregistered designs, trade marks, utility models, applications for and rights to apply for any of the foregoing, design rights, copyrights (and rights in the nature of copyright), topography rights, trade names, trade secrets, know-how, database rights or equivalent intellectual or industrial property rights arising or subsisting anywhere in the world.

## For the purpose of this Policy “Works” means all or any literature, materials, manuals, reports, research papers, flow charts, drawings, diagrams, tables, prototypes, software, works, discoveries, creations, inventions and / or improvements which are created, originated, conceived, discovered, designed, developed and / or made by staff (whether alone or in conjunction with any person). For the avoidance of doubt, Works can be in any media or format including paper and electronic formats and the term Works specifically includes items published on websites and in social media.

# Ownership of IPR

## The question of who owns IPR and the IPR in any Works developed by a staff member in the course of their employment with Cardiff Metropolitan University or using Cardiff Metropolitan University resources is governed by the provision of Cardiff Metropolitan University staff contracts of employment and by legislation. All such IPR vests in Cardiff Metropolitan University and the member of staff shall provide such further assurances as required to ensure this is achieved. In recognition of the contribution of this business asset members of staff are able to benefit from the Fair Share Scheme as set out in this policy.

## The statement on ownership set out in Para 3.1 includes any copyright work which also vests in Cardiff Metropolitan University in accordance with the Cardiff Metropolitan University contract of employment and relevant legislation.

## Members of staff are referred to the contract of employment for further details of copyright in Works produced in furtherance of their professional careers and any material produced for personal use, including Works produced as an aid to teaching.

## In the event of participation in the “Fair Share Scheme”, staff must retain copies of all copyrighted material (including all drawings, plans, designs and other artwork or materials) which they produce. All such material should be dated and marked with the staff member’s name and the date of creation. These materials will of course be subject to this policy.

# Exploitation of IPR

## In the event of a patent application, staff members are reminded that it is a requirement for the purposes of obtaining patent or registered design protection that the invention, discovery or design must be novel and therefore must remain unpublished and confidential prior to any application for patent or registered design protection being made. In view of this requirement Cardiff Metropolitan University staff members are required to obtain the prior written consent of Cardiff Metropolitan University through their School’s Associate Dean (Research or Innovation) prior to publishing or disclosing details in respect of any Works capable of patent protection developed in the course of their employment with Cardiff Metropolitan University or using Cardiff Metropolitan University resources. This would include any approaches made to potential joint venture partners or organisations, which might be interested in developing or exploiting the Works. Prior publication or disclosure of relevant details as to any Works may mean relevant protection will not be obtainable which will directly affect the likelihood of successful exploitation.

## The process for securing an agreement for the development, exploitation and protection of IPR can be initiated by Cardiff Metropolitan University, a line manager or an individual member(s) of staff.

## As the process of protecting IPR can be both a long and expensive one, it is essential that any ideas and information or potential IPR are identified and assessed at an early stage to ascertain whether or not there is a commercially viable proposition. This policy sets in place arrangements for the disclosure and assessment of all Works, ideas and information developed by Cardiff Metropolitan University staff in the course of their employment at Cardiff Metropolitan University or through use of Cardiff Metropolitan University resources.

## If, in the course of his/her employment or through use of Cardiff Metropolitan University resources, a staff member develops/creates Works, IPR, ideas or information that are automatically protected as Unregistered Rights or may be capable of being protected as Registered Rights, that development should be notified to his/her School’s Associate Dean (Research or Innovation) as soon as possible and if applicable, in accordance with the terms of Cardiff Metropolitan University’s contract of employment and associated operational guidelines.

## In order to assess the commercial viability of any Works, ideas, information or the IPR, staff member(s) will also be required to submit to their School’s Associate Dean (Research or Innovation) in the first instance, full details of the Works, ideas and information, any additional development work necessary, details of how they consider it may be exploited, together with provisional costings for development and exploitation of the IPR. Such details are required to be submitted in the pro forma set out in Appendix 1. If requested to do so Cardiff Metropolitan University will provide reasonable assistance to the staff member in completing the required pro forma. Members of staff may also wish to seek advice from their professional association.

## The completed pro forma will be initially evaluated by the School’s Associate Dean (Research or Innovation). If he/she considers the ideas, information, IPR or Works warrant further evaluation, the relevant details will be passed to the appropriate Dean. On approval by the Dean of School, the completed pro forma will be submitted to the Director of Innovation in Research & Innovation Services, who will review the proposal and, where appropriate, undertake an initial assessment of the commercial viability. If he/she considers the ideas, information, IPR or Works warrant further evaluation, the relevant details will be passed to the IP Panel which, if satisfied as to the commercial viability of the idea, will approve it for potential exploitation. At any time during the evaluation process Cardiff Metropolitan University reserves the right to refuse IPR or Works as being commercially viable in which case Para. 4.7 will apply.

## Confirmation of refusal of the commercially viability of any IPR or Works submitted by a staff member will be communicated to that staff member in writing and at the request of the staff member such IPR or Works may (at Cardiff Metropolitan University’s sole option and discretion) be assigned or licenced by Cardiff Metropolitan University to that staff member on terms specified by Cardiff Metropolitan University.

## In the event of acceptance by the IP Panel of any idea, information, IPR or Works for potential exploitation, such acceptance will be communicated to the relevant staff member in writing by the Director of Innovation.

## To assist Cardiff Metropolitan University in undertaking the evaluation process, the staff member(s) making the application may be required to submit additional written materials in support of their application or to appear in person to provide evidence in support of their application to the relevant person or body at any point of the evaluation procedure.

## Appeals against an initial refusal to consider the evaluation of any idea for intellectual rights should be presented to the University Executive Group via the Pro Vice-Chancellor (Research and Innovation).

## As exploitation of any IPR or Works will generally be undertaken through the IP Panel involving other organisations where appropriate, it is essential to ensure its work is not undermined. Therefore, no arrangements should be made with third parties in relation to the exploitation of any IPR or Works and no commitments should be entered into with any third parties without the prior written consent of the University Executive Group. Cardiff Metropolitan University will of course consider any suggestion for potential organisations who might be interested in developing/exploiting IPR or Works and where relevant would involve the staff member in any negotiations.

## For the avoidance of doubt any IPR associated with arrangements that Cardiff Metropolitan University enters into directly with third parties is not covered by this policy and will be covered in the individual arrangements with that third party.

# Costs and expenses

## Where appropriate Cardiff Metropolitan University will meet the cost of the application for registered protection in respect of any IPR which has been formally approved by Cardiff Metropolitan University’s IP Panel. Cardiff Metropolitan University may also, at its discretion, meet all relevant renewal fees payable in order to maintain such registration. However, the IP Panel reserves the right at any time to review any registered IPR for the purpose of ascertaining whether or not such rights continue to be capable of generating sufficient income to warrant payment of any due renewal fees. In the event that it is decided that the patent or registered design is considered to no longer be capable of generating sufficient income to cover costs associated with maintaining such registration the IP Panel may, at its discretion, allow such registered protection to lapse. In such circumstances if the relevant member(s) of staff wishes to maintain the relevant registration s/he may do so at his/her own expense in which case Cardiff Metropolitan University may formally assign or licence its rights in respect of the relevant registered IPR or Works to the member(s) of staff on terms specified by Cardiff Metropolitan University.

## Any and all costs incurred by Cardiff Metropolitan University in obtaining IPR protection in respect of any IPR or Works, together with the cost of maintaining such protection and any other costs (including legal costs) associated with exploitation of any IPR or Works (including overheads and taxes payable in respect of such exploitation) will be deducted from any income arising from the exploitation of the IPR or Works. After such deductions have been made, the remaining sum (“the Net Proceeds”) will be shared between Cardiff Metropolitan University and the member(s) of staff attributed as the inventor(s) or designer(s) of the relevant IPR or Works. The division of the Net Proceeds will be divided in accordance with the Fair Share Scheme, details of which are set out in Para. 6.1.

## Cardiff Metropolitan University will take reasonable steps to protect ideas, information and IPR where relevant. However, due to the potentially high costs of protecting IPR from infringement no guarantee of legal action being undertaken in the event of a potential infringement can be given by Cardiff Metropolitan University. However, where IPR is licensed to a third party, Cardiff Metropolitan University will where possible ensure that the licence agreement provides that the costs of protecting the relevant IPR from third party infringement will be the responsibility of the licensee.

# Fair Share Scheme

## The Net Proceeds (as defined in Para. 5.2) of the exploitation of any IPR developed by a Cardiff Metropolitan University staff member in the course of his/her employment or using Cardiff Metropolitan University resources will be apportioned on a case-by-case basis following negotiations between Cardiff Metropolitan University and the member of staff.

## Where more than one staff member is involved, revenue will normally be distributed by Cardiff Metropolitan University in equal shares between the staff members unless the relevant staff members specifically notify the Cardiff Metropolitan University Research & Innovation Committee in writing that they require distribution of the Net Proceeds on an unequal basis. In such circumstances the Cardiff Metropolitan University Research & Innovation Committee will require a signed confirmation from each relevant staff member of the agreed basis of apportionment of such sums.

## Payment of any sum due to staff member(s) in accordance with this will be made on a [quarterly]/[annual] basis (after deduction of tax where appropriate) to such bank account as the relevant staff member(s) shall notify the Cardiff Metropolitan University Research & Innovation Committee and will be accompanied by a statement indicating how the figure paid has been calculated.

# Confidentiality

## In addition to the specific references to confidentiality within this policy, staff are reminded of their contractual responsibilities set out in the contract of employment regarding confidentiality.

# Appeals

## Any dispute relating to this policy, including any dispute arising out of ownership and payments, will be referred initially to the staff member’s line manager. If the dispute cannot be resolved by the line manager, it will be referred to the Vice Chancellor who will determine how to proceed to resolution.

## The process within Para. 8.1 does not affect any statutory rights applicable to or referenced in the contract of employment.

# Further Information

## If further information is required on any of the matters dealt with within this policy, please contact: -

## Cardiff Metropolitan University Research & Innovation Committee, Llandaff Campus, Western Avenue, Cardiff.

**Annexes**

# **Annex 1 – IP & COMMERCIALISATION FUND APPLICATION FORM**

Available on the Research & Innovation Services SharePoint:

[IP & Commercialisation Fund (sharepoint.com)](https://outlookuwicac.sharepoint.com/sites/RIS/SitePages/Funding/IP-Commercialisation-Fund.aspx)

# **Annex 2 - Examples of Registered Designs**

**Patents** – patent rights protect inventions and in order for an invention to be granted a patent it must be new and involve an inventive step, which must be capable of industrial application and not specifically excluded (e.g. computer programs, methods of doing business etc). The granting of a patent in respect of an invention provides a monopoly right to use and exploit that invention, for a limited period usually 20 years. In return for the exclusive rights regarding the patented invention, the inventor effectively agrees to information regarding the patent being made available to the general public. UK patents are maintained on the public register by the Patent Office. Similar rights may be obtained in other countries through separate registration systems.

**Registered Designs** – this right relates to the outward appearance of an article or set of articles of manufacture and provides for a monopoly right in respect of the design. Designs must be novel and have eye-appeal. Registration lasts for an initial period of 5 years from the date of the registration and can be extended for further five year periods for up to a maximum of 25 years by payment of additional fees.

**Registered** **Trade Marks** – a registered trade mark is any sign or mark which effectively distinguishes the goods or services of one trader from another. It can include words, logos, pictures or a combination of all three and can also include shapes, sounds and colours. In order to obtain a registered trade mark, the mark must be distinctive for the goods/services for which registration is made, not be deceptive or descriptive of the relevant goods or services and must not be identical or similar to earlier marks which are registered for the same or similar goods or services.

# **Annex 3 – Examples of Unregistered Rights**

**Copyright –** copyright provides the author of certain types of material with the right to control the way in which such material may be used and/or exploited. The author broadly has the right to control copying, adapting, issuing, renting and lending of the work he/she created. The right applies to all original literary, dramatic, musical and artistic work and includes computer programmes, sound recording, films, broadcasts and typographical arrangements of published works. The rights granted in respect of copyright arise automatically and subsist for a period of 70 years after the death of the author and 50 years from the date of publication in respect of sound recordings, broadcasts and cable programmes. While copyright is not registerable within the UK, certain countries, namely the United States, do provide for a system of registration of copyright.

**Unregistered Design –** this protects a design against copying. The right arises automatically but has a twofold requirement for originality:

(a) it is original (i.e. not itself a copy); and

(b) it is not common place in the design field in question.

The length of protection provided is for up to 10 years from first marketing. Designs however are specifically excluded where they must fit or match other items (i.e. spare parts) or are only surface decoration (the definition of unregistered design protects only the shape of a product).

**Know How** – know-how and other confidential information which would include such things as technical, commercial information and secret formulae can be protected very simply by keeping it confidential, normally under the terms of a confidentiality agreement. This is important because once it ceases to be confidential it will no longer be valuable.