

Intellectual Property Policy

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Intellectual Property Policy Overview

Oxford Brookes University believes its research and related activities should be disseminated for the benefit of wider society, contributing positively to the economy, public policy, culture and quality of life. One way that these impacts may be achieved is by the commercialisation of research outputs. Indeed, many funders of research expect that where appropriate, the University will facilitate commercialisation activities, for example by providing specific funding such as Follow-on or Proof-of-Concept awards.

The protection and exploitation of potentially valuable Intellectual Property (IP) plays an important role in the commercialisation and impact pathways, in fostering partnerships with business and industry, and in generating income streams that help to make research sustainable. The University, therefore, has a responsibility to ensure that its IP is managed effectively.

This document provides details of the University's policy for the ownership, management and commercialisation of research outputs and commercial ideas. This includes the arrangements for sharing any resultant income with inventor/ creator(s).

In this document an inventor/ creator(s) is defined as a staff member responsible for creating, inventing or developing Intellectual Property. The University may extend the benefit of this Policy to certain third parties, which extension must be evidenced in writing and signed by an authorised signatory of the University.

It is the University policy that:

- a) The product of work carried out with the benefit of the University environment (which includes facilities, resources, expertise and intellectual assets) constitutes Intellectual Property (IP) that should be owned, protected and used by the University for the general good of the University community as well as to the benefit of wider society.
- b) The University should make provision to recognise and reward persons who a) create work within the University that may have commercial value or b) bring into the University for its benefit already created work which they own.
- c) The University should not infringe the rights of others who own and control Intellectual Property.
- d) The University should meet its obligations to the funders of research including where required, the management and commercialisation of the results of the research.
- e) When working collaboratively with business and industry, the University is mindful of its obligations to recognise the IP rights of funders of research and will seek to ensure equitable and fair distribution to all parties including the University.
- f) The University supports knowledge exchange activities. The University will facilitate confidentiality agreements and any other necessary agreements as required to enable collaboration with business and industrial partners.
- g) The University recognises the value of Open Research and supports Open Access in making research publicly available. The University will work with researchers to ensure any intellectual property relevant to their specific research outputs will be adequately assessed and protected in addition to the suitability of such repositories.

The following Policy is designed to allow the University to identify, protect and use the Intellectual Property (IP) generated within the University environment or in collaboration with partners, to recognise and reward the creators of IP and to avoid infringement of third-party IP rights.

Intellectual Property Policy

1. Responsibility

- 1.1. The Pro Vice Chancellor for Research and Innovation (PVC RI) is responsible for the University's Intellectual Property (IP) Policy and the Research, Innovation and Enterprise Directorate (RIE) is responsible for implementation and operational delivery of the Policy to ensure effective protection and commercialisation of University IP.

2. Coverage of Policy

- 2.1. This Policy covers IP in all materials concerning any of the University's activities whether research, consultancy, academic, professional or otherwise created using University facilities and resources. For the avoidance of doubt, the University owns IP if:
 - a) The IP was created by a person employed by the University in circumstances where the law (The Patents Act 1977 and the Copyright, Designs and Patents Act 1988, together with any related IP legislation) presumes ownership to the employer; or
 - b) The IP creator or owner has, in writing, assigned their rights to the University.
- 2.2. This Policy covers all persons:
 - a) Bound by the University's regulations in general by virtue of their employment; or
 - b) Under a contract (such as for services, collaborative research with a third party, studentship or visiting researcher) binding the signatories to abide by these Regulations; or
 - c) Otherwise agreeing to abide by this Policy specifically (which agreement may be by written contract or by conduct or by verbal indication).
- 2.3. Where a person is bound to this Policy by virtue of their employment by the University, that person continues to be bound in respect of IP created during their University employment and as described at 10 below.

3. Exceptions to the Policy

- 3.1. IP created by undergraduate students and postgraduate taught students is exempt unless the University specifically negotiates and agrees otherwise (for example in relation to final year projects, projects involving third parties and work requiring use of pre-existing university-owned IP).
- 3.2. Postgraduate research students, as part of the enrolment process, will be asked to disclose any relevant IP, and review and agree to the terms and conditions of enrolment with respect to assignment of IP arising from their studies to the University. This does not include thesis copyright.
- 3.3. Generally, scholarly works produced solely in the furtherance of an academic career, being articles in journals, papers for conferences, study notes not used to deliver teaching and books not commissioned by the University, are not subject to this Policy.
- 3.4. The Director of RIE, in consultation with the PVC RI, will consider any particular case raised by those exempt from the Policy with a view to admitting them, by agreement, to the coverage of this Policy but will not be bound to admit any case.
- 3.5. This would be subject to verifying the factual basis of generation and ownership of the IP and to agreeing a share in the value of any successful commercialisation.

The RIE Directorate will, where practicable, provide support and guidance in the shape of information, contacts and examples but on a strict "no liability" basis and on the understanding that any individual IP owner would always be best served by taking independent advice on their own position.

- 3.6. Where those exempt from the Policy jointly generate IP with staff an agreement between the University and those exempt may be sought to determine if and how the IP may be exploited and how the value of any successful commercialisation would be shared. It should be noted that in this case neither the University nor the exempt person may exploit the joint IP without the written agreement of the other party.

4. Identifying IP and Disclosure

- 4.1. All persons bound by this Policy are responsible for disclosing to their Dean (or nominee) or Director of RIE (or nominee):
 - a) Any potential new IP arising from their work and/or;
 - b) Any potentially commercialisable IP arising from their work;
 - c) The ownership by a third party of any IP referred to or used for their work;
 - d) Any use to be made of existing university IP during their work;
 - e) Any IP they themselves own which is proposed to be used by the University.
- 4.2. The RIE Directorate is responsible for providing advice and responding to queries related to IP. If such an enquiry requires further investigation, all persons bound by the Policy will be expected to complete the [University Invention Disclosure Form](#) and return this to the RIE Directorate who are responsible for evaluating the information.

5. Protecting IP (including duty of confidentiality)

- 5.1. When undertaking University work with persons exempt from the Policy, staff must ensure there is a contract or agreement in place that adequately protects the University's IP (background and arising) prior to any work commencing.
- 5.2. All persons bound by the Policy must:
 - a) Keep the nature and matters relating to IP confidential until the fact and manner of disclosure is approved by the Director of RIE or nominee;
 - b) Only disclose any new IP in detail to students or other third parties where they have a genuine need to know and where they are also under an obligation of confidentiality to the University; and
 - c) Assist in protecting the University's rights to the IP by keeping and making available on request appropriate records of creation. Guidance on Recording Intellectual Property is provided in APPENDIX D.
- 5.3. Staff wishing to create a brand or sub-brand of Oxford Brookes with a name and/or logo by which to promote their research and/or knowledge exchange activity should make an application in writing to the Director of RIE. In consultation with Marketing, Communications and Engagement and Faculties, the request will be reviewed and a decision provided. The RIE Directorate will also ensure adequate protection is put in place e.g. by registering a trade mark, if appropriate.

6. Securing the University's Rights in Relation to Use of IP

- 6.1. All persons bound by the Policy must cooperate with the RIE Directorate to ensure that all aspects of the following are approved in writing and in advance:
 - a) That before the start of any collaboration with third parties who are not bound by the Policy (including students and visiting academics as well as other universities and companies) from which IP may arise, or for which University IP

may be used or disclosed, and the RIE Directorate is requested to secure appropriate assignments and/or agreements for the University relating to confidentiality and IP issues.

- b) That those terms are agreed by the University and made clear in any bid or proposal or collaboration document relating to the project/work prior to the commencement of the work;
- c) That the project/work outcome is, wherever possible, owned by, assigned to or licensed to the University for its use and/or commercialisation on adequate and fair terms agreed by the University;
- d) That the University may procure from the individual or third-party owner or controller of any IP referred to or used for their work within the University an appropriate licence, assignment or consent for the University's use of the IP at the outset of the work to avoid infringement;
- e) That no work is conducted for the benefit of or using material owned by a third party before the terms of ownership and use of project/work outcome are agreed;
- f) That the University's ownership is asserted in relation to trade marks and copyright by the use of appropriate copyright (e.g. © Oxford Brookes University 2023) and trade mark symbols. APPENDIX C provides guidance on Copyright in Course Materials (including e-learning).

6.2. For new members of staff joining the University any rights to existing intellectual property will be secured and/or assignments made as appropriate. The RIE Directorate will manage any in-flight commercialisation activity as required.

7. Commercialising IP

7.1. RIE Directorate in collaboration with inventor/ creator(s) and Faculties has responsibility for commercialising University-owned IP on behalf of the University. IP may be commercialised through:

- a) Grant of a licence to one or more third parties to exploit associated inventions;
- b) Assignment to a third party;
- c) Creation of a spinout company.

7.2. The University provides support to academic researchers who have created IP with potential to be spun out in a new company. The terms for creation of a spinout are set out in the University's Spinout Policy

7.3. Any income generated from commercialising University-owned IP belongs to the University. It is the University's policy to share such income, as set out in the Revenue Share Arrangements [APPENDIX B], with all named inventor/ creator(s), as detailed in the Invention Disclosure Form.

8. Reward for Creation

8.1. The RIE Directorate is responsible for administering the University's approach to revenue sharing derived from intellectual property with inventor/ creator(s) of IP, as set out in the Revenue Share Arrangements [APPENDIX B]. All persons bound by the IP Policy have the right to apply for this reward, whether as individuals or as a team, where they can warrant the uniqueness and originality of new IP created by them and demonstrate its value to the University.

8.2. Once there is a definitive income stream, a Revenue Sharing Agreement is entered into between the University and the relevant inventors being offered a reward.

- 8.3. Where IP is generated jointly by staff, or with others exempt from the IP Policy, each is responsible for informing the University of their individual contributions to its generation during completion of the [University Invention Disclosure Form](#). For the purposes of distribution of compensation or reward in respect of IP generated jointly among staff or staff and others, it shall be their responsibility to agree their *pro rata* shares and to inform the University. Where there is no agreement, the Director of RIE shall make an initial ruling.

9. Applications to use University IP (including Trade Marks)

- 9.1. The University is willing to consider requests from its staff and students for a licence to use specific IP owned by the University for their personal use although the terms and decision to grant any such licence is wholly a matter of discretion for the University.
- 9.2. Applications for a licence under paragraph 9.1 should be made in writing to the Director of RIE. Following due process, an initial ruling shall be given within 20 working days of receipt or reasons for not permitting.
- 9.3. Applications to use the University name, logo and/or trade mark should be made in writing to the Director of RIE who will consult with Marketing, Communication and Engagement. It should be noted that only an authorised signatory of the University can grant permission.
- 9.4. Copyright requests for materials believed to be owned by Oxford Brookes are directed to ircopyright@brookes.ac.uk to determine ownership before passing to the RIE Directorate to review the request, make a decision and arrange any agreements that may be necessary.

10. On Leaving the University, Secondments and Visitors

- 10.1. Upon leaving the University, any person bound by this Policy shall continue to acknowledge and attribute the University's IP rights created during their employment or under any other contractual obligation whilst at the University in a clear manner and declare, where appropriate, to any new employer or third party.
- 10.2. Usually it will be the intention of the University that entitlements and obligations arising under this Policy will continue after employment at the University ceases. This is providing that the commercialisation of the IP is not hindered and that the inventor/creator(s) continue to support the commercialisation process as necessary after employment ceases. This may require a negotiation with a future employer involving a sharing of overall revenues with the new employer and clarification that no conflicts of interest exist.
- 10.3. Visitors from other organisations who work on site at Oxford Brookes are not members of staff and therefore exempt from this Policy. However, all visitors are expected to have a contract or agreement prior to commencing work within the remit of this Policy, including provisions for background and arising IP.
- 10.4. Members of staff who work with other organisations as visitors or on secondment are expected to have a contract or agreement in place to manage any intellectual property background and arising IP.

11. Notification of Infringement

- 11.1. Any person bound by this Policy must alert the RIE Directorate or the University's Legal Services Department immediately on suspecting or becoming aware of an infringement of IP rights being either
 - a) Infringement of IP rights owned by the University; or

b) The University's infringement of IP rights owned by a third party.

11.2. In the case of actual or suspected infringement of third-party IP rights, any person bound by this Policy must comply with the instructions of RIE and/or the University's Legal Services Department in order to minimise the impact and extent of the infringement. Any action will be entirely at the discretion of the University.

12. Breach of the Policy

12.1. Breach of this Policy is a disciplinary matter for University staff and students under the normal procedures.

12.2. The University shall consider all avenues available to it, including legal action by injunction or for damages or otherwise, in respect of persons bound by these Regulations acting in breach of them.

13. Discretion to Assign/Licence Back

13.1. If the University decides that it does not wish to pursue the commercialisation of any IP or that it does not wish to maintain an interest in IP, it has the discretion to assign its rights to the inventor/ creator(s) of the IP or to enter into an agreement to enable the IP to be used by the inventor/ creator(s).

13.2. This will generally only be granted where there is clear evidence that the IP provides no other benefit to the University and is not related to other IP which the University has an interest in. The University will not assign its interest if it considers that the commercialisation of the IP could potentially bring the name of the University into disrepute through previous association or may contravene national regulations and legislation concerning protected activities that may pose a national security risk as required in the National Security and Investment Act 2021 nor the Export Control Order 2008.

13.3. Requests for any such transfer of rights from the University should be made in the first instance to the Director of RIE or nominee.

14. Amendments to the Policy

14.1. This Policy may be amended by the Vice Chancellor's Group (VCG).

15. Disputes

15.1. Any person disputing the coverage, administration or effect of this Policy must address their concern in writing in the first instance to the Director of RIE who shall within 20 working days of receipt give either an initial ruling or reasons for not so doing together with an indication of process (e.g. further information required, reference to another person/body for decision or opinion).

16. Appeals

16.1. Any person dissatisfied with the application of or a decision made under this Policy must appeal in writing to the Director of RIE who will convene a sub-committee of the Research and Knowledge Exchange Committee (RKEC) to undertake a review after consultation with the person making the appeal.

16.2. The University reserves the right to delay or refuse an appeal under 16.1 where it is satisfied that the subject-matter of the appeal has been referred to and is being progressed under another suitable process, such as the University's Student

Complaints Procedure, including an external process where the University is content to recognize the outcome of that external process.

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APPENDIX A: A Brief Guide to Intellectual Property Rights

This appendix gives an overview of the different types of intellectual property rights. Further information is available on the Intellectual Property Office (IPO) website (<https://www.ipo.gov.uk/ip-support/welcome>).

1. What is Intellectual Property?

- 1.1. Intellectual Property (IP) is the term used for any inventive product of the human mind i.e. all IP has a human creator, although the wider question of whether something occurring in nature (DNA for example) can be claimed as IP is not certain. IP can either be tangible such as a physical work of art or intangible such as a scientific process.

2. How is IP used?

- 2.1. The ownership and control of IP is expressed in terms of IP rights (IPR) such as copyright. The system of ownership and licensing means that a right to use IP can be distinct from the ownership of that IP; for example, the author of a novel can license a film company to make a film of the book. Obviously, the IP owner usually wants to be paid for allowing someone else (the licensee) to use the IP.

3. Who is the owner of IP in law?

- 3.1. Generally, the creator of IP is its legal owner (often described as the "first owner"). From the University's point of view, the most important exception to this is the general rule that IP is owned by a person's employer where the IP is created as part of, or through the auspices of, the person's employment.
- 3.2. Ownership rights can be assigned by the first owner; this assignment is often made, for example, as a condition of a researcher's funding (i.e. the funder is prepared to pay for the research provided that ownership of any IP is assigned from the researcher to the funder).

4. How is ownership of IP protected?

- 4.1. Legally recognised IPR can arise automatically, as with copyright, or can arise through registration, as with patents. Other rights are capable of enforcement either as unregistered or registered rights, as with design rights. It is beyond the scope of this guide to analyse the difference in enforcing unregistered and registered rights.
- 4.2. Where there is no legally recognised right of ownership in a particular type of inventive or creative asset, the only way to protect the value of the ownership is to keep the nature of the asset secret.
- 4.3. This means that trading with or discussing the asset must be done under terms of strict confidence, usually emphasised by the parties entering into a formal confidentiality agreement (also known as an NDA / non-disclosure agreement). For example, there is no legally recognised way of protecting "know-how" so it is prudent to disclose valuable know-how only when the person to whom it is disclosed has been placed under an obligation of confidence. The law recognises obligations of confidence and offers remedies for a breached obligation.
- 4.4. Even where a legally recognised system of protection exists for a type of IP, some owners still choose to rely on secrecy rather than take advantage of protection offered where, as with a patent, disclosure is a condition of the protection. Once IP is disclosed, the "keeping it secret" option has gone.

5. Summary of the main classes of IPR.

- 5.1. **Patent** - A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.
- 5.2. **Copyright** - This time-limited (varies between 25 and 70 years according to the material) right arises automatically on the physical creation (not the idea) of software, original literary, dramatic, artistic or musical work, and in recorded (e.g. film) or published (e.g. layout) derivations. Use of the © mark and owner's name and date is the internationally recognised way of alerting the public to the copyright ownership but the protection (the right to preventing unauthorised copying) exists regardless (governed by the Copyright Designs and Patents Act 1988). Copyright may be assigned to a third party, but until that point or until a licence is agreed it remains the property of the creator, unless s/he creates the work 'in the course of his/her employment', in which case it is the property of the employer.
- 5.3. **Moral Rights** - In addition, all European countries (including the UK) recognise an author's moral rights. There are four – paternity, integrity, false attribution and privacy. These rights relate to the reputation or standing of the creator in the eyes of fellow human beings. To infringe a moral right involves denigrating or harming the author's reputation. The right of paternity has to be asserted in writing: it is the right to be identified as the author of the work. The right of integrity means the copyright owner has the right to object to derogatory treatment of their work. Basically, this means changing it in any way without permission. Moral rights can be waived: by this, the author chooses not to exercise the rights – or they can be bequeathed. They cannot be assigned.
- 5.4. **Performing Rights** - Creators of copyright works have the right to protect the physical form in which those works are created – words on the page, pigment on a canvas, or the clay or metal of a sculpture. Performers such as actors, musicians and dancers also enjoy protection of their performance, especially when recorded on film, video, tape, CD, or in other forms. Performing rights may affect the multimedia elements of online courseware, as well as the creator's copyright in the material itself.
- 5.5. **Database Rights** - This time-limited (15 years) right arises without registration to protect the compilers of non-original information from losing the benefit of their work through unauthorised copying or reuse (governed by the Copyright and Rights in Databases Regulations 1997).
- 5.6. **Industrial Designs** - There is automatic time-limited (15 years) protection (the right to prevent unauthorised copying) for unregistered designs, provided authorship can be proved, under the Copyright Designs and Patents Act 1988. This design right covers functional shape or configuration. On registration under the Registered Designs Act 1949, the designer of the new pattern or shape which has aesthetic appeal (can be 2 or 3 dimensional) acquires a monopoly right of commercialisation for 25 years.
- 5.7. **Domain Names** - Registering a domain name for Internet use gives a right to use the domain name typically for a period of two years. (Registered with bodies like ICANN and NOMINET). Owners of trade marks can have established rights to domain names.
- 5.8. **Trade Marks** - Registering a trade mark under the Trade Marks Act 1994 gives a monopoly right for the use of graphically distinct trading identification signs. Unregistered trade marks have some protection through court actions against "passing off" (piracy), provided that their use has not lapsed for a period of 5 years.

6. Issues for IP creators and owners

6.1. Some of the main problem area for IP creators and owners:

- a) Incorporating background IP which belongs to someone else;
- b) Joint ownership (where there is more than one creator);
- c) Proving the date of creation (e.g. where two inventor/ creator(s) contest priority over the same invention/discovery);
- d) Failing to define/prove what was created;
- e) Inadvertent disclosure.

6.2. If this happens to you, contact the Directorate for Research, Innovation and Enterprise for support.

APPENDIX B: Revenue Share Arrangements

This appendix details the revenue sharing arrangements for inventor/ creator(s).

1. Net Benefits

- 1.1. Subject to any agreements with external collaborators net benefits are the remainder of all licence fees, royalties and any other monies received by the University from commercialisation of the invention after deduction of the following:
 - a) Tax;
 - b) Costs of travel outside the United Kingdom on business connected with the invention;
 - c) External professional services costs incurred to support commercial exploitation of the invention e.g. consultants;
 - d) Costs of development, including the principal costs and any premiums on repayable awards such as Proof of Concept Funding, prototype production
 - e) The University's expenses of applying for, obtaining and maintaining protection of the invention;
 - f) Costs of resisting any petitions or applications for revocation of such protection and infringement proceedings of such protection including fees paid and payable in respect of such matters and legal fees;
 - g) Costs of gathering evidence and investigating suspected infringements;
 - h) Costs of external lawyers and other professional advisors used to set up agreements with external collaborators;
 - i) Costs arising from audit of compliance with commercial agreements, including licence agreements;
 - j) Additional expenses incurred by the University in paying additional PAYE income such as employer's contribution to National Insurance or pension costs. However, note that revenue sharing benefits are not normally pensionable;
 - k) Staff support costs arising from activities solely for the purposes of directly generating revenues, where such costs would not otherwise have been incurred by the University and not covered elsewhere in the University.
- 1.2. The University reserves its right to negotiate terms in special circumstances: for example, if IP is shared with third parties or where multiple elements of IP are combined for commercialisation.

2. Payments

- 2.1. The University shall pay to the inventor/creator(s) once a year a proportion of the Net Benefits. This will be normally on the following scale:

Net Cumulative Benefit	Inventor's Share	University Share
£1 to £100,000	66%	34%
Over £100,000	33%	67%

- 2.2. The inventor/ creator(s) share of the Net Benefits is cumulative. For example, if the Net Benefit was £10,000 in year 1, 20,000 in year 2, 45,000 in year 3 and £125,000 in year 4, cumulative total £200,000, the inventor/creator(s) share would be as shown in the table below:

Net Benefit			Inventor/Creator(s) Share					
Year	Annual Net Benefit	Cumulative Net Benefit	Year 1	Year 2	Year 3	Year 4	Year 5	Cumulative
1	£10,000	£10,000	£6,600					£6,600
2	£20,000	£30,000		£13,200				£19,800
3	£45,000	£75,000			£29,700			£49,500
4	£125,000	£200,000				£49,500*		£99,000
5	£100,000	£300,000					£33,000	£132,000

*[66% of £25,000 = £16,500 & 33% of £100,000 = £33,000, Total = £16,500 + £33,000 = £49,500]

- 2.3. Where there is more than one inventor/creator(s), the inventor/creator(s) share is divided between the inventor/creator(s) in a proportion which reflects their respective contributions as provided in the Invention Disclosure Form, and is a percentage of the Cumulative Net Benefit.
- 2.4. For the purpose of identifying the cumulative income, income from one invention is counted together irrespective of whether the same IP is commercialised through one or multiple agreements.
- 2.5. The share of the Net Benefit to the inventor/creator(s) gives inventor/creator(s) more benefit early on in the lifetime of the invention and the single step in % share simplifies the administration of benefits.
- 2.6. The University will endeavour to ensure all payments are made to inventor/creator(s), however, it is the responsibility of the inventor/creator(s) to ensure Oxford Brookes is kept informed of any changes to contact information. The RIE Directorate will inform the PVC RI for a final decision.

APPENDIX C: Guidance on Copyright in Course Materials (including e-learning)

Appendix C provides guidance on establishing and protecting copyright in course materials including content in 'courseware' developed for distance learning and e-learning.

1. Background

The distribution of content in any form involves questions of intellectual property. The interests of both the creators of content in course materials and the users of content need to be met. These guidelines focus largely on creators' needs, whether within or outside the university, and attempt to establish principles of good practice for all.

2. Courseware

- 2.1. Courseware may be created or distributed as print on paper, but it is anticipated that it is more likely to be created and distributed in digital form, either on the Internet or (more probably) on the Extranet.
- 2.2. Oxford Brookes University is a service organisation that delivers education. The development of courseware is an essential adjunct to the service provided, but is not an end in itself.
- 2.3. In this context, it is essential that the University can develop and maintain courseware to the highest international standards. The University must be confident that it either controls or has authority to use all the intellectual property rights that are necessary for it to be able to achieve this aim.
- 2.4. At the same time, the University has no wish to curtail the academic freedom of its staff to publish within the framework of scholarly communication. These guidelines are intended to strike an appropriate balance between the needs and rights of the University and the needs and rights of the individual members of staff.
- 2.5. This draft policy document has been prepared in accordance with the University's Contract of Employment with members of its staff.

3. Challenges of convergence, interdependence and re-use

- 3.1. Courseware has till now largely focused on conventional print on paper format and mainly on the use of text and graphics. Different IPR issues arise the further we move into a digital and online environment. These issues include performing rights, moral rights, and rights in applicable software. IPR issues affect text, graphics, still and moving images, music, sound recordings, multimedia, and other copyright forms.
- 3.2. Convergence between different media types – text, pictures, audio-visual, software – produces an environment in which rights management becomes potentially complex. This complexity increases as the content becomes more interdependent – and more difficult to deconstruct into its constituent parts.
- 3.3. Multiple formats and multiple delivery mechanisms mean that copyright may subsist in a wide variety of elements owned by many different individuals. Identification of rights ownership is a key part of the process of developing courseware.
- 3.4. Courseware may have a long lifetime, and be subject to constant revision. The need to re-use and re-edit courseware may outlast the tenure of any individual member of staff. The university must continue to have the necessary rights to re-use and to update the material.

4. Content specifically commissioned to be included in courseware.

- 4.1. For content commissioned from members of academic staff in the normal course of their duties for inclusion in courseware, the University will depend on Clause 16.4 of the University's Contract of Employment and on Clause 11 of the Copyright Designs and Patents Act (CDPA) 1988 (works produced in the course of employment). All IPRs will belong to the University.
- 4.2. Although under Clause 79 (3) (a) of CDPA 1988 it is clear that the author's moral rights do not apply to works produced in the course of employment, nevertheless the University will so far as is practicable identify the original author(s) of all items of courseware.
- 4.3. For works commissioned from a member of staff which is to be produced outside the normal course of their duties, or from someone who is not a member a staff, the University will use a form of contract which makes it clear that all IPRs in the work belong to the University and that all moral rights are waived.
- 4.4. The University will in principle always be prepared on request to licence re-use of such content developed by an author in other contexts. The University reserves the right to refuse such a licence for the reuse of the same content in courseware developed for a subsequent employer (in competition with the University). This should not be seen as implying that the University is claiming any rights over the ideas contained in the courseware – simply over their precise mode of organisation and expression.

5. Copyright – Extract from the academic contract of employment

- 5.1. Subject to the following provisions, the University and you acknowledge sections 11 and 215 of the Copyright, Designs and Patents Act 1988.
- 5.2. All records, documents and other papers (including copies and summaries thereof) which pertain to the finance and administration of the University and which are made or acquired by you in the course of your employment shall be the property of the University. The copyright in all such original records, documents and papers shall at all times belong to the University.
- 5.3. The copyright in any work of design compiled, edited or otherwise brought into existence by you as a 'scholarly work' produced in furtherance of your professional career shall belong to you, 'scholarly work' includes items such as books, contributions to books, articles and conference papers, and shall be construed in the light of the common understanding of the phrase in higher education.
- 5.4. The copyright in any material produced by you for your personal use and reference, including as an aid to teaching shall belong to you.
- 5.5. However, the copyright in course materials produced by you in the course of your employment for the purposes of the curriculum of a course run by the University and produced, used or disseminated by the University shall belong to the University, as well as the outcomes from research specifically funded and supported by the University.
- 5.6. The above sub-clauses (3) - (5) shall apply except where agreement to the contrary is reached by you and the University. Where a case arises, or it is thought that a case may arise, where such agreement to the contrary may be necessary, or where it may be expedient to reach a specific agreement as to the application of the above sub clauses to the particular facts of the case, the matter should be taken up between you and your Head of Department/School and the Director of Research, Innovation and Enterprise Directorate. By way of example, this sub-clause would apply where any question of assignment of copyright or of joint copyright may arise.

6. Rights owned by third parties

- 6.1. The University respects the Intellectual Property Rights of third parties, and staff should at all times respect them.
- 6.2. If content for courseware is taken from any source where the ownership of the IPRs belongs to someone other than a member of the University's staff or the University itself, it should always be assumed that it is necessary to obtain a licence to use that content, whether or not payment is to be made.
- 6.3. The responsibility for ensuring that such licences are obtained lies with the member of staff who has been commissioned to develop the specific piece of courseware. If that member of staff has any doubts about whether a licence is required, they should consult the Legal Services Department.
- 6.4. Licences for use of third-party material should be obtained on behalf of the University not on behalf of the individual member of staff, using a form of licence that can be provided by the Legal Services Department.
- 6.5. It is unlikely that third parties will grant rights to the University that are sufficiently broad to allow repeated or perpetual re-use of material. Applications should specify the use for which rights are being sought. Individuals should be careful to ensure that applications for re-use, when required, are made promptly and accurately.
- 6.6. Licences for use of third-party material will normally require that licensees adhere to the rights owner's moral rights of paternity and integrity. This means the author must be fully credited, and that editorial or other changes must be approved by the third party.
- 6.7. Licences from third parties will often require payment for any substantial use of their copyright material, and they are free to ask for whatever they think their material is worth. The Director of Research, Innovation and Enterprise should be consulted.
- 6.8. Staff should not expect the process of permission clearance to be instantaneous or even prompt: the process can take weeks rather than days.
- 6.9. The University's membership of HERON [Higher Education Resources Online] may provide help with permissions clearance in some cases. HERON is a copyright and digitisation service.

7. Policy and practice to protect Brookes material

- 7.1. New material produced specifically for use in the University (whether courseware or in any other form) is itself subject to copyright protection, and members of staff must play their part in ensuring the university's IPR interests are protected as far as possible.
- 7.2. Contents or title pages, metadata or other descriptions of such material should carry a copyright line which reads "© (year, e.g. 2006) Oxford Brookes University". This material is protected by copyright and may not be copied, re-used, downloaded, or otherwise appropriated, except in accordance with terms or exceptions of the 1988 Copyright, Designs and Patents Act, or with licences issued by the Copyright Licensing Agency, without the express permission of the University. Applications for permission should be made in the first instance to the Copyright Executive Officer (lrcopyright@brookes.ac.uk).
- 7.3. Securing and protecting the copyright of material generated in any form (whether conventional print or digital) by the university will remain a long-term commitment on the part of all academic staff.
- 7.4. Misuse or apparent infringements of University copyright material by third parties should be notified immediately to the Directorate for Research, Innovation and Enterprise (see paragraph 11 of the IP Policy).

APPENDIX D: Guidance on Recording the Creation of IP

Appendix D provides guidance on how to use and keep records (paper or digital form) properly to record the creation of IP in order to facilitate proof of invention. This is particularly important for patents in the USA, but the same records can be used for establishing creation dates for other forms of intellectual property.

1. Background

- 1.1. For all forms of Intellectual Property (IP), the onus is on the creator to prove ownership and date of creativity or inventiveness. The onus is rarely on the infringer to prove innocence. This is particularly true for naturally occurring rights such as Copyright and (unregistered) design rights. However, even for rights that require registration such as patents, registered designs and registered trademarks the onus is still on the creator – just at an earlier stage.
- 1.2. It is generally considered good practice by researchers, developers and engineers to keep a notebook (paper or digital format) to log their activities, and many already do this – but they often do not do it in a way that will stand up in court.
- 1.3. Establishing good practice with respect to the recording of R&D will help to ensure that the intellectual property that is created is not inadvertently lost, and any potentially valuable intellectual property identified at an early stage.

2. How to keep the Notebook (paper or digital form)

- 2.1. It should be possible to keep records in reasonably complete and clear form without becoming too time-consuming and burdensome.
- 2.2. The following is intended as a general guide on how to keep a notebook (paper or digital). From a legal standpoint, a laboratory notebook (paper or digital) entry should be sufficiently competent to prove certain facts, such as the conception of an idea, the testing of a model, and the results of the test.
- 2.3. For paper notebooks:
 - a) It is important to use a notebook that has a permanent binding. Loose-leaf, spiral-bound or other temporarily bound books allow for page removal, insertions and substitutions, and are therefore not suitable.
 - b) The pages of the notebook should also be numbered. Such a system helps to reduce the possibility of any successful challenge to the validity of the notebook entry.
 - c) Notebooks should never be mutilated, for example by tearing or cutting out pages.
 - d) The permanence of the records is a prime consideration and it is therefore important that good quality paper should be used.
 - e) Use black permanent ink that is not water or solvent reactive, and does not smear. The ink should be light stable.
- 2.4. For digital notebooks it is essential that back-up copies are kept, and password protection is used as appropriate.

3. Recording Entries in the Notebook

- 3.1. As a general guideline, there should be enough information in the notebook (paper or digital) to enable someone working in the field to duplicate the work.
- 3.2. All data should be identified with respect to the project to which it relates, for example, by a project or experiment number or by a descriptive heading.
- 3.3. Do not use slang, abbreviations and unduly technical jargon. The notebook must be understandable to others, not only patent attorneys, but judges and sometimes to jurors and potential licensees.
- 3.4. Entries should be consecutively dated.

- 3.5. Any subsequent data added to the notebook, for example results of analysis, should be entered on a separate page with reference to the original entry. All digital entries should be backed-up and password protected as appropriate.
 - 3.6. Don't leave blank areas on a page. Draw lines through unused pages or parts of pages.
 - 3.7. The entries in the notebook (paper or digital) should be legible and factually complete.
 - 3.8. It is important to describe experimental procedures in as full detail as possible. This should include all conditions of experiment and all apparatus, sketched if necessary. Full details of the apparatus used should also be given.
 - 3.9. If an invention is made, the dates of "conception" and "reduction to practice" are very important in the USA. The record must show that there has been no "abandonment" between these dates. Diligence in the reduction to practice of an invention means that, as far as possible, generally steady, uninterrupted and constant work occurred following the conception of an invention.
 - 3.10. Avoid making negative notes or comments such as "No good", "Doesn't work" which might be later construed as indicating you were abandoning the idea.
- 4. Facts not opinions**
- 4.1. Do not express opinions in notebooks (paper or digital). This could lead to misinterpretation.
 - 4.2. The notebook should be limited to factual, quantitative and qualitative results. Statements like "the idea is obvious", "I think it is unpatentable", "perhaps would infringe patent X" should be avoided.
- 5. Inserts and supporting information**
- 5.1. If a record needs to be kept of computer-generated output - or other inserts such as graphs, drawings, photographs or other loose pages - each insert should be dated and attached in a permanent way (e.g. glued, stapled) onto successive numbered pages of the permanently bound notebook. The witness should write and sign across the join.
 - 5.2. If support records cannot be added to the notebook itself (e.g. large engineering drawings, computer source code, related reports, theses, etc), then reference to them should be made in the notebook in a consistent way and they should be stored in an orderly, readily retrievable manner.
- 6. Errors, Changes and Additions**
- 6.1. Errors should not be erased or obliterated beyond recognition. Neither should liquid paper be used. Simply cross out an error so that it is apparent what the error was.
 - 6.2. Explain all errors and mistakes as they occur and initial them.
 - 6.3. Never remove pages from the notebook.
 - 6.4. Entries should never be changed or enlarged at a later date. It is better to make a new entry, pointing out the change.
 - 6.5. Pencil diagrams or sketches should never be retraced in ink.
- 7. Signing off**
- 7.1. The US Patent Office has ruled that another witness who is independent must corroborate an inventor's testimony. For example, if the worker is a PhD student then the witness should not be their supervisor, since the supervisor is likely to become a co-inventor, and therefore not independent. A witness should sign the notebook on a regular basis.

8. Safe keeping

- 8.1. The notebook should be regarded as a confidential legal document and as such its use should be controlled. When completed, it should be stored in a safe place. It should not be treated as a freely available publication. For digital records, password protection should be used as appropriate.